

CRIMINAL JUSTICE RESPONSE TO CRIMES MOTIVATED BY INTOLERANCE AND DISCRIMINATION

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I. INTRODUCTION

Violent crimes resulting from intolerance and discrimination are not uncommon in Pakistan. While, on the one hand, crimes against women such as 'honour killing', domestic violence resulting in severe injuries and even murder and 'stove burning' have stemmed from gender-related discrimination, on the other, religious intolerance has given rise to assaults on members of religious minorities and registration of blasphemy cases against them. Thus, the crime pattern is marked with crimes motivated by intolerance and discrimination. This paper aims at analysing the crimes motivated by religious intolerance and the response of the criminal justice system. Faith based persecution is an ongoing phenomenon in Pakistan which has severely affected the religious minorities of the country. Violence motivated by intolerance has been targeted 'against all religious minorities, including Ahmadis, Christians, Shia Muslims, Sikhs, Hindus and Parsis'.¹ According to a recent report by Amnesty International, "state and non-state actors continued to discriminate against religious minorities, both Muslim and non-Muslim, in law and practice".² This paper discusses how a weak legal framework coupled with societal pressures and a lack of adequate law enforcement measures has contributed towards such crimes.

A. Organization of the Paper

The first section of the paper traces the origins of Pakistan with a historical context. The ideology in favour of merging religion and politics was present since the birth of Pakistan and set forth the ground for crimes motivated by religious intolerance. The second section discusses how the country's legal framework fails to offer adequate protection to religious minorities. It also outlines the societal pressures such as the rise of religious-political groups which have led to an increase in religious discrimination. The third section outlines how, due to a lack of adequate law enforcement measures, the victims of such attacks are denied justice. In this section the statistics of crimes motivated by religious intolerance will be analysed. An analysis of the criminal justice system (CJS) shall also be made outlining why it failed to respond effectively to these crimes. In the end some recommendations on how the situation/response can be improved shall be made and a conclusion shall be drawn.

B. Historical Context of the Creation of Pakistan its Religious Ideology

On 14 August 1947, Pakistan was founded as an independent nation state after achieving its independence from India. Pakistan was based very much on the concept of a 'Muslim homeland'. Whether Pakistan was created for Islam or Muslims is a question which remains debatable to this day. Some ideologies of Pakistan maintain that Pakistan was meant to create an Islamic state³ in the Indian subcontinent. Other ideologies doubt this position and maintain that the primary purpose of Pakistan was to build a secular state for Muslims to escape dominance of Hindu rule. Ahmed in his book *Jinnah, Pakistan and Islamic Identity* discusses that Pakistan meant different things to different people. For some it was theology; Pakistan was seen as an Islamic country, a homeland where Muslims will enjoy religious freedom and will abide by the laws based on the Quran and the Sharia. A famous slogan still chanted in Pakistan is *Pakistan ka Matlab kya La Illah IllAllah*, which translates to "What is the meaning of Pakistan? There is no God but Allah." For some it was sociology; Muslims were concerned about preserving their culture and language and feared that they had little chance in a Hindu dominant society. For some it was economics; there was a fear that

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¹ Farahnaz Ispahani, "Pakistan's Descent into Religious Intolerance." Hudson Institute, March 1, 2017. Available at: < <https://www.hudson.org/research/13492-pakistan-s-descent-into-religious-intolerance>>.

² Amnesty International, "Amnesty International Annual Report 2016/17: Pakistan", February 23, 2017. Available at: <<https://www.amnesty.org.in/amnesty-international-annual-report-201617-pakistan/>>.

³ Not to be confused with the Islamic state of Iraq and Syria. Refers to a state based on Islamic principles.

Muslims might not be able to succeed under the powerful Hindu commercial and entrepreneurial monopolies. Yet for some it was an expression of a Hindu-Muslim confrontation which had been taking place for centuries and posed a challenge to the idea of Muslims being dominated by Hindus.⁴ As such, there is still a debate about the true ideology that resulted in the creation of Pakistan. However, despite the disagreements it is evident that the idea of Pakistan was associated very strongly, in one way or another, with a Muslim identity.

