

TO KILL OR NOT TO KILL?  
A DISCURSIVE ANALYSIS OF COLONIAL AND ISLAMIC INFLUENCES  
ON BLASPHEMY LEGISLATION IN POSTCOLONIAL PAKISTAN

by

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## **Abstract**

At the time of independence, Pakistan inherited certain blasphemy laws along with the Indian Penal Code instituted by the British in 1860. After independence, additional blasphemy laws were introduced under a military regime in the 1980s. The postcolonial laws mirrored the colonial blasphemy legislation in important ways, but also differed significantly. Like their colonial precursors, the postcolonial blasphemy laws are (a) capacious in terms of what constitutes the offense and (b) require complainants to demonstrate that their “feelings” have been injured, which entails incitement of religious passion and violence that does not subside in favor of the judicial process. The postcolonial laws were designed moreover to appease certain religious political actors and a segment of the population. By means of these laws, an autocratic regime coopted and legitimized social violence in exchange for legitimacy. In the years following their legislation, these laws have been used to punish dissent and target members of minority communities. The laws have engendered unhealthy social mobilization and vigilante justice. The present work investigates colonial, Islamic traditional and imperial, and contemporary discursive influences that have shaped the blasphemy laws instituted in the 1980s. The characterization of the discursive and political climate in contemporary Pakistan is based on analysis of (a) interviews and video statements appearing on news and social media, and (b) semi-scholarly articles appearing in journals of religiopolitical organizations. The discussion of Islamic traditional and imperial influences is based on an examination of the Qur’an and important Islamic juristic texts on the subject. The impressions concerning the colonial legacy derive mostly from secondary scholarly works. Based on engagement with numerous primary and secondary sources in Arabic, English and Urdu, it is contended that the blasphemy laws introduced in Pakistan in the 1980s mirror certain features of precursor colonial laws, but also bear distinctive features that issue from a postcolonial Islamic discursive matrix consisting of a tide of Salafism that began in the 1970s, preoccupation with a narrow set of moral concerns and top-down approach to Islamic reform, and the desire to antagonize perceived adversaries of Islam and Pakistan.

## **Lay Summary**

Blasphemy laws instituted in Pakistan through the 1980s have reflected and emboldened certain trends in postcolonial Islamic thought. Like their colonial precursors, Pakistani blasphemy laws require the complainants to demonstrate that their feelings have been injured, which entails excitement of religious passion and instigation of violence that does not easily subside in favor of the judicial process. The social violence coopted and furthered by these laws has claimed the lives of many people who were accused of blasphemy, often without an opportunity to defend themselves. The present work investigates recent and remote, Islamic and colonial influences that have a share in the genesis of Pakistani blasphemy laws. The study aims to demystify these laws and contribute to shifting the discourse in the direction of fairness and human dignity while remaining consonant with ethical and religious sensibilities of the Pakistani populace.

## **Preface**

This thesis is original, unpublished, independent work by the author, S. A. Faisal Nahri.

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Studying theories and methods in religious studies with Prof Paul Bramadat proved to be another important influence in this work. I gained much-needed familiarity with postcolonial scholarship, especially the role of power in shaping discourse, in Paul's class. I combined those insights with Prof Anne Murphy's feedback on my prospectus to identify important discursive developments that issued from reconfigured religious power in postcolonial Pakistan and played a critical role in the country's blasphemy legislation.

When Rume was away for a year, Siraj al-Haqq Scott Kugle offered valuable help and insights as I conceived the project and wrote my prospectus. Scott's important article on Anglo-Muhammadan jurisprudence is one of two sources that inform my analysis in the present work. I am indebted to my colleague and mentor Seemi Ghazi, who requested Scott to assist me in the earliest phase of this project. Seemi witnessed the turbulence in my personal and professional life and offered immense support at various stages of my master's studies. Her compassion and selflessness has changed me for the better.

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إِنْه

بِسْمِ اللَّهِ

الْفَالِقِ الْحَبِيبِ وَالنُّوِيِّ

وَالْفَاظِرِ السَّمَاوَاتِ الْعَلِيِّ

در راه خدمت به بندگان خدا

## Introduction

On a Tuesday afternoon in January 2011, the Pakistani news media broke the news that the governor of Pakistan's most populous Punjab province had been killed by his own bodyguard who shot him many times after he met someone for lunch in the relatively peaceful Kohsar Market in Islamabad. Governor Taseer had been publicly advocating against the blasphemy law 295-C and sought presidential pardon for a Christian woman of modest socioeconomic standing who had been sentenced to death under this section of the penal code.<sup>1</sup> Only two months later, the country's non-Muslim minister for minority affairs Shahbaz Bhatti was similarly assassinated in the capital city. He had also been vocal about the travesties of justice connected with the country's blasphemy laws.<sup>2</sup> Even though the debate around blasphemy laws was much older, the cold-blooded murders of Taseer and Bhatti forcefully highlighted the plight of many others who were targeted by means of these laws but did not have the social standing to receive sufficient coverage on news media.

Following the institution of these laws in the 1980s, there has been a sharp increase in the number of cases registered for blasphemy, most of all under Section 295-C which prescribes the death penalty for insulting the prophet Muhammad, deliberately or by implication, with no option for repentance and pardon. A number of people are on death row, but none have been executed thus far owing to international pressure. Many others are serving prison sentences or have been victims of vigilante justice. Members of minority communities are more likely to be accused of blasphemy, often to settle trivial disputes. It takes only a rumor and fiery speech by the local prayer leader (*imām*) to incite lynching, vandalism and other forms mob violence. Lawyers defending the

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<sup>1</sup> "Punjab Governor Salman Taseer Assassinated in Islamabad," *BBC News*, January 4, 2011, sec. South Asia, accessed December 4, 2017, <http://www.bbc.com/news/world-south-asia-12111831>.

<sup>2</sup> "Pakistan Minorities Minister Shahbaz Bhatti Shot Dead," *BBC News*, March 2, 2011, sec. South Asia, accessed December 4, 2017, <http://www.bbc.com/news/world-south-asia-12617562>.



accused, judges acquitting them, and people advocating revision of the laws have been attacked and killed.

Scholarly and journalistic analyses of blasphemy legislation and prevailing approaches to reform often focus on certain aspects, at the expense of others, in the complex genealogy of these laws. In a significant piece of postcolonial scholarship, Asad Ahmad elaborates and emphasizes the colonial genealogy of Pakistani blasphemy laws, which is mostly overlooked because of the antagonism between secular-liberal and religious groups in contemporary Pakistan and because of important differences that exist between colonial and postcolonial blasphemy laws.<sup>3</sup> Ahmad provides a remarkable account of substantive similarities between colonial and postcolonial blasphemy laws and how the former determined the possibilities for the latter. Significantly, he traces these similarities to the legal and linguistic philosophy of Thomas Macaulay, the architect of the Indian Penal Code. Ahmad also notes important differences between the two sets of laws but does not explain the distinctive features of postcolonial blasphemy laws in terms of classical and contemporary Islamic discourses and other factors that might be at play. In this respect, his discussion is limited to locating the accusatory discourse responsible for blasphemy charges in 19th-century polemical debates between Bareilvi, Deobandi and Ahl-i ḥadīth Muslims of India.<sup>4</sup> However, the legislation of postcolonial blasphemy laws and subsequent rise in blasphemy allegations is much more complex and intricately related to certain 20th-century discursive developments, which Ahmad does not account for. In short, his main contribution is elaborating the specific ways in which Pakistani blasphemy laws mirror their colonial precursors.

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<sup>3</sup> Asad Ali Ahmed, "Specters of Macaulay: Blasphemy, the Indian Penal Code, and Pakistan's Postcolonial Predicament," in *Censorship in South Asia*, by Raminder Kaur and William Mazzarella (Indiana University Press, 2009), 174, accessed January 10, 2017, <http://muse.jhu.edu/book/3839>.

<sup>4</sup> Ibid., 187.

Around the same time as Asad Ahmad's chapter, Siddique and Hayat published an important article on the subject, in which they discuss how the requirement of intent, an important element of colonial blasphemy legislation, was omitted in the postcolonial blasphemy laws instituted by General Zia's regime in the 1980s. With reference to numerous cases in the post-Zia period where absence of intent was not considered and people who ought not to have been tried, including the mentally challenged, were convicted after long painful trials, Siddique and Hayat make a compelling case for introduction of a *mens rea* requirement in Zia-era blasphemy laws to lower the chances of unjust convictions.<sup>5</sup> In this way, the authors have addressed an important point of distinction between colonial and postcolonial laws, which Asad Ahmad also notes in his work. However, their attempt to explain the genesis of Zia-era legislation is restricted to an autocratic regime instrumentalizing Islam and instituting the laws for less than bona fide reasons. Their account is the kind that gives General Zia too much credit without taking stock of the discursive climate that Zia reflected and fueled. Strangely, they steer clear of emphasizing the colonial genealogy of these laws, even though they engage with the same sources as Ahmad.

With a Western rights-based approach, Siddique and Hayat critique Pakistani blasphemy laws for undermining free speech and invoke a "broad international consensus on the undesirability of the death penalty" stipulated in Section 295-C of the Pakistan Penal Code for blasphemy against the prophet Muhammad.<sup>6</sup> Also a feature of Bilal Hayee's article published in 2012,<sup>7</sup> the rights-based discourse often issues from a place of Western indignation and perpetuates the colonial view of South Asian communities as overly religious hence irrational. Thus, a rights-based approach

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<sup>5</sup> Osama Siddique and Zahra Hayat, "Unholy Speech and Holy Laws: Blasphemy Laws in Pakistan – Controversial Origins, Design Defects, and Free Speech Implications," *Minnesota Journal of International Law* 17 (2008): 340–348.

<sup>6</sup> *Ibid.*, 381.

<sup>7</sup> Bilal Hayee, "Blasphemy Laws and Pakistan's Human Rights Obligations," *University of Notre Dame Australia Law Review*, no. 14 (December 2012): 25–53.

fails to move the vast majority of Pakistanis, who see it as an instrument of Western hegemony and a form of continuing onslaught.

In contrast with Asad Ahmed who emphasizes the colonial connection of Pakistani blasphemy laws and Siddique and Hayat who emphasize a military regime's need for legitimacy, Mashal Saif suggests that an "established body of work within the Islamic legal canon" informs the 'ulamā's treatment of blasphemy.<sup>8</sup> As she surveys the evolution of blasphemy offenses in the body of Islamic legal writings, she glosses over the differences between various schools of Islamic law and articulates a singular "Islamic legal position" on the matter. Contrary to Saif's view, I contend that the 'ulamā' do not formulate their arguments through an engagement with the "extensive Islamic legal literature on *sabb al-rasūl*" even as they purport to do so.<sup>9</sup> Their arguments are in fact shaped by numerous discursive and political factors often at the expense of the nuance and specifics of traditional Islamic deliberations on the subject. In her work, Saif discusses how certain 'ulamā' locate the sovereign authority to declare someone *homo sacer*<sup>10</sup> in the *sharī'ah*, which they interpret themselves, in their bid to justify extrajudicial murders of alleged blasphemers. However, Saif also notes that other 'ulamā' appeal to the Islamic tradition as well to justify the state's monopoly over the use of violence and to "expound the perils of lawlessness and anarchy that result from vigilante justice".<sup>11</sup> From my point of view, the stark distinction between these positions, both of which are couched in Islamic terms, highlights the limitation of tracing the genealogy of contemporary Islamic attitudes to the historical Islamic tradition.

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<sup>8</sup> Mashal Saif, "The 'Ulamā' and the State: Negotiating Tradition, Authority and Sovereignty in Contemporary Pakistan" (PhD Dissertation, Duke University, 2014), 90, accessed August 27, 2016, <http://dukespace.lib.duke.edu/dspace/handle/10161/9093>.

<sup>9</sup> Ibid., 94.

<sup>10</sup> *Homo sacer* is someone whose life is neither worth saving nor killing. Thus, a person deemed *homo sacer* by the sovereign may be killed without fear of retaliation. See Ian Buchanan, "Homo Sacer," *A Dictionary of Critical Theory* (Oxford University Press, January 1, 2010), accessed April 30, 2018, <http://www.oxfordreference.com/view/10.1093/acref/9780199532919.001.0001/acref-9780199532919-e-328>.

<sup>11</sup> Saif, "The 'Ulamā' and the State," 99.

Syed Adnan Hussain has offered a more comprehensive account of various historical and contemporary influences that explain the blasphemy legislation of the 1980s. However, he proposes a ‘linear’ set of ‘transformations’ beginning with the Islamic traditional and imperial practice, transitioning through the colonial period into Pakistan of the 1980s, and ultimately the present decade.<sup>12</sup> The interrelation of these influences and the eventual nature of Pakistani blasphemy laws appears to be more complicated than Hussain proposes. However, blasphemy laws are not the focus of his dissertation. He has only delved into the topic so far as it illuminates the dilemmas of a modern Islamic nation-state juggling religious and liberal commitments.

In short, the available works on the subject do not paint a full picture of the complex genealogy of Pakistani blasphemy laws. They often reduce the genesis of blasphemy laws to an aspect or two of a much more complicated picture. Thus, there is much confusion about how these laws came about, if they are integrally Islamic or not, and what should be the focus of advocacy and efforts for reform. The present work is an attempt to paint a more holistic picture of the multifaceted genealogy of Zia-era blasphemy laws, especially the one that penalizes blasphemy against the prophet Muhammad with death. It is my belief that a more balanced and comprehensive account of the genesis of these laws will open new avenues for discussion, help reduce the religious-secular divide, and push the Pakistani public discourse in the direction of greater fairness.

To accomplish this goal, in my first chapter, I will identify and elaborate certain features of the discursive and political climate in Pakistan that I believe are central to the legislation of blasphemy laws through the 80s and that also explain subsequent resistance to reform and amendment of these laws. It is my contention that a fair understanding of these discursive and political factors is necessary to develop effective strategies for advocacy and intervention. In the

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<sup>12</sup> Syed Adnan Hussain, “Negotiating Pakistan: A Genealogy of a Post-Colonial Islamic State” (PhD Dissertation, University of Toronto, 2015), 160–197, accessed July 31, 2016, <http://search.proquest.com/docview/1734037998/abstract/80963ECD24546D5PQ/1>.

second chapter, I will explore the genealogy of blasphemy laws further back in history. I will examine the emergence and evolution of blasphemy (*sabb*) offenses in the Islamic legal tradition, and whether it is significantly connected with how blasphemy laws are justified and defended in Pakistan today. I will also consider possible influences of Islamic empires on jurists' discussion of blasphemy and if at all this influenced the blasphemy debate in colonial India and contemporary Pakistan. Finally, I will identify the ways in which colonial legacy continues to shape the blasphemy laws and the public opinion around them. While protagonists of these laws often couch their arguments in Islamic terms suggesting continuity with the historical Islamic tradition, I argue that blasphemy laws are more significantly a product of the immediate religiopolitical milieu of postcolonial Pakistan and not-so-distant influences from the country's colonial past.

My characterization of the religiopolitical discourse in contemporary Pakistan, especially as it relates to blasphemy laws, is based on an examination of interviews, political speeches, video statements, and semi-scholarly and purely journalistic articles, mostly in Urdu and sometimes in English, published in news media and journals representing specific organizations and shared widely across social media. I have also benefited from secondary scholarly sources that reflect on the history of Pakistan, the evolving relationship between the state and the religious establishment, the still-negotiated place of Islamic law in the modern state, and the blasphemy legislation of the 1980s itself.

In the second chapter, my discussion of the emergence and evolution of blasphemy offenses in the Islamic tradition is based on readings of the Qur'an, Ibn Taimīyah's treatise on blasphemy against the prophet, and different Ḥanafī texts that discuss the topic in Arabic. I rely mostly on secondary sources in my discussion of Islamic imperial and colonial influences on Islamic law and, more specifically, blasphemy laws.

My theoretical approach is generally shaped by an awareness of the role of ‘power’ in shaping ‘discourse’, which I gather from postcolonial scholarship. More specifically, my analysis in this work is informed by and resonates with Barbara Metcalf’s discussion of the philosophies of three modern Muslim thinkers, Iqbāl, Maudūdī and Madanī. Metcalf demonstrates and emphasizes that spokespersons of Islamic movements tend to argue in Islamic terms suggesting continuity with the textual Islamic tradition, but their ideas are shaped in considerable interaction with their immediate cultural and political worlds.<sup>13</sup> I apply this principle to how blasphemy laws are justified and defended in postcolonial Pakistan. My engagement with primary and secondary source materials is further shaped by Scott Kugle’s important work on recasting of Islamic law in colonial South Asia and how that influenced Muslim perceptions of Islamic law through the 20th century.<sup>14</sup>

The transliteration of Arabic and Urdu text in this work is based on the ALA-LC transliteration schemes for the two languages.<sup>15</sup> The only exception is that the Arabic diphthongs are represented as *au* (instead of *aw*) and *ai* (instead of *ay*), which makes them consistent with the Urdu diphthongs. This partly solves the difficulty of transliterating words that are shared between the two languages. The more significant differences in pronunciation of consonants across the two languages are represented exactly as the ALA-LC schemes recommend.

It is my earnest desire that this work finds appeal among fellow Pakistanis, especially members of civil society who are always looking for newer, more effective ways to engage with the issues at hand. I sincerely hope that my arguments are consonant with the ethical-religious sensibilities and aspirations of Pakistani society and contribute to changing the public opinion around blasphemy laws for the better.

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<sup>13</sup> Barbara Metcalf, “Imagining Muslim Futures: Debates over State and Society at the End of the Raj,” *Historical Research* 80, no. 208 (May 1, 2007): 286–298.

<sup>14</sup> Scott Alan Kugle, “Framed, Blamed and Renamed: The Recasting of Islamic Jurisprudence in Colonial South Asia,” *Modern Asian Studies* 35, no. 2 (May 1, 2001): 257–313.

<sup>15</sup> “ALA-LC Romanization Tables,” accessed April 30, 2018, <https://www.loc.gov/catdir/cpsd/roman.html>.

## Chapter 1 •

### Blasphemy Legislation in Postcolonial Pakistan

Advocates of Islamic legislation in modern Muslim states tend to articulate their arguments in Islamic terms, suggesting continuity with the textual Islamic tradition that many Muslims view as authoritative. Thus, blasphemy laws criminalizing deliberate and implied acts of insult in relation to God, Muhammad, the first generation of Muslims, and finality of Muhammad's prophethood have been justified and defended in postcolonial Pakistan with reference to the Qur'an, *ḥadīth* records of the prophet's normative practice (*sunnah*), and the Islamic juristic tradition (*fiqh*). However, the respective genealogies of blasphemy laws are much more complex than religious-political arguments made to furnish traditional Islamic bases for these laws suggest. In a compelling essay, Barbara Metcalf argues that spokespersons of Islamic movements develop their ideas in substantial interaction with the world around them. Their arguments and tactics often bear significant resemblances to non-Islamic movements of their time.<sup>16</sup> Given how these movements evolve in relation to their immediate circumstances, Metcalf further stresses the limitations of tracing the genealogy of any given movement to certain Qur'anic verses, aspects of the Islamic tradition, or a putative founder.<sup>17</sup> Thus, the present chapter is concerned with identifying the immediate discursive and political factors that have made the legislation of blasphemy laws possible in postcolonial Pakistan and that also account for the resistance faced in revisiting these laws. I will begin by painting a big picture of the country's religious landscape, for it helps us identify the stakeholders in the blasphemy debate, especially groups that are likely to support the legislation and others that suffer from the abuse of these laws. Next, I will explore the

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<sup>16</sup> Metcalf, "Imagining Muslim Futures," 287–288.

<sup>17</sup> Ibid., 288.

reconfiguration of religious authority and emergence of a powerful religious establishment in the postcolonial nation-state, and how this contributed to a major shift in the political discourse. My core contribution in this chapter is identifying certain features of the religiopolitical discourse in contemporary Pakistan which are, in my view, central to the legislation of blasphemy laws and subsequent resistance to reform or amendment of these laws.

## **1.1 Religious landscape of the country**

A populous multiethnic country, Pakistan came into being when the Indian sub-continent was partitioned upon departure of the British in 1947. The case of Pakistan is very interesting in terms of how nationalism and religion come together. At its inception, the country defied the usual criteria of nationhood. The two segments of Pakistan's territory, then East and West Pakistan, were separated by a thousand miles and had little in common except for religious identity. Moreover, the international borders separating India and Pakistan cut through two important ethnic regions of South Asia, namely Bengal and Punjab. Urdu, the first language of a mere 4% of the population at the time was adopted as the national language to unite diverse ethnic groups that constituted Pakistan.<sup>18</sup> The youngest of Pakistani languages, Urdu was the language of the Muslim elite of India and thus symbolic of Muslim nationalism and ideologically significant in Pakistani politics.<sup>19</sup>

More than 95% of Pakistanis profess the Islamic faith, the vast majority (~80%) being Sunni. The Shī'ah constitute 15% or more of the population, most of whom are Ithnā 'Ashari (Twelvers), recognizing twelve *imāms* or successors of Muhammad and following the Ja'fari school of *fiqh* (or

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<sup>18</sup> Barbara Daly Metcalf, *Islamic Contestations: Essays on Muslims in India and Pakistan* (New Delhi; New York: Oxford University Press, 2004), 217–218.

<sup>19</sup> Shahid Javed Burki and Lawrence Ziring, "Pakistan," *Encyclopedia Britannica Online*, 2017, accessed March 27, 2017, <https://www.britannica.com/place/Pakistan>.



Islamic law).<sup>20</sup> There is also a small but influential Ismā‘īlī Shī‘ah community known for business, education, welfare work, and political clout despite little direct involvement in politics. While the Twelver Shī‘ah have long been subject to radical Sunni violence and have sometimes retaliated with violence, the Ismā‘īlī community is rarely targeted in comparison.

The Aḥmadi community that believes in the mission of Mirzā Ghulām Aḥmad of Qadian was declared non-Muslim by means of a constitutional amendment in 1974. Anti-Aḥmadi hate, discrimination and violence has dramatically increased over the last several decades. The country also has small but significant Christian and Hindu minorities, marginalized and excluded from most sectors of public life and subject to Sunni violence in more or less the same way as the Aḥmadi community.

The vast majority of Sunnis identify with the Ḥanafī school of *fiqh*, which can be traced back to the eminent Iraqi jurist Abū Ḥanīfah (d.767CE) and his students. The theology and religious observance of Pakistani Sunnis and their relationship with the Ḥanafī tradition is further influenced by Barelvi<sup>21</sup> and Deobandi<sup>22</sup> reform movements that originated in pre-partition India. Men receiving diplomas from Barelvi- and Deobandi-style seminaries, commonly known as ‘*ulamā*’ (scholars; sing. ‘*ālim*’), oversee mosques and have considerable influence with lay

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<sup>20</sup> *Fiqh* is the traditional Islamic discipline concerned with elaborating appropriate conduct for the individual and the society based on the Qur’an, accounts of the prophet’s life and other sources of religion. It is often described as Islamic law in English. Traditionally, most Muslims have identified with a *madh’hab* of *fiqh*, or school of law. The Amman Message issued by the King of Jordan in 2004 and a follow-up convention of 200 scholars identified eight living schools of Islamic law: four of them Sunni, two Shī‘i, and the Ibāḍī and Ṣāḥīrī schools.

<sup>21</sup> Sayyid Aḥmad Riṣā Khān Barelvi (d.1831), the movement’s protagonist was opposed to certain practices derived from folk Sufism, Shī‘i doctrine and local customs that he thought compromised God’s unity. See John L Esposito, “Barelwi, Sayyid Ahmad Reza Khan,” *The Oxford Dictionary of Islam*, Oxford Islamic Studies Online (Oxford University Press, n.d.), accessed April 30, 2018, <http://www.oxfordislamicstudies.com/article/opr/t125/e304>.

<sup>22</sup> The educational reform movement centered around a school founded in Deoband in 1867 aimed to preserve the teachings of the faith while Muslims of India lived under non-Muslim rule. The founders of the school Dār al-‘ulūm Deoband were influenced by the thought of Sayyid Aḥmad Riṣā Khān Barelvi, but the movement quickly grew distinct. The school subscribed to the Ḥanafī legal tradition, endorsed “sober” Sufism, produced *imāms*, preachers, and writers, and gave birth to the transnational Tablīghī Jamā‘at in the 20th century. See John L Esposito, “Deobandis,” *The Oxford Dictionary of Islam*, Oxford Islamic Studies Online (Oxford University Press, n.d.), accessed April 30, 2018, <http://www.oxfordislamicstudies.com/article/opr/t125/e522>.

Pakistanis. Similarly, Sufi masters or *pīrs* preside over countless shrines in the country and wield a fair degree of influence in Pakistani society and politics.

Originally, the country's population was (and perhaps continues to be) more inclined towards folk Sufism, but Deobandi schools proliferated in the 80s and 90s due to geopolitical factors and Saudi patronage. The government of Saudi Arabia, non-government organizations and individuals were instrumental in establishing new Deobandi schools and funding existing ones to support Afghan refugee children in Pakistan.<sup>23</sup> As a result, Deobandi schools constituted 64% of the total number of seminaries in the country in 1988, compared to Barelvi schools that made up only 25%.<sup>24</sup> Thousands of Afghan refugee children attended these seminaries in the North-West Frontier Province (now Khyber Pakhtunkhwa) bordering Afghanistan and other parts of the country.<sup>25</sup> Saudi support for Afghan refugees and Deobandi seminaries was not simply charitable but strategic too in countering Iranian influence in Pakistan after the 1979 revolution.<sup>26</sup> For the same reason, when graduates of these schools, the Taliban, later formed government in Afghanistan, Saudi Arabia was the first to recognize them along with Pakistan and the UAE.<sup>27</sup>

Among the Sunnis of the country are the Ahl-i ḥadīth, a small but likely growing number of people whose belief and practice closely resembles that of Wahhābis in Saudi Arabia.<sup>28</sup> Ahl-i ḥadīth seminaries have also received a significant amount of official and private Saudi support in

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<sup>23</sup> Muhammad Qasim Zaman, *The Ulama in Contemporary Islam: Custodians of Change*, Princeton Studies in Muslim Politics (Princeton: Princeton University Press, 2010), 175–176, accessed August 27, 2016, <http://site.ebrary.com/lib/alltitles/docDetail.action?docID=10442063>.

<sup>24</sup> Salīm Maṣṣūr Khālīd, *Dīnī madāris men ta'lim: kaifiyat, masā'il, imkānāt* (Islamabad: Institute of Policy Studies, 2004), 150–152.

<sup>25</sup> Ibid., 164.

<sup>26</sup> Saif, “The ‘Ulamā’ and the State,” 11.

<sup>27</sup> Zaman, *The Ulama in Contemporary Islam*, 175–176.

<sup>28</sup> The Ahl-i ḥadīth in South Asia were inspired by Shāh Walī Allāh Dahlavī and the 18th-century Wahhābi movement. They advocated direct use of the Qur'an and ḥadīth anecdotes of the prophet Muḥammad and criticized following the schools of law. The Ahl-i ḥadīth are much less sympathetic to Sufism than Barelvis and Deobandis. See John L. Esposito, “Ahl-i Hadith,” *The Oxford Dictionary of Islam*, Oxford Islamic Studies Online (Oxford University Press, n.d.), accessed April 30, 2018, <http://www.oxfordislamicstudies.com/article/opr/t125/e77>.

the last few decades, and their numbers have proliferated at a relatively fast pace given the small size of the community.<sup>29</sup> However, the political influence of Ahl-i ḥadīth clerics and schools is still very limited compared to the clout of Bareilvi and Deobandi clerics and seminaries.

More importantly, the country's Ḥanafis have not been immune to 20th-century Salafism that finds appeal as an evidence-based approach to religion relying solely on the Qur'an and the prophet's normative practice. For Salafi purposes, the latter may be known from *ḥadīth* anecdotes, which are alleged and actual records of the words and works of Muhammad. With emphasis on the Qur'an and *ḥadīth*, Salafism promises simplicity in reasoning and the impression (or illusion) of going back to the earliest days of Islam. This is in contrast with voluminous works of Islamic law (*fiqh*) that have originated in diverse sociopolitical contexts over centuries and often involve complex reasoning on seemingly simple matters. For a lot of people, Salafism has further meant breaking free from the shackles of *taqlīd*, a form of traditionalism that views adherence to a single school of *fiqh* in all matters as mandatory. It is seen moreover as an antidote to the veneration of saints, a practice that many view as idolatrous and contrary to the monotheistic spirit of Islam. Perhaps the more significant factor responsible for the triumph of Salafism over mystical and juristic Islamic traditions is the impetus that Saudi oil-money has afforded to the former. The rather simplistic philosophy and convenience of Salafism has appealed not just to self-didacts of the digital age but also certified clerics, the '*ulamā*', who often find themselves overwhelmed by the voluminous works of their predecessors. As we shall see later in this chapter and the next, the rise of Salafism among Ḥanafī scholars and lay Muslims has had serious implications for the public discourse surrounding blasphemy laws in Pakistan.

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<sup>29</sup> The number of schools affiliated with the board of Salafi schools (*wifāq al-madāris al-salafīyah*) nearly doubled between 1988 and 2000. See Khālid, *Dīnī madāris men ta'lim*, 176.

## 1.2 The state and the ‘*ulamā*’

Historically, the ‘*ulamā*’ have enjoyed much authority in the lives of lay Muslims. Wael Hallaq believes that the emergence of the modern nation-state permanently undermined the epistemic authority of the ‘*ulamā*’ class.<sup>30</sup> However, Mashal Saif argues that Hallaq overestimates the state’s power and ability to implement its decisions and underestimates the authority and power of ‘*ulamā*’ in the post-colonial Muslim world.<sup>31</sup> In the case of Pakistan, the military and political elite have often tried to curtail and regulate the influence of ‘*ulamā*’ but also accommodated their demands, sometimes simultaneously. As Saif contends, it is more accurate to say that the power and authority of the ‘*ulamā*’ has reconfigured in the context of the modern state. The state’s continued reckoning with the ‘*ulamā*’s power has allowed for a significant discursive shift that is at the heart of blasphemy legislation. In the following pages, I will attempt to outline the reconfiguration of the ‘*ulamā*’s influence with the state in postcolonial Pakistan.

### 1.2.1 The coming together of ‘*ulamā*’ and Islamists

The ‘*ulamā*’ were originally opposed to the creation of Pakistan given that a significant number of Muslims would remain in India as a weaker minority. However, they took it upon themselves to baptize Pakistan when it became a reality. Maudūdī was the foremost ideologue arguing for *islāmī nizām* (the Islamic system) and the Islamic state. While Maudūdī was an unconventional (*ghair-muqallid*) thinker who did not see eye to eye with ‘*ulamā*’, they were united by the common cause of Islamizing the country and saving it from the irreligiosity of the bureaucratic and political elite. Bonderman would classify Maudūdī as a “religious reformer” who believed in reviving Islam by

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<sup>30</sup> Wael B Hallaq, “Juristic Authority vs State Power: The Legal Crisis of Modern Islam,” *Journal of Law and Religion* 19 (2003): 258.

<sup>31</sup> Saif, “The ‘Ulamā’ and the State,” 48–49.

means of renewed *ijtihād*.<sup>32</sup> On the other hand, “traditionalist” ‘*ulamā*’ believed in the sufficiency of the tradition and attributed the decline of Muslim society to the corruption of rulers and their failure to observe the timeless Islamic law.<sup>33</sup> The rather inconvenient marriage of traditionalist ‘*ulamā*’ and Maudūdī goes as far back as the 1953 riots in Lahore that resulted in destruction of property, killing of hundreds of Aḥmadis and displacing thousands. The anti-Aḥmadi riots erupted when the government refused to meet the demands made by religious leaders for the removal of Aḥmadis from key positions in government and declaring them non-Muslim. In the aftermath of the riots, ‘Abd al-Sattār Khān Niyāzī and Maudūdī were sentenced to death for inciting violence.<sup>34</sup> Even though the death sentence was not carried out, Maudūdī’s publication of *Qadiyānī mas’alah* on this occasion earned him considerable leverage with traditionalist ‘*ulamā*’. In the ensuing years, the ‘*ulamā*’ and Maudūdī-led Islamists would work together on various issues. In time, as Bonderman notes, Maudūdī and the political Islamists inspired by him turned more and more conservative, focusing on preservation of the *sharī‘ah*, and resisting reform side by side with traditionalists.<sup>35</sup> As Maudūdī and the Jamā‘at-i Islāmī assimilated with the religious establishment, the ‘*ulamā*’ internalized Maudūdī’s political philosophy. Maudūdī’s political project became the ‘*ulamā*’s project. By the late 70s and early 80s, Maudūdī’s Islamic terminology was a defining feature of the country’s political discourse.<sup>36</sup> As we will see in the next section, Maudūdī’s top-down approach to reform and emphasis on baptizing the law and the state shaped the contours of

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<sup>32</sup> David Bonderman, “Modernization and Changing Perceptions of Islamic Law,” *Harvard Law Review* 81, no. 6 (April 1, 1968): 1178.

<sup>33</sup> Ibid.

<sup>34</sup> Niyāzī was a religious-political leader of Bareilvi persuasion affiliated, at the time, with Awami Muslim League. Previously, he had presided over the Punjab chapter of Pakistan Muslim League, the party that led the Pakistan Movement. Subsequently, he would serve as the Secretary General and eventually President of the religious-political organization Jamī‘at ‘Ulamā-yi Pākistān (JUP) from 70s through 90s. He also served in the National Assembly and the Senate in 80s and 90s. His party, JUP, has been an important element in the religious alliances that pushed for Islamic constitutional amendments and lawmaking in Pakistan.

<sup>35</sup> Bonderman, “Modernization and Changing Perceptions of Islamic Law,” 1179.

<sup>36</sup> Metcalf, *Islamic Contestations*, 240–241.

Islamic activism in Pakistan. The alliance of Maudūdī-led Islamists and the ‘*ulamā*’ class, though tenuous, has been effective enough to pressure successive governments to introduce poorly conceived Islamic legislation and constitutional amendments.

The power of the religious establishment is moreover related to their mastery of (often violent) street protests. The ‘*ulamā*’ and the Islamists initially resorted to and discovered their street power because the country did not have general elections for more than two decades after independence. In the absence of representative legislative bodies, religious and political organizations had to rely on street demonstrations to have their voices heard. However, protests and strikes in large urban centers can grow so strong and violent that people are inconvenienced and the government crippled.<sup>37</sup> It is likely that extended periods of authoritarian rule have made street protests and strikes the default mode of political activism. So much so that religious (and non-religious) political actors who do not perform well in electoral politics or fail to have their way in democratic institutions pour out on the streets and take the country hostage until their demands are met. As the respected Deobandi cleric Zāhid al-Rāshidī tellingly affirms,

...it is true that for enforcing the shariah as positive law in Pakistan, the best way is through creating and promoting mass awareness and support, including through the ballot box and other peaceful political means. But, given Pakistan’s particular

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<sup>37</sup> The latest example is the sit-in protest organized by Ṭaḥrīk Labbaik Ya Rasūlallāh and the outlawed Sunnī Ṭaḥrīk that blocked the major entry/exit point to-and-fro Islamabad for over three weeks. The protesters demanded resignation of the federal law minister for proposed changes to a declaration that required electoral candidates to confirm the finality of Muhammad’s prophethood and that members of the Aḥmadi community were not Muslim for believing otherwise than the dominant view. The government quickly withdrew the changes to the declaration from the proposed bill for electoral reforms. Yet the protesters insisted that the original proposal to amend the *khatm-i nubūwat* declaration was cause for the Minister of Law to resign from his office. They demanded moreover that the case concerning Asia Bibi’s alleged blasphemy be expedited in the Supreme Court. The protest and the resultant roadblock prevented adults and children from attending work and school respectively. Ambulances and cars carrying the sick were also denied passage, which resulted in at least one death. The protesters attacked journalists, burned their vehicles and those of police, and attacked and vandalized the residences of various provincial and federal ministers. The sit-in protest was called off only after the government accepted the demands including resignation of the federal law minister. See “Islāmābād Āpreshan: Ḥālāt Is Nahaj Tak Kaise Puhnche?,” *BBC Urdu*, November 25, 2017, sec. Pakistan, accessed December 4, 2017, <http://www.bbc.com/urdu/pakistan-42122613>.

context and conditions, these means are not adequate. This is because Pakistan's ruling class...only understands the language of agitation and public pressure, and is willing to make concessions...only if forced or pressurised to do so. Whatever concessions have been made to shariah laws in Pakistan so far have been a result of street power and people's demonstrations and agitations. And this is why even today demands for the enforcement of the shariah are forced to take the form of demonstrations and the exhibition of street power.<sup>38</sup>

## 1.2.2 Regimes negotiate with the religious establishment

In their turn, regimes have chosen to negotiate with and appease undemocratic pressure groups and created institutions to accommodate and coopt certain political actors at the expense of the people's will. As Lombardi notes, and we will observe in the following pages, undemocratic regimes and designers of Islamic constitutions and *sharī'ah*-guarantee clauses often seek legitimation from and the appeasement of a subset of Muslims, not a cross-section of society.<sup>39</sup> In the process, regimes invest the power to interpret the *sharī'ah* and implement Islamic repugnancy clauses in undemocratic institutions that are not inclined to respect the people's will or protect their rights and freedoms.<sup>40</sup>

In the case of Pakistan, outright secularists who believe in following the European example and purposefully eliminating all things Islamic are few and far between. The country has been ruled for the most part by modernists, or Westernizers as Bonderman calls them, who are likely to accommodate traditional Islamic values and institutions even as they favor adoption of European laws and practices.<sup>41</sup> Bonderman notes that "the more equivocal their philosophy and belief, the

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<sup>38</sup> Zāhid al-Rāshidī, interview by Yoginder Sikand, April 10, 2010, accessed November 15, 2017, <http://www.islamopediaonline.org/editorials-and-analysis/yoginder-sikan-interviews-maulana-zahid-ur-rashidi-maulvis-and-madrasas-terr>.

<sup>39</sup> In the 20th century, a number of nation-states with predominantly Muslim populations sought to Islamize their constitutions by means of *sharī'ah*-guarantee clauses, also known as Islamic repugnancy clauses, that required the state law to be consistent with the *sharī'ah*. See Clark B Lombardi, "Designing Islamic Constitutions: Past Trends and Options for a Democratic Future," *International Journal of Constitutional Law* 11, no. 3 (July 1, 2013): 616–617.

<sup>40</sup> Ibid., 621.

<sup>41</sup> Bonderman, "Modernization and Changing Perceptions of Islamic Law," 1179–1180.

more likely they are to respond to outcries of the traditionalists.”<sup>42</sup> Thus, with shallow or missing political ideologies, modernist Pakistani leaders have accommodated the demands of the Islamic religiopolitical establishment in exchange for the legitimacy and stability of their rule.

However, even as they appeased and coopted some religious leaders and organizations to achieve their ends, civilian and military regimes have often attempted to control and curtail the influence of the Islamists and the ‘*ulamā*’. Thus, the autocratic regime of Field Marshal Ayub Khan, unsympathetic to traditional ‘*ulamā*’, established the Islamic Research Institute (IRI) and the Council of Islamic Ideology (CII) to carry out research and advise the government on Islamization of the law. Determined by the state, the membership of these institutions was eclectic: professionals with secular training in economics, law and the academic study of religion balanced a handful of traditionalist ‘*ulamā*’ or others that the latter would trust.<sup>43</sup> Essentially, the state tried to appropriate the role of defining Islam. The success of IRI and CII would make the ‘*ulamā*’ and the Islamists outside of these institutions less relevant. But the struggle for authority and representation was not going to end there. The religious establishment questioned the Islamic credentials of the members of CII and IRI and presented a sustained challenge to the legitimacy and functioning of these institutions.<sup>44</sup>

The defeat in the war of 1971 that resulted in the creation of Bangladesh augmented the ability of the religious establishment to pressure the government. With limited social-scientific understanding of the factors that led to the fracture of the nation, many Pakistanis resonated with religious explanations of the tragedy, such as moral degradation and the rulers’ lack of commitment to Islam. The country’s religious leadership fostered and benefited from such Islamic consciousness in the 1970s. Further, the rise of the Islamic consciousness coincided, as Barbara

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<sup>42</sup> Ibid., 1180.

<sup>43</sup> Saif, “The ‘*Ulamā*’ and the State,” 54–56.

<sup>44</sup> Ibid., 55–57.



Metcalf notes, with the desire to benefit from emerging oil-based economies of the Arab world.<sup>45</sup> The state opened the doors to Arab influence on Pakistani religion and culture, and workers traveled to the Saudi Kingdom and neighboring Arab states and brought home values from the Salafi heartland. Eager to consolidate his power, Zulfikar Bhutto tried to capitalize on the religious consciousness at home, aligned with the Arab world abroad, and framed his political project as Islamic socialism through the 1970s. His slogan of food, clothing and shelter, peppered with Islamic symbolism found appeal with ordinary Pakistanis. Bhutto could not deliver on his promise of economic reform, but he met the growing demands of the Islamic establishment, including a constitutional amendment that declared Ahmadiis non-Muslim and paved the way for further persecution of the community.<sup>46</sup>

Bhutto's talk of Islamic socialism gave way to General Zia's Islamic vision. Zia was sympathetic to and patronized Maudūdī's Jamā'at-i Islāmī at least in the first few years of his rule. Mian Tufail Muhammad, the Jamā'at chief at the time, sensed a "golden opportunity" for the establishment of an "Islamic system". Jamā'at leaders accepted positions in Zia's cabinet in August 1978, but resigned after few months. However, the Jamā'at continued to work with the military regime as a major ally of the Pakistan Army against the Soviets in neighboring Afghanistan.

General Zia reflected and capitalized on the mood of the country's religious establishment in the 70s. As Siddique and Hayat note, the Pakistan National Alliance, a conservative 9-party conglomerate that launched a movement against Bhutto, set the stage for Zia's appeal to Islam in their demands for *niẓām-i muṣṭafá* (the system of the prophet).<sup>47</sup> Zia reflected this surging Islamic consciousness and promised remedy for the "moral degeneration" that worried Bhutto's opponents. The autocratic nature of his rule left an enduring mark on Pakistani public discourse and a host of

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<sup>45</sup> Metcalf, *Islamic Contestations*, 237.

<sup>46</sup> Ibid., 237–238.

<sup>47</sup> Siddique and Hayat, "Unholy Speech and Holy Laws," 318.

undemocratic amendments and institutions that haunt the country to this day. Owing to his unabating influence on the country's legal-constitutional and democratic struggles, it is important to understand the factors that made possible his decade-long rule, which cemented a certain kind of Islamic discursive hegemony.

Zia's government desired legitimacy at home and "strategic depth" in neighboring Afghanistan following the Soviet invasion and the Shī'ah Iranian revolution. With the perennial threat of India to the East, the military establishment would not allow the long Western border to turn hostile. The Soviets had to be fought and the Sunni Pashtuns empowered against Dari-speaking Shī'ah in Afghanistan. For this purpose, the Sunni-Islamic zeal to fight injustice and oppression came in handy. None could fight the war with greater conviction than the religiously motivated. The Americans instrumentalized the Islamic zeal for *jihād* against "godless" communists, and the Saudis sanctioned it to counter Shī'ah Iran. The religious sensibilities of General Zia came together with those of political and militant Islamists at home and in Afghanistan. The Soviets were pushed back, the perceived threat on Pakistan's Western border thwarted, and General Zia's undemocratic rule legitimized. However, the ill-advised and hasty Islamization of state institutions and the law was a major side effect of this regimen that worked well for the US, Saudi Arabia, and Pakistan at the time.

Zia's regime created new judicial institutions, the Federal Shariat Court and the Shariat Appellate Bench of the Supreme Court, to accommodate and coopt a segment of the religious establishment. The Federal Shariat Court was tasked with ensuring that all new legislation conformed with the *sharī'ah* and striking down existing laws that seemed repugnant. The court would consist of eight Muslim judges appointed by the president, three of whom had to be '*ulamā*'. The decisions of the Federal Shariat Court could be challenged in the Shariat Appellate Bench only. Zia also increased the representation of '*ulamā*' in the Council of Islamic Ideology,

already an undemocratic institution established originally by Ayub Khan's military regime. Together these institutions are the kind that circumvent the people's will and, as Lombardi notes, fail to protect their rights and freedoms.<sup>48</sup> In particular, the authority invested in the Federal Shariat Court is directly responsible for the legal amendment that made blasphemy against the prophet solely punishable by death, as we will see in a subsequent section.

Zia did not just create these parallel institutions, but openly expressed disapproval for party-based politics and parliamentary democracy as a secular institution that was incongruent with the supremacy of the *sharī'ah*.<sup>49</sup> Four years after assuming power, he created the *majlis-i shūrā* to substitute for an elected parliament. The self-appointed president handpicked 284 members for the *majlis* with the help of the bureaucracy and the intelligence agencies.<sup>50</sup> Another three years later when the demands for democracy grew, the autocrat held *non-partisan* elections for the *majlis-i shūrā* in February 1985.

Even before the *majlis-i shūrā* was elected or appointed to rubber-stamp Zia's ambitions, he had embarked on Islamic legislation appeasing certain religious groups, but disappointing other religious and non-religious stakeholders. Thus, he introduced the controversial Hudood Ordinance in 1979, promulgating "Islamic" punishments for *zinā* (understood as fornication and adultery), *zinā bi'l-jabr* (rape), theft and alcohol consumption.<sup>51</sup> Among other things, the ordinance was widely criticized for stipulating similar evidentiary requirements for criminalized consensual sex and rape.<sup>52</sup> Next, Zia's autocratic government introduced the Zakat Ordinance in 1980, which enabled the government to deduct 2.5% of the funds in the bank accounts of the country's citizens

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<sup>48</sup> Lombardi, "Designing Islamic Constitutions," 621.

<sup>49</sup> Siddique and Hayat, "Unholy Speech and Holy Laws," 319.

<sup>50</sup> Shaikh Aziz, "Majlis-i-Shura Replaces Parliament," *DAWN.COM*, June 21, 2015, accessed November 26, 2017, <http://www.dawn.com/news/1188777>.

<sup>51</sup> Saif, "The 'Ulamā' and the State," 60–61.

<sup>52</sup> Siddique and Hayat, "Unholy Speech and Holy Laws," 321.

every year.<sup>53</sup> These highly-visible measures were criticized as cosmetic and unlikely to result in fairness and redistribution of resources to the underprivileged in society,<sup>54</sup> but they emboldened the religious establishment nonetheless.

While Zia pushed his agenda through the 80s, the ‘*ulamā*’ with and without state affiliations pressured the government to introduce Islamic legislation of their own liking.<sup>55</sup> Fearing that the Shī‘ah would be emboldened by the Iranian revolution, the Sunni religious establishment pressed the government to criminalize the use of insulting language in relation to the first three caliphs and other companions of the prophet Muhammad.<sup>56</sup> As a result, Section 298-A was introduced in the penal code in 1980. Subsequently, the Taḥrīk-i khatm-i nubūwat, a religious movement “defending” the finality of Muhammad’s prophethood, demanded criminalization of the use of Muslim terminology by Aḥmadis and threatened violence against the community if the demand was not met. This led to enactment of Sections 298-B and 298-C in 1984. Along the way, Sections 295-B and 295-C were also introduced to criminalize desecration of the Qur’an and insulting the prophet respectively. By means of such legislation, Asad Ahmed notes that the postcolonial state coopted and legitimized social violence.<sup>57</sup>

Most significantly, Islamization measures of the 80s solidified a major discursive shift in Pakistani politics that began in the 1970s. The subsequent governments of Benazir Bhutto and Nawaz Sharif had to work in the discursive milieu that the religious establishment fashioned with the governments of Zulfikar Bhutto and General Zia. While Benazir Bhutto tried to steer clear of trouble with the religious establishment, Nawaz Sharif actively sought to cultivate the ‘*ulamā*’s

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<sup>53</sup> Saif, “The ‘Ulamā’ and the State,” 61.

<sup>54</sup> Metcalf, *Islamic Contestations*, 241.

<sup>55</sup> Saif, “The ‘Ulamā’ and the State,” 62.

<sup>56</sup> The Shī‘ah believe that the first three successors of Muhammad usurped the right of ‘Alī who was the prophet’s cousin and son-in-law and his legitimate heir in terms of spiritual-cum-political authority. Shī‘i rituals often involve cursing actual and deemed opponents of ‘Alī some of whom are revered by majority Sunnis.

<sup>57</sup> Ahmed, “Specters of Macaulay,” 183.

favor. It was during Sharif's first tenure that the Federal Shariat Court (FSC) made the death penalty the sole punishment for insulting the prophet Muhammad. Sharif's government had the option to contest and refine the FSC's ruling, but the prime minister chose to appease the religious establishment in the hope of establishing his Islamic commitment and credibility.

### **1.2.3 The power of religious actors in the 21st century**

At the turn of the century, the government of Gen Pervez Musharraf was faced with the aftermath of the Sep 11 attacks. His decision to cooperate with the US in the war on al-Qaeda and Taliban was hugely unpopular. As the world grew uncomfortable with traditional Islamic seminaries, now viewed as breeding grounds for "terrorists", Musharraf attempted to modernize and regulate *madrasahs*. The staff and students of these schools who were previously seen as allies and proxies of Pakistan Army (as well as Saudi Arabia and the US) were now religious reactionaries that posed a threat to the world and brought a bad name to Islam and Pakistan. They had to receive a shot of Musharraf's "enlightened moderation". The resistance to Musharraf's alliance with the US and his proposed reforms to *madrasah* education was great. The Pakistani nation was in denial of their own country's breeding of extremism and militancy in the previous two decades and, more importantly, suspicious of the American pretext for the war in Afghanistan. The suspicion and mistrust translated into massive electoral support for the religious parties in the 2002 general elections. Muttahidah Majlis-i 'Amal (MMA), the alliance of religious parties secured nearly 20% of the seats in the National Assembly and formed a government in the Frontier province (now Khyber Pakhtunkhwa). Despite such manifest opposition, Musharraf went ahead with his plans to monitor religious schools and their affiliated '*ulamā*' and introduce curricular reforms. Thus, a few state-run "model" *madrasahs* were established, and existing schools were required to register with the government to qualify for funding. Many schools rejected the state's attempt to register and regulate them.

Perhaps a more significant confrontation between the Musharraf-led state and the religious establishment that decisively tilted the balance in favor of the latter was over the Women's Protection Act. International and local rights activists had been criticizing the Zia-era Hudood Ordinances that controversially proposed similar evidentiary requirements for rape and consensual sex outside of wedlock: four adult male witnesses of good reputation. Inability to meet the evidentiary requirements on the part of a victim of rape or lesser forms of sexual assault and harassment invited prosecution for *zinā* and slander. Musharraf's government decided to amend the laws and proposed the Women's Protection Bill. An intense debate ensued on Pakistani news media. The Council of Islamic Ideology (CII), headed by Muhammad Khalid Masud at the time, observed that the Hudood Ordinances had generated numerous constitutional, legal and religious issues and recommended that the National Assembly revise these laws.<sup>58</sup> The '*ulamā*' and the Jamā'at-i Islāmī came out in fierce opposition. They attacked Musharraf's intentions and the credentials of the CII's less-than-traditional membership. Thorough as they may be in their scholarship, CII members like Khalid Masud and Javed Ghamidi lacked the credentials and orientation that would satisfy the '*ulamā*'. Under pressure from the clerics, the government constituted a '*ulamā*' committee to weigh in on the proposed Women's Protection Act. Ghamidi, widely perceived as a rational voice in the CII, resigned on this occasion on grounds that the establishment of a '*ulamā*' committee in direct competition with the CII was a breach of the latter's jurisdiction. However, the government went on to accept most of the recommendations of the '*ulamā*' committee without further consulting the CII.<sup>59</sup>

Two years later, the CII, under the continued leadership of Khalid Masud proposed reforms to divorce law giving women the right to divorce without having to fight for the dissolution of

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<sup>58</sup> Saif, "The '*Ulamā*' and the State," 70.

<sup>59</sup> Ibid., 71–72.

marriage in a court and losing the bridal gift (*mahr*) in the process.<sup>60</sup> The ‘*ulamā*’ rose in opposition once again, arguing that giving women the right to divorce was un-Islamic. They protested the CII’s recommendations and demanded resignation of the chairperson and reconstitution of the council. Musharraf’s government bowed to the pressure. The CII was reconstituted to include twelve new members, all traditionally-trained ‘*ulamā*’. The council originally created to define Islam on behalf of the state was now dominated by the religious establishment.<sup>61</sup> This marked an important victory for the religious establishment over the political establishment. Initially determined to reform the religious seminaries, the autocratic government of Musharraf made significant compromises with the powerful religious establishment that threatens the country with violence and frequently challenges the writ of the state.

In the ensuing years, when the Governor of Punjab and the Federal Minister for Minority Affairs criticized the blasphemy law (295-C) for its potential for abuse, they paid with their lives.<sup>62</sup> The ‘*ulamā*’ either failed to condemn their murders or justified them outright. More recently, the Taḥrīk Labbaik Yā Rasūlallāh, a Barelvi organization founded to defend the prophet’s honor when the zealous murderer of Governor Taseer was sentenced to death, pressured the government to meet numerous demands through violent protests and a blockade of a major highway leading to the capital city for over three weeks.<sup>63</sup> The ‘*ulamā*’ establishment was hardly troubled. Most ‘*ulamā*’ conveniently put the blame on the inadequately Islamic government and condoned the actions of

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<sup>60</sup> The Islamic tradition has allowed men to divorce their wives unilaterally and with mere utterance of a few words. However, women must approach a competent court to have the marriage dissolved and are also required to forfeit the bridal gift. A woman may have the right to unilateral divorce only if the man delegates the right to her at the time of marriage. The 1939 Dissolution of Marriage Act, which Pakistan inherited, provides for such delegation of the right to divorce. However, most women and their families are reluctant to negotiate this right at the time of marriage and find themselves at the mercy of a lengthy court trial if the relationship turns out unhealthy.

<sup>61</sup> Saif, “The ‘Ulamā’ and the State,” 74–78.

<sup>62</sup> “Punjab Governor Salman Taseer Assassinated in Islamabad”; “Pakistan Minorities Minister Shahbaz Bhatti Shot Dead.”

<sup>63</sup> “List of Demands Put Forward by TLY and Accepted by Govt for Ending the Faizabad Protest,” *DAWN.COM*, November 28, 2017, accessed November 28, 2017, <https://www.dawn.com/news/1373197>.

these violent religious actors. In effect, the Pakistani state and society have become hostages to highly conservative, often unreasonable and violent religious actors. The tactics employed by fringe and mainstream ‘*ulamā*’ and organizations betray a lack of respect for the democratic process and reflect the degree of power enjoyed by the religious establishment.

### **1.3 Features of the religio-political discourse in contemporary Pakistan**

The reconfiguration and consolidation of the ‘*ulamā*’s power in post-colonial Pakistan has been accompanied by a shift in the national discourse. This shift in discourse provides the backdrop for blasphemy legislation and explains the difficulties that subsequent governments have faced in amending these laws.

In the first couple of decades after independence, modernist civilian and military leaders used Islam as a rhetorical device for national unity, but not a program of action.<sup>64</sup> The ‘*ulamā*’ and Islamists were not central to the movement that led to the creation of Pakistan, but they attempted to impart an Islamic character to the state after it was created. Thus, the Objectives Resolution (1949) that was going to serve as the foundation for the country’s future constitutions affirmed that all sovereignty belonged to God, that the State of Pakistan would exercise the authority delegated and defined in scope by God, and enable Muslims “to order their lives in the individual and collective spheres in accord with the teachings and requirements of Islam.”<sup>65</sup> The modernist leaders who acquiesced to the demands of religious actors may have thought that the Islamic character of the Objectives Resolution and the Constitution of 1956 (suspended in 1958) was symbolic. But the ‘*ulamā*’ and Islamists were only beginning to articulate their demands. In particular, the writings of Maudūdī and the activism of his Jamā‘at-i Islāmī would present a significant challenge to future governments and set the stage for other articulations of Islamic demands.

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<sup>64</sup> Metcalf, *Islamic Contestations*, 236.

<sup>65</sup> “The Objectives Resolution,” *Islamic Studies* 48, no. 1 (2009): 91.



Whereas Pakistani governments depended on American military aid and were influenced by American foreign policy in the first two decades, Zulfikar Bhutto turned away from Western powers and sought to tap into emerging oil-based economies of the Arab world. The shift in foreign policy was catalyzed by the independence of Bangladesh in 1971. Pakistan's status as the homeland of South Asian Muslims was diminished, and it became strategic and perhaps necessary to identify with Muslim states of West Asia and North Africa.<sup>66</sup> Thus, Bhutto appealed to the sense of deprivation experienced by ordinary Pakistanis and promised a fairer distribution of resources using a mix of Islamic and socialist rhetoric. However, the Islamic claim of his program was inadequately developed and undermined by his impatience with the '*ulamā*' and Islamists and his disregard for the values and lifestyle they promoted.

Since Bhutto's "Islamic socialist" promise of "*roṭī, kapṛā, makān* (food, clothing, and shelter)" was not thoroughly articulated as an ideology, it withered rather quickly after Zia overthrew his government.<sup>67</sup> The ideology and Islamic terminology that had been honed by Maudūdī and the Jamā'at-i Islāmī in the preceding decades became widely used in Zia's time.<sup>68</sup> Like Bhutto, the Islamic political actors spoke of the grievances of the underprivileged, but did not propose and advocate any policies for a systemic change in the distribution of resources. In April 1980, certain policy recommendations were made at the behest of the Ministry of Finance for meaningful Islamization of the country. These included a proposal for universal education, land reforms, setting limits on inherited wealth, and developing an equitable and progressive tax policy.<sup>69</sup> Ignoring these recommendations, the regime and the religious leadership chose a different

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<sup>66</sup> Metcalf, *Islamic Contestations*, 237.

<sup>67</sup> Bhutto made concessions to the business and feudal elite while he was still in government. After Bhutto, the Pakistan People's Party warmed up to capitalism so much so that Bhutto's slogan of food, clothing and shelter is all but history.

<sup>68</sup> Metcalf, *Islamic Contestations*, 240–241.

<sup>69</sup> *Ibid.*, 241.

route: criminalizing alcohol consumption, regulating women's dress and the 'mixing' of men and women in the public sector, introducing controversial *ḥudūd* penalties and religious courts, and charging *zakāt* on bank accounts (a measure that the Ministry of Finance argued was going to work against the poor).<sup>70</sup> Instead of changing the lives of ordinary Pakistanis for the better, these highly-visible measures gave Islamic legitimacy to the autocratic regime and made the pursuit of justice more bureaucratic and cumbersome. The measures moreover betray a lack of social-scientific understanding of the nation's problems on the part of the Islamists as well as the regime that sought to appease and coopt them. While Maudūdī, the ideologue of the Jamā'at-i Islāmī that had favor with Zia's regime, was originally seen as an unconventional thinker who dared to think out of the box, his call for systemic change and infusion of Islamic values in society and politics did not materialize beyond ill-advised, poorly-conceived legislation.

More importantly, the obsession with moral degradation (particularly with respect to women's 'modesty', romantic and sexual openness among men and women, and consumption of alcohol) and blasphemy in the late 70s and early 80s defined the contours of Islamic political activism in the ensuing decades. The Islamic idiom patronized by Zia and marked by Maudūdī's political emphasis and top-down approach to Islamic reform has had an abiding influence on the national discourse. Before the advent of the nation-state, the '*ulamā*' were generally more concerned with the individual's moral and spiritual growth. In the decades following the creation of Pakistan, the '*ulamā*' have been increasingly political and Islam increasingly politicized. Transformation or replacement of the total social-political order is now a shared goal of a wide range of Islamic political actors.

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<sup>70</sup> Ibid., 241–242.

### 1.3.1 Anathematizing the opponent

The shift in the discourse goes further than the Islamic idiom and a preoccupation with the sociopolitical order. An alarming development in the Pakistani public discourse is the ease with which the ‘*ulamā*’ and the Islamists question the faith, not just the intent, of an interlocutor who dares to express views different from their own. The ‘*ulamā*’ and their Islamist allies have become the gatekeepers, or *ṭhekedār* (contractors) in Pakistani parlance, of the Islamic religion. Some anathematize their opponents and instigate violence against them. Others condone the violence and blame the victim and/or the state for not checking the victim’s conduct. As Ebrahim Moosa notes, “the ‘*ulamā*’ extend the sanctity attached to the Prophet to the methodology they and their forebears have crafted to interpret the Prophet’s teachings.”<sup>71</sup> The discursive tradition and authority of the ‘*ulamā*’ have become synonymous with the prophet’s charisma, so much so that “infractions of certain teachings involving the authority of the tradition are often couched as violating the authority of the Prophet and frequently trigger charges of anathema (*takfīr*), blasphemy and apostasy.”<sup>72</sup> The result is that the form of Islamic language popularized in Zia’s time has come to dominate all discussion; and other styles of argumentation, whether Islamic, liberal or Marxist, have been delegitimized.<sup>73</sup> Pakistanis have become proficient in citing verses of the Qur’an and anecdotes of the prophet,<sup>74</sup> even though few understand how early Islamic scholarship engaged with these sources. Since the ‘*ulamā*’ and Islamists couch their arguments in Islamic language, others *must* respond in kind – or risk their reputation and sometimes their life.

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<sup>71</sup> Ebrahim Moosa, “Muslim Political Theology: Defamation, Apostasy, and Anathema,” in *Profane: Sacrilegious Expression in a Multicultural Age*, ed. Christopher Grenda, Chris Beneke, and David Nash (Oakland: University of California Press, 2014), 174, accessed May 10, 2015, [https://www.academia.edu/10148400/\\_Muslim\\_Political\\_Theology\\_Defamation\\_Apostasy\\_and\\_Anathema\\_in\\_Profane\\_Sacrilegious\\_Expression\\_in\\_a\\_Multicultural\\_Age\\_Eds.\\_Christopher\\_S.\\_Grenda\\_Chris\\_Beneke\\_David\\_Nash\\_Oakland\\_Calif\\_and\\_London\\_University\\_of\\_California\\_Press\\_2014\\_169-188](https://www.academia.edu/10148400/_Muslim_Political_Theology_Defamation_Apostasy_and_Anathema_in_Profane_Sacrilegious_Expression_in_a_Multicultural_Age_Eds._Christopher_S._Grenda_Chris_Beneke_David_Nash_Oakland_Calif_and_London_University_of_California_Press_2014_169-188).

<sup>72</sup> Ibid.

<sup>73</sup> Metcalf, *Islamic Contestations*, 236.

<sup>74</sup> Ibid., 258.

This unhealthy dynamic is remarkably evident in a 2011 interview of Sayyid Munawwar Ḥasan, then chief of the Jamā‘at-i Islāmī. The journalist asked Munawwar Ḥasan why his party opposed the Women’s Protection Act and defended Hudood Ordinances even though the latter required a rape victim to produce four adult male Muslim witnesses for *ḥadd* conviction. He asked the JI chief if a rape victim who is unable to produce four witnesses should remain quiet about the atrocity. Ḥasan affirmed that a rape victim ought to remain silent if she did not have four witnesses and that this was Islam’s way of eradicating the evil from the society. When questioned further, the JI chief was quick in alleging that the interviewer was questioning the word of God, even though the text of the Qur’an makes no mention of rape. He went on to say that his case rested on the Qur’an and the prophet’s practice, while the interviewer argued against the sacred sources.<sup>75</sup> Munawwar Ḥasan’s conflation of *zinā* (consensual sex outside of the confines of institutional marriage) and rape, and his suggestion that a rape victim ought to remain silent if she could not produce four witnesses is precisely what troubles the critics of Hudood Ordinances. Equally troubling is how he conflates his own views with the Qur’an and the prophet’s word and undermines his interlocutor’s *muslim*-ness.

More recently, the now-former law minister Zāhid Ḥāmid posted a telling clarification on the internet after his residence was attacked and vandalized by protestors demanding his resignation, because his office had tabled a bill for electoral reforms that included a minor amendment to the declaration concerning the finality of Muhammad’s prophethood. The amendment was perceived as accommodating the Aḥmadi community. The minister’s resignation was not enough to calm down the mobs incited by certain clerics. For his own safety and the safety of his family, he had to assure his audience in a video message that he believed in the finality of the

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<sup>75</sup> Sayyid Munawwar Ḥasan, interview by Iḥtishām Amīruddīn, June 24, 2011, accessed December 14, 2017, <https://www.youtube.com/watch?v=6cssqZccOlg>.

prophethood of Muhammad, and that he loved the prophet from the depth of his heart and could lay down his life to protect his honor.<sup>76</sup> This shows the kind of atmosphere and the nature of discourse prevalent in Pakistan at this point. In an atmosphere like this, it is nearly impossible to have a meaningful conversation about certain laws and advocate reform without risking one's life, property and reputation.

### 1.3.2 The rise of Salafism

Another important feature of the changing discourse in Pakistan is the rise of Salafism. We noted earlier in this chapter that the country has a predominantly Ḥanafi Sunni population. Yet the nature of arguments in contemporary Pakistan is increasingly Salafi. Salafism follows from the belief that the first few generations of Muslims, known as the righteous predecessors (*al-salaf al-ṣāliḥ*), were the best community in Islamic history. Emulating the righteous predecessors, who are also the chief interpreters and transmitters of the prophet's words and works, is the surest and shortest path to doing Islam right and attaining the pleasure of God. The practice of these early Muslims as well as the prophet is best captured, it is believed, in *ḥadīth* collections. Thus, *ḥadīth* reports become the primary means to learn about religion side by side with and sometimes superseding the Qur'an. Though not a homogenous group, people who draw inspiration from early Islam (contested as it may be) and seek to emulate early Muslims in worship and personal-social etiquette may be called Salafis for our purposes.<sup>77</sup> Differences aside, they share a desire to 'return' to the 'original' teachings of the Qur'an and the *sunnah* (normative practice) of the prophet.

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<sup>76</sup> "Law Minister Zahid Hamid Releases Video Message to Offer Explanation," *The News*, November 26, 2017, accessed December 5, 2017, <https://www.thenews.com.pk/latest/249102-law-minister-zahid-hamid-releases-video-message-to-offer-explanation>.

<sup>77</sup> Joas Wagemakers, "Salafism" (August 5, 2016), accessed December 15, 2017, <http://religion.oxfordre.com/view/10.1093/acrefore/9780199340378.001.0001/acrefore-9780199340378-e-255>.

The appeal of Salafism lies in its epistemological and didactic convenience and its promise as a *taqlīd*-free approach that can foster a fresh yet authentic understanding of religion.<sup>78</sup> With sole reliance on the Qur'an and the prophet's practice, Salafism gives the impression of going back to the origins and the core of Islam. Compared to complex *fiqhi* arguments contained in voluminous works, Salafi arguments are easy to learn and easy to share. Whereas *taqlīd* seems to stifle fresh interpretations and thinking, Salafism promises, at least in theory, to draw upon traditional sources without being enslaved to them.

*Taqlīd* is criticized for privileging the views of certain scholars of the past in opposition to purportedly sound *ḥadīth* reports attributed to the prophet. As appreciation for the *fuqahā's*<sup>79</sup> critical engagement with their sources diminishes, it is convenient for the lay person as well as the scholar of our time to assume that a well-meaning jurist of the past simply did not have access to certain anecdotes of the prophet or was mistaken in discrediting them.<sup>80</sup> A person subscribing to and promoting scholarly views that seem to not account for allegedly sound *ḥadīth* reports is then seen as a partisan, a blind follower of a school of law. And Salafism promises a progressive option: letting go of traditional scholarly opinions in favor of the prophet's wisdom. Thus, many who wish to rise above scholastic chauvinism have imbibed core Salafi ideas.

With an emphasis on evidence (albeit of a certain kind) and condemnation of innovation (*bid'ah*) in matters of religion as the antithesis of the prophet's practice (*sunnah*), Salafism has also emerged as an alternative and antidote to veneration of saints and shrine worship that no longer

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<sup>78</sup> *Taqlīd* is a form of traditionalism that assumes much value in the works of Islamic jurists (*fuqahā'*) representing various schools. In this scheme of things, it is considered mandatory for the lay Muslim to follow one of the schools of law (*madhāhib fiqhīyah*) in most or all matters. This approach was widespread in the Muslim world before the rise of Salafism in the 20th century.

<sup>79</sup> Singular: *faqīh*; a jurist, a scholar-practitioner of *fiqh* or Islamic law.

<sup>80</sup> This sort of criticism and pressure from competing schools is not new. Early in Islamic history, Ḥanafī jurists were so affected by the critique of rival *ahl al-ḥadīth* schools that they set out to defend the school's founders against the charge of discrediting *ḥadīth* reports, and reconciled their methodology with the *ahl al-ḥadīth* emphasis on the prophet's anecdotes.

appeals to a growing number of urban middle-class youth who would rather research their faith over the internet and social media than defer to tradition.

Finally, the influence of Saudi oil money on Islamic discourse in the late-20th and early-21st centuries has been pivotal in the rise of Salafism. The Saudi government and Saudi-affiliated non-governmental organizations have been subsidizing the publication and dissemination of books that promote Salafism, sponsoring foreign students for Islamic studies at Saudi universities, and funding schools and mosques all over the world. Additionally, workers from many parts of the world including Pakistan have been travelling to Saudi Arabia, staying there for extended periods of time and bringing home Salafi values that dominate Saudi public life. Together these factors have made it possible for Salafism to supplant more *taqlīd*-based approaches to Islam in much of the Muslim world.

Ḥanafī scholars and lay Muslims in Pakistan have not been immune to the global surge of Salafism. The growing Salafism of the clerical class and the laity has had direct implications for blasphemy legislation and violence in Pakistan. The ‘*ulamā*’ and Islamist politicians regularly cite weak *ḥadīth* reports to support their claim of divine sanction and scholarly consensus for punishment of blasphemy with death, even the permissibility of a zealot murdering someone accused of blasphemy without a fair trial. Salafi arguments like these, based purely on a mix of weak and sound *ḥadīth* reports, offer a sharp contrast with nuanced Ḥanafī scholarship on the subject, which we will review in the next chapter.

An article published by Anis Ahmad in the monthly *Tarjumān al-qur’ān*, the ideological mouthpiece of the Jamā‘at-i Islāmī (JI), provides an intriguing example of the increasingly Salafi nature of Islamic arguments in contemporary Pakistan. Anis Ahmad is the younger brother of a prominent Jamā‘at leader Khurshid Ahmad. He served as Vice President of the International Islamic University Islamabad and Dean of the Faculty of Islamic studies at the International

Islamic University Malaysia. Owing to his academic credentials and association with Khurshid Ahmad, his ‘academic’ voice carries much weight with JI activists, especially when he echoes them. In the article, Anis Ahmad weighed in on the proposal to reform blasphemy laws. With all his academic expertise, he suggests that the public debate around blasphemy laws at the time was the product of concerted efforts made by the “so-called human rights organizations” and the “secular lobby” to create controversy around an uncontroversial issue and to push the country into conflict and turmoil.<sup>81</sup> He considers the death penalty for blasphemous acts against the prophet as a matter of consensus backed by divine sanction, and decries the contention of the “secular lobby” that Pakistan’s blasphemy laws were “man-made”.<sup>82</sup> To make his case, Anis Ahmad cites Jewish and Christian scriptures and European blasphemy laws. However, relevant to our discussion is his citation of Islamic tradition and practice. He cites two verses from the Qur’an and one instance from the life of the prophet, and names three works of Muslim jurists on the subject. The three jurists are the Ḥanbali scholar Ibn Taimīyah, the Shāfi‘i scholar Taqī al-dīn al-Subkī, and the Ḥanafī scholar Ibn ‘Ābidīn. We will explore the work of Ibn ‘Ābidīn on the subject of insulting the prophet (*sabb al-rasūl*) in the next chapter. Here it is relevant to note that Anis Ahmad identifies two conservative non-Ḥanafī scholars, even though most Pakistanis adhere to the Ḥanafī school of law. Even more intriguing are his references to the Qur’an and an instance from the prophet’s life and what he makes of them. The first verse he cites reads:

Those who wage war against God and His Messenger and strive to spread corruption in the land should be punished by death, crucifixion, the amputation of an alternate hand and foot, or banishment from the land: a disgrace for them in this world, and then a terrible punishment in the Hereafter. (Qur’an 5:33)<sup>83</sup>

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<sup>81</sup> Anīs Aḥmad, “Taḥaffuẓ-i Nāmūs-i Risālat Aur Hamārī Zimmah-Dārī,” *Mahnāmah Tarjumān al-Qur’ān* (December 2010).

<sup>82</sup> Ibid.

<sup>83</sup> MAS Abdel Haleem, trans., *The Qur’an: A New Translation*, Oxford World’s Classics (New York: Oxford University Press, 2005), 71.



And the second verse reads:

Those who oppose God and His Messenger will be brought low, like those before them: We have revealed clear messages, and humiliating torment awaits those who ignore them. (Qur'an 58:5)<sup>84</sup>

Anis Ahmad introduces these verses as offering “in clear terms” the punishment for “rebellious against God and the messenger” or “treason”.<sup>85</sup> After quoting the verses, he concludes, “the punishment in the divine law for blasphemy against the messenger is...execution of the perpetrator.”<sup>86</sup> There are numerous issues in this typically Salafi line of reasoning. First, the verses speak of opposing God and the prophet and waging war against them but make no mention of insulting God or the prophet. Anis Ahmad does not explain how opposing the prophet or waging war against him is the same as insulting the prophet. Second, the vagueness of the text presents a challenge in its application. The phrases *fasād fī al-arḍ* (corruption in the land) and *yuhāddūna* (opposing God and the prophet) can be interpreted in different ways. They are too general to offer any legislative potential. Third, the verses offer *numerous ways*, not just the death penalty, to ‘punish’ the vaguely worded crimes of opposing God and the prophet, waging war against them, and striving for corruption. Fourth, the text immediately following one of the verses cited by Anis Ahmad makes room for repentance before someone is punished, contrary to the popular Pakistani view and the law itself that deems blasphemy an unpardonable offence.<sup>87</sup> Sadly, Anis Ahmad ignores all of these issues in his characteristically Salafi citation of these verses.

He similarly sidesteps important details in his reference to the execution of a few individuals despite the general amnesty on the occasion of the conquest of Makkah. In his

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<sup>84</sup> Ibid., 362.

<sup>85</sup> Ahmad, “Taḥaffuz-i Nāmūs-i Risālat Aur Hamārī Zimmah-Dārī.”

<sup>86</sup> Ibid.

<sup>87</sup> “Unless they repent before you overpower them – in that case bear in mind that God is forgiving and merciful.” Qur'an 5:34; Abdel Haleem, *The Qur'an*, 71.

simplistic Salafi argument, Anis Ahmad does not account for alternative explanations of the verses or the event in question from the prophet’s life, and asks his reader, “In the face of these texts, how can anyone who believes in the authority of the Qur’an and *ḥadīth* think of any punishment other than death for an insulter of the prophet?”<sup>88</sup> Such reasoning on the part of religious intellectuals and clerics has made blasphemy an unpardonable offense in the imagination of an average Pakistani. Thus, any calls for reform or amendment of the law are met with fierce opposition.

### 1.3.3 And who could be more unjust than one who conceals testimony

While it is hard to say if Anis Ahmad was inattentive or disingenuous in his argument, certain religious clerics and political actors are deliberately concealing evidence and misrepresenting the Islamic tradition to oppose what they describe as the “secular agenda”. In a series of important pieces, Arafat Mazhar catalogues how the ‘*ulamā*’ considered blasphemy a pardonable offense until the “secular” Governor of the Punjab province Salman Taseer sought presidential pardon for Aasia bibi, a Christian woman of modest socioeconomic background convicted of blasphemy.<sup>89</sup> The ‘*ulamā*’ took offense at Taseer’s bold criticism of the law and the clergy’s support for it. After Taseer was assassinated by his bodyguard, many rushed to find excuses for the cold-blooded murder from the practice of the prophet Muhammad. For the murderer to be pardoned, Taseer had to be a blasphemer and blasphemy an unpardonable offense. So, it was argued that criticizing the blasphemy law and supporting a blasphemer was blasphemy too.<sup>90</sup> Jamia Binoria, a religious school with considerable authority, had previously published a *fatwā* on the institution’s website that deemed blasphemy a non-*ḥadd* offense<sup>91</sup> for which the state could determine punishment.

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<sup>88</sup> Ahmad, “Taḥaffuz-i Nāmūs-i Risālat Aur Hamārī Zimmah-Dārī.”

<sup>89</sup> Arafat Mazhar, “Why Blasphemy Remains Unpardonable in Pakistan,” *Dawn* (Karachi, February 19, 2015), accessed February 26, 2015, <http://www.dawn.com/news/1163596>.

<sup>90</sup> Saif, “The ‘Ulamā’ and the State,” 89.

<sup>91</sup> Islamic jurists have conceived *ḥadd* crimes as those offenses for which a punishment is fixed in the Qur’an and *ḥadīth* of the prophet Muhammad. When the strict requirements of a *ḥadd* punishment are not met, or when no

After Taseer was assassinated, Jamia Binoria issued another *fatwá* declaring that blasphemy was only punishable by death.<sup>92</sup> Similarly, Munīb al-Raḥmān Shāmzai, an influential cleric, who had previously stated that there was provision for pardon in cases of blasphemy, now declared that there was consensus that blasphemy was not a pardonable offense.<sup>93</sup>

Mazhar takes us further back to the late 19th-century debate between Ahl-i ḥadīth and Ḥanafī scholars. In response to Ahl-i ḥadīth criticism that the Ḥanafī position around insulting the prophet disregarded certain *ḥadīth* reports, some 450 clerics including the chief Bareilvi protagonist Aḥmad Rizā Khān and Rashīd Gangohī and Mahmūd al-Ḥasan of the Deoband movement issued a joint statement that the *ḥadīth* reports in question were about habitual offenders, that non-Muslim blasphemers could not be executed for single instance of blasphemy, and that there was scope for pardon.<sup>94</sup>

Mazhar went on to ask prominent religious-political figures why then they would not acknowledge the scope for pardon affirmed in the Ḥanafī tradition. The answer was “*maṣliḥat*”, public interest in early Mālikī tradition, but political expediency in contemporary Urdu parlance. Religious leaders believe that making such information public was not in the nation’s best interest – it served the “secular agenda”.<sup>95</sup> Withholding the facts of the matter is better than colluding or appearing to collude with so-called secular forces.<sup>96</sup> As Mazhar sums it up, the ‘*ulamā*’ and religious politicians believe that Islam is under attack from outside and from within. To defend Islam, religious actors must oppose secular elements, even if they betray their own tradition and

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specific punishment is stipulated in the Islamic proof texts, an authorized judge determines the discretionary (*ta’zīr*) punishment for the crime in question.

<sup>92</sup> Mazhar, “Why Blasphemy Remains Unpardonable in Pakistan.”

<sup>93</sup> Ibid.

<sup>94</sup> Arafat Mazhar, “The Fatwas That Can Change Pakistan’s Blasphemy Narrative,” *Dawn* (Karachi, January 15, 2015), accessed February 26, 2015, <http://www.dawn.com/news/1154856>.

<sup>95</sup> Mazhar, “Why Blasphemy Remains Unpardonable in Pakistan.”

<sup>96</sup> Arafat Mazhar, “The Untold Story of Pakistan’s Blasphemy Law,” *Dawn* (Karachi, December 10, 2014), accessed April 14, 2015, <http://www.dawn.com/news/1149558>.

turn a blind eye to the loss of lives and destruction of property in this tug of war.<sup>97</sup> They will not cede ground to godless advocates of human rights.

Mashal Saif similarly notes in her work that Ammar Khan Nasir, the son of respected cleric Zāhid al-Rāshidī and a scholarly voice in his own right, was discouraged by his grandfather Sarfrāz Khān Ṣafdar, also an esteemed scholar, from publicizing his findings about the dubious nature of an incident involving ‘Umar Ibn al-Khaṭṭāb that is often used to justify capital punishment for blasphemy and the extrajudicial murder of alleged blasphemers.<sup>98</sup> Ṣafdar argued that the incident was mentioned in numerous classical commentaries of the Qur’an, and Nasir’s critique would weaken the trust of lay Muslims in esteemed scholars of the past and their important works.<sup>99</sup> Another Deobandi cleric Mahr Muḥammad argued that debunking incidents that did not meet the most stringent requirements of proof would lead to religious turmoil.<sup>100</sup> For these ‘*ulamā*’, a certain kind of stability in religious thought was more important than the veracity of an incident and its use in religious arguments.

Such concealing of evidence, whether to oppose dissenting voices perceived as anti-Islamic or to not weaken the confidence of lay Muslims in their tradition, is a critical feature of the religio-political discourse that affects public opinion and debate around blasphemy laws in contemporary Pakistan. The ‘*ulamā*’ are not ready to educate and empower the masses so they think for themselves. They prefer to do the thinking on behalf of the people and mobilize them to counter un-Islamic forces when needed. In their turn, people who trust the ‘*ulamā*’ parrot their claims of consensus and, when incited, punish dissent by means of violence. In turn, the ‘*ulamā*’ blame the government for not reining in “anti-Islamic” voices that seek “disorder” in the society.

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<sup>97</sup> Mazhar, “Why Blasphemy Remains Unpardonable in Pakistan.”

<sup>98</sup> Saif, “The ‘Ulamā’ and the State,” 134–138.

<sup>99</sup> Ibid., 137–138.

<sup>100</sup> Ibid., 138.

In summary, the narrow set of ‘Islamic’ concerns pushed by religious politicians through the 70s and 80s, their top-down approach and preoccupation with the social-political order, the rise of Salafism and easy questioning of the interlocutor’s faith, and betrayal of the Islamic tradition to oppose the “secular agenda” are important discursive developments that help us understand the institution of certain blasphemy laws in the 1980s and subsequent resistance to reform and amendment of these laws.

#### **1.4 The institution and modification of blasphemy laws**

Pakistan inherited the Indian Penal Code from British India in 1947. Thomas Macaulay, the first Law Member in the Governor General’s Council of India, presented the draft code in 1837, which was enacted after revisions in 1860. Macaulay had included offences relating to religion in Chapter XV of the code, which was widely debated and critiqued before and after the code was adopted. Among the laws were Sections 295–298, which criminalized intentional damage and defilement of places of worship and other sacred objects, disturbance of religious assemblies, malicious trespassing of burial sites and remains, and wounding of “religious feelings” of an individual.<sup>101</sup> We will review some of Macaulay’s impressions of India and his legal philosophy that gave shape to these laws and the criticism that followed in the next chapter. Here it is important to note that the laws were intended to achieve harmony between different religious communities inhabiting India, arguably to the advantage of minorities including Muslims. Thus, when the Lahore High Court failed to convict the author and publisher of *Rangīlā Rasūl*, a slanderous tract attacking the prophet Muhammad, under Section 298 (which only covered *spoken* blasphemy), the state introduced Section 295-A criminalizing *written* as well as spoken words and visible representations intended to outrage the religious feelings of any class of the

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<sup>101</sup> Ahmed, “Specters of Macaulay,” 181.

Crown's subjects.<sup>102</sup> After this addition to Chapter XV of the Indian Penal Code in 1927, there was no further legislation until 1980s, when General Zia's government instituted five new blasphemy laws to appease the religious constituency.

Following the Iranian revolution, majority-Sunni '*ulamā*' feared that local Shī'ah community might be emboldened in their practice of cursing the first three successors and other 'companions' of Muhammad. Thus, Sunni '*ulamā*' demanded legislation against insulting companions of the prophet Muhammad, and the regime obliged with the introduction of Section 298-A in 1980. Soon afterwards, a moral panic over alleged defilement of some copies of the Qur'an led to the introduction of Section 295-B criminalizing desecration of the Qur'an in 1982. Subsequently, the Taḥrīk-i khatm-i nubūwat (Movement for the finality of Muhammad's prophethood) threatened violence and demanded legislation against the Aḥmadi community. Zia's government obliged with the institution of Sections 298-B and C, in 1984, criminalizing the use of Islamic terminology by members of the Aḥmadi community, their "posing" as Muslims, preaching their faith, or "in *any manner whatsoever* outrag[ing] the religious feelings of Muslims". Finally, through an act of parliament and with the efforts of Advocate Ismail Qureshi, who seems to have dedicated his life to the cause, Section 295-C was introduced in 1986 criminalizing spoken and written words and visible representations that directly or by implication insulted the prophet Muhammad.<sup>103</sup>

The laws instituted in Zia's time use colonial-era laws as their starting point. As one would expect, the two sets of laws share important features: (a) they make "wounded feelings" a cause of action, (b) require the complainants to demonstrate that their feelings have been injured, which translates into incitement of anger and violence in the society, and (c) they are vague and capacious

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<sup>102</sup> Ibid., 182.

<sup>103</sup> Ibid., 183; Siddique and Hayat, "Unholy Speech and Holy Laws," 310–311.

in terms of what constitutes the offense, which makes room for abuse.<sup>104</sup> The two sets of laws differ, too, in important ways. While the colonial laws were meant to protect all subjects of the state including minority Muslims in colonial India, Zia-era legislation is meant to protect persons and texts deemed sacred by majority Muslims seeking to subdue minorities in Pakistan.<sup>105</sup> In the case of the colonial legislation, the state sought to emerge as a rational and neutral party in relation to emotionally fragile religious communities. In the postcolonial setting, the state sought to appease and forge an “affective connection” with a segment of the public without any pretense of neutrality, securing for the regime the semblance of legitimacy that it needed at the time.<sup>106</sup>

Further, the requirement of *intent* on the part of the accused has been eliminated in Zia-era legislation. The original blasphemy laws introduced in 1860 and 1927 emphasized the intention of the accused. It is evident moreover from the Law Commissioners’ commentaries of the Indian Penal Code that “proof of intent was a *prerequisite* to the application of these sections”.<sup>107</sup> The Law Commissioners distinguished between “a deliberate, premeditated intention to wound” the religious feelings of a certain community and what might happen “on the sudden in the course of discussion” – only the former made the accused liable to conviction.<sup>108</sup> One had to force oneself upon the attention of listeners and enter into discussion with the deliberate purpose of offending them.<sup>109</sup> The Law Commissioners made it apparent that “utterances made during the course of an argument or quarrel do not constitute blasphemy”.<sup>110</sup> Owing to such emphasis and clarity, Siddique and Hayat observe that Pakistani courts were highly attentive to “deliberate and malicious

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<sup>104</sup> Ahmed, “Specters of Macaulay,” 182.

<sup>105</sup> Siddique and Hayat, “Unholy Speech and Holy Laws,” 337.

<sup>106</sup> Ahmed, “Specters of Macaulay,” 183–184.

<sup>107</sup> Siddique and Hayat, “Unholy Speech and Holy Laws,” 340.

<sup>108</sup> *Ibid.*, 340–341.

<sup>109</sup> *Ibid.*, 344.

<sup>110</sup> *Ibid.*, 345.

intention” in adjudicating blasphemy accusations prior to Zia-era legislation.<sup>111</sup> Thus, adjudicating a case concerning the publication of a book that compared Islam and Christianity with the purpose of establishing the superiority of the latter, the Lahore High Court remarkably observed that the “author did not deny that his object was to show the superiority of Christianity over Islam, but he said at more places than one that he had no intention of injuring the feelings of Muslims whom at places he called his brethren.”<sup>112</sup> The court noted that “it is well-known that when followers of a religion try to show that their religion is the best in the world, words which will not be palatable to the followers of other religions are difficult to avoid.”<sup>113</sup> The court further observed that

things may be said or written which will outrage the religious feelings of followers of other religions. When a person does that, the law will presume that he intended to insult the religious beliefs of the followers of other religions. But even so the ingredients of Section 295-A of the Pakistan Penal Code will not have been satisfied because they can be satisfied only if it is established that the intention to insult the religious beliefs was deliberate and malicious.<sup>114</sup>

In sharp contrast, the crucial requirement of intent was omitted from blasphemy legislation in Zia’s time, with the result that absence of intent was not considered in adjudication of blasphemy cases under Sections 295-B and C and 298-A, B and C. In particular, Section 295-C stipulated death penalty for insulting the prophet Muhammad directly or even by implication, yet absence of intent was immaterial, and the law did not provide for repentance or pardon either. Thus, Siddique and Hayat cite numerous post-Zia cases in which the absence of intent was not considered, and people who should not have been tried in the first place were convicted after long painful trials, including a teacher responding to questions in class and a mentally-unstable drug

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<sup>111</sup> Ibid., 341–342.

<sup>112</sup> Ibid., 341.

<sup>113</sup> Ibid., 342.

<sup>114</sup> Ibid.



addict entering into an argument with a shopkeeper over his inability to pay overdue money.<sup>115</sup> Based on their survey of blasphemy cases, Siddique and Hayat conclude that “lower courts have...proven unreliable in blasphemy trials to the extent that even when a defense such as insanity, which applies even to offenses without an explicit *mens rea* requirement, is available to the accused, they have still handed down convictions.”<sup>116</sup> They argue that insertion of a *mens rea* requirement into Zia-era blasphemy laws would lower the chances of unjust convictions, especially where the accused is *not insane and did not intend* to defile the Qur’an, the prophet, other holy persons or objects.<sup>117</sup>

#### **1.4.1 The institution and modification of Section 295-C**

Among the laws instituted in the 1980s, we are most concerned with Section 295-C in the present work. It is the last of the five blasphemy laws enacted in General Zia’s time. It appears that the greatest number of blasphemy cases have been registered under this section,<sup>118</sup> which reads:

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.

The law is mainly the work of Advocate Ismail Qureshi. Since previous legislations did not specifically address blasphemy against the prophet Muhammad, Qureshi petitioned the Federal Shariat Court in 1984 to prescribe death penalty for blasphemy. The court reserved judgment, observing, among other things, that legislation was the parliament’s prerogative.<sup>119</sup> Next, Advocate Qureshi drafted the law and presented it in the parliament in 1986 with the help of Apa Nisar

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<sup>115</sup> Ibid., 343–348.

<sup>116</sup> Ibid., 348.

<sup>117</sup> Ibid.

<sup>118</sup> Ibid., 324.

<sup>119</sup> IA Rehman, “The Blasphemy Law,” *DAWN.COM*, November 25, 2010, accessed December 3, 2017, <http://www.dawn.com/news/585332>.

Fatima, a member of the National Assembly affiliated with the Jamā‘at-i Islāmī. Qureshi had stipulated the death penalty as the only punishment for blasphemy against the prophet. The law minister was wary of the bill because the Qur’an did not prescribe the death penalty for the offense, and numerous religious parliamentarians argued that life imprisonment was sufficient.<sup>120</sup> However, supporters of the bill insisted that the death penalty for blasphemy was not a matter of debate. The bill was adopted with the death penalty *and* life imprisonment as alternative punishments for insulting the Islamic prophet. Section 295-C, quoted above, was thus introduced in the Pakistan Penal Code.

Ismail Qureshi did not settle for this. He petitioned the Federal Shariat Court (FSC) again in 1990 to have the option of life imprisonment removed from the law. Certain ‘*ulamā*’, including Subḥān Maḥmūd, Ghulām Sarwar Qādrī and Ṣalāḥuddīn Yūsuf, maintained in the court that a person guilty of blasphemy should be given an opportunity to repent and that the Islamic tradition allowed for the ruler to issue lesser punishments than death sentence for blasphemy.<sup>121</sup> Neither of these concerns made it to the court judgment. To Qureshi’s satisfaction, the court ruled in Oct 1990 that life imprisonment was “repugnant” to the Qur’an and the prophet’s practice, and that the death penalty was the befitting *ḥadd* punishment for blasphemy against the prophet. The court required the government to make arrangements for amendment of the law before April 30, 1991. Should the amendment not take place within the specified time, the words “or imprisonment for life” in Section 295-C would cease to be effective in compliance with the court’s order. With this, blasphemy against the prophet Muhammad became an unpardonable offense punishable by death. The FSC proved to be the kind of institution that, Lombardi says, circumvents people’s will and

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<sup>120</sup> Ibid.

<sup>121</sup> Muftī Muḥammad Zāhid, “Pākistān kā Qānūn-i Tauhīn-i Risālat aur Fiqh-i Ḥanafī,” *Mahnāmah al-Sharī‘ah* 22, no. 10 (October 2011), accessed December 8, 2014, <http://www.alsharia.org/mujalla/2011/oct/fiqah-hanafi-mufti-zahid>.

fails to protect their rights and freedoms.<sup>122</sup> Qureshi approached the FSC precisely because an autocratic regime had conferred on this institution the authority to amend or strike down laws that seemed repugnant to Islam without necessarily referring the matter to elected representatives of the people.

Further, Arafat Mazhar has pointed out that Qureshi's case was based on mistaken reading of important texts. In his Salafi line of reasoning, Qureshi resorted to non-Ḥanafī arguments based on dubious accounts of alleged incidents from the prophet's life. In a bid to confirm his Salafi argument, he misread critical passages in Ibn 'Ābidīn's *Radd al-muḥtār*. Ibn 'Ābidīn (d.1836), a prominent Ḥanafī scholar who lived in Ottoman Damascus, argues in his *Radd al-muḥtār*, a commentary of al-Ḥaṣḥafī's (d.1677) *Durr al-mukhtār*, that the Ḥanafī school allowed for and encouraged repentance in cases of blasphemy against the prophet. He critiqued the earlier scholar al-Bazzāzī (d.1424) for attributing otherwise to Ḥanafī jurists and misrepresenting the school in this matter. Precisely where Ibn 'Ābidīn does that, Qureshi mistook him as saying that there was no room for repentance for one who had insulted the prophet.<sup>123</sup>

Like many other Islamic legal texts, Ibn 'Ābidīn quotes a passage from al-Ḥaṣḥafī's work and follows it up with his own commentary in *Radd al-muḥtār*. Qureshi misquotes and attributes to Ibn 'Ābidīn a passage that Ibn 'Ābidīn quotes from al-Ḥaṣḥafī's work and attributes to al-Bazzāzī:

And every Muslim who has apostatized, his repentance is acceptable, except [1] those whose apostasy is recurrent (based on what has preceded) and [2] one who has disbelieved by disrespecting a prophet from among the prophets; the latter should be killed in fulfilment of *ḥadd* penalty and his repentance is not acceptable at all.<sup>124</sup>

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<sup>122</sup> Lombardi, "Designing Islamic Constitutions," 621.

<sup>123</sup> Mazhar, "The Untold Story of Pakistan's Blasphemy Law."

<sup>124</sup> Muḥammad Amīn Ibn 'Ābidīn, *Radd Al-Muḥtār 'alā Al-Durr Al-Mukhtār*, 2nd ed., vol. 4 (Bairūt: Dār al-fikr, 1992), 231–232.

After citing al-Bazzāzī from al-Ḥaṣkafī’s work, Ibn ‘Ābidīn goes on to critique al-Bazzāzī’s view. Qureshi concatenates part of al-Bazzāzī’s statement with a phrase from Ibn ‘Ābidīn’s annotation, forging a new sentence and presenting it as a “*fatwá* written in Ibn ‘Ābidīn’s *Raww al-Mukhtār* [sic]”:

One who has disbelieved by disrespecting the prophet should be killed in fulfilment of *ḥadd* penalty and his repentance is not acceptable at all, for the *ḥadd* punishment is not averted by repentance.<sup>125</sup>

Such misreading of Ibn ‘Ābidīn’s work and erasure of critical Ḥanafī stance underlies Qureshi’s claim of scholarly consensus on the subject. A mistake or misrepresentation of such order on the part of people meddling with the country’s laws is inexcusable.

Qureshi has acknowledged mistakes in the research upon which 295-C is based.<sup>126</sup> According to IA Rehman, former chairman of Human Rights Commission of Pakistan, Qureshi admits that the law needs further amendment to make it consistent with the Qur’an and the prophet’s practice. Qureshi now believes that proof of intent and unimpeachable evidence are necessary to secure conviction.<sup>127</sup> Welcome as it may be, such an admission is far from the original zeal with which Qureshi pursued the legislation and amendment of 295-C in the first place. In their turn, the country’s clerics, including the renowned Mufti Taqī Usmani who was serving on the Shariat Appellate Bench of the Supreme Court at the time when FSC ruled on Qureshi’s petition, have mostly allowed the false impressions and disingenuous arguments of the 80s and early 90s to shape public opinion in the following decades.

After the Federal Shariat Court ruled on Ismail Qureshi’s petition, the federal government appealed the decision, but Ismail Qureshi urged the prime minister to withdraw the appeal or else

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<sup>125</sup> Muhammad Ismail Qureshi, *Nāmūs-i Rasūl aur Qānūn-i Tauhīn-i Risālat* (Lahore: al-Faiṣal Nāshirān o Tājirān-i Kutub, 1994), 113.

<sup>126</sup> Mazhar, “The Untold Story of Pakistan’s Blasphemy Law.”

<sup>127</sup> Rehman, “The Blasphemy Law.”

the Muslim electorate would be infuriated.<sup>128</sup> Qureshi approached the prime minister's father too and urged him to convince his son to withdraw the appeal against the FSC ruling.<sup>129</sup> Nawaz Sharif ordered the appeal to be withdrawn and affirmed that if there were a harsher punishment for blasphemy than death penalty, the government would recommend it. Qureshi proudly exhibits the former prime minister's note at the end of his book.<sup>130</sup>

Next, the government presented the Criminal Law (Third Amendment) Bill to remove the option of life imprisonment from the statute in compliance with the FSC ruling. The bill was referred to the Standing Committee on Law and Justice in the Senate in November 1991. The committee, led by Raja Zafarul Haq of the ruling party, observed that the offense under Section 295-C was worded vaguely and recommended that the Council of Islamic Ideology (CII) furnish a more precise definition. The committee moreover sought the CII's advice on how the offense under this section was punished during the life of the prophet, his first four successors, and other Muslim countries in the present.<sup>131</sup> There is conflicting information about subsequent discussion of the bill and its adoption in the National Assembly. Justice Durab Patel says that Nawaz Sharif had a comfortable majority in the house, but rushed the bill in order to appease certain religious political actors.<sup>132</sup> Rehman says that the bill was adopted in the early days of Benazir Bhutto's second tenure as prime minister.<sup>133</sup> Yet the official website of the National Assembly does not list the Criminal Law (Third Amendment) Act.<sup>134</sup> The Criminal Law (Second Amendment) Act enacted in

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<sup>128</sup> Zāhid, "Pākistān kā Qānūn-i Tauhīn-i Risālat aur Fiqh-i Ḥanafī."

<sup>129</sup> Mazhar, "Why Blasphemy Remains Unpardonable in Pakistan."

<sup>130</sup> Qureshi, *Nāmūs-i Rasūl aur Qānūn-i Tauhīn-i Risālat*, 405.

<sup>131</sup> Rehman, "The Blasphemy Law."

<sup>132</sup> Shemeem Burney Abbas, *Pakistan's Blasphemy Laws: From Islamic Empires to the Taliban* (Austin: University of Texas Press, 2013), 75–76.

<sup>133</sup> Rehman, "The Blasphemy Law."

<sup>134</sup> "Acts of Parliament," *National Assembly of Pakistan*, accessed December 31, 2017, <http://na.gov.pk/en/acts-tenure.php>.

November 1991 concerns Section 295-A only.<sup>135</sup> In the 36th session of the Senate in February 1992, Raja Zafarul Haq proposed to delay the presentation of the report concerning the amendment of 295-C. The motion was adopted, and the committee annexed the observations (noted above) to the bill without endorsing it. It appears that there was no further discussion in the Senate or the CII, and the proposed amendment to Section 295-C was not undertaken.<sup>136</sup> More recently, Senator Farhatullah Babar brought up this issue in the Senate after he learned about the unfinished work from IA Rehman of the Human Rights Commission. As a result, the Senate's Human Rights Committee decided to follow up on the observations made by the Law and Justice Committee in late 1991 and early 1992.<sup>137</sup> However the process is likely derailed again because of the political events in 2017, especially the disqualification of the Prime Minister and the three-week long blockade of a major highway leading to the capital city protesting the proposal to make minor changes in the *khatm-i nubūwat* declaration required of electoral candidates.

#### **1.4.2 Ensuing violence and opposition to reform**

Section 295-C of the Pakistan Penal Code is a story of misreading important Islamic texts, and ignoring the observations of certain '*ulamā*' that blasphemy was *pardonable* and *punishable by means other than death*, then turning a deaf ear to the recommendations of the Senate's Standing Committee, and the country's leadership trying to appease political allies and a segment of the population, and '*ulamā*' withholding important evidence from the Islamic tradition to oppose their ungodly rivals. The consequences have been deadly, not just unfortunate. For more than two decades, '*ulamā*' and religious politicians supporting the law have incessantly repeated the false claim of scholarly consensus on the punishment of blasphemy. The idea has seeped deep into the

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<sup>135</sup> "Criminal Law (Second Amendment) Act," *The Gazette of Pakistan* (November 27, 1991): 479–480.

<sup>136</sup> "Archives Pave Way for Blasphemy Law Debate in Senate," *The Nation*, December 2, 2016, accessed December 30, 2017, <http://nation.com.pk/02-Dec-2016/archives-pave-way-for-blasphemy-law-debate-in-senate>.

<sup>137</sup> *Ibid.*

consciousness of many Pakistanis, who now believe that blasphemy against the prophet is a non-pardonable offense punishable by death, that the law in question is sanctioned by the divine, and whoever believes otherwise is guilty of blasphemy too and must pay with their life if they persist in questioning the law. While death sentences have not been carried out owing to international pressure, several people are on death row, and others spend years in detention before and during trial, often in solitary confinement. Many more have been victims of mob violence and extrajudicial murder, sometimes in police custody. Members of minority communities are much more likely to be accused of blasphemy to settle trivial disputes. It takes a rumor and a fiery speech by the *imām* (prayer leader) of the local mosque to activate a mob that vandalises private and public property and subjects the accused to violence, at times lynching. In the case of minorities, their entire neighborhoods have been burned down and people displaced on a few occasions. Lawyers defending the accused and judges acquitting them, and people advocating revision of the law have been attacked and assassinated.

The '*ulamā*' and Islamist politicians are brisk and fierce in their opposition to any calls for reform in the law, but they are hardly moved by the many human tragedies that result from the widespread misuse of the law. In their turn, people in government usually coopt and legitimize social violence for political mileage. Thus, the blasphemy law 295-C has become a tool for punishing personal and professional foes, silencing dissent, and victimizing minorities. The law reflects *and* fuels religious intolerance and obscurantism in the Pakistani society. Additionally, the discursive and political climate that has given birth to the law and that feeds on the law has made meaningful conversation on the subject next to impossible. People who insist on having the conversation with the eventual goal of revisiting the law are putting their lives on the line for the cause.

## 1.5 Final thoughts

Early in the history of Pakistan, traditionally-trained '*ulamā*' and Islamists got together to impart an Islamic character to the state of Pakistan. They managed to have the country named Islamic Republic and negotiated a few Islamic clauses into the constitution. The nation was subsequently jolted by the loss of East Pakistan in 1971. The religious leadership explained the tragedy in terms of moral degradation and the rulers' lack of commitment to Islam. This resulted in a surge of Islamic consciousness through the 70s, which was further catalyzed by growing socioeconomic and political ties with the Arab world. Significantly, the growing ties with Saudi Arabia and neighboring Arab countries coincided with the rise of Salafism in predominantly Ḥanafi Pakistan. The simplicity and convenience of Salafi epistemology, particularly the emphasis on the Qur'an and the prophet's practice known from *ḥadīth* anecdotes, found appeal among lay Pakistanis benefiting from oil-based economies of the Arab world. The '*ulamā*' class could not resist the rise of Salafism for much longer either, especially as their institutions started receiving funds from Saudi Arabia to counter the Iranian Shī'ah influence and fight the Soviets in Afghanistan.

The '*ulamā*'s preoccupation with moral degradation, Maudūdī's desire to transform the total social-political order, and the rise of Salafism mainly under Saudi influence came together in General Zia's time who cemented the discursive shift that had begun in the 70s. The Islamic political idiom patronized by Zia dominated all discussion and delegitimized other forms of religious and secular argumentation, which have since invited charges of anathema and *kufr*. These developments in the sphere of discourse are further complicated by the militarization of certain sectors of Pakistani society in the 1980s, a major side-effect of the Afghan war, which would translate into religiously-motivated violence in the ensuing years. Thus, governments and civil society in post-Zia Pakistan have had to maneuver in a violent discursive and political climate fashioned by the religious establishment together with Zulfikar Bhutto and General Zia.



The discursive developments that crystallized in Zia's time provided the medium in which a politicized Islamic tradition came together with colonial-style codification and undemocratic institutions designed to bypass the people's will. While the Islamic political idiom marked by Maudūdī's top-down approach created an atmosphere that permitted Zia-era legislation and tampering with the country's institutions, the incognito Salafism determined the kind of arguments that were made and accepted in support of blasphemy laws. Salafi-style reasoning is particularly evident in the trajectory of Section 295-C. As we have seen in this chapter and will explore further in the next, Ismail Qureshi did not just resort to dubious accounts and arguments that only meet Ḥanbali-Salafi standards but also misread and/or misrepresented critical Ḥanafī texts in a bid to confirm his Salafi argument. In their turn, the '*ulamā*' have mostly allowed false impressions and disingenuous reasoning to prevail and shape public opinion since the 80s, partly because they are increasingly Salafi and resonate with the kind of arguments Qureshi made, and partly because they would rather withhold the facts of the matter than cede ground to ungodly secular rivals.

Such has been the politics of lawmaking in the postcolonial nation-state. The consequences have been utterly tragic. Blasphemy laws, especially Section 295-C, have provided legal cover for religiously-motivated violence and the persecution of minorities. Emboldened by the laws but mistrusting the state, not-so-scholarly clerics have been activating assassins and mobs to attack and punish the accused, who are presumed guilty without an opportunity to prove otherwise, as well as those who sympathize with them and advocate for justice and human dignity. In these ways, the discursive milieu that gave birth to Zia-era blasphemy laws feeds off those very laws and fiercely defends them.

## Chapter 2 ·

### Pre-Pakistan Influences in the Blasphemy Drama

In the last chapter, we considered the sociopolitical and discursive factors that led to blasphemy legislation and that continue to defend it in contemporary Pakistan. However, the genesis of blasphemy legislation goes further back in history. In the current chapter, we will consider the Islamic juristic basis, and the lack thereof, for Pakistani Muslim attitudes toward blasphemy. We will examine the Ḥanafī school's discussion of *sabb al-rasūl* (insulting the prophet), since most Pakistanis identify as Ḥanafīs, and because the Ḥanafī discussion of the issue brings much-needed nuance to the debate and undercuts the claims of traditional scholarly consensus used to justify the ill-conceived legislation. Further, we will explore the Islamic-imperial and British-colonial influences that shape Pakistani attitudes and perceptions around blasphemy. It is my contention that the desire to punish blasphemous speech and acts is hardly rooted in the Islamic scripture or the Ḥanafī deliberations on the question of *sabb* and *shatm*, terms encompassing offensive speech and acts, within and outside the auspices of Islamic empires. However, the colonial past of South Asia appears to be a major influence on 20th-century Muslim ideas of state and law, and more specifically, the nature of postcolonial blasphemy laws and Pakistani Muslim attitudes *vis-à-vis* blasphemy.

#### 2.1 Blasphemy in the prophet's time

In the earliest phase of Islamic history, numerous beliefs, speech and acts are recorded and discussed in the Qur'an as seriously offensive. Later in Islamic history, these utterances and acts would be described as *sabb* (defilement, insult) in relation to God, prophets, and the first generation of Muslims. In modern parlance, we describe such acts as blasphemy. Thus, the Qur'an

takes exception to the notion that the divine has offspring, "...those who say God has offspring; no knowledge of the matter do they have, nor did their ancestors. Too big a word is what issues from their lips. They do not utter but a lie."<sup>138</sup> Speaking of deities that Arabs thought were daughters of God, the Qur'anic voice conveys outrage when it says, "these are but names that you and your forefathers have invented, concerning which God has not revealed any authority. They do not but follow conjecture and their own whims."<sup>139</sup> Similarly, the Qur'an notes that the incredulous among the audience of Muhammad mocked him and ridiculed his claim of prophethood. They dismissed him as a soothsayer, a poet or someone possessed by evil spirits.<sup>140</sup> The Qur'an notes that Muhammad was grieved by what his opponents thought of him and deems their rejection of him as an affront to the signs and word of God.<sup>141</sup> Their contention that God did not reveal anything to a human is deemed an *underestimation* of the divine.<sup>142</sup> Even so, the theological and verbal affronts to God and the prophet are not identified as crimes whose punishments ought to be instituted by a temporal authority in the life of this world. Instead, the opponents of Muhammad are warned of what awaits them in the next life, "Those who hurt God and the messenger, God has cursed them in this world and the next and has prepared a humiliating punishment for them."<sup>143</sup> In the case of Abū Lahab, a fierce opponent of Muhammad, The Qur'an turns on him the very words that he used to curse Muhammad and declares that he and his wife will fuel a fire in the other world.<sup>144</sup> Yet no punishment is prescribed for Abū Lahab or his wife in the present realm.

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<sup>138</sup> Qur'an 18:4–5.

<sup>139</sup> Qur'an 53:23.

<sup>140</sup> Qur'an 52:29–30.

<sup>141</sup> Qur'an 6:33.

<sup>142</sup> Qur'an 6:91 and 22:74.

<sup>143</sup> Qur'an 33:57.

<sup>144</sup> Qur'an 111:1–5. See Carl W Ernst, "Blasphemy: Islamic Concept," ed. Lindsay Jones, *Encyclopedia of Religion* (Detroit: Macmillan Reference USA, 2005), Gale Virtual Reference Library, accessed November 6, 2014, <http://go.galegroup.com/ps/i.do?id=GALE%7CCX3424500375&v=2.1&u=ubcolumbia&it=r&p=GVRL&sw=w&asid=d098e3c829b6e279c24aba54c6c0dcdb>.

Later in Islamic history, the schools of law would consider blasphemous acts as signifying apostasy (*riddah*). Whether perceived blasphemy could be deemed apostasy is a separate debate. Here it is worth noting that the Qur'an does not prescribe the death penalty for apostasy either. While people have sometimes argued otherwise, Kamali points out that the Qur'an notes that certain people converted back and forth into and out of Islam.<sup>145</sup> Kamali argues that the text would not entertain the prospect of repeated belief and disbelief if death was the prescribed punishment for the first instance of apostasy.<sup>146</sup> Even the renunciation of faith for a second time and a subsequent increase in disbelief, noted in the verse, does not precipitate the promulgation of the death penalty in this text or other passages in the Qur'an.<sup>147</sup> People who oscillated between belief and disbelief are only warned of punishment in the afterlife – no legal punishments are pronounced for them in the temporal realm.

The Qur'anic treatment of what is described as blasphemy or apostasy notwithstanding, certain incidents from the prophet's life, the circumstances and occurrence of which is contested, are often cited as evidence for the punishability of blasphemous acts. These alleged incidents from Muhammad's life figure prominently in the works of *ahl al-ḥadīth* scholars, especially Ibn Taimīyah and less so Taqī al-dīn al-Subkī, who have advocated the death penalty for blasphemers. The dubious incidents as well as the works of scholars that rely on them form the backbone of Salafi arguments concerning blasphemy in present-day Pakistan.

Ibn Taimīyah, for example, cites the case of a woman murdered by a blind Muslim man who alleged that she used to insult the prophet. When the matter was brought to Muhammad, he reportedly excused the murder. Ibn Taimīyah cites two reports, one of them suggests that she was

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<sup>145</sup> "Those who believe then disbelieve, then believe again, then disbelieve and then increase in their disbelief – God will never forgive them nor guide them to the path." Qur'an 4:137.

<sup>146</sup> Mohammad Hashim Kamali, *Freedom of Expression in Islam* (Cambridge: Islamic Texts Society, 1997), 97.

<sup>147</sup> *Ibid.*, 97–98.

Jewish.<sup>148</sup> Another suggests that she was the man's spouse and mother of his two sons.<sup>149</sup> Then there is the widely-cited case of Ka'b Ibn al-Ashraf, a Jewish man, about whom Muhammad reportedly sought an assassin because he had "hurt God and the messenger".<sup>150</sup> Ibn Taimīyah notes that he had conspired with Meccans to undermine Muhammad's polity in Madinah, in contravention of the *mīthāq*, a covenant or "constitution" governing the fledgling city-state of Madinah, requiring Christians, Jews and Muslims to ally against outside enemies. Ibn al-Ashraf was disappointed by Muhammad's success in the battle of Badr in 2AH. After the battle, he visited Mecca and expressed support for the Meccans. Upon his return, he openly declared his opposition to Muhammad's leadership of the city-state and wrote insulting poetry. However, Ibn Taimīyah argues that, in this instance, insulting the prophet alone was grounds for execution.<sup>151</sup>

To buttress his case for execution of an insulter of the prophet, Ibn Taimīyah goes on to cite less known incidents like the murder of al-'Aṣmā' Bint Marwān by a man named 'Umair from her own clan. She wrote poetry insulting Islam and the prophet and incited people against him. According to Ibn Taimīyah's sources, the prophet commended 'Umair for the murder.<sup>152</sup> Next, he cites the murder of a more-than-120-year-old Jewish man Abū 'Afik, who was displeased by the Muslims' seeming success in the battle of Badr and composed poetry insulting the prophet and condemning his followers.<sup>153</sup> Ibn Taimīyah borrows these incidents mostly from the genre of *al-siyar wa-al-maghāzī* (biographies and expeditions), works known for relying on questionable accounts that usually do not meet the standards of authenticity set by traditional scholars of *ḥadīth*. While Ibn Taimīyah makes his case for the execution of an alleged blasphemer, he paints a grim

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<sup>148</sup> Taqī al-dīn Ibn Taimīyah, *Al-Ṣārim Al-Maslūl 'alā Shātim Al-Rasūl*, ed. Muḥammad Muḥī al-dīn 'Abd al-Ḥamīd (al-Ḥars al-waṭanī al-sa'ūdī, 1983), 61.

<sup>149</sup> Ibid., 67–68.

<sup>150</sup> "Man li-ka'b ibn al-ashraf fa-innahū qad ādhā allāha wa-rasūlahū." See Ibid., 70.

<sup>151</sup> Ibid., 70–84.

<sup>152</sup> Ibid., 95–98.

<sup>153</sup> Ibid., 104–105.

picture of the Islamic prophet Muhammad and suggests that his fellows used to kill people that they thought insulted him. The prophet would encourage and condone these murders and sometimes describe the murderers as helpers (*nāṣir*) of God and the messenger.<sup>154</sup>

Mashal Saif discusses another incident, also cited by Ibn Taimīyah, in which ‘Umar, the second caliph, allegedly killed a Muslim person who sought adjudication from him after the prophet had given an unfavorable verdict.<sup>155</sup> Again, the incident is used to justify the death penalty for blasphemy *and* extrajudicial murder of suspected blasphemers. Saif details how a minority of scholars, ‘Ammār Khān Nāṣir among them, contest the veracity of this incident.<sup>156</sup>

Similarly, Anīs Aḥmad cites the case of four individuals who, according to him, were guilty of apostasy and insulting the prophet and were therefore executed even as everyone else was pardoned when Makkah was conquered.<sup>157</sup> The details of the incident and the reason(s) for the execution of these individuals, even their number, is hard to establish from biographical and historical works available to us. More importantly, advocates of the death penalty for blasphemy cite alleged incidents like these to the exclusion of other reports that suggest the contrary. Kamali, for example, cites numerous incidents from Muhammad’s life that suggest that the prophet never executed someone for mere blasphemy and/or apostasy.<sup>158</sup> Such contrast in arguments concerning Muhammad’s life is not surprising given the nature of accounts that feature in biographical-historical works, *ḥadīth* collections and commentaries of the Qur’an. Works in these genres adhere to widely differing standards of authenticity, which is why it is possible to make diametrically-opposed arguments about the prophet’s conduct based on different sets of reports and incidents recorded in different sources.

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<sup>154</sup> Ibid., 148.

<sup>155</sup> Saif, “The ‘Ulamā’ and the State,” 123–126.

<sup>156</sup> Ibid., 134–139.

<sup>157</sup> Aḥmad, “Taḥaffuẓ-i Nāmūs-i Risālat Aur Hamārī Zimmah-Dārī.”

<sup>158</sup> Kamali, *Freedom of Expression in Islam*, 92–98.

For our purpose, however, it is alarming that such arguments concerning the life and work of Muhammad based on questionable accounts pass as the *sunnah* or normative practice of the prophet that commands authority with lay Muslims who know little about the trade of Islamic arguments. Next, these arguments concerning Muhammad inform the scholar's interpretation and the layperson's understanding of the Qur'an in conflict with what thematic studies of the text might suggest. Such arguments invoking the prophet's example issue from and perpetuate Salafism in private lives and public discourse, which we noted in the first chapter, and form the toxic mold that is fashioning public opinion around blasphemy laws in Pakistan.

## 2.2 Emergence of *sabb* offences in Islamic law

With the emergence of legal schools, Islamic jurists or *fuqahā'* began to elaborate the nature of blasphemy, conditions for liability and punishment of various forms of *sabb* (insult) directed towards God, the prophets, especially Muhammad, and the first generation of Muslims, some of whom were close to Muhammad. Classified as a form of apostasy by later jurists, blasphemy or *sabb* in relation to Muhammad did not figure in the discussion of apostasy (*riddah*) in formative Sunni legal texts, such as Mālik's (d.795) *Muwatta'* and Saḥnūn's (d.854) *al-Mudawwanah*, al-Shaibānī's (d.805) *Kitāb al-aṣl*, and al-Shāfi'ī's (d.820) *al-Umm*.<sup>159</sup> In the case of the Shāfi'ī school, *sabb al-rasūl* began to be recognized as an offence that necessitated legal consequences in late-8th and early-9th century CE, about three hundred years after Muhammad.<sup>160</sup> Blasphemy against the prophet featured in the chapters on apostasy in Shāfi'ī legal manuals after al-Nawawī (d.1276) published his *Minhāj al-ṭālibīn*, more than six centuries after Muhammad.<sup>161</sup>

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<sup>159</sup> Lutz Wiederhold, "Blasphemy against the Prophet Muḥammad and His Companions (Sabb Al-Rasūl, Sabb Al-Ṣaḥābah): The Introduction of the Topic into Shāfi'ī Legal Literature and Its Relevance for Legal Practice under Mamluk Rule," *Journal of Semitic Studies* 42, no. 1 (March 1, 1997): 44.

<sup>160</sup> *Ibid.*, 44–45.

<sup>161</sup> *Ibid.*, 46.

Wiederhold's survey of the discussion of *sabb* in Islamic legal manuals, especially those of the Shāfi'i school, highlights the fact that blasphemy against the prophet was classified as a form of apostasy and its punishment stipulated only gradually.

Depending on their respective methodologies, various schools of law have drawn different inferences from the Qur'an and alleged incidents from the life of the prophet as they deliberated blasphemy. The Māliki, Shāfi'i and Ḥanbali schools are identified as *ahl al-ḥadīth* schools for their emphasis on the use of reports concerning the practice of Muhammad and first-generation Muslims.<sup>162</sup> On the other hand, scholars of the Ḥanafī school were pejoratively labelled as the *ahl al-ra'y*, those who relied too much on reason. Ḥanafī scholars, especially early in the history of the school, were known to be cautious in accepting reports attributed to the prophet and his earliest followers. This important difference between the Ḥanafīs and the *ahl al-ḥadīth* reflects in their respective discussions of blasphemy. The *ahl al-ḥadīth* have differed among themselves too in their standards for scrutinizing and utilizing anecdotes attributed to the prophet and his earliest followers. Thus, Mālik (d.795) who lived in the city of the prophet, albeit a century and a half after the prophet, rejected solitary reports (*akhbār al-āḥād*) that contradicted the practice of the people of Madinah, which he believed enjoyed continuity with the prophet's practice.<sup>163</sup> Al-Shāfi'i (d.820) was more inclined to utilize solitary reports if they met his criteria for reliable transmission. Aḥmad Ibn Ḥanbal (d.855), repulsed by the rationalism of the Mu'tazilah and victimized by the state that supported the latter, went so far as to say that he preferred weak *ḥadīth* to a rational exercise.<sup>164</sup>

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<sup>162</sup> The *ahl al-ḥadīth* schools of law date back to second and third Islamic centuries (8th–9th centuries CE). They are different from the Ahl-i ḥadīth movement in 19th-century India that was inspired by Shāh Walī Allāh Dahlavī and the 18th-century Wahhābī movement in the Arabian Peninsula.

<sup>163</sup> Malik used to cite his teacher's view, "One thousand people following one thousand is a stronger evidence than one person taking from another." See Adil Salahi, *Pioneers of Islamic Scholarship* (Leicester: The Islamic Foundation, 2006), 38–39.

<sup>164</sup> "Al-ḥadīth al-ḍa'if aḥabb ilayya min al-ra'y." See Shams al-dīn Muḥammad Ibn al-Qayyim al-Jauzīyah, *A'lām al-muwaqqi'in 'an rabb al-'ālamīn*, ed. Muḥammad 'Abd al-Salām Ibrāhīm (Bairūt: Dār al-kutub al-'ilmīyah, 1991), 1:61.



The difference in the outlook of the eponyms and the respective methodologies of the Shāfi‘i and Ḥanbali schools reflects in the treatises of Taqī al-Dīn al-Subkī (d.1355) and Ibn Taimīyah (d.1328) on the subject of blasphemy. Al-Subkī and Ibn Taimīyah spent significant portions of their lives in Damascus, which was governed by the Mamluks of Egypt at the time. Both witnessed the times when the Muslim world was shaken by Mongol invasions and the fall of the Abbasid empire. Shocked by an incident in the Umayyad mosque in which a person of Shī‘i persuasion abused the first three successors and perhaps other companions of Muhammad, al-Subkī is concerned mainly with *Muslims* insulting the prophet *and his companions* in his *al-Saif al-maslūl ‘alā man sabba al-rasūl*.<sup>165</sup> On the other hand, Ibn Taimīyah was possibly motivated to write his treatise after he witnessed a Christian man insulting the prophet, and therefore concerns himself with *Muslim and non-Muslim subjects* insulting *the prophet* in *al-Ṣārim al-maslūl ‘alā shātīm al-rasūl*. Al-Subkī, a Shāfi‘i scholar, shows much concern for the authenticity of the reports that he cites, mostly from al-Tirmidhī’s *al-Jāmi‘ al-ṣaḥīḥ*, even though he sometimes appeals to consensus (*ijmā‘*) of the entire Islamic community or of scholars without citing his sources.<sup>166</sup> On the other hand, Ibn Taimīyah, a Ḥanbali scholar, cites only a few reports from respected *ḥadīth* collections and borrows heavily from the genre of biographies and expeditions (*al-siyar wa-al-maghāzī*) where much lower standards of authenticity are observed. As we have seen in the previous section, Ibn Taimīyah is willing to rely on dubious incidents to make his case for capital punishment and extrajudicial murder of blasphemers. Even when a host of reasons is evident in the sources that explain why an opponent of the prophet may have been executed, Ibn Taimīyah argues that disrespect for Muhammad alone constituted grounds for the execution, so he may establish a zero-tolerance policy towards actual and perceived blasphemy. In the process, Ibn Taimīyah paints

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<sup>165</sup> Wiederhold, “Blasphemy against the Prophet Muḥammad and His Companions,” 47–49.

<sup>166</sup> Ibid., 51–52.

the Islamic prophet and his followers as bloodthirsty egoistic authoritarians who silenced dissent and disrespect at the slightest hint, which is far from the model behavior that most Muslims believe their prophet and his earliest followers embodied. That is not Ibn Taimīyah’s concern though, for he attributes to his prophet what he does not mind himself. In effect, Ibn Taimīyah’s *al-Ṣārim* is more a reflection of the author’s character, circumstances and methodology that relies on questionable accounts and the exclusion of counterevidence, rather than a fair assessment of how the prophet and his earliest followers might have dealt with harassment and insult. Yet, it is *al-Ṣārim*, an extreme Ḥanbali text authored by the Salafi icon, that is most widely cited in the majority-Ḥanafi Pakistan today, and not one of the more nuanced and moderate Ḥanafi sources. This is perhaps the gravest manifestation of the rise of Salafism in Pakistan, which I have argued in the previous chapter, and a major influence in the Pakistani public discourse around blasphemy.

### **2.3 Ḥanafi discussion of *sabb al-rasūl***

Scholars of the Ḥanafi school have differed in important ways from scholars of the other schools in their treatment of blasphemy in relation to the prophet. Ḥanafi discussions of *sabb al-rasūl* falsify the claim of consensus that many use to defend the blasphemy legislation, Section 295-C of the Pakistan Penal Code, in its present form. The section of the penal code concerning blasphemy against the prophet Muhammad has been criticized for (1) stipulating death penalty, while (2) omitting the requirement of intent, and (3) not allowing for repentance and pardon, and for (4) its potential for misuse against religious minorities. Siddique and Hayat have made a case for introducing a *mens rea* requirement in the law to protect individuals that *did not intend* to insult the prophet, which we noted in the first chapter.<sup>167</sup> Here I will argue that Ḥanafi deliberations on the subject offer possible remedy for another two of these four issues: the provision of pardon and

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<sup>167</sup> Siddique and Hayat, “Unholy Speech and Holy Laws,” 343–348.

prevention of misuse of the law against religious minorities of the country. The Ḥanafī discussion of blasphemy against the prophet shows us a path to reform that is likely to find appeal with conservative Pakistanis, most of whom identify as followers of the Ḥanafī school even as they are influenced by the global tide of Salafism.

### **2.3.1 When the accused is Muslim**

*Ahl al-ḥadīth* jurists affiliated with Mālikī, Shāfi‘ī and Ḥanbalī schools believe that blasphemy against the prophet is a *ḥadd* offense.<sup>168</sup> Jurists of the Ḥanafī school, owing to their assessment of the Qur’an and accounts of Muhammad’s life, do not view blasphemy against the prophet as a *ḥadd* crime in itself. Because of this fundamental conceptual difference, Ḥanafī jurists have treated blasphemy against the prophet committed by a Muslim and a non-Muslim subject of the state differently. When a Muslim commits an act of blasphemy against the prophet, they treat it as an instance of apostasy (*riddah*), and most Ḥanafīs believe that apostasy is punishable by death.<sup>169</sup> However, unlike their Mālikī and Ḥanbalī counterparts, Ḥanafī (as well as Shāfi‘ī) jurists encourage a Muslim man guilty of *sabb al-rasūl* or another form of apostasy to repent before the judge determines that he must be executed. If the person repents, death penalty is averted.

#### ***Al-Bazzāzī’s confusion and subsequent clarifications***

Some confusion occurred when the 15th-century scholar, Mullā Khusrū (d.1480) suggested that a Muslim who disrespects Muhammad or another prophet would be executed in observance of the *ḥadd* penalty and his repentance (of his own accord, or after he is captured and testified against)

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<sup>168</sup> Islamic jurists have conceived *ḥadd* crimes as those offenses for which a punishment is fixed in the Qur’an and *ḥadīth* of the prophet Muhammad. See John L Esposito, “Hadd,” *The Oxford Dictionary of Islam*, Oxford Islamic Studies Online (Oxford University Press, n.d.), accessed March 3, 2018, <http://www.oxfordislamicstudies.com/article/opr/t125/e757>.

<sup>169</sup> Kamali notes that the renowned Ḥanafī jurist al-Sarakhsī (d.1090) did not view apostasy as a *ḥadd* offense, because the punishment of apostasy was suspended, unlike *ḥadd* offenses, if the person repented. A detailed discussion of the status of apostasy in the Ḥanafī school is outside the scope of the present work. See Kamali, *Freedom of Expression in Islam*, 93–94.

would not avert the punishment, just as repentance does not avert the *ḥadd* penalty for falsely accusing someone of illicit sex.<sup>170</sup> Mullā Khusrū argued that repentance may not avert *ḥadd* penalties relating to the rights of human beings. Since insulting the messenger is a violation of the right of a human being, one is liable to be killed even if one was intoxicated while committing the act. He attributes this position to Abū Bakr, the first caliph, Abū Ḥanīfah, al-Thaurī, the scholars of Kūfah and well-known scholars of the Māliki school.<sup>171</sup> With reference to al-Khaṭṭābī, Ibn Saḥnūn, al-Bazzāzī and al-Subkī, he asserts that a Muslim who commits an act of disrespect towards the messenger has committed *kufr* (disbelief), and there is consensus among ‘*ulamā*’ that he ought to be executed, and whoever doubts his punishment or his disbelief has committed *kufr* too.<sup>172</sup> Mullā Khusrū’s impressions found their way to al-Tamartāshī’s (d.1596) *Tanwīr al-abṣār*.<sup>173</sup> Later Ḥanafī scholars ‘Alā’ al-dīn al-Ḥaṣkafī (d.1677) and Ibn ‘Ābidīn al-Shāmī (d.1836) attempted to set the record straight by tracing the genealogy of what they viewed as misrepresentation of the school’s position.

Ibn ‘Ābidīn, an early 19th-century Ḥanafī scholar who lived in Damascus under the Ottomans, is widely studied and cited by Ḥanafī ‘*ulamā*’ in Pakistan. He takes issue with Mullā Khusrū’s suggestion that repentance by a person guilty of blasphemy may not avert the punishment because it involves the right of a human being, namely the prophet. For this argument to be valid, Ibn ‘Ābidīn argues that there must be a proof (*dalīl*) to the effect that the ruler can make the claim on behalf of the prophet – Ibn ‘Ābidīn believes there is none. To the contrary, he says the prophet is known to have forgiven many people who hurt and abused him before converting to Islam.<sup>174</sup>

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<sup>170</sup> Muḥammad Mullā Khusrū, *Durar Al-Ḥukkām Sharḥ Gharar Al-Aḥkām*, vol. 1 (Dār iḥyā’ al-kutub al-‘arabīyah, n.d.), 299–300.

<sup>171</sup> Ibid., 1:300.

<sup>172</sup> Ibid.

<sup>173</sup> Ibn ‘Ābidīn, *Radd Al-Muḥtār*, 4:231–232.

<sup>174</sup> Ibid., 4:232.

In his commentary of al-Ḥaṣḥafī's *Durr al-mukhtār*, Ibn 'Ābidīn points out that Mullā Khusrū had borrowed the account from al-Bazzāzī (d.1424), who copied it from al-Qāḍī 'Iyāḍ's (d.1149) *al-Shifā'*, where it is attributed to the early Mālikī scholar Ibn Saḥnūn.<sup>175</sup> Ibn 'Ābidīn argues that al-Bazzāzī was mistaken about Ibn Saḥnūn's statement appearing in *al-Shifā'*. Ibn Saḥnūn did not mean an absolute consensus among the scholars about executing a Muslim blasphemer and not accepting his repentance. Al-Ḥaṣḥafī and Ibn 'Ābidīn point out that al-Qāḍī 'Iyāḍ records on a few occasions in *al-Shifā'* that Abū Ḥanīfah and others treated *sabb al-rasūl* on part of a believer as a matter of apostasy and accepted the person's repentance as in other forms of apostasy.<sup>176</sup> Given this acknowledgement in the text, Ibn Sāḥnūn's statement could only be construed as suggesting consensus among the scholars concerning (1) *kufr* (disbelief or apostasy) of the person found guilty of insulting the messenger, and (2) execution *if the person fails to repent*, for many scholars including Shāfi'is had held that a person who repented would be spared execution.<sup>177</sup>

Al-Ḥaṣḥafī observes that al-Bazzāzī borrowed from the Shāfi'i scholar Taqī al-dīn al-Subkī (d.1355), the author of *al-Saif al-maslūl*, but no Ḥanafī scholars.<sup>178</sup> With reference to important Ḥanafī texts, such as al-Sughdī's (d.1068) *al-Nuṭaf*, 'Alā' al-dīn al-Ṭarāblusī's (d.1440) *Mu'īn al-ḥukkām*, *Sharḥ al-Ṭaḥāwī*, and al-Zāhidī's (d.1260) *al-Ḥāwī*, al-Ḥaṣḥafī establishes the Ḥanafī position that one who disrespects the messenger is an apostate (*murtadd*), and he would receive the same treatment as any other *murtadd*, i.e. his repentance is encouraged and accepted before the judge decrees execution.<sup>179</sup> Similarly, Ibn 'Ābidīn contends that scholars of the Ḥanafī school prior to al-Bazzāzī thought of *sabb al-rasūl* on part of a believer as a case of *riddah*

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<sup>175</sup> Ibid.

<sup>176</sup> Ibid., 4:232–233.

<sup>177</sup> Ibid., 4:232.

<sup>178</sup> Ibid., 4:233–234.

<sup>179</sup> Ibid., 4:234.

(apostasy), and the person could be spared execution if he repented. He observes that al-Bazzāzī drew upon *al-Ṣārim al-maslūl* too, the work of the Ḥanbali scholar Ibn Taymīyah, along with the Māliki text *al-Shifā'* and the Shāfi'i *al-Saif al-maslūl*, but no Ḥanafī works.<sup>180</sup> Even as he relied on these non-Ḥanafī texts, al-Bazzāzī either misunderstood or completely missed those instances where Ḥanafī position concerning *sabb al-rasūl* is discussed.<sup>181</sup> Ibn 'Ābidīn examines al-Bazzāzī's non-Ḥanafī sources (*al-Shifā'*, *al-Ṣārim*, and *al-Saif*) and shows that these texts invariably record Ḥanafī treatment of *sabb* as apostasy and acceptance of repentance, and do not attribute any other position to jurists of the school.<sup>182</sup> He then goes on to cite Ḥanafī sources, such as Abū Yūsuf's (d.798) *Kitāb al-kharāj*, al-Ramlī's (d.1671) commentary of Ibn Nujaim's (d.1563) *al-Baḥr*, al-Ḥamawī (d.1687), and al-Sā'ihānī and al-Raḥmatī (lesser-known commentators of al-Ḥaṣḥafī's *al-Dūrr*), all confirming the Ḥanafī treatment of *sabb* committed by a believer as a matter of apostasy with an opportunity to repent.<sup>183</sup> Ibn 'Ābidīn is clearly troubled by al-Bazzāzī's suggestion that there was no disagreement about *ḥadd* penalty for a believer guilty of *sabb* and non-acceptance of his repentance, for Ḥanafī as well as non-Ḥanafī sources indicated otherwise. He complains that al-Bazzāzī's negligence caused a lot of confusion concerning the Ḥanafī position on *sabb al-rasūl*, for many authors after him (including Mullā Khusrū) trusted his account without referring to earlier Ḥanafī sources.<sup>184</sup> Both al-Ḥaṣḥafī and Ibn 'Ābidīn are convinced that non-acceptance of repentance in cases of *sabb al-rasūl* was never attributed to Ḥanafī jurists before al-Bazzāzī. The latter was mistaken about the Māliki doctrine, which he projected on the Ḥanafī school. He moreover missed all the instances where his non-Ḥanafī sources affirmed that Ḥanafīs treated *sabb al-rasūl* as a form of apostasy and accepted repentance.

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<sup>180</sup> Ibid.

<sup>181</sup> Ibid., 4:234–235.

<sup>182</sup> Ibid., 4:233.

<sup>183</sup> Ibid., 4:234.

<sup>184</sup> Ibid.

Such extensive rebuttal of al-Bazzāzī's misrepresentation of the Ḥanafī treatment of blasphemy against the prophet notwithstanding, we noted in the previous chapter that Ismail Qureshi, the principal architect of Section 295-C of Pakistan Penal Code, was under the impression that Ibn 'Ābidīn considered blasphemy against the prophet an unpardonable offense punishable by death at the time when he pushed the legislation that is, in reality, aligned with Ibn Taimīyah's hardline position.<sup>185</sup> If the blasphemy law in question were to be aligned with Ḥanafī deliberations on the subject, a provision for repentance and pardon is in order.

### 2.3.2 When the accused is non-Muslim

A non-Muslim who commits an act of disrespect towards Muhammad could not be an apostate. Since the Ḥanafīs did not believe there was a *ḥadd* penalty for *sabb al-rasūl* itself, they held that a non-Muslim found guilty of *sabb* could be given a *ta'zīr* punishment that varied depending on the seriousness of the offense, the (un)willingness of the person to recant and repent, and other considerations.<sup>186</sup> Since the discussion did not belong in apostasy, Ḥanafī jurists would discuss *sabb al-rasūl* committed by a non-Muslim subject under the heading of *dhimmah*, which is semi-contractual protection and rights extended by the Muslim state to a non-Muslim subject against payment of the *jizyah* tax.<sup>187</sup> Unlike *ahl al-ḥadīth* scholars, Ḥanafī jurists held that a non-Muslim guilty of *sabb al-rasūl* continued to enjoy the state's protection. In other words, *sabb* incidents did not void *dhimmah*.

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<sup>185</sup> Mazhar, "The Untold Story of Pakistan's Blasphemy Law."

<sup>186</sup> *Ta'zīr* punishments are given when the strict requirements of a *ḥadd* punishment are not met, or when no specific punishment is stipulated for a crime in the Islamic proof texts, namely the Qur'an and *ḥadīth* anecdotes attributed to the prophet Muhammad. An authorized judge determines the discretionary punishment for the crime in question. See John L Esposito, "Tazir," *The Oxford Dictionary of Islam*, Oxford Islamic Studies Online (Oxford University Press, n.d.), accessed March 3, 2018, <http://www.oxfordislamicstudies.com/article/opr/t125/e2363>.

<sup>187</sup> Ronald L Nettler, "Dhimmī," in *The Oxford Encyclopedia of the Islamic World* (Oxford University Press, 2009), accessed March 6, 2018, <http://www.oxfordreference.com/view/10.1093/acref/9780195305135.001.0001/acref-9780195305135-e-0194>.

Thus, Mullā Khusrū discusses the punishment of a non-Muslim insulting the prophet in the broader discussion of the relationship of the Muslim state with its non-Muslim subjects. He notes that al-Shāfi‘ī thought that an act of disrespect towards Muhammad voided *dhimmah* and warranted execution of the guilty. Mullā Khusrū argues, however, that *sabb al-rasūl* amounted to *kufr* (disbelief), and other forms of *kufr* did not void *dhimmah*. He cites a report with reference to al-Bukhārī and Ibn Ḥanbal that a Jewish person greeted the prophet with “*al-sām ‘alayk* (death to you)” instead of the usual greeting of *salām* (wholeness, peace). The prophet’s companions were infuriated and wanted to kill the person, but the prophet did not allow them to do so, which Mulla Khusrū believes implied that the non-Muslim guilty of insulting the prophet Muhammad continued to enjoy the citizenship of Madinah.<sup>188</sup>

Similarly, Ibn Nujaim al-Miṣrī (d.1563) notes in *al-Baḥr al-rā’iq* (a commentary on Ḥāfiz al-dīn al-Nasafī’s (d.1310) *Kanz al-daqa’iq*) that *dhimmah* is not voided by *sabb al-rasūl*, for the latter is a form of *kufr* and comparable forms of *kufr* did not void *dhimmah*.<sup>189</sup> Ibn Nujaim notes that his predecessor al-‘Ainī (d.1453) suggested that a non-Muslim subject of the state would be executed for *sabb*, and contends that this had no basis in the Ḥanafī tradition.<sup>190</sup> Next, he notes that Ibn al-Humām (d.1456) also diverged from the position of the Ḥanafī school in this matter, so his student Qāsim (d.1474) did not follow his opinion.<sup>191</sup> Ibn Nujaim says he understands that a believer is inclined to take a hardline position different from that of the school when it comes to the prophet’s honor, but that it was mandatory to follow the school. Referring to the earlier authoritative text, Jamāl al-Dīn al-Ghaznawī’s (d.1197) *al-Ḥāwī al-Qudsī*, he says that the non-

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<sup>188</sup> Mullā Khusrū, *Durar Al-Ḥukkām*, 1:299.

<sup>189</sup> Zīn al-dīn Ibn Nujaim al-Miṣrī, Muḥammad Ibn Ḥusain al-Ṭūrī, and Muḥammad Amīn Ibn ‘Ābidīn, *al-Baḥr al-rā’iq sharḥ Kanz al-daqa’iq, wa-takmilatuh lil-Ṭūrī, wa-Minḥat al-khāliq li-Ibn ‘Ābidīn bi-al-ḥāshiyah*, 2nd ed., vol. 5 (Dār al-kutub al-islāmī, n.d.), 124.

<sup>190</sup> Ibid., 5:124–125.

<sup>191</sup> Ibid., 5:125.



Muslim subject may be disciplined and punished by means other than execution for their act of disrespect towards the Islamic faith, the prophet, or the Qur'an.<sup>192</sup>

However, Ibn 'Ābidīn contends in his *Minḥat al-khāliq* (a commentary of *al-Baḥr al-rā'iq*) that Ibn Nujaim's impression that there was no basis for killing a non-Muslim subject guilty of *sabb al-rasūl* was not correct. He argues that the Ḥanafī jurists had held that the accused would face a discretionary punishment (*annahū yu'azzar*), and that itself meant that the person could be executed, for *ta'zīr* can be as much as death penalty depending on the gravity of the crime.<sup>193</sup> While Ibn 'Ābidīn insists on the possibility of executing a non-Muslim subject guilty of insulting the prophet, he holds that the punishment is *ta'zīr* by nature, and not *ḥadd* – which means it is not a fixed, immutable punishment decreed by the divine that the state or an authorized judge could not diminish or waive.

In summary, Ḥanafī jurists have traditionally held that a non-Muslim subject continues to enjoy the protection of the state despite a proven act of disrespect towards the messenger, and is given a disciplinary *ta'zīr* punishment, which may or may not be death, depending on the degree and frequency of the offense and whether the accused is remorseful or unrepentant. Since the Pakistani blasphemy law, Section 295-C, is modelled after colonial blasphemy legislation and aligned with *ahl al-ḥadīth* deliberations on the subject, it does not differentiate between Muslims and non-Muslims to the disadvantage of the latter who are often marginalized in the majority-Muslim national context and are more likely to be targeted by means of such laws than Muslim compatriots. A revision of the law in light of Ḥanafī deliberations on the subject would better safeguard members of minority communities from abuse of the law in the aspiring South Asian democracy.

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<sup>192</sup> Ibid.

<sup>193</sup> Ibid., 5:124.

## 2.4 Islamic imperial and British colonial engagements with Islamic law

### 2.4.1 Post-Mongol Islamic empires adopt a school of law

Islamic juristic discussions of *sabb al-rasūl*, or any other issue for that matter, did not take place in a vacuum. The jurists were responding to sociopolitical and economic realities of their time and place. They were sometimes at loggerheads with regimes and sometimes partners with them. Highlighting the interplay of political power and religious authority, Ebrahim Moosa goes so far as to suggest that *traditional Islamic punishments of blasphemy and apostasy are products of a political theology that developed over centuries under varying conditions of empire*.<sup>194</sup> Similarly, Guy Burak makes an intriguing case for a “second formation of Islamic law” under the auspices of post-Mongol Islamic empires. He calls into question narratives of Islamic law that assume near-total independence of jurists and continuity in the nature of law from pre-Mongol period through to the 19th century.<sup>195</sup>

In the domains of Umayyad, Abbasid, Ayyubid and Mamluk empires, Burak notes that the sovereign “did not intervene in the different schools’ structures or authorities, or the content of their laws.”<sup>196</sup> Early in their history, the Islamic schools of law consolidated around “specific legal discourses and hermeneutic principles” and developed their own conventions to guide students and followers through different opinions and advise which ones were more authoritative than others.<sup>197</sup> While the imperial governments appointed jurists of different schools as judges (*qāḏīs*), they did not (or could not) interfere with the appointment of jurisconsults (*muftīs*) in their domain.<sup>198</sup> Traditionally, a *muftī* was an authority figure who issued authoritative opinion (*fatwā*) in response

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<sup>194</sup> Moosa, “Muslim Political Theology,” 174–175.

<sup>195</sup> Guy Burak, “The Second Formation of Islamic Law: The Post-Mongol Context of the Ottoman Adoption of a School of Law,” *Comparative Studies in Society and History* 55, no. 03 (2013): 579–580.

<sup>196</sup> *Ibid.*, 583.

<sup>197</sup> *Ibid.*, 582–583.

<sup>198</sup> *Ibid.*, 584.

to questions of religious-legal nature. A *muftī* would guide the school's less competent followers and instruct judges when they encountered cases not addressed in the school's legal literature. In that capacity, a *muftī* was often able to exercise their discretion and employ fresh reasoning (*ijtihād*) to solve new issues and, thus, played an important role in developing and regulating the school's doctrine.<sup>199</sup> Burak notes that the appointment of *muftīs* in the Mamluk sultanate, for example, remained the prerogative of authority figures affiliated with the school of law, who granted competent disciples the permit (*ijāzah*) to teach and issue legal opinions more or less independently.<sup>200</sup>

Burak argues that the Ottoman adoption of a branch of the Ḥanafī school in the 15th century marked a significant departure from the practice of earlier centuries. The adoption of a school of law as the state *madh'hab* entailed (a) appointment of *muftīs* by the state, (b) emergence of the imperial *medrese* educational system and (c) an imperial jurisprudential canon, and (d) reconstruction and recording of the school's genealogy under the auspices of the empire. In time, there emerged an imperial learned hierarchy with well-defined educational and career tracks. Burak views this as a very important development with doctrinal implications for the school of law that remain understudied and underemphasized.<sup>201</sup> The adoption of the school of law, Burak notes, was not merely state patronage, but enabled the empire to authorize certain discourses and opinions within the Ḥanafī school that jurists affiliated with the dynasty were expected to apply.<sup>202</sup> Marking this shift, the Ottoman Sultan, in 1556, issued an edict and an imperial legal code, in which he specified the texts that students of the imperial *medrese* educational system were going to study.<sup>203</sup>

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<sup>199</sup> Ibid.

<sup>200</sup> Ibid., 584–585.

<sup>201</sup> Ibid., 584.

<sup>202</sup> Ibid., 585.

<sup>203</sup> Ibid., 586.

Thus, the privileging of certain opinions and texts out of a broader range was predicated on dynastic authority and law, or *kanun*.<sup>204</sup>

To the east, Burak notes that Timurid, Özbek and Mughal dynasties appointed *muftīs* too.<sup>205</sup> The Timurid ruler Shahrukh (d.1447) also appointed a chief *muftī*, the *shaikh al-islām*, for his domains, much like the newly created office of *şeyhülislam* in the Ottoman realm.<sup>206</sup> Like the emergence of imperial jurisprudential canon in the Ottoman world, the Mughal emperor Aurangzeb ‘Ālamgīr commissioned a compilation of rulings that jurists affiliated with the dynasty were expected to apply. The 17th-century collection is named *Fatāwā-yi ‘ālamgīrī* after the emperor. Like his Ottoman counterparts, Aurangzeb requested that the jurists tasked with the compilation consult the jurisprudential texts in his imperial library.<sup>207</sup> In these ways, Burak believes that rulers and dynasties in the post-Mongol eastern Islamic lands regulated the structure and doctrine of the Ḥanafī school in an unprecedented manner. He calls this phase in the history of Islamic law the era of the state *madh'hab*.<sup>208</sup>

With this account of the emergence of state *madh'hab*, or the second formation of Islamic law, Burak calls into question the narratives of Islamic legal history that view 19th-century reforms as earliest instances of significant state intervention in Islamic law. In these master narratives, codification of law in 19th-century states, inspired by European legal ideals and institutions, resulted in a loss of fluidity and diversity in Islamic law. Thus, in the South-Asian context, British colonial administration is viewed as the main contributor to the decline of fluidity and diversity in Islamic law. From Burak’s point of view, state interventions in Islamic law date from much earlier, and there is much greater continuity between pre- and post-19th-century periods, and between

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<sup>204</sup> Ibid., 588.

<sup>205</sup> Ibid., 591–592.

<sup>206</sup> Ibid., 591.

<sup>207</sup> Ibid., 592–593.

<sup>208</sup> Ibid., 594.

Islamic and non-Islamic governmental practices.<sup>209</sup> Burak observes that these continuities are discernible in early colonial India as well, where the British authorities tapped into Mughal notions of sovereignty and law, and placed emphasis on certain jurisprudential texts considered authoritative in the Mughal era.<sup>210</sup> In effect, Burak cautions us against assuming a rupture, if there is none, between precolonial, colonial and postcolonial imaginations of Islamic law, and overestimating the influence of colonial legislation in the blasphemy ordeal of contemporary Pakistan.

While Burak makes a fair case for a second formation of Islamic law under the auspices of Islamic empires, his impression that the British drew upon Mughal notions of sovereignty and law, and his suggestion of continuity between Islamic imperial and colonial practices is not well-founded. As we will see in the next section, Kugle reveals in much greater detail the departure from Mughal notions and practice of law even as the British relied on the Mughal emperor's authority to secure their precarious domain in the early colonial period. The rupture with the Islamic (traditional Ḥanafī as well as imperial) past was complete after the dissolution of the Mughal empire in 1857 and enactment of the Indian Penal Code in 1860. Consequently, the Pakistani legislation of Section 295-C is not continuous with Ḥanafī deliberations within and outside of post-Mongol imperial context. Instead, the blasphemy law in question brings together certain features of colonial legislation and non-Ḥanafī Islamic arguments.

#### **2.4.2 The colonial institution of Anglo-Muhammadan law: continuity or rupture?**

In an important article, Scott Kugle has examined the formative period of Anglo-Muhammadan jurisprudence, from 1771 to 1832. Kugle believes that it was not a “system” of jurisprudence that combined “elements from Islamic legal traditions and British practical application” as the name

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<sup>209</sup> Ibid., 600.

<sup>210</sup> Ibid., 601.

implied.<sup>211</sup> It was rather an interpretive experience that enabled and justified the raw exercise of power by the British in the early colonial period.<sup>212</sup> It served as the “interface between the East India Company (as an early modern state) and the surrounding society, which it could not comprehend but had to control.”<sup>213</sup>

The battle of Plassey resulted in British control over Bengal in 1757. With further maneuvering and manipulation, the East India Company was granted the status of ‘Diwan of the Mughal Emperor’ in 1765, which allowed them to collect taxes from Bengal but also required them to manage the civil administration of the territory.<sup>214</sup> To act out the role of Diwan, Warren Hastings, appointed governor of Fort William in 1772, authorized British officers to collect taxes and oversee indigenous judges (*qāzīs* and *pandits*) in settlement of disputes. At this point, Hastings maintained that Hindus and Muslims were going to be governed by their respective laws.<sup>215</sup> While representing and pretending to continue Mughal institutions, however, the East India Company began reordering legal and political structures.<sup>216</sup> In 1780s, the company created a civil service and educational institutions to train English and Indian civil servants. The teachers at these educational institutions were Orientalists, who were tasked with gathering and translating “indigenous law codes” that British officers would use.<sup>217</sup> In this early stage, the precarity of the British administration required a facade of Mughal authority and the pretense that Muslims were being governed by Islamic law, so that their displacement of the Mughals did not cause too much alarm. To avoid insurgency and resistance, the company justified its rule in the name of the Mughal

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<sup>211</sup> Kugle, “Framed, Blamed and Renamed,” 312.

<sup>212</sup> Ibid., 257.

<sup>213</sup> Ibid., 258.

<sup>214</sup> Ibid., 261.

<sup>215</sup> Ibid., 262–263.

<sup>216</sup> Ibid., 263.

<sup>217</sup> Ibid., 264.

emperor, even though it was steadily undermining the latter's authority.<sup>218</sup> Essentially, the British appropriated and rejected Mughal authority at the same time. The appeal to Mughal authority disappeared when it was no longer necessary. By 1790, the British gained military control of the entire Bengal province and assumed *nizāmat* (executive power) without Mughal authorization. They established criminal courts and relegated indigenous *qāẓīs* and *pandits* to the role of "court officers" who would "assist" the magistrate when needed.<sup>219</sup>

To minimize the British magistrates' sole reliance on *qāẓīs* and *pandits* in civil and criminal courts, the British commissioned translation of what they viewed as indigenous law codes. One such text, al-Marghīnānī's (d.1197) *al-Hidāyah*, translated from Persian (not the original Arabic), served as the foundation of Anglo-Muhammadan jurisprudence. The translator Charles Hamilton took the liberty to excise subtleties from the text that he viewed as contradictions.<sup>220</sup> Thus, *al-Hidāyah* was not just found and translated, but a new text was created. Since *al-Hidāyah* did not discuss the subject of inheritance, al-Sujāwandī's (d.1411) *al-Sirājīyah* was commissioned for translation, again from Persian, not the original Arabic. The literal translation of *al-Sirājīyah* proved too obtuse to be used in courts, so it was succeeded by Neil Baillie's treatise on Ḥanafī Islamic system of inheritance.<sup>221</sup> Baillie documented his treatment of Aurangzeb's *Fatāwā* for the purpose of his work: his principle in making selections was to retain everything of the nature of general proposition and reject particular cases, except when they illustrated a general principle or maxim of law.<sup>222</sup> This was quite opposite of the very nature of Islamic legal manuals. In effect, what started as a project of simply 'translating' indigenous law codes quickly turned into creating new texts while maintaining outwardly that Muslims were

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<sup>218</sup> Ibid., 267.

<sup>219</sup> Ibid., 264–265.

<sup>220</sup> Ibid., 272.

<sup>221</sup> Ibid., 272–273.

<sup>222</sup> Ibid., 296–297.

being governed by means of their own Islamic law. British jurists did not find the original Islamic texts very useful because they did not “lay down general rules beyond the limits prescribed by the precise facts of each case”.<sup>223</sup> Only sources that had been subjected to translation and redaction, separated from traditional authorities, and made into a ‘code’ to the satisfaction of British jurists could be used in the courts.<sup>224</sup>

Once a small selection of resources was furnished in English, the magistrates would not allow Muslim *qāẓīs*, now court officers, to return to the original texts to extract a new law for a given situation, which is what the traditional practice of *fiqh* entailed.<sup>225</sup> The Muslim jurists were expected to only apply the laws found in the few texts that the British had composed and the magistrates deemed authoritative.<sup>226</sup> By restricting the *qāẓīs* to a few authorized texts on Islamic law that the British had composed, the Anglo-Muhammadan courts began to build a “bulwark of precedent”.<sup>227</sup> Since the initial efforts at translation did not produce the desired results, the emerging body of precedent was going to guide and restrict future understanding and practice of Islamic law. Thus, court proceedings were recorded in casebooks and eventually published.<sup>228</sup> In effect, the work of Anglo-Muhammadan courts, supplemented by translation and composition of certain texts, and publication of court proceedings resulted in a “practical codification even when formal textual codes were impossible to produce.”<sup>229</sup> There was hardly anything Islamic about this experiment in jurisprudence. It was more accurately an *orientalist vision* of Islamic law saturated with English legal notions.

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<sup>223</sup> Ibid., 296.

<sup>224</sup> Ibid., 297.

<sup>225</sup> Ibid., 286.

<sup>226</sup> Ibid., 287.

<sup>227</sup> Ibid., 279.

<sup>228</sup> Ibid., 274.

<sup>229</sup> Ibid., 280.



The British were mistaken from the start in their assumption or desire to see Islamic law and Islamic legal manuals as “codes”.<sup>230</sup> Kugle notes, for example, that *Fatāwā-yi ‘ālamgīrī*, the 17th-century compilation commissioned by the Mughal emperor Aurangzeb, was a *compilation*, not a code.<sup>231</sup> Being compilations, Islamic legal manuals, including the imperial *Fatāwā*, brought together many different decisions with their respective reasoning in a single folio, which served as a valuable resource for the jurist in future decision making.<sup>232</sup> Compilations did not “iron out contradicting decisions, or force decisions to become pure precedent, freed from their foundations in the reasoning of *usul al-fiqh*.”<sup>233</sup> The Orientalist scholars and jurists were puzzled by the “ambiguities” in these compilations, which they attempted to treat in their translation and redaction of the texts.<sup>234</sup>

To make their project of codification possible, the British moreover assumed that the door of *ijtihād* (fresh juristic reasoning) was closed. They believed Islamic law had been codified centuries ago, and Muslims of their day were to only implement it. Thus, they not only projected *taqlīd* (merely following the work of learned predecessors) onto Islamic law but enforced it in their domain.<sup>235</sup> As Kugle says, the British did not invent *taqlīd*, but their presence in India gave *taqlīd* a legal and social reality that it did not enjoy in any other time and place.<sup>236</sup>

While Burak suggests that the British tapped into Mughal notions of law, Kugle notes that the British ignored the 2-tier Mughal practice of law that followed from their distinction of ordinary and extraordinary justice.<sup>237</sup> In the Mughal realm, day-to-day affairs were guided by

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<sup>230</sup> Ibid., 270–271.

<sup>231</sup> Ibid., 296.

<sup>232</sup> Ibid., 295.

<sup>233</sup> Ibid., 296.

<sup>234</sup> Ibid., 273.

<sup>235</sup> Ibid., 297.

<sup>236</sup> Ibid., 299.

<sup>237</sup> Ibid., 282.

custom and government procedure, but for certain offenses, *ḥudūd* punishments were invoked. The Islamic *sharī‘ah* was applied, but in a system of two coexisting types of law, which afforded the jurist the opportunity to address new situations and continue the project of *fiqh*.<sup>238</sup> Kugle observes that the “Mughal policy of multi-levelled application of textual precedents was not recorded in the texts which the British chose as authoritative.”<sup>239</sup> Textual sources that gave the British a semblance of familiarity with Islamic law took precedence over Mughal practice, which might very well have been based on other texts that the British did not have the patience or interest to explore. The British conveniently viewed Mughal practice as arbitrary and unsystematic, not least because they were in direct competition with the Mughals and wanted to justify seizing political authority from them.<sup>240</sup>

More specifically on the question of blasphemy, the *Fatāwā* commissioned by Aurangzeb ‘Ālamgīr included a fair bit of discussion on the status and treatment of a non-Muslim subject who insulted the prophet Muhammad,<sup>241</sup> and a much longer account of apostasy and blasphemous speech that amounted to *kufr* (renunciation of faith) in relation to Muslim subjects.<sup>242</sup> However, the British did not concern themselves with the question of blasphemy in the Anglo-Muhammadan phase of the colonial project. Consequently, the discussion is largely absent from early 19th-century British publications on Islamic law, including those based on *al-Hidāyah* and the imperial *Fatāwā*.<sup>243</sup> If the discussion in the *Fatāwā* reflected the empire’s meddling with Islamic law as Burak suspects, the exclusion of this discussion from the Anglo-Muhammadan experiment rules

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<sup>238</sup> Ibid., 279.

<sup>239</sup> Ibid., 282.

<sup>240</sup> Ibid., 281–283.

<sup>241</sup> Sayyid Amīr ‘Alī, trans., *Fatāwā ‘Ālamgīrī*, vol. 3 (Lahore: Maktabah Raḥmānīyah, n.d.), 433–434.

<sup>242</sup> Ibid., 3:434–468.

<sup>243</sup> Hussain, “Negotiating Pakistan,” 177–178.

out possible continuity between Islamic imperial and colonial practices in this area of our immediate concern.

### **2.4.3 The institution of the 1860 Penal Code: a definitive rupture with the past**

The rupture with the Islamic traditional and imperial past was complete after the fall of the Mughal empire in 1857. With the institution of the Indian Penal Code and Code of Criminal Procedure in the ensuing five years, Islamic law was removed altogether from the criminal field, and survived only as a code of personal law governing private transactions among Muslims.<sup>244</sup> In 1864, Muslim *qāẓīs* assisting British magistrates in the colonial courts were removed along with any remaining Persian titles.<sup>245</sup> Next, the enactment of the Evidence Act in 1872 removed Islamic legal elements from the procedure of testimony and evidence. As Hussain notes, the British policy had shifted from “record and conquer” to “demolish and replace”, especially in relation to Islamic law.<sup>246</sup> Any continuity between Islamic imperial and early colonial practices becomes irrelevant after the British abandoned their own practice of borrowing from and fusing Islamic law with British legal notions. The institution of the 1860 Indian Penal Code was moreover a break from the early colonial practice itself when the British espoused caselaw and attempted to cast Islamic law in that mold too. The institution of positive law in colonial India reflected the ongoing debate between the Whig and the Utilitarian camps in Britain and a partial triumph of the latter in the colony. While advocates of the Utilitarian philosophy of law faced much greater resistance at home, their colleagues in colonial India exercised legislative power, aided by cultural separation and Orientalist assumptions, to introduce systemic changes without fearing or sympathizing with resistance.<sup>247</sup>

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<sup>244</sup> Kugle, “Framed, Blamed and Renamed,” 300.

<sup>245</sup> Ibid., 300–301.

<sup>246</sup> Hussain, “Negotiating Pakistan,” 179.

<sup>247</sup> Kugle, “Framed, Blamed and Renamed,” 276–278.

The progenitor blasphemy law, Section 298 of Chapter XV, after which Pakistani legislation of the 1980s is modeled in important ways, first appeared in the Indian Penal Code enacted by the colonial government in 1860. The Law Commissioners responsible for instituting the penal code made no secret of their intention to break with the Islamic legal tradition, which they viewed as “the last system of criminal law which an enlightened and humane Government would be disposed to receive.”<sup>248</sup> Thus, Siddique and Hayat have argued that the inclusion of the chapter on religious offences, and Sections 295–298 in particular, in the Indian Penal Code is not explained by retention of certain elements of Anglo-Muhammadan (caricature of Islamic) law, but other factors.<sup>249</sup> Asad Ahmed provides an account of these *other factors*. Ahmed notes that Thomas Macaulay, the chief architect of the Indian Penal Code, believed that offensive and insulting language should be considered a speech act subject to criminal jurisprudence. Proposing changes to the English laws of defamation, he argued that “defamatory spoken words should be considered an offense irrespective of whether they caused a breach of the peace, on the grounds that the mental pain they inflict is a sufficient basis for an action.”<sup>250</sup> In addition to his awareness of the affective aspects of language, Macaulay viewed the people of India as more susceptible to mental anguish caused by insulting language, especially when caste, religion, or women were involved. In this respect, he was influenced by Bentham who identified Bengal, and by extension the Indian subcontinent, as a site of untoward religious passion.<sup>251</sup> Macaulay believed that there was “no country in which more cruel suffering is inflicted, and more deadly resentment called forth, by injuries which affect only the mental feelings,” and so the government had “much to apprehend

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<sup>248</sup> Siddique and Hayat, “Unholy Speech and Holy Laws,” 336.

<sup>249</sup> Ibid.

<sup>250</sup> Ahmed, “Specters of Macaulay,” 179–180.

<sup>251</sup> Ibid., 179.

from religious excitement among the people”.<sup>252</sup> Finally, Macaulay believed that Indians lacked agency and were insufficiently disposed to help themselves, a situation that Macaulay wanted to remedy by means of his lawmaking. Thus, the chapter on religious offences as well as other parts of the penal code reflected Macaulay’s desire to “rouse and encourage manly spirit among the people” rather than “multiply restrictions on the exercise of the right of self-defense”.<sup>253</sup> The promulgation as well as the character of Section 298, the original blasphemy law in the Indian Penal Code, is best explained by Macaulay’s attention to the harm caused by insulting language, his perception of Indian sensitivity to such harm, and perceived lack of agency among the people of India. The parent blasphemy law is hardly explained by Burak’s tentative suggestion of continuity between Islamic imperial and colonial practices in South Asia.

## **2.5 An abiding colonial legacy**

In the context of colonial Africa (too), the colonists went about codifying flexible custom into hard prescription, thereby inventing an African tradition that had hitherto not existed.<sup>254</sup> The invented traditions provided the colonists with models of command on one hand, and the African subjects fixed models of behavior on the other. Ranger observes that African politicians and cultural nationalists are left with dual colonial legacy. On one hand is the body of traditions related to statehood and governance that are still shaping the culture of the ruling class and provide the means for expressing nationhood (such as flags, national anthems etc.). On the other hand is the “traditional African culture” invented by colonial administrators, missionaries, anthropologists, often with the assistance of African elders.<sup>255</sup> Those who despise the elite culture and the colonial

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<sup>252</sup> Ibid., 180.

<sup>253</sup> Ibid., 178–179.

<sup>254</sup> Terence Ranger, “The Invention of Tradition in Colonial Africa,” in *The Invention of Tradition*, ed. Eric Hobsbawm and Terence Ranger (Cambridge: Cambridge University Press, 2012), 212.

<sup>255</sup> Ibid., 261–262.

model of governance face the danger of embracing another set of colonial inventions, the premodern African tradition.<sup>256</sup>

The legacy of the colonists in South Asia has not been very different. The operation of colonial courts transformed customary law into statutory law. Further, Islamic jurisprudence lost its dynamic substance (i.e. the practice of *fiqh* that involved continuing *ijtihād*) while it was reified in form. The modern state appropriated Islamic law but neutered its potential and promise.<sup>257</sup> The (re)invented tradition, named the “Law of Muslims”, became a point of reference for the next generation of South Asian Muslims who “struggled to reassert their voice in British India and to recapture a sense of lost identity”.<sup>258</sup> The *sharī‘ah* was codified by the British as they wrested political power away from Muslims; yet the next generation of Muslim lawyer-leaders trained in British educational institutions would mobilize people and organize their politics around this “colonized” *sharī‘ah*.<sup>259</sup> Even though the experience of Anglo-Muhammadan jurisprudence in the early colonial period was lost in law itself, Kugle argues that it shaped 20th-century Muslim conception of the *sharī‘ah* and self-statement, hence the Islamic past and the Islamic futures.<sup>260</sup>

By means of the legal jargon employed by the colonists, the presumptions underpinning Anglo-Muhammadan imagination of Islamic law spread into the wider political consciousness of Muslims in South Asia. British jurisprudence conceived Islam as a rarefied monolithic entity. Muslims accepted and owned this conception, made it the basis of their nationhood, and utilized it to agitate for political rights. Muslim political leaders who hailed from the profession of law often lacked a social-regional base and religious learning. Kugle aptly notes that they were leaders in search of a constituency. Thus, they defined the Islamic community, as if there was just one, as

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<sup>256</sup> Ibid., 262.

<sup>257</sup> Kugle, “Framed, Blamed and Renamed,” 312.

<sup>258</sup> Ibid., 258.

<sup>259</sup> Ibid., 258–259.

<sup>260</sup> Ibid., 259.

their constituency, and advocated representational government where they would represent the community that they imagined and spoke of as a monolith.<sup>261</sup>

As the British lost confidence in their colonial mission and civilizational superiority, Muslim lawyers gradually mounted their critique of the colonial government and formulated their own visions of an Indian-Islamic future.<sup>262</sup> These utopias, Kugle notes, accepted British ideas about social organization and their model of state and government and, by and large, a colonial conception of the *sharī'ah*. Thus, their vision of the future presupposed the centralizing modern state and its attendant institutions, including positive law, that India was going to inherit from the British. Further, they addressed the perceived stagnation of Islam, and responded to the charge that it was part and parcel of the essence of Islam as a religion or of Muslims as a people.<sup>263</sup>

It appears that even visionaries like Iqbāl and Maudūdī were not immune to British notions concerning law, society and politics. Thus, Kugle notes that Iqbal believed that Islamic law could grow but placed that growth in the ambit of the modern state. He bought into the notion that the gates of *ijtihād* were closed and that individual *ijtihād* was no longer viable. His alternative, the collective *ijtihād*, was going to be established through legislative councils. He assumed the suitability of a lawyer class to be the locus of power, and the superiority of European-style legislative assemblies that could subsume local powers, regional dialects and religious sects.<sup>264</sup> Like his belief in the highly centralized institutions of the modern state, Iqbal shared the belief with colonial paternalism that a system run by the common man was dangerous.<sup>265</sup> His apprehension

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<sup>261</sup> Ibid., 303.

<sup>262</sup> Ibid., 304–307.

<sup>263</sup> Ibid., 307.

<sup>264</sup> Ibid., 308.

<sup>265</sup> Hussain, “Negotiating Pakistan,” 134.

reflected in his critique of Western democracy. In a piece of poetry, he famously said that democracy was a system of government in which heads were counted, not weighed.

جمہوریت اک طرز حکومت ہے کہ جس میں  
بندوں کو گنا کرتے ہیں، تو لا نہیں کرتے

While Iqbal accepted the social and political configuration of the modern state, he was critical of ethnic and linguistic nationalisms. He opposed the territorial nationalism of the Indian National Congress but favored political autonomy for religiously homogenous populations.<sup>266</sup> He believed that shared religion served as a more secure foundation for nationhood than territory, ethnicity or language. Here again, he appears influenced by the colonial classification of Hindus and Muslims as communities distinct from one another, and largely homogenous within.<sup>267</sup> His demand for autonomous Muslim states in the Indian union has led many to see him as a supporter of religious nationalism, even an icon of Pakistani nationalism even though he lived before the idea of partition was adopted.

Maudūdī's analysis of colonial heritage was incisive too in certain ways. However, like Iqbal, his "solution to the problem presupposes the centralized, authoritarian, and distant state which the British created through their control of language, both political and legal."<sup>268</sup> Maudūdī's formula was to have the Islamic vanguard control the modern state apparatus and impart thereof cohesion and self-worth on the Muslim society. "As in the colonial state, Maudūdī's Islamic state propagates an order which is not generated from the bottom up. The state must educate, admonish, punish and reorganize the people under its authority in order to bring about utopian progress."<sup>269</sup>

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<sup>266</sup> Metcalf, "Imagining Muslim Futures," 293.

<sup>267</sup> Hussain, "Negotiating Pakistan," 134–135.

<sup>268</sup> Kugle, "Framed, Blamed and Renamed," 309.

<sup>269</sup> Ibid.



While he criticized secular and religious leadership who assumed the *sharī‘ah* to be a “private” realm of religiosity, his alternative was “public” in the British sense of the dichotomy.<sup>270</sup> Just as Iqbal’s vision of collective *ijtihād* would operate in the modern legislature, Maudūdī used the term *sharī‘ah* for a God-ordained system created and implemented by means of modern state institutions. The distant, centralized state allowed Maudūdī’s *sharī‘ah* to remain a system that was eternal and external to the people who inhabit it.<sup>271</sup> Like Iqbal, Maudūdī deplored the divisions assumed and caused by modern nation states, yet he contributed to forging a religious nationalism, more so than Iqbal. His emphasis on and assumption of a culturally homogenous “Islamic” community followed from the logic of the modern nation state.<sup>272</sup>

Maudūdī internalized and Islamized European ideas of governance even as he sought to resist the colonial onslaught. He lost touch with the organically Islamic secularity, the separation of religion and state that happened early in Islamic history, and that caused the enterprise of Islamic scholarship to be privatized.<sup>273</sup> Islamic scholars were often symbols of resistance against tyrant regimes that tried to coopt them for legitimacy. Through much of Islamic history, the demands of political power were seen as corrupting and un-Islamic.<sup>274</sup> The Muslim scholarly class expected the society to improve if the building blocks of individual lives improved. In a distinctly modern turn, Maudūdī and the generation of Islamists inspired by him wanted to control the machinery of the state themselves.<sup>275</sup> While Maudūdī and his contemporaries could not reenact the precolonial Islamic past, they sought to Islamize what was being inherited from the colonists. Thus, Maudūdī’s

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<sup>270</sup> Ibid.

<sup>271</sup> Ibid.

<sup>272</sup> Metcalf, “Imagining Muslim Futures,” 289.

<sup>273</sup> Or perhaps it was Maudūdī’s Salafism that made him dismiss the burden of Islamic history and appeal to his imagination of the earliest phase of *al-khilāfah al-rāshidah*, the Sunni name for the short-lived regime of Abū Bakr, ‘Umar, ‘Uthmān and ‘Alī that succeeded the prophet Muhammad.

<sup>274</sup> Metcalf, *Islamic Contestations*, 200.

<sup>275</sup> Ibid., 245–246.

project of the Islamic state, as well as the resources to realize it, were decidedly modern and significantly a fruit of colonization.

Since Maudūdī's project of the Islamic state presupposes modern state institutions, his calls for Islamization have entailed recasting of Islamic law in the mold of positive law. In fact, as we noted in the previous chapter, Maudūdī's call for systemic change and infusion of Islamic values in society and politics barely materialized beyond a few constitutional amendments and poorly conceived codification of certain Islamic legal notions. While the republic has been baptized in the process, the presumed benefits of Islamic law are far from realized. To the contrary, violent actors have found legal sanction for harassing and persecuting religious minorities in the Islamic republic. The plurality of non-binding views on virtually every subject that characterized Islamic law historically is being obliterated for the contemporary Muslim, who is increasingly accustomed to inflexible "standard" Islamic positions on matters of legal concern. The transmutation of Islamic law that started under the colonial auspices continues at the hands of the custodians of Islam. Talal Asad aptly sums up the predicament when he says, "there has been an acceptance of the modernizing state (and the model of the Western state) and a translation of its projects into Islamist terms."<sup>276</sup>

The ideas and ideologies of Maudūdī, Iqbal and other thinkers of their time share less with the historical Islamic tradition than with other thinkers and movements, usually not Muslim, of their own time. Metcalf argues that 20th-century Muslim ideologies were forged in significant interaction with contemporaneous discourses and movements.<sup>277</sup> The horizontal continuity with contemporary world movements helps explain the divergence in Muslim ideologies of the 20th century. The widely differing visions of Islamic thinkers of the recent past hardly make sense if we

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<sup>276</sup> Talal Asad, "Modern Power and the Reconfiguration of Religious Traditions: Interview by Saba Mahmood," *Stanford Humanities Review* 5, no. 1 (1995): 1–16.

<sup>277</sup> Metcalf, "Imagining Muslim Futures," 287–288.

trace their genealogy in precolonial Islamic texts, even the ones they invoke themselves. However, the divergences begin to make sense when we situate ideologues and movements in their respective discursive and political contexts.<sup>278</sup> Such horizontal continuities, or more immediate connections, help us understand specific issues like blasphemy legislation in postcolonial Pakistan too, unlike Burak's vertical continuity that falls short in numerous ways as we have seen in the last several pages.

Compared to the broader colonial influences that enveloped 20th-century Muslim politics and discourse, Asad Ahmed unpacks for us the more intimate layer in the matrix: the significant influence of colonial blasphemy laws on postcolonial legislation. Without collapsing two distinct moments in history into one, Ahmed shows how the precursor colonial laws determined the frame of possibilities for future laws in the post-colony. Ahmed argues, as we noted in the previous section, that the original blasphemy law, Section 298 of the Indian Penal Code, was a product of Macaulay's desire to punish insulting language for the harm it caused in the affective domain, and his argument that religiously-sensitive Indians were particularly susceptible to such harm. Thus, Section 298 criminalized hurting the "religious feelings" of any class of the queen's subjects. The section was criticized by many before and after the penal code was enacted. Missionaries objected that the section potentially criminalized religious debate and curtailed their ability to proselytize.<sup>279</sup> Judges and colonial administrators argued that making wounded sentiments a cause of action was a recipe for disaster. Lawrence Peel, chief justice of the Supreme Court in 1848, argued the wounding of religious feelings should be penalized only when it leads to public disorder.<sup>280</sup> Fitzjames Stephen, who considered the code a remarkable success, was nevertheless apprehensive about this section. From his point of view, "religious feelings" was too capacious a term that

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<sup>278</sup> Ibid., 297–298.

<sup>279</sup> Ahmed, "Specters of Macaulay," 181.

<sup>280</sup> Ibid.

invited easy accusations. He believed the disaster could be avoided so long as British judges adjudicated blasphemy cases, but the law could result in “horrible cruelty and persecution” if Muslims and Hindus governed the country and the courts.<sup>281</sup> What Stephen framed as incompetence of the colonial subjects was more accurately an admission that the law was problematic by nature.

Macaulay desired that future amendments or additions to the code closely followed the original language of the code. Colonial authorities as well as Pakistani regimes responsible for subsequent additions have done just that. Thus, Section 295-A introduced by the colonial government in 1927 was equally broad as it criminalized spoken and written word or any other visible representations that insulted or attempted to insult the religion or religious beliefs of any community.<sup>282</sup> Likewise, the new sections introduced in Pakistan during 1980s are vague and incredibly broad in terms of what constitutes an offense, and they allow wounded feelings to be a cause of action, which makes them easy to invoke and abuse. This is especially the case with Section 295-C that stipulates the death penalty for anyone who “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.” Evidently, Macaulay’s desire to punish insulting language for the emotional harm that it causes has manifested in the most ambitious way in Section 295-C, the last of the blasphemy laws to be instituted. The vagueness and capaciousness of the laws, the error of allowing wounded feelings to be a cause of action, and the ease with which the laws can be used have all been compounded in the postcolonial legislation.<sup>283</sup> Ahmed has spotted another more dangerous similarity between the original Section 298 drafted by Macaulay,

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<sup>281</sup> Ibid.

<sup>282</sup> Section 295-A was instituted when the colonial government realized that Section 298 only covered spoken words, not written, and failed to prosecute the author and publisher of *Rangīlā Rasūl* insulting the Islamic prophet Muhammad. See Ibid., 182.

<sup>283</sup> Ibid., 182–183.

the subsequent Section 295-A added by the colonial government in 1927, and the postcolonial blasphemy laws instituted in the 1980s: that they entail incitement of religious passion, then fail to contain it.<sup>284</sup> The original blasphemy law and all of the succeeding laws require the plaintiffs to demonstrate that their feelings have been injured. Thus, plaintiffs would not only exaggerate the injury in the affective realm but incite and mobilize people to demonstrate the outrage and pressure the state to take action against the perceived offense.<sup>285</sup> Once excited, the religious passion is not easily satisfied and dissipated by legal process and judgment.<sup>286</sup> Thus, mobilized groups often question the state's ability to adjudicate alleged cases of blasphemy. Doubting the state's ability and will to prosecute blasphemy, the more radical actors have gone on to murder alleged blasphemers before, during and after their trials.<sup>287</sup> In this way, the colonial and postcolonial blasphemy laws do not just respond to religious outrage, but create affective publics that become attached to symbolic issues and increasingly resort to public display of emotion and violence in defense of their religious icons and sensibilities.<sup>288</sup>

In summary, the colonists have left behind a multi-layered legacy that has broadly shaped 20th-century Muslim politics and discourse, hence perceptions of the Islamic past, present and the future, especially in relation to state and law. More specifically, the colonial blasphemy laws have had a defining influence on postcolonial blasphemy laws. Despite differences that we have noted in the first chapter, the two sets of laws share a set of highly consequential features, such as capaciousness in terms of what constitutes the offense, making wounded feelings a cause of action, the ease with which the laws can be invoked, and the incitement of religious passion and creation of affective publics that are not easily dissipated and satisfied by the legal process.

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<sup>284</sup> Ibid., 183–184.

<sup>285</sup> Ibid., 177.

<sup>286</sup> Ibid., 184.

<sup>287</sup> Ibid., 177.

<sup>288</sup> Ibid., 173–174.

## 2.6 Final thoughts

Islamic ideologues, political leaders and activists often couch their arguments in Islamic terms, seeking and suggesting continuity with an image of traditional Islamic thought that is considered authoritative and transcendent. Because of how they represent themselves, among themselves and to outsiders, they are perceived as “working hermetically from within an impermeable and unchanging textual tradition”.<sup>289</sup> However, as we have seen in this chapter, such vertical continuities between relatively remote eras in history are less able to explain ideologies, movements, and legislation in the world around us. Abstract political philosophies as well as specific instances of legislation make more sense when we attend to their immediate social-political milieu and not-so-remote influences from the recent past.

Thus, advocates and defenders of the blasphemy legislation in postcolonial Pakistan might very well claim an Islamic basis for the laws in question, but these laws are hardly connected with traditional Islamic, and in particular, Ḥanafī deliberations on the subject within and beyond the context of Islamic empires. Reflecting the overall character of Islamic law, the jurists’ discussion of *sabb al-rasūl* is characterized by a plurality of views on various aspects of the matter, which is far from what notions of positive law permit today. In fact, the Ḥanafī provision of accepting repentance and application of discretionary *ta’zīr* punishments to non-Muslim offenders, reserving death penalty specifically for unrepentant and repeat offenders, offers an avenue for reforming the Pakistani blasphemy law, 295-C, that stipulates unconditional death penalty for Muslim and non-Muslim offenders, willing to repent or not, alike.

The Pakistani blasphemy laws are better explained by the sociopolitical and discursive factors that we identified in the previous chapter, and their not-so-distant colonial genealogy that

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<sup>289</sup> Metcalf, “Imagining Muslim Futures,” 287.

we have explored in the present chapter. Like their colonial precursors, Zia-era blasphemy laws, especially Section 295-C, reflect Thomas Macaulay's desire to punish insulting language for the emotional injury that is caused. The postcolonial legislation moreover shares and aggravates the *capaciousness* of colonial blasphemy legislation and the *requirement to demonstrate injured feelings*, which entails incitement of religious passion and political mobilization that does not simply disappear as the judicial process kicks in. The more unique 'Islamic' character of postcolonial blasphemy laws 295-C and 298-A, which punish language and acts insulting Muhammad and his companions respectively, must be seen together with the larger transformation of Islamic law from a plurality of non-binding subjunctive expressions to codified positive law that is expected to be enforced by the powerful modern state. This transformation of the essence of Islamic law began under colonial auspices but continues in the post-colony owned and championed by the Islamists.

## Conclusion

During the life of Muhammad, the Qur'an took note of various forms of theological and verbal affronts that the prophet dealt with regularly. The offenders were warned of God's judgment and what awaited them in the afterlife, but no punishments were prescribed in the temporal realm. In the centuries after Muhammad, insulting language or behavior with respect to God, the prophet and the first generation of Muslims was gradually criminalized. Jurists affiliated with *ahl al-ḥadīth* schools considered blasphemy against the prophet a *ḥadd* offense deserving capital punishment. Shāfi'i jurists allowed for repentance, but Mālikis and Ḥanbalis did not. Ḥanafī jurists treated blasphemy against the prophet as a matter of apostasy if the offender was known to be a believer. If the offending believer was a man, they prescribed death penalty. Like other forms of apostasy, they allowed and encouraged the offender to repent. If he repented, the death penalty would be averted. For non-Muslim offenders, Hanafi jurists proposed discretionary *ta'zīr* punishment determined by the state and/or the judge. Unlike jurists affiliated with other Sunni schools of law, Ḥanafīs held that blasphemy against the prophet did not void the protection (*dhimmah*) afforded by the state to a non-Muslim subject.

The jurists' law was influenced by Islamic empires, especially in post-Mongol Eastern Islamic lands. In Mughal India, the emperor Aurangzeb commissioned the compilation of *Fatāwā-yi 'ālamgīrī*, which includes a sizeable discussion of blasphemy. However, neither the early colonial experiment of Anglo-Muhammadan jurisprudence nor the positive legal code instituted subsequently drew upon the discussion of blasphemy in the imperial *Fatāwā*. In fact, the colonial institution of the Indian Penal Code in 1860 caused a decisive rupture with the Islamic traditional and imperial past. The blasphemy laws included in the penal code reflected Thomas Macaulay's



desire to punish insulting language for its emotional harm, and not any sort of continuity with the Islamic juristic or imperial traditions. Pakistan inherited these blasphemy laws along with the colonial penal code, and subsequent blasphemy legislation mirrored the precursor colonial laws in important ways.

The postcolonial blasphemy law 295-C is justified and defended in Islamic terms, but it is not the result of a thorough effort to mirror the Islamic juristic deliberations on the subject within or outside the auspices of Islamic empires. The law was first adopted in 1986 in the Majlis-i Shūrā, a questionable substitute to a democratically-elected parliament. Subsequent amendment of the law in 1991 depended on the Federal Shariat Court, another arguably undemocratic institution invested with the authority to strike down laws that appeared ‘repugnant’ to Islam. Ismail Qureshi, who lobbied General Zia’s substitute-parliament to adopt the law and subsequently had it amended through the Federal Shariat Court, relied on dubious accounts of the life of Muhammad and misread important Ḥanafī texts to confirm his Salafī argument for punishing blasphemy against the prophet with death without the option of repentance and pardon. The majority of ‘*ulamā*’ and Islamist politicians either resonated with Qureshi’s argument or allowed the false impressions and claims of consensus on the matter to prevail in the public discourse. When opposition to the controversial law grew stronger, some of the ‘*ulamā*’ who previously held that blasphemy was a pardonable offense for which the state could determine a suitable punishment, declared that blasphemy against the prophet was not a pardonable offense and deserved the death penalty prescribed in the Qur’an and/or the prophet’s example. Thus, advocates of the postcolonial blasphemy law have been evidently unsystematic and disingenuous in their engagement with the Islamic tradition. Their inconsistent reasoning and expedient about-turns cannot be explained with reference to the body of Islamic juristic writings. The arguments made and accepted in favor of the blasphemy legislation are better explained by the desire of the ‘*ulamā*’ and Islamist politicians to

oppose ‘secular’ rivals and their ‘ungodly’ agendas at all costs. The currency of Salafi-style arguments and betrayal of the Ḥanafī tradition in predominantly Ḥanafī Pakistan is moreover explained by the incognito rise of Salafism beginning in the 70s and the discursive shift marked by a certain Islamic political idiom that was cemented in General Zia’s era. The same set of discursive developments explains continued resistance to reform and amendment of blasphemy laws.

Aside from the obvious inconsistency with the Ḥanafī Islamic tradition, Section 295-C as well as other blasphemy laws instituted during the 1980s must be seen as continuation of the colonial project of transforming Islamic law from a plurality of subjunctive expressions to a codified positive law that is expected to be enforced by the centralized modern state. While it is reified by means of codification, Islamic law continues to lose its dynamic substance. The remodeling of Islamic law and production of a colonized *sharī‘ah* that began with Anglo-Muhammadan jurisprudence in early colonial India is now owned and spearheaded by the spokespersons of the Islamic tradition.

At a more concrete level, Section 295-C and other blasphemy laws instituted in the 1980s reproduce certain inauspicious traits of the precursor colonial laws: they are capacious in terms of what constitutes the offense, and they require the complainants to demonstrate that their feelings have been injured, which translates into incitement of anger and violence in the society that does not automatically subside after the judicial process kicks in. The postcolonial blasphemy laws go one step further by omitting the requirement of intent, which is a recipe for unfair convictions and an extraneous burden on the judicial system.

Far from justifying the miscarriages of justice that are born out of Zia-era blasphemy laws, the Ḥanafī juristic tradition offers a potential remedy to the situation. While Siddique and Hayat have made a compelling case for introducing a *mens rea* requirement in Zia-era blasphemy laws to reduce the chances of unfair convictions, the Ḥanafī encouragement of repentance and application

of discretionary *ta'zīr* punishments to non-Muslim offenders is a possible answer to the abuse of the law, especially in relation to religious minorities. If the law were revised in accordance with the Ḥanafī tradition, we can expect a significant drop in blasphemy charges and convictions.

In order to push public opinion towards fairness and a concern for human dignity, members of civil society further need to engage with and untangle the discursive developments that have made the blasphemy legislation possible and that continue to shield it. Pakistani '*ulamā*' and civil society need to challenge the rise of Salafism, which has directly affected the quality of arguments around blasphemy laws. Similarly, the '*ulamā*' and religious activists who realize their responsibility must step forward and work with civil society to reduce the religious-secular divide. The binary is unrepresentative of Pakistani society and only serves certain religious actors who wish to deny legitimacy to all arguments other than their own and the relatively rare secular actors who are borderline theophobic. The rest of us would do well to defy the binary and forge new discourses that go further than those popularized in General Zia's time.

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