

**THE APPLICATION OF STRICT LIABILITY IN PAKISTAN'S
BLASPHEMY LAW
(A COMPARATIVE STUDY)**



Submitted by
WAHEED AHMAD
Reg.No:74-FSL/LLMSL/F21

Supervisor
SIR Dr-HABIB-UL-RAHMAN

FACULTY OF SHARIAH AND LAW
DEPARTMENT SHARIAH AND LAW INTERNATIONAL ISLAMIC UNIVERSITY ISLAMABAD
PAKISTAN

THE APPLICATION OF STRICT LIABILITY IN PAKISTAN’S BLASPHEMY LAW

(A COMPARATIVE STUDY)

1. Thesis statement	5
2. introduction	5
3. Research Questions	7
4. Objectives of the Research	7
5. Research Methodology	8
6. Literature review	8
Chapter No. 1	13
The Concept of Strict Liability in Pakistani Law	13
1.1 Introduction	13
1.2 Meaning and Definition of Mensrea and Actus Rea in Pakistani Law	14
1.2.1 The Significance of <i>Mens Rea</i>	14
1.2.2 Actus Rea	16
1.3 Essential Elements of strict liability in Pakistani law	18
1.4 Strict liability offences in Pakistan blasphemy law	20
1.4.1 Historical Context of Blasphemy Laws in Pakistan	20
1.4.2 The Intent Requirement Pre-Zia Era	22
1.4.5 Zia-ul-Haq Regime Amendments	23

1.4.6 Implications of Absence of Intent Requirement	27
1.4.7 The Controversial Application of Strict Liability in Blasphemy Cases:	32
Conclusion	34
Chapter No. 2	35
The Concept of Strict Liability in Islamic Law	35
2.1 Introduction	35
2.2 Meaning and Definition of Mens Rea and Actus Rea in Islamic Law	36
2.3 Essential Elements of Strict Liability in Islamic Law	39
2.4 Shariah Take on Strict Liability in Blasphemy Cases	41
2.4.1 Quran on Blasphemy Laws	42
2.4.2 Principles of Islamic Jurisprudence	46
2.5 Strict Liability in the Islamic Law of Tort	48
2.6 Comparative Analysis of Blasphemy Laws in Other Muslim Majority Jurisdictions	50
Conclusion	51
Chapter No. 3	53
The Study of Pakistan Apex Court Judgments about Strict Liability in the Light of Shariah	53
3.1 Introduction	53
3.2 Ismail Qureshi vs the State	53
3.3 Asia Masih vs the State	56
3.4 Shabazz Masih v. State, 2007 MLD 1040 (Lahore)	58

3.5 Critical Analysis of the Case Studies	59
3.6 Exceptions	61
Conclusion	62
Chapter No. 4	64
Recommendations	64
Bibliography	67

THE APPLICATION OF STRICT LIABILITY IN PAKISTAN’S

BLASPHEMY LAW

(A COMPARATIVE STUDY)

1. Thesis Statement

The recent interpretation and existing application regarding the blasphemy laws in Pakistan created ambiguity and there is considerable debate on it. So, therefore, it is imperative to take close analysis to address this concern to guarantee a fair and just legal result in the future.

2. Introduction

The blasphemy laws in Pakistan have a complex history. These laws are based on strict liability which doesn't take mens rea into account which is debatable in the light of Shariah and Pakistani law. Intention can be taken into account in every criminal matter under Shariah(Shari'ah). According to Ibn Manẓūr (711 AH), Maqāsid is the plural version of *maqṣad*, which means intention. The concept of intention originated in the Glorious Al-Qur'ān. According to Al-Ṭabarī, intentions are a vital part of the Islamic faith and a difficult issue in Sharia law. The individual will face divine wrath as a result of willfully committing a corrupt act that is prohibited by Islamic law. Nonetheless, God will pardon a person who unintentionally commits such a horrific deed. According to Al-Ṭabarī, the intention of the individual carrying out the actions plays an important role in distinguishing between the two. Allah states in the Qur'ān , that He does not

hold you liable for unintentional oaths, but He does hold you accountable for the motives and activities of your souls. Allah's defining traits are forgiveness and forbearance. The objective is also based on a Hadith of the Prophet. Abu Hafs Umar Ibn Al-Khattab stated that he had personally heard the words of Allah's prophet. *إِنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ، وَإِنَّمَا لِكُلِّ امْرِئٍ مَا نَوَى، فَمَنْ كَانَتْ هِجْرَتُهُ إِلَى اللَّهِ وَرَسُولِهِ فَهِيَ هِجْرَتُهُ إِلَى اللَّهِ وَرَسُولِهِ، وَمَنْ كَانَتْ هِجْرَتُهُ لِدُنْيَا يُصِيبُهَا أَوْ امْرَأَةٍ يَنْكِحُهَا فَهِيَ هِجْرَتُهُ إِلَى مَا هَاجَرَ إِلَيْهِ*.

(Innamal-a'mālu bin-niyyāt, wa innama likulli imri'in mā nawā. Faman kānat hijratuhū ilallāhi wa Rasūlihī fahijratuhū ilallāhi wa Rasūlihī, wa man kānat hijratuhū lidunyā yuṣībuhā aw imra'atin yankihuhā fahijratuhū ilā mā hājara ilaih.) *"The reward of deeds depends upon the intentions and every person will receive the rewards according to what he has intended. So, whoever emigrates for the sake of Allah and his Messenger, his emigration will be (counted as being) for Allah and his Messenger. Whoever emigrates for worldly benefits or for a woman to marry, his emigration will be (counted as being) for what he emigrated for"*¹ (collected by Al-Bukhari and Muslim). The Ḥadīth is sound, authentic, and approved by Muslim traditional scholars. Intention can be taken into account in every criminal matter under Shari'ah only 3 matters come out of intention عَنْ أَبِي هُرَيْرَةَ، قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: ثَلَاثٌ جِدُّهُنَّ جِدٌّ، وَهَزْلُهُنَّ جِدٌّ: النِّكَاحُ، (An Abī Hurayrah, qāl: Qāla Rasūlullāhi ﷺ: Thalāthun jiddahunna jiddun, wa hazlahunna jiddun: an-nikāḥu, waṭ-ṭalāqu, war-raj'atu.) *"It was narrated from Abu Hurairah that: the Messenger of Allah (ﷺ) said: "There are three matters in which seriousness is serious and joking is serious: marriage, divorce and taking back (one's wife)"*², rest all are dealt as a crime if the criminal intention is found, also criminal justice system is based on men's rea and actus rea any act done without men's rea is not a crime strict liability is imposed only when the intention is

¹Muhammad ibn Isma'il al-Bukhari, Sahih al-Bukhari, hadith no. 1 (Beirut: Dar Tawq al-Najah, 1422 AH).