Despite the debate, there can be little doubt that Pakistan's founder, Muhammad Ali Jinnah, had a vision of a secular Pakistan; a Muslim homeland which guaranteed minority rights. In his first Presidential Address to the Constituent Assembly of Pakistan (August 11, 1947), he famously said:

“You are free; you are free to go to your temples, you are free to go to your mosques or to any other place of worship in this State of Pakistan. You may belong to any religion or caste or creed — that has nothing to do with the business of the State... We are starting with this fundamental principle: that we are all citizens, and equal citizens, of One State.”⁵

However a competing ideology advocated for the merging of Islam and politics through the establishment of an Islamic republic governed by Sharia law.⁶ Eventually, the secular vision of Jinnah lost to the ideology of the Islamic forces, composed of both traditional *ulema* and a number of Islamist parties, notably the Jammah-i-Islami (JI). Their influence during the initial crafting of the Pakistani constitution injected religion (Islam) into the governing system of the country, an influence which deepened with time.⁷ The fact is that over time Pakistanis have been made to believe that Jinnah intended to create Pakistan as a theocratic state.⁸ Pakistan's self-identification as an 'Islamic Republic' clearly speaks of the role religion has played in shaping the Pakistani identity. This identity was further reinforced by the 'islamization' of Pakistan under the Military Regime of Zia-ul-Haq.

II. DISCRIMINATION UNDER THE CONSTITUTION AND THE LAW

The legal framework of Pakistan provides insufficient protection to religious minorities. Despite being a signatory to the Universal Declaration of Human Rights (UDHR) 1948⁹ and the International Covenant on Civil and Political Rights, the legal framework fails to safeguard minority rights. As per the UDHR, Pakistan is obligated to provide its citizens with the following rights:

- **Article 1:** 'All human beings are born free and equal in dignity and rights...'
- **Article 2:** 'Everyone is entitled to all the rights and freedom(s) set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political...'
- **Article 7:** 'All are equal before the law and are entitled without any discrimination to equal protection of the law...'
- **Article 18:** 'Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.'

Pakistan has also ratified the International Covenant on Civil and Political Rights (ICCPR), in 2010. Therefore, Article 18¹⁰ mentioned above is binding on Pakistan and its courts and constitution are required

⁴ Akbar Ahmed, *Jinnah Pakistan and Islamic Identity* (London: Routledge, 1997), p. 109

⁵ Columbia.edu, "Muhammad Ali Jinnah's first Presidential Address to the Constituent Assembly of Pakistan", (August 11, 1947). http://www.columbia.edu/itc/mealac/pritchett/00islamlinks/txt_jinnah_assembly_1947.html>.

⁶ Fatima Zainab Rahman, "State restrictions on the Ahmadiyya sect in Indonesia and Pakistan: Islam or political survival?", *Australian Journal of Political Science* vol. 49, no. 3 (2014): 408-422.

⁷ Ibid.

⁸ Ibid.

⁹ UN General Assembly, "Universal declaration of human rights," 1948, <[http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/217\(III\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/217(III))>

¹⁰ Article 18(1) of the *International Covenant on Civil and Political Rights* provides: "Everyone shall have the right to freedom

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to provide and ensure religious freedom to its citizens, especially to its minorities, 'who being equal citizens of Pakistan are entitled to equal protection of law'¹¹.

The constitution of Pakistan¹² guarantees equality before the law for all its citizens and non-discrimination on the basis of race, religion etc. Article 20 of the Constitution states: "every citizen shall have the right to profess, practice and propagate his religion". Article 25 (1) provides, "all citizens are equal before law and are entitled to equal protection of law." Article 5 states, "adequate provision shall be made for the minorities to freely profess and practice their religions and develop their cultures," and article 33 fixes the state's responsibility in safeguarding the rights and interests of religious minorities. However, these provisions are in contradiction with some other provisions of the Constitution, as Article 2 declares, "Islam shall be the State religion of Pakistan;" Article 31 states that it is the state's duty to foster an Islamic way of life. Article 41(2) provides, "a person shall not be qualified for election as President unless he is a Muslim," Article 91(3) provides that the Prime Minister shall also be a Muslim and Article 227 (1) states, "all existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah, in this Part referred to as the Injunctions of Islam, and no law shall be enacted which is repugnant to such Injunctions."¹³

In view of the above, certain sections of the Pakistan Penal Code (PPC) and the Criminal Procedure Code (CrPC) were amended, and new penal sections for blasphemy and 'other offences against religion' were promulgated with penalties ranging from imprisonment to death sentence. In 2009, the UN Committee on the Elimination of Racial Discrimination noted that Pakistan's "blasphemy laws may be used in a discriminatory manner against religious minority groups".¹⁴ Evidently section 295-A of the PPC criminalizes the "deliberate and malicious intention of outraging the religious feelings of any class of the citizens of Pakistan"; however, the other religious offences in the PPC specifically protect Muslims, thus putting a limit to 'freedom of expression' of non-Muslims. Section 295-B declares, "whoever wilfully defiles, damages or desecrates a copy of the Holy Quran, or of an extract therefrom, or uses it in any derogatory manner, or for any unlawful purpose, shall be punishable with imprisonment for life".¹⁵ Section 295-C states, "whoever by words, either spoken or written, or by visible representation, or by any imputation, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet (peace be upon him) shall be punished with death or imprisonment for life, and shall also be liable to fine."¹⁶ In 1990, the Federal Shariat Court¹⁷ made the death penalty mandatory for conviction under Section 295-C¹⁸. It is pertinent to note that Section 298 of the PPC states about protection of "the religious feelings of *any* person", both Muslim and non-Muslim, yet it is so vague that it criminalizes not only speech but any form of expression whether it directly displays hostility or not. Thus, this section can be used and bent to the advantage of any complainant and is often misused against members of minorities unjustifiably

Referring to the text of Section 298 of the PPC, a professor of law at Harvard University who specializes in Islamic law commented, "as enacted into a statute, this law has wreaked havoc in Pakistan because the usual checks on its extreme consequences in old Islamic states do not exist in the modern context, and

of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching."

¹¹ All Party Parliamentary Group for International Freedom of Religion or Belief, "Discrimination against Religious Minorities in Pakistan: An Analysis of Federal and Provincial Laws," Available at: <<https://appgfreedomofreligionorbelief.org/media/RESEARCH-DOCUMENT-1-discrimination-against-religious-minorities.-Analysis.pdf>>.

¹² National Assembly of Pakistan, Government of Pakistan, *The Constitution of Islamic Republic of Pakistan*, 1973.

¹³ Ibid. *The Constitution Of Islamic Republic of Pakistan, with the Provisional Constitution Order, 1981: as Amended up-to-Date. Lahore: All Pakistan Legal Decision, 1982*

¹⁴ Committee on the Elimination of Racial Discrimination, United Nations, "International Convention on the Elimination of all Forms of Racial Discrimination", 16 March 2009, para 19. Available at: <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fPAK%2fCO%2f20&Lang=en>

¹⁵ Pakistani.org, "Pakistan Penal Code: Act XLV of 1860". Available at: <<http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>>.

¹⁶ Ibid.

¹⁷ The Federal Shariat Court of Pakistan has the authority to examine and determine whether the laws of the country comply with Islamic Sharia Law.

¹⁸ Federal Shariat Court, "PLD 1991 FSC 10 (Ismail Qureshi vs the Government of Pakistan)", <<http://federalshariatcourt.gov.pk/5.html>>

because the law is seen by some as government license for popular or mob violence against any person alleged to have insulted Islam.”¹⁹ These legal gaps have enabled bigoted members of the Pakistani society to victimize the minorities. Many innocent people from among minorities (Christians, Sikhs and Hindus and Ahmadis) have been booked under the vaguely worded Blasphemy Law.²⁰

III. DISCRIMINATION DUE TO SOCIETAL FACTORS

As discussed in the first section, since the birth of the country, a political ideology has borne roots which make religious minorities second-class citizens in their own country. Successive governments in Pakistan and different political parties have used the Islamic ideological card to their own political end. Religious differences, lust for power and a race for material gains have made religion ‘explosive’ in the society. Coupled with high levels of poverty and illiteracy, the masses seek refuge in religion and are sensitive to the call of clergy who use them for their political motives. Over the last few decades, religious-political groups have grown in power making life even more difficult for religious minorities.²¹

In 2011, a study sponsored by the U.S. Commission on International Religious Freedom (USCIRF) and conducted by the International Center for Religion and Diplomacy (ICRD) concluded, “Pakistan’s public schools and madrassas negatively portray the country’s religious minorities and reinforce biases which fuel acts of discrimination, and possibly violence, against these communities.”²² The negative attitude towards religious minorities influences the way people think and affects various aspects of the society. In such an environment there is tremendous pressure on the criminal justice system to remain neutral and deliver effectively in response to crimes motivated by religious intolerance. It was observed by the UN Special Rapporteur on the judiciary on her visit to Pakistan in 2013, “judges have been coerced or pressured to decide against the accused, even without supporting evidence, and that lawyers, in addition to their reluctance to take up such cases because they are afraid for their security, are targeted and forced not to represent their clients properly”.²³

A. The Case of Asia Bibi

The case of Asia Bibi demonstrates how the societal pressures from religious groups can lead to highly unfavourable circumstances for religious minorities. In 2011, governor of Punjab Salman Taseer was murdered by his police bodyguard when he publicly spoke against the blasphemy law being unjust and in favour of an accused Christian woman (Asia Bibi who was accused of blasphemy). A Christian farm labourer, a 47-year-old mother of five, was sentenced to death for blasphemy in 2010, after she had angered fellow Muslim workers by taking a sip of water from a cup. When the workers demanded she convert to Islam, she refused which prompted a mob to later allege that she had insulted the Prophet of Islam.²⁴ After remaining in prison for 9 years, Asia Bibi was declared innocent by the Supreme Court of Pakistan on 31 October 2018.²⁵ The decision of the court was not welcomed by the extremist religious elements who blocked roads, raised processions in protest and openly uttered death threats to the judges followed by violent outbreaks on the streets. By evening, “thousands of club-wielding demonstrators had blocked highways, burned tyres and

¹⁹ Research Directorate, Immigration and Refugee Board, “Immigration and Refugee Board of Canada, Pakistan,” *Whether section 298 of the Pakistan Penal Code (PPC) refers to any offence under religious law or Shari’a and, if so, the penalty under religious law or Shari’a*. January 30, 2002, PAK 38359.E. Available at: <<http://www.refworld.org/docid/3df4be8e8.html>>.

²⁰ Farahnaz Ispahani, “Pakistan’s Descent into Religious Intolerance”, *Hudson Institute*, Mach 1st, 2017, <<https://www.hudson.org/research/13492-pakistan-s-descent-into-religious-intolerance>>

²¹ Ibid.

²² United States Commission on International Religious Freedom, “Pakistan’s Educational System Fuels Religious Discrimination,” November 11, 2011, Available at: <<https://www.uscirf.gov/news-room/press-releases/pakistans-educational-system-fuels-religious-discrimination>>.

²³ Gabriela Knaul, “Report of the Special Rapporteur on the independence of judges and lawyers, Addendum: Mission to Pakistan” (Pakistan: UN Human Rights Council, 4 April 2013), Available at: <<http://www.refworld.org/docid/51b9a0794.html>> p. 56-61.

²⁴ Harriet Agerholdm, “Asia Bibi: Husband pleads for family asylum in UK after blasphemy conviction overturned,” *The Independent*, November 4, 2018. Available at: <<https://www.independent.co.uk/news/world/asia/asia-bibi-pakistan-asylum-theresa-may-uk-protests-blasphemy-supreme-court-a8616556.html>>.

²⁵ Memphis Barker, “Asia Bibi: Pakistan court overturns blasphemy death sentence,” *The Guardian*, October 31, 2018. Available at: <<https://www.theguardian.com/world/2018/oct/31/asia-bibi-verdict-pakistan-court-overturns-blasphemy-death-sentence>>.

pelted police with stones in major cities including Islamabad and Karachi.”²⁶ The actual publication of the ruling was delayed for weeks after blasphemy campaigners “promised to paralyse” the country and kill the judges if they did not uphold Bibi’s death sentence.”²⁷ The Supreme Court was due to hear the case in 2016, but delayed the trial after one of the judges resigned. After the havoc these religious fuelled protesters laid on the country, the lawyer representing the Christian woman fled the country for fear of his²⁸ life and Asia Bibi’s husband has pleaded for asylum from the UK, US and Canada.²⁹

IV. DISCRIMINATION DUE TO LACK OF LAW ENFORCEMENT

Considering the above scenario there is not much space for the police, prosecution and courts (main organs of CJS) to deter crimes motivated by religious intolerance and to bring offenders to justice and prosecute those guilty of such crimes speedily and fairly.

A. Lack of Authentic Data

The following figures represent crimes against religious minorities in the province of Punjab as per the record of the Central Police Office Punjab (Lahore).³⁰

Table 1: Crimes against Religious Minorities in the Province of Punjab

Cases Registered Where Either Minorities or their Place of Worship Were Targeted From 01.01.2016 to 30.09.2018						
	District	Total Cases	Cancelled	Untraced	Challenged	Under Inv.
1	Lahore	3	0	1	2	0
	Gujranwala	2	0	0	2	0
	Gujrat	1	0	0	1	0
	Sahiwal	1	0	0	1	0
	Chakwal	1	0	0	1	0
	Faisalabad	1	0	0	1	0
	Total	9	0	1	8	0
Cases Registered under Blasphemy against Minorities From 01.01.2016 To 30.09.2018						
	District	Total Cases	Cancelled	Untraced	Challenged	Under Inv.
2	Lahore	1	0	1	0	0
	Sheikhupura	1	0	0	1	0
	Layyah	1	0	0	1	0
	Total	3	0	1	2	0
Cases Registered Where Person of Other Sects or their Places of Worship Were Targeted from 01.01.2016 to 30.09.2018						
3	Nil	0	0	0	0	0
Cases Registered Where Accused of Blasphemy Cases Were Targeted From 01.01.2016 to 30.09.2018						
4	Nil	0	0	0	0	0
Grand Total		12	0	2	10	0

It is important to note, however, that the numbers reported in the aforementioned tables are misleading. These numbers have been taken from the official data collected by the Central Police Office Punjab which does not provide a true picture. According to reports by civil-society and non-governmental organizations, the actual number of crimes motivated by religious intolerance is much more substantial. For instance, the

²⁶ Ibid.

²⁷ Ibid.

²⁸ BBC, “Asia Bibi: Lawyer flees Pakistan in fear of his life,” November 3, 2018, Available at: <<https://www.bbc.com/news/world-asia-46082324>>.

²⁹ BBC, “Asia Bibi Blasphemy Case: Husband pleads for asylum”, November 3, 2018, Available at: <<https://www.bbc.com/news/world-asia-46085577>>.

³⁰ Data collected from Statistical Officer, Central Police Officer, Lahore.

above figures depict that only three cases of blasphemy were registered against members of minorities from 2016 to 2018 in the whole of Punjab (with NO case in 2017),³¹ while only one minority group (Ahmadis) claimed that in the year 2017 two cases of blasphemy (case 1061/17 & 245/17)³² had been registered in Lahore against their members. Similarly the official data notes that only four cases have occurred where minorities or their places of worship have been targeted in 2017, while the report³³ by only one minority group (Ahmadi) claimed that four Ahmadis were murdered in four separate incidents, while two assault attempts to murder were made on Ahmadis due to religious intolerance in 2017.

There are several reasons for this disconnect between the actual numbers and the reported numbers. Firstly, the crimes reported are often not classified as hate crimes but instead as general crimes. For instance, if a member of a minority religious community is assaulted due to religious intolerance, that crime is classified as a general assault, and not as a hate crime. According to Ahmadis (a religious minority), 260 Ahmadis have been murdered and 379 assaulted for their faith since 1984 in Pakistan without these crimes being classified as ‘crimes motivated by religious intolerance’ in police records. Secondly, for small crimes like assault without grievous harm, the victims of the crime motivated by religious intolerance are unwilling to come forward to seek redress against the perpetrators. This is in large part due to the lack of faith in the criminal justice system. As a result, many of the religion-motivated crimes remain unreported and unprosecuted. Thirdly, there have been many reported instances in which the government officials have failed to intervene in favour of the victim. There have been cases in which despite the victim making a claim to a police official, the official report goes unfiled. According to the Pakistan International Religious Freedom Report 2017, civil-society groups have expressed concern “that authorities often failed to intervene in instances of societal violence against religious minorities, and police failed to arrest perpetrators of such abuses.”³⁴

Just as a quick reference, data from the fact sheet of ‘Violence Towards Religious Communities in Pakistan’ by the United States Commission on International Religious Freedom for the year 2013-14 is shared below.³⁵

Table 2: Statistics on Targeted Violence against Religious Communities in Pakistan

July 2013 – June 2014					
OVERALL ATTACKS		CASUALTIES			
Number of Attacks		Numbers Killed		Numbers Injured	
Shi'a	54	Shi'a	222	Shi'a	289
Christians	22	Christians	128	Christians	185
Ahmadis	10	Ahmadis	10	Ahmadis	1
Sufis	7	Sufis	22	Sufis	59
Hindus	4	Hindus	0	Hindus	1
Sikhs	3	Sikhs	2	Sikhs	0
Other Groups	20	Other Groups	46	Other Groups	238
Total	122	Total	430	Total	773

³¹ Data collected from Statistical Officer, Central Police Officer, Lahore.

³² Daniel Mark, “A Report on Persecution of Ahmadis in Pakistan; During the Year 2017” (Washington, D.C: USCIRF, 2018).

³³ Ibid.

³⁴ Bureau of Democracy, Human Rights, and Labor, United States Department of State, “Pakistan: International Religious Freedom Report,” (Washington, 2017), Available at: <<https://www.state.gov/documents/organization/281276.pdf>>.

³⁵ UNSIRF, “Fact Sheet Pakistan: Violence Towards Religious Communities in Pakistan”, August 2014, <<https://www.uscirf.gov/sites/default/files/Pakistan%20Factsheet.pdf>>.

Table 3: Examples of Types/Methods of Attacks

Targeted bombings		Targeted Shootings		Rapes	
Shi'a	11	Shi'a	29	Shi'a	0
Christians	1	Christians	5	Christians	3
Ahmadis	0	Ahmadis	4	Ahmadis	0
Sufis	3	Sufis	3	Sufis	0
Hindus	0	Hindus	0	Hindus	0
Sikhs	0	Sikhs	1	Sikhs	0
Other Groups	4	Other Groups	6	Other Groups	0
Total	19	Total	48	Total	3

It is evident that the number of incidents reported by any independent private agency is far more than those compiled and updated by official police records in Punjab.

B. Ineffectiveness of the Criminal Justice System of Pakistan

The ineffectiveness of the criminal justice system of Pakistan is not limited to crimes motivated by religious intolerance but transcends across all crimes. However, in the case of crimes motivated by religious intolerance, the situation becomes even more glaring. Factors such as a weak judicial system, lack of effective prosecution services, lack of capacity of law enforcement agencies, such as the police force, and the lack of an effective witness protection programme, all contribute towards this ineffectiveness.

C. Weak Judicial System

In addition to a weak legal framework discussed in section II of this essay, Pakistan also suffers from a weak judicial system. The country's judicial system has been for several years marred by excessive delays. The judiciary in Pakistan is severely overworked as the number of judges has not increased with the increasing population. Various Law Commissions established from time to time for reforming criminal justice system have unanimously pointed towards this issue. According to a Supreme Court report, there is one judge for every 42,857 persons which does not match international standards by any means.³⁶ With 90% of the total litigation in subordinate courts, these courts are confronted with problems of insufficient courtrooms and office equipment and shortages of judicial officers and support staff.³⁷ According to civil-society organizations, "lower courts often failed to adhere to basic evidentiary standards in blasphemy cases."³⁸ The official crime statistics reflect that all nine cases registered for attack on religious minorities or their places of worship are under-trial to-date. Not a single case has been decided in the court of law. Similarly, out of three cases of blasphemy two are still being tried while one has been declared 'untraced'. The recent blasphemy case that got worldwide publicity (Asia Bibi) was decided after nine years and the accused was declared not guilty. The accused remained in prison for 9 years despite being innocent.

D. Lack of Effective Prosecution Services

The District Public Prosecutor is the head of district prosecution and all work related to different courts is distributed by him/her among prosecutors in a district.³⁹ A public prosecutor has to guide the police in investigations, collection of evidence and prosecute offenders in courts of law. However, the country also suffers from an ineffective prosecution services system and there is a significant gap of collaboration between the prosecutor and the police. According to the Supreme Court of Pakistan, more than 65% criminal cases do not end up in conviction in the province of Punjab alone.⁴⁰ This is the result of weak and defective investigation and deficient prosecution. It was further observed that no consistent Standard Operating Procedures (SOPs) exist for cooperation between the police and prosecution during the investigation stage.

³⁶ Dr Faqir Hussain, "Judicial System of Pakistan" (Islamabad: Federal Judicial Academy, May 2015). Available at <http://www.supremecourt.gov.pk/web/user_files/File/thejudicialsystemofPakistan.pdf>.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Punjab Laws, "Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act 2006", Available at: <<http://punjablaws.gov.pk/laws/483.html>>.

⁴⁰ Supreme Court of Pakistan, "Civil Petition No. 1282 of 2014", Available at: <<http://www.supremecourt.gov.pk/web/page.asp?id=2022>>.

E. Lack of Capacity of Law Enforcement Agencies

The lack of capacity issues of the law enforcement agencies such as the police force is also a major impediment for an effective response toward the crimes committed. According to the US Department of State (USDoS), there is a 'weak criminal justice system' in Pakistan, but the effectiveness of the police varies by district, ranging from 'good to ineffective'.⁴¹ The Pakistan Institute of Legislative Development And Transparency (PILDAT) observes that Pakistani police lack operational capacity and professionalism.⁴² Most of the officers conducting investigations are not abreast with modern techniques of evidence collection and preservation. Low conviction rates reflect poor investigation of cases by police and highlight their capacity and training issues. Additionally, SOPs and even rules are not followed during investigation, thus leaving legal lacunas in cases. For instance, according to the Criminal Procedure Code, the blasphemy complaints under section 295-C of the PPC should not be investigated by an officer below the rank of Superintendent of Police. However, in practice this provision was rarely implemented.⁴³

F. Lack of Adequate Witness Protection

The Pakistan criminal justice system also lacks an adequate witness protection programme, which is a serious concern for the effective implementation of the rule of law. Witnesses who withdraw their statements or fail to appear before courts are very common in the criminal justice system of Pakistan. While a number of factors can account for this, the absence of protection available to witnesses greatly exacerbates the issue. In absence of an effective witness protection programme, people fear to testify against hardened criminals.

V. RECOMMENDATIONS

A. Response to Crimes Motivated by Intolerance

Considering that religious intolerance is so deep rooted in the country, it is safe to conclude that there is no quick and easy fix to the problem. However, several steps can and should be taken to improve the situation. First, the government needs to align its national laws with international conventions which promote tolerance and religious freedom. The existing laws are clearly discriminatory in nature and do not offer an effective framework for the protection of religious minorities. Pakistan as a signatory to the Universal Declaration of Human Rights should ensure that its domestic laws uphold the spirit of the declaration and all citizens of the country receive equal protection and right under the law.

The government should take steps to minimize the societal pressures. This would require collaboration among various departments of the government. For instance, the Ministry of Education should ensure that religious hate is not being taught at the education centres in the country and instead religious tolerance is promoted through various academic curriculums. The law-enforcement agencies need to play a pro-active role against mobs and protesters (such as those who took to the street in the aftermath of the Asia Bibi acquittal), as they pose a major threat to peace and security of not only religious minorities but to the entire Pakistani society.

The Pakistani government should ensure that there is a reliable database for crimes motivated by intolerance and discrimination. As the aforementioned discussion has shown, the numbers reported by the official authorities are misleading due to a number of factors. Therefore, effective steps need to be taken to ensure that there is a reliable database starting from providing an environment in which the victims feel safe to report their crimes to the law enforcement agencies. According to the European Union Agency for Fundamental Rights, "Victims of crimes motivated by bias and prejudice are often unable or unwilling to seek redress against perpetrators. As a result, many of these crimes remain unreported, unprosecuted and, therefore, invisible."⁴⁴ Pakistan should combat hate crimes and address the fundamental rights violations by

⁴¹ Bureau of Democracy, Human Rights, and Labor, United States Department of State, "Pakistan: International Religious Freedom Report," (Washington, 2016), Available at: <<https://www.state.gov/documents/organization/281276.pdf>>. p. 11.

⁴² Muhammad Ali Nekokara, "Policy Brief: Policy Recommendations for Reforms in Police," (Islamabad: PILDAT, January 2016), p. 7.

⁴³ Prof. Sir Nigel Rodley, (President), Prof. Robert Goldma, (Vice President), et. al., "On Trial: The Implementation of Pakistan's Blasphemy Laws," (Geneva, Switzerland: International Commission of Jurists, November 2015). Available at: <<http://www.refworld.org/pdfid/565da4824.pdf>>.

⁴⁴ Michael O'Flaherty, "Ensuring justice for hate crime victims: professional perspectives," (Luxembourg: European Union Agency for Fundamental Rights, 2016) Available at <<http://fra.europa.eu/en/publication/2016/ensuring-justice-hate-crime>>

making the crime more visible and holding perpetrators accountable.

As discussed in the previous section, a weak judicial system, lack of effective prosecution services, lack of capacity of law enforcement agencies and the lack of an effective witness protection programme stand in the way of victims achieving justice. These weaknesses in the criminal justice system need to be immediately addressed. The current Law Minister has recently announced amendments in civil law to speed the pace of pending cases to improve the efficiency of judicial system.⁴⁵ Such amendments should be welcomed and in addition, effective case-management system should also be implemented.

The government should dedicate resources for the capacity-building of prosecution services and the law enforcement agencies. Both the prosecutors and the police force should be extensively trained in their relevant fields. Moreover, better and modern techniques of evidence collection and preservation should be introduced to ensure that more reliable investigative material is collected. Greater collaboration between the prosecution services and the police should also be fostered to ensure that the victims are able to pursue their cases.

Measures need to be introduced for the Witness Protection Programme. The first legislation of its kind in Pakistan was the *Sindh Witness Protection Act 2013*. This law allows witnesses to establish new identities, record witnesses testimony through video-link facilities without attending court in person, concealing their identities and provision of financial assistance to legal heirs in case a witness gets killed during the process.⁴⁶ Such legislation should be enacted in other provinces as well. The government should ensure that such programmes are properly implemented at the ground level with proper budget allocations and support staff.

VI. CONCLUSION

Violent crimes resulting from religious intolerance and discrimination are a common occurrence in Pakistan. The ineffectiveness of Pakistan's criminal justice system has serious repercussions for religious minorities. A weak legal framework coupled with societal pressures and lack of adequate law enforcement measures have all contributed towards such crimes. While religious persecution is severely deep rooted in the social fabric of the country, the situation can be improved by introducing special measures dedicated to target each of the aforementioned factors. The country's laws must be brought in compliance with Pakistan's obligations under the signed and ratified international instruments on human rights. Focus should be laid on capacity-building of law enforcement agencies and prosecution services. Police training facilities should be immediately tasked to revise investigation modules to bring those in conformity with modern techniques of data analysis, collection of forensic evidence from crime scenes and preservation of evidence. These steps are imperative to build the confidence of the public, especially minorities, in the CJS so that they report their complaints in case of any transgression against them.

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⁴⁵ The News, "Judicial Reforms to be introduced," September 14, 2018, Available at: <<https://www.thenews.com.pk/latest/368551-judicial-reforms-to-be-introduced-for-speedy-justice-law-minister>>.

⁴⁶ Provincial Assemblé of Sindh, "Witness Protection Act 2013." Available at: <<http://www.pas.gov.pk/uploads/acts/Sindh%20Act%20No.LI%20of%202013.pdf>>.

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