. Muslim ibn al-Hajjaj, Sahih Muslim, hadith no. 1907 (Riyadh: Darussalam, 2007).

² Abu Dawud Sulayman ibn al-Ash'ath, Sunan Abi Dawud, hadith no. 2194 (Riyadh: Darussalam, 2008).

known for example a person found guilty of murder qatli amad if proved that his intention was not involved, he cannot be convicted for Qatl 'Amd but for Qatl Shay' Bi-‘Amd or Qatl Khata'.”

3. Research Questions

- 1) What are strict liability offences in Pakistan blasphemy law?
- 2) How does the concept of strict liability differ from Pakistani law and what is its meaning in Islamic law?
- 3) What could be the legal consequences of implementing strict liability?
- 4) What modification is required to be made in this regard?
- 5) What is the approach of the superior judiciary on strict liability in Pakistan Blasphemy law?

4. Objectives of the Research

- 1) To define strict liability offences in Pakistan blasphemy law.
- 2) To explain the concept of strict liability in Islam and its difference from Pakistani law.
- 3) To elaborate on the legal consequences of the implantation of strict liability.
- 4) To explain the modifications which are required in this regard.
- 5) To discuss the approach of the superior judiciary on strict liability in Pakistan blasphemy law.

5. Research Methodology

To complete the research the following methodology shall be adopted.

- a) The research is descriptive and comparative?
- b) The primary sources of Islamic law will be consulted.
- c) The secondary sources of Islamic law shall also be consulted if needed.
- d) Pakistani laws regarding, strict liability shall be visited.
- e) For the sake of comparison every point will be compared separately under both laws i.e. Shariah and Pakistani laws.
- f) To collect scattered information books, articles, magazines, thesaurus, research papers and internet surfing shall be utilised.

6. Literature review

Muslim Christian Attitudes to the Laws of Blasphemy in Pakistan (1982-2009) An Analytical Survey Shakoor Alam Mphil Comparative Religion Usul al-Din iiui 2011

This English-written thesis has covered the rubric of the blasphemy of prophet (pbuh) posited by Christian but he has not discussed anything in his thesis regarding the strict liability in Pakistan's blasphemy law

1) Freedom of expression and derogatory remarks against sacred personality a case study of Pakistan in the perspective of Shari'ah and Pakistan's law Muhammad Yasir MS Islamic & jurisprudence faculty of Shari'ah and law iiui 2013

In this thesis the researcher has discussed the freedom of expression about making fun of hagiographic personalities and its limitation in Pakistani society, he has also analysed Pakistan's blasphemy laws however it has not lemmatized a specific area or a country. He has also

discussed the irony of Islamic injunction along with the sarcasm of the hagiographic personalities. However, he has not discussed anything regarding the strict liability of Pakistan's blasphemy law.

2) “AS GOOD AS DEAD” THE IMPACT OF THE BLASPHEMY LAWS IN PAKISTAN

This article has been published on amnesty. In this article the author has discussed the evolution, the broad scope of allegations and international law and standards regarding Pakistan blasphemy law, in this article the author has also discussed that Pakistan blasphemy law is based on the doctrine of strict liability which doesn't take the mens rea into account, he has also discussed the opinion of a religious scholar Allama Tahir Ashrafi, a member of the Council of Islamic Ideology, advised Amnesty International that intention is a vital aspect in determining whether an act of blasphemy is an infraction. The absence of intention in a statute that is already vaguely drafted, culminating in an automatic death sentence, makes its application more vulnerable to potential state violations and misuse by non-state actors. The author has not compared strict liability with Islamic law.

3) Punishment of Blasphemy in Criminal Justice System of Pakistan and International Human Rights Law: A Comparative Analysis Dr. Asad Ullah

In this article the Author has discussed the comparison of IHRL and Pakistan blasphemy law, he has also discussed the contradiction of Pakistan blasphemy law with the IHRL, and he has defined the Right to freedom of expression from an Islamic point of view by following the primary and secondary sources of Shari'ah. The Author has also discussed that the Pakistan

blasphemy law has been criticized by different jurists, legal experts and politicians due to the application of strict liability, but there is no comparison of strict liability with Shari'ah.

4) Blasphemy laws and mental illness in Pakistan

By Muzaffar Husain

In this article the Author has discussed the background of blasphemy legislation in Pakistan, the author has also discussed that many mentally ill people have been prosecuted in blasphemy cases, in this article the author has also mentioned the possible legal safeguards for mentally ill people prosecuted in blasphemy law of Pakistan. The author also pointed out that certain offences, such as Section 295-C, are categorized as strict liability offences, which require no proof of intent. But there is no comparison of strict liability with Shariah.

5) Pakistan blasphemy law: A concern for McCarthyism

Mariam Haider syed

In this article the Author has specifically discussed the lack of Men's rea in blasphemy law, The Author has also discussed that intention plays an important role in a criminal case, the author has also discussed the case law “Punjab religious book vs state” in which the court has taken the intention of accused into account the court held that the accused would only be convicted if there were a conscious and a spiteful intention, the importance attached to the Men's rea requirement, in this case, is in stark contrast to the current blasphemy law. This doesn't take the intention into

account and makes it a strict liability offence, but there is no comparison of strict liability with Shari'ah.

6) No Space for Democracy and Rule of Law: Blasphemy Laws in Pakistan

Article published on the JURIST website

In this article the author has discussed the case of Asia Bibi in detail, the author has also discussed the Pakistan blasphemy law sections and its punishment, Furthermore, he claims that Pakistan's present blasphemy law violates Article 25 of the Pakistani constitution. Article 25 states that discrimination is banned, except for legitimate classifications. Blasphemy legislation that is limited to specific religions cannot be regarded as legal classifications. The author also underlines in this article that Pakistan's current blasphemy law does not account for the requirement of Mens rea for the performance of an act, making them strict liability offences. He has also discussed in his article that the construction of these offences reveals the ignorance of common law such as insanity and minority, but there is no comparison with Shari'ah.

7) Dissecting the Asia Bibi Case: A Critical Analysis of Blasphemy Law in Pakistan

Muhammad Sadiq Kakar

This article was published by the Manchester Journal of Transnational Islamic Law & Practice. In this article the Author has discussed the compatibility and non-compatibility of the Asia Bibi case judgment with Shari'ah and international human rights law, the author has also discussed that when the Federal Shari'ah court concluded the judgment on Ismail Qureshi's claim against the government Blasphemy was not established as a strict liability offence by the FSC since

mens rea was not an essential ingredient. But there is no comparison of strict liability with Shari'ah.

**8) Pakistani Blasphemy Law Between Hadd And Siyasa: A Plea For Reappraisal of the
Ismail Qureshi's Case by Muhammad Mushtaq Ahmad**

In this paper the author has examined the blasphemy law from the perspective of Hanafi jurisprudence, he has discussed the punishment of Muslim and non-Muslim blasphemers from the perspective of Hanafi jurisprudence, in this paper, the author has also discussed Pakistan's current blasphemy law not only against the Pakistani law but also against the Islamic law because the intention is the essential element of a crime and this current blasphemy law has not taken it into account thus this law is based on strict liability. However, the author did not compare the strict liability with Shari'ah.

Chapter No. 1

The Concept of Strict Liability in Pakistani Law

1.1 Introduction

This chapter will provide details about the strict liability of the crime and the elements of crime e.g. Actus Rea and mens rea which are important for constituting strict liability of a crime. There is no denying that the Islamic Republic of Pakistan has the strictest "blasphemy laws" in the world—and this isn't only true for nations with a majority of Muslims³. It is important to note that in the Judeo-Christian tradition—and, due to its impact, in most Western legal systems—the term "blasphemy" refers to the act or statement that is disparaging of God. This is before to delving into the complexities of the blasphemy legislation. However, in Pakistan, the "blasphemy law" is usually brought up in reference to offensive remarks made against the Prophet (peace be upon him). Because of this, the word "blasphemy" is usually translated as **Tauhin-i Risalat** in Pakistan, which means “making fun of prophethood.”⁴ A crime and an offence are often separated in criminal law. In Pakistan, however, the two names are considered synonymous. Crimes are grouped into various categories in Anglo-American jurisprudence; however, Pakistan does not follow this technique. Rather, Pakistan categories offences into three types depending on the presence of mens rea, a fundamental aspect that determines the nature of the crime. A crime consists of three key components: *mens rea*, *actus reus*, and concurrence. Nonetheless, with a few exceptions, Pakistani courts only accept the first two criteria, failing to recognise the importance of concurrence. While it is commonly presumed that criminal intent exists in all acts,

³ Temperman, Jeroen. "Blasphemy, Defamation of Religions and Human Rights Law." *Netherlands Quarterly of Human Rights* 26, no. 4 (2008): 517-545.

⁴ Atlavī, Sājid Khān. *Tauḥīn-i Risālat Kā Shar‘ī Ḥukm*. Lahore: Maktabah-i Abū Bakr ‘Abd Allāh, 2012.

the statute may contradict this presumption. The prosecution is responsible for establishing the accused's responsibility, and they must offer credible and accepted evidence. It is critical to keep in mind that an individual is believed innocent until proven guilty.⁵

1.2 Meaning and Definition of Mensrea and Actus Rea in Pakistani Law

In Pakistani legislation, which is based on Shariah law, the main components of a criminal offence are actus rea (wrongful deed) and mens rea (culpable state of mind). The Actus Reus refers to the defendant's physical act or omission, as opposed to the mental part of the conduct. The defendant's mental state or intent at the moment of the action.⁶ For example, in order to hasten his death, employs Strangles' *actus reus*. *Mens rea* is sometimes disregarded in some statutory offences.⁷

1.2.1 The Significance of *Mens Rea*

Mens Rea is the first ingredient of a crime, indicating the mental state that must be developed to conduct a certain offence. A person with criminal intent makes a determined choice to break the law. It also includes the will of individuals who engage in behaviours knowing that they will result in a banned outcome, such as recklessness. *Mens Rea* also covers other states of mind unrelated to intending or foreseeing consequences; knowing or believing that goods are stolen, or dishonesty and fraudulent trading. A more specific understanding of the word would be the criminal intention, which refers to a purpose to commit a crime under the law, given that Mens

⁵ Ibn Munir, Amr. "The Elements of Crime under the Pakistani Legal System: An Overview." *Pakistan Journal of Criminology* 16, no. 2 (2024): 75-86. <https://doi.org/10.62271/pjc.16.2.75.86>.

⁶ Shaikh, Mahmood Ahmed. "Legal Aspects of 'Sense of Capability' (Mens Rea to Actus Reus) as the Main Cause of Crimes." LLM Thesis, University of Karachi, 2015.

⁷ Ibn Munir, Amr. "The Elements of Crime under the Pakistani Legal System: An Overview." *Pakistan Journal of Criminology* 16, no. 2 (2024): 75-86. <https://doi.org/10.62271/pjc.16.2.75.86>.

Rea can exist when an individual acts in good faith and with a clean conscience. *Mens Rea* is not influenced by cause or purpose, thus it differs from intention. It is a psychological disorder that drives a person to participate in criminal behaviour. *Mens Rea* should not be confused with motive as it indicates why someone (X) wishes a particular event to happen. For example, the act of theft necessitates the existence of *Mens Rea*, which implies the deliberate purpose of permanently depriving others of their assets.⁸

Numerous criminologists have stated their views on the importance of *Mens Rea*, one of the two main components of any crime, along with *Actus Reus*. *Mens Rea* describes the careless or intentional conduct that lead to the commission of a crime. The court has determined that, to administer criminal justice the most important criteria or essence of every offence i.e. *Mens Rea* or guilty mind has to be considered. No crime is complete unless the commission of the same is coupled with the necessary ingredient of *Mens Rea* or guilty mind.⁹

In Islamic law, intention is given due importance and has been declared as an essential part of a crime. The Qur'an has identified it as '*amd*' in the offence of murder. In this regard, a tradition has laid down a basic principle that all acts are adjudged by intentions. "Islamic law follows an objective method in contracts as well as in crimes. The inner intention or 'what goes on in the mind of the accused' is difficult to determine. In contracts, it goes by the words used in contracts only. In crimes, it fixes external standards that do or are likely to convey the inner workings of the mind of the offender".¹⁰

⁸ Ibid

⁹ 2014 P Cr. L J 989, 992.

¹⁰ Mahmood Ahmad, Shaikh. "Legal Aspect of Sense of Capability (*Mens Rea* to *Actus Reus*) as the Main Cause." November 2015, 1–20. <https://pr.hec.gov.pk/jspui/handle/123456789/13124>.

1.2.2 Actus Rea

Actus Reus refers to an 'act' done in violation of law. It involves the conduct of an accused person, its circumstances and consequences included in an offence. "The Actus Reus comprises all the elements of the definition of the offence, save those which concern the condition of mind of the accused. Should any element of the Actus Reus not be present, then the offence has not been committed. Where the Actus Reus of a crime includes specific consequences of conduct, it must be shown that those consequences have been caused by the accused". The Actus Reus is the outcome of planning and preparations made by a culprit by using his/her sense of capability for a crime.¹¹ "The Actus Reus itself may be said to consist of the following elements:

1. Conduct:

it is conscious voluntary bodily movement. An act may include, in some cases, an omission (conduct) or failure to act when the law imposes such a duty. The word 'act' denotes a series of acts as well as a single act: the word 'omission' denotes as well a series of omissions as a single omission."¹²

2. The consequences of the act:

The Actus Reus must lead to the prohibited result. Some acts may not have a result, and the act itself constitutes the crime, as in perjury. It is to be noted that it is the conduct and not the result that is the Actus Reus. A dead man with a knife in his back is not the Actus Reus of murder. It is putting the knife in the back thereby causing death which is the Actus Reus.¹³

¹¹ L. B. Curzon. Criminal Law. United Kingdom: The M&E Handbook Series, 1973.
<https://www.ojp.gov/ncjrs/virtual-library/abstracts/criminal-law>.

¹² Ibid

¹³ Ibid

3. Circumstances in which the act takes place:

The circumstances may constitute a "state of affairs" that makes the act of the accused unlawful. The definition of a crime may be formulated in such a way that it can be committed although there is no "act." There is no need for a "willed muscular movement," and it may be enough if a specified "state of affairs" is proved to exist. These offences are sometimes called "status" or "situation" offences. The presence of the accused is an act, while the existence of the unlawful assembly is the state of affairs. Sometimes a particular state of mind on the part of the victim may be required. If a man is prosecuted for the offence of Zina bill-Jabar or rape not liable to Hadd, it must be shown that the woman did not consent to the act of sexual intercourse.¹⁴

4. The Actus Reus must be proved:

It must be shown by the prosecution that an Actus Reus does exist. It is important to note that Mens Rea may exist without an Actus Reus, but if there is no Actus Reus there can be no crime.¹⁵

5. The Act Must Be Voluntary:

The act must be voluntary in the sense that it must be a conscious exercise of the will. The rationale for this rule is that an involuntary act will not be deterred by punishment.¹⁶

6. The act should be causative:

If the definition of an Actus Reus requires the occurrence of certain consequences it is necessary to prove that it was the conduct of the accused that caused those consequences to occur. In Qatl-i-'amd or Qatl-i-khata, it is necessary to prove that the act caused death.

¹⁴ Ibid

¹⁵ Khan Niaze, Imran Ahsan. General Principles of Criminal Law: (Islamic and Western). 2010.

¹⁶ Ibid

If the death came about through some other cause then the crime is not committed. Causation is called Sababiyah in Arabic.”¹⁷

1.3 Essential Elements of strict liability in Pakistani law

The essence of strict responsibility is that the inhabitants follow the laws. Universal laws apply to all members of a community. The notion is based on a well-known legal adage that states, Lack of knowledge about the law is not a valid justification. General laws cover a wide range of offences, including rape, murder, and traffic violations. Special legislation is enacted with the stated goal of addressing a specific issue, community, or geographic location. Although their overall responsibility is not exempt, all individuals subject to special legislation must comply with it. (Shaikh 2015). It is not necessary to understand all of the elements of a strict liability offence. The importance of a mental condition is often not ignored for all components of the offence, but just for certain ones.¹⁸ In Pakistan, the Supreme Court has assigned the accused a specific role, thus the notion of "*falsus in uno falsus in omnibus*," which states that if a person lies about one thing, they are likely to lie about everything, does not apply.¹⁹

The major significance of an offence's being a strict liability offence is that certain defences such as mistake of fact are not available. Strict liability offences are sometimes referred to as absolute prohibition offences, but this term is misleading if not incorrect. Absolute prohibition implies that Mens Rea need not be proved for all these elements. If an offence has been defined in such a way that Mens Rea is not required for even a single element of the Actus Reus, the offence is one

¹⁷ Ibid

¹⁸ (2014 SCMR 749), 785

¹⁹ (NLR 2015 Criminal 135), 145-149

of strict liability. The single element that does not require Mens Rea is one of great significance.²⁰

Every criminal applies a method to commit a crime having attained a kind of ‘sense of capability’ which in either way causes harm to other people. Most of the criminal acts disturb a social life therefore these are dealt with by public officers. Strict liability offences, also known as public welfare offences, are generally regulatory offences that are part of a regulatory scheme. They generally involve a relatively low penalty and are not regarded by the community as involving significant moral impropriety. The definition of a strict liability offence usually does not include the word knowingly Where the word knowingly is used Mens Rea as to all the elements of the Actus Reus is required. Several arguments are advanced for and against strict liability. The arguments given in favour are given below:

- a) The primary function of courts is the prevention of crime and strict liability deals with this most effectively. Criminologists like Barbara Wootton have strongly supported this reason.
- b) Without it guilty people would escape punishment. The argument assumes that it is possible to deal with cases without deciding whether or not one had Mens Rea, and whether or not he was negligent.
- c) It is necessary to impose strict liability in the public interest. The greater the degree of social danger, the more likely the imposition of strict liability. Inflation, drugs, road accidents and pollution are constantly brought to our attention as pressing evils, and in

²⁰ Niazee, Khan Imran Ahsan. General Principles of Criminal Law: (Islamic and Western). 2010.

each of these cases strict liability is imposed in the interest of the public and protection of society”.²¹

1.4 Strict liability offences in Pakistan blasphemy law

Pakistan's blasphemy laws which have been a matter of dispute domestically and globally also have raised renown in international communities. These laws are very strict and even have the death penalty as a punishment for offences that are related to insulting Islam, the Prophet Muhammad, or the Quran. As far as Pakistan's blasphemy law is concerned one of the main aspects of it is the substitutions of incurable liability that should be known to all concerned with the legal system of the country.²²

The concept of strict liability means an obligation imposed on a party without the requirement to prove its intent, negligence, or fault. In the context of blasphemy laws in Pakistan, strict liability means that one can be subjected to criminal prosecution for blasphemous actions or words, regardless of whether the actions were committed deliberately or without the defendant's knowledge of the illegality of the conduct.²³

1.4.1 Historical Context of Blasphemy Laws in Pakistan

The pamphlet *Rangila Rasul* was produced in 1924 by Raj Pal, a Hindu printer in Lahore²⁴. The content was exceedingly disagreeable, and the title was even more offensive. Raj Pal was charged with breach of Section 153A of the Indian Penal Code (IPC) before the court of

²¹ Ibid

²² Ahmad, Muhammad Mushtaq. "Pakistani Blasphemy Law between Ḥadd and Siyāsah." *Islamic Studies* 57, no. 1 (2018): 9–44. <https://www.jstor.org/stable/26617665>.

²³ Ibid

²⁴ Sājīd A'vān. *Taḥaffuẓ-i Nāmoos-i Risālat Aur Gustākh-i Rasūl Kī Sazā*. Multan: 'Ālamī Majlis-i Taḥaffuẓ-i Khatm-i Nubuvvat, 1996.

Magistrate First Class, Mr. C. H. Disney. Raj Pal was sentenced to a six-month prison term and a fine of Rs. 1000. Raj Pal attempted to amend this judgment in some way. He proceeded to the Court of Sessions. The punishment was decreased by Judge Col. F. B. Nicolas; however, the judgment remained unchanged. The Single Bench of the Lahore High Court heard Raj Pal's argument against this verdict. He was acquitted by the court. Justice Kunwar Dilip Singh Masih penned that Section 153A was not designed to restrict reasoning against a deceased religious leader, *“regardless of the scurrilous and unsavoury nature of such an attack.”* However, in a different case that same year, the Court's Division Bench, which was consisting of Justice Dilip and Justice Broadway (who was accountable for the Bench), determined that Section 153A embraced books that would encourage religious hate and violence amongst groups²⁵.

However, the British Government was compelled to adopt Section 295A into the Indian Penal Code in 1927 as a result of the aforementioned occurrences²⁶. This clause says that an individual will be sentenced to two years in jail if they *“insults or attempts to insult the religion or the religious beliefs”* of a certain group of individuals by *“with deliberate and malicious intention of outraging the religious feelings”* of that group. The offense did not fall under the strict responsibility standard once more, as the primary component of the crime was mens rea.

Sections 295 and 298 of the Indian Penal Code, which were in effect from 1860 and 1927, specifically state that the offense must be committed *“with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion,”* in section 295; *“with the deliberate and malicious intention of outraging the religious feelings of any class of*

²⁵ Ghāzī ‘Ilām al-Dīn Shāhīd. Lahore: Jang Publishers, 1988.

²⁶ Criminal Law Amendment Act, XXV of 1927.

His Majesty's subjects” in Section 295-A; and “*with the deliberate intention of wounding the religious feelings of any person*” in Section 298”.²⁷

It suggests that someone may have wanted to cause emotional harm to another person by diverting their attention towards them and using derogatory remarks about their religious convictions. This would not be the case, though, if it was clear that the person used the words purely to make their point and did not purposefully take advantage of the circumstances to do so—even if they were aware that they would probably offend people at the time²⁸.

1.4.2 The Intent Requirement Pre-Zia Era

During the key case of *Punjab Religious Book Society, Lahore v. State*, the purpose that is necessary in Section 295-A is explored in a great deal of detail²⁹. The Book Society asserted that reading a book that they had published had content that was “*designed to offend the religious feelings of Muslims in Pakistan,*” and that doing so was in violation of section 295-A of the Pakistan Penal Code. Consequently, the Book Society made a request to the Home Department to reverse a decision that had been made. The judge made the following statement: “*As was but to be expected the object of the author, who was a Christian, was to show that Christianity was a true religion and Islam was not. The author did not deny that his object was to show the superiority of Christianity over Islam, but he has said at more places than one that he had no intention of injuring the feelings of Muslims whom at places he called his brethren*”. Mizan-ul-

²⁷ *ibid*

²⁸ Nizami, Muhammad Mazhar Hassan. *The Pakistan Penal Code with Commentary*. Year of publication.

²⁹ *The Punjab Religious Book Society v. State*, 1960 PLD 1.

Haq was the name of the book that compared different religions, specifically Christianity and Islam.³⁰

Based on its interpretation of the phrase “*deliberate and malicious intent*” that is required in Section 295-A, the court came to the conclusion that the content that was purportedly offensive did not fall under the purview of that piece of legislation. When someone does something that “*is extremely offensive and has no reliable source to justify its acceptance as correct*” or indicates that the “*argument in favor of one religion has sunk to the level of abuse to another,*” it is likely that they were intentionally and maliciously attempting to offend people's religious sensibilities. This is because such actions are considered to be extremely offensive.³¹

1.4.5 Zia-ul-Haq Regime Amendments

During the month of July in 1977, General Muhammad Zia-ul-Haq, who was serving as the Chief of the Army Staff at the time, imposed martial law in Pakistan and threw out the Constitution. For the sake of justifying his continued rule, he proposed the concept of "Islamising" both the business and the laws. As a result, he made a number of significant adjustments to the way things were functioning.

In the year 1980, General Zia included Section 298A in the Penal Code, which made it unlawful to use insulting language against holy persons.³² Following the escalation of tensions between the Shi'a and Sunni sects, this provision was included in the document. In addition to making it unlawful to speak ill of the Prophet's (peace be upon him) wives, his family, or his rightly led

³⁰ *ibid*

³¹ *ibid*

³² Pakistan Penal Code (Second Amendment) Ordinance XLIV of 1980.

Successors or Companions, it also imposed a penalty of three years in prison, a fine, or both for those who did so. The terms "intention," "knowledge," and "malice" are not utilized in this section, which is a key point to keep in mind. For another way of putting it, this is a crime that falls under the category of strict responsibility, which indicates that there is no requirement to prove mens rea. Clause 295-B was adopted in 1982, and it makes it a criminal offense to contaminate a copy of the Holy Qur'an, among other things³³. If you continue to act in this manner, you will spend the rest of your life behind bars. The amendments that were made in 1984 (298-B/-C) only pertain to Ahmadis and specify the penalties that violators could face, which could be up to three years in prison. At long last, in 1986, the most contentious clause, 295-C, was included in the document. It was said that it was a criminal offense to make disrespectful remarks about the Holy Prophet, and that doing so could result in a fine, a prison sentence, or even death. It is essential to keep in mind that the offenses committed under Sections 298B and 298C are considered to be crimes of strict responsibility. This means that you do not need to provide evidence by demonstrating that you had the appropriate purpose. It is essential to keep in mind that bail can only be granted for crimes that fall under section 298-A.

The establishment of a distinct judicial system that includes two religious courts at the highest level, namely the Federal Shariat Court (FSC) and the Shari'ah Appellate Bench (SAB) of the Supreme Court (SC), was one of the most significant moves that was taken in the direction of making the legal system more Islamic. Both of these organizations, by bringing together their respective groupings, reinforced the formal role of Islamic religious experts. In the long run, the

³³ Anti-Islamic Activities of Qadiani Group, Lahori Group and Ahmadis (Prohibition and Punishment) Ordinance XX of 1984.

establishment of Shariat courts will ultimately result in confusion, as well as a turf war and competition between them and courts that do not adhere to Shariat³⁴.

Because of the petitions that were submitted to the Supreme Court by Muhammad Ismail Qureshi, Section 295 C was included in the judicial code. Through the submission of a Shariat Petition in 1984, Muhammad Ismail Qureshi posed a challenge to the regulations that were included in Section 295A of the FSC³⁵. In his statement, he stated that these regulations violated Islamic law. The petitioner's primary argument was that Section 295A stipulates that an individual who blasphemously talks against the Prophet (peace be on him) shall be sentenced to jail, although Islamic law stipulates that this is a very serious offense that should be punished with death³⁶. A decision has not yet been made regarding the matter of Ismail Qureshi v. General Muhammad Zia-ul-Haq and Others, which was heard by the entire bench of the Federal Supreme Court. However, in order to prevent the court from making a decision, the law was altered by Parliament, which included the addition of Section 295C to the PPC. A new law was drafted by the petitioner, Ismail Qureshi, and presented to the Parliament by Apa Nisar Fatima, who is a member of the National Assembly. In the meantime, the petitioner presented the bill to the Parliament. Under the proposed legislation, the only sanction for the offender would be the death penalty. On the other hand, Iqbal Ahmad Khan, who is designated as the minister for religious matters, proposed that the court should have the authority to select between the death penalty and

³⁴ Cheema, M. H. "Beyond Beliefs: Deconstructing the Dominant Narratives of the Islamization of Pakistan's Laws." *American Journal of Comparative Law* 60 (2012).

³⁵ Shariat Petition No. 1/L/84 of 1984.

³⁶ Qureshi. *Qānūn-i Tauḥīd-i Risālat*.

life in prison. This concept was supported by the Parliament, which ultimately resulted in the passage of the law's wording in the year 1986³⁷.

Ismail Qureshi was still dissatisfied with the Islamic nature of Section 295C, even after the addition of the provision that stipulated a sentence of life in prison. So, in order to challenge the new law, he resorted to another Shari'ah plea in the FSC. The Federal Supreme Court (FSC) handed down its verdict in the new case of Ismail Qureshi v. The Government of Pakistan in the month of December in the year 1991³⁸. Within the petition that he submitted, the petitioner brought forward two primary issues. In the first place, he stated that according to Islamic law, blasphemy is punishable by death as Hadd, and that the same sentence ought to be handed down to anyone who commits the same act against another prophet. As a result of the Full Bench of the FSC's agreement with both of the petitions, the Federal Government was informed that it was required to modify Section 295C by the 30th of April in 1992; otherwise, the modifications would take place on their own. According to the legislation, the phrase "or imprisonment for life" that is found in Section 295C does not have any significance. Despite the fact that Section 295C only make reference to the name of the Prophet Muhammad (peace be upon him), the same principle applies to blasphemy committed against other prophets. Ismail Qureshi was the case that led to this decision by the FSC.

Generally speaking, the FSC has relied on legal evidence to support its assertion that the punishment for apostasy in Islamic law is a Hadd punishment, which is a punishment that cannot be altered or mitigated. On the other hand, it did not provide an answer to the question of how a non-Muslim could be punished for heresy in a manner that was satisfactory. In a similar manner,

³⁷ Pakistan Penal Code, Section 295C, inserted through Section 2 of the Criminal Law (Amendment) Act III of 1986.

³⁸ PLD 1991 FSC 10.

the FSC came to the conclusion that the convicted individual's confession of guilt would not result in the suspension of his sentence. The fact that this was contrary to the well-established principle in Islamic law, which states that the punishment for apostasy is suspended until a person repents, made this a peculiar occurrence. Blasphemy is seen to be a violation of the rights of the Prophet (peace be upon him), and it is believed that no one else can forgive what has been committed. The judge made this decision in the court. When seen from both a theological and a legal perspective, this is an extremely poor decision. Not only is it not obvious how accurate the traditions of the Prophets are, but it also makes me wonder why the Sunnah should be more essential than the Holy Qur'an, particularly when it comes to the issue of the death penalty. Furthermore, the judges of the FSC attempted to categorize blasphemy as a form of apostasy in order to incorporate it into the more severe Hudud offenses, which have been defined as "transgression of God's limits." Despite the fact that many experts did not and still do not consider apostasy to be a genuine Hudud sin, they went ahead and decided to do this³⁹.

1.4.6 Implications of Absence of Intent Requirement

The intention requirement carries a tremendous deal of weight in comparison to the laws pertaining to blasphemy, which do not specify the intent of the person who is currently being accused. Within the provisions of Sections 295-B, 295-C, and 298-A, intent is not required. It is because of this that blasphemy accusations that would not have been able to pass the mens rea threshold have been able to go through drawn-out trials before being heard on appeal.

1. The case of Dr. Younas Sheikh

On October 2, 2000, Dr. Sheikh was accused of blasphemy by Maulana Abdul Rauf, who was the senior religious leader of a local religious organisation. This action was taken in

³⁹ Vikor, K. Between God and the Sultan: A History of Islamic Law. London, 2005.

response to a petition that was submitted by eleven of Dr. Sheikh's students. The petition stated that the doctor had made disrespectful remarks regarding the Prophet (PBUH) in a teaching setting⁴⁰. According to the F.I.R. the following statement made by Dr. Sheikh was considered blasphemous which made in response to a student's inquiry that *“Prophet Mohammad was a non-Muslim until the age of forty; he had not been circumcised until the age of forty; he married for the first time at the age of twenty-five, when he was neither a prophet nor a Muslim, and that therefore his "nikah" (marriage contract) was not solemnized; at age forty his armpit and under-naval hair was not removed; and his parents were non-Muslims.”*⁴¹

A senior lawyer at Pakistan's Supreme Court named Abid Hassan Minto asserts that Dr. Sheikh made the allegedly blasphemous comments in response to a student's inquiry on pre-Islamic Arab practices. Mr. Minto stated that the remarks, regardless of whether or not they were true, were founded on common sense and that the majority of people would understand them as a rational, if not definitional, answer to the question. He stated that prior to the establishment of Islam in Saudi Arabia, all actions were considered to be "a-Islamic," including those of the Prophet (PBUH) and his family.

The intention of the offences committed previous to Zia was required by Section 295-C of the PPC, despite the fact that this provision does not require intention. If this flawed law had not been there, the case against Dr. Sheikh would have been significantly less compelling, if not altogether nonexistent. In light of the fact that the remarks were made during a lecture and in response to specific questions posed by particular pupils, it is

⁴⁰ Nadeem Iqbal, 'Only Death Will Do' (June 2001) NEWSLINE
<http://www.newsline.com.pk/NewsJune2001/humanR.htm>

⁴¹ First Information Report (FIR), Police Station Margela, Islamabad, Case of Dr. Younus Shaikh (October 2, 2000).
<http://www.rationalistinternational.net/Shaiikh/fir-drshaikh.htm>.

possible to argue that the defendant did not enter into the discussion with the deliberate purpose of so offending his classmates. Due to the fact that his words also addressed the questions that were posed by the students, he did not “*force himself upon the attention of [his listeners]*.” When this was taken into consideration, there was no justification for referring to the second group as “involuntary hearers.” For the sake of putting his students at ease, “*he [had] made [the comments] on the spur of the moment, in good faith, just to further his argument.*” As a result of the fact that Section 295-C expressly stipulates that blasphemy against the name of the Prophet (PBUH) is sufficient to be found guilty, regardless of whether the accused intended to do so, the defendant was unable to present any of these grounds.

2. The Arshad Javed Case

When the intent test is not satisfied, strict liability under Section 295-C is applicable. This is proved by the conviction of mentally ill individuals by lower courts, such as in the case of Arshad Javed⁴². As a result of the individual's mental illness, they would have been qualified for an acquittal. The Additional Sessions Judge in Bahawalpur handed down the death penalty to Arshad Javed on February 9, 1993, for violating Section 295-C of the Pakistan Penal Code. Moreover, he was sentenced to three years in prison for hard labour for stating that he had read and agreed with Salman Rushdie's controversial work *The Satanic Verses*, which is prohibited in Pakistan. This sentence was handed down for his statement.

⁴² State v. Muhammad Arshad Javed, 1995 MLD 667 (Lahore).

According to his legal representatives, the fact that he was suffering from mental illness at the time of the murder was established by a number of medical tests that showed indicators of mania and hypomania.

Javed first asserted that he suffered from a mental disease; nevertheless, his claim was not adequately substantiated by the reality of the situation, and as a result, he was found guilty. Nevertheless, the verdict was overturned by the High Court at a later time, and the court stated that Javed could utilise the insanity argument because he was oblivious of the atrocities he had committed. In addition to highlighting the fact that the evidence did, in fact, demonstrate that Javed suffered from mental illness, the court also pointed out the flaws in the defence's legal case⁴³.

3. The Wajih-ul-Hassan Case

At the end of September, the Supreme Court granted acquittal to one individual who had been on death row. He was sentenced to prison in 2002 after being found guilty of apostasy and has remained there ever since. More than seventeen years have passed since Wajih-ul-Hassan was placed behind bars solely on the basis of allegations⁴⁴. In 1999, Hassan was accused of sending blasphemous letters to a legal representative. The handwriting of the accused was found to be extremely similar to the letters that were under investigation, according to a report that was written in 2001 by a handwriting expert. Hassan was ultimately found guilty by the trial court, and he was condemned to

⁴³ ibid

⁴⁴ NDTV. "Pakistan Supreme Court Releases Man Sentenced to Death After 18 Years, Says No Evidence, No Witness." April 1, 2021. <https://www.ndtv.com/world-news/pakistan-supreme-court-releases-man-sentenced-to-death-after-18-years-says-no-evidence-no-witness-2107600>.

death as a result. Furthermore, the decision was eventually upheld by the Lahore High Court⁴⁵.

4. Statistics of Blasphemy Cases in Pakistan

Among the more than 1,500 allegations and cases that had been filed by the year 2021, 89 individuals had been murdered without a trial. Due to the fact that not all instances of blasphemy are reported, the general public has the misconception that the number is lower. Punjab, which is a single province, was home to more than 70 percent of the accused (1,098). Balochistan (12), Sindh (177), Khyber Pukhtunkhwa (KP) (33), and Azad Jammu and Kashmir (AJK) (11) were the subsequent most frequent locations. Sindh was the seventh most frequent location⁴⁶.

No woman had ever been charged with blasphemy prior to the amendments that were made to the blasphemy laws in 1980 and 1986, which included the addition of additional sections. A Sindhi lady named Bushra Taseer was charged for violating Section 295-C in the year 1996. According to a tailor, she provided him with fabric that featured religious motifs for the purpose of stitching⁴⁷. There were 107 women who were accused of blasphemy between the years 1947 and 2021, and 18 of them were executed without a trial. The two of them were minors. On July 28, 2014, a horde of people, including an elderly mother and two young girls, broke into the homes of Ahmadiis in Gujranwala, causing the deaths of all three of them. The way in which they responded to a post on Facebook that they considered to be blasphemous was as follows. Not surprisingly, none

⁴⁵ Wajih-ul-Hassan v. Ismail Qureshi, Lahore High Court, 2010 (unreported).

⁴⁶ Centre for Research and Security Studies. "Blasphemy Cases in Pakistan: 1947-2021." <https://crss.pk/blasphemy-cases-in-pakistan-1947-2021/>.

⁴⁷ Imtiaz, S. "In the Name of Religion: 32 Blasphemy Cases in Sindh." The Express Tribune, December 13, 2010. <http://tribune.com.pk/story/89374/in-the-name-of-religion-32-blasphemy-cases-in-sindh/>.

of the individuals who were assaulted by the mob were found guilty of blasphemy. This is due to the fact that the young person who was accused was not present at home when the mob attacked⁴⁸.

A total of 65 women who were accused of blasphemy were members of the Christian faith, followed by 37 members of the Muslim faith, eight Ahmadis, two members of the Hindu faith, one member of the Buddhist faith, and two women whose religion was unknown. On the other hand, men, who made up the majority, were charged with this felony (930), which encompasses all branches of Islam and accounts for seventy percent of all male blasphemers. A total of 186 Christians, 179 Ahmadis, 16 Hindus, and one Sikh remained on the list of male suspects following the incident. The percentage of people in the country who do not follow the Islamic faith is less than five percent⁴⁹.

1.4.7 The Controversial Application of Strict Liability in Blasphemy Cases:

Since every country has its capabilities and constraints – the introduction of strict liability in the context of blasphemy cases is very controversial due to its tendency to be abused. Critics have argued that such laws are highly ambiguous and can be easily interpreted, alongside the fact that one can be easily charged incompletely because there are no preliminaries for the case; this puts vulnerable people at risk of persecution and false accusations.⁵⁰

⁴⁸ Tanveer, R. "Gujranwala Blasphemy Case: Ahmadis Point Fingers at 'Silent Spectators.'" *The Express Tribune*, July 28, 2014. <http://tribune.com.pk/story/742273/gujranwala-blasphemy-case-ahmadis-point-fingers-at-silent-spectators/>.

⁴⁹ Centre for Research and Security Studies. "Blasphemy Cases in Pakistan: 1947-2021." <https://crss.pk/blasphemy-cases-in-pakistan-1947-2021/>.

⁵⁰ International Commission of Jurists. *On Trial: The Implementation of Pakistan's Blasphemy Laws*. Geneva, 2015.

In Pakistan's case, the accusations of blasphemy are normally a result of bitterness in personal relations, religious hatred or animosity as opposed to actual blasphemous conduct. There are no strong mechanisms to combat and deter unwarranted accusations hence the innocent ones are arrested and prosecuted with the criminals.⁵¹

Several high-profile cases highlight the perils of strict liability in Pakistan's blasphemy laws:

Minority Christian girl Rimsha Masih with learning disability was arrested on charges of blasphemy at just fourteen years of age. However, she was alleged to have set the pages of the Qur'an (Muslim's Holy Book) on fire). Despite the known facts that exonerated her, including her mental well-being and the conflicting statements of witnesses, she had to wade through the torrents of the litigious system for a long time until she was finally found innocent.⁵²

Asia Bibi, a Christian woman, was given a death sentence for blasphemy after she allegedly uttered a word insulting to the Prophet Muhammad during a quarrel with her Muslim colleagues. The global outrage and proofs of fairness lapse in her trial rather than freed her to be liberated by the Supreme Court of Pakistan as late as in the year 2018.⁵³

The decision of the government to institute strict liability to blasphemy cases involves great apprehensions referring to human rights, freedom of expression and the rule of law in Pakistan. The laws that shift the weight of evidence from the accused to the arrested person and allow arbitrary arrests and prosecutions undermine the basic principles of justice and fairness.

⁵¹ Ibid

⁵² Rimsha Masih Case 2012

⁵³ Asia BiBi Case 2010

Conclusion

Strict liability regarding blasphemy tales is counteractive to the freedom of expression, self-censorship, and interreligious conflict tendencies because it restrains dialogue and peaceful coexistence in society. The Christians, Hindus and Ahmadis minorities are especially the Community that slumps under these laws thereby causing them to suffer even more in the Pakistani society.

In Pakistan, the strict liability of the blasphemy laws is a major human right, freedom of expression, and the rule of law issue. It is therefore a prerequisite to correct and redress the problems as well as violation of such laws in the country to ensure that justice prevails, minority rights are protected, and the society remains tolerant and peaceful.

Chapter No. 2

The Concept of Strict Liability in Islamic Law

2.1 Introduction

This chapter provides a concise review of the notion of strict liability in Islamic law, with a focus on the history of Islamic criminal law. The importance of the hadith "actions are to be judged by intentions" and the role of the Prophet (PBUH)'s Sunnah in the Pakistani legal system is being investigated. It is critical to determine whether these factors play a significant role in the legal system, and if so, to what extent. The main findings of this study indicate that the Qur'an, the Prophet's Sunnah (P.B.U.H), Ijma', and Qiyas (analogy) are the primary sources of Islamic law. The Sunnah is acknowledged as a secondary source of Islamic law in Pakistan's legal system. The hadith, which states that "actions are to be judged by intentions," is important because it defines the fundamental rules that govern not just our religious obligations but also the arena of law, notably criminal law. This hadith underlines the fundamental idea that all deeds must be carried out with a proper intention.

This hadith also serves as a key principle governing the organisation of both criminal and civil conduct in a legal system. A crime requires both mens rea (culpable mental state) and actus reus (physical expression of the purpose). As a result, the absence of a culpable purpose does not constitute a criminal violation; nonetheless, the penalty will be harsher in the case of more serious offences. As a result, offences are classified as willful or incidental, with the former receiving a harsher sentence than the latter. The application of punishment in specific criminal situations is dependent on the presence of both the commission of the act and a guilty mental

condition. As a result, establishing whether an action is a crime requires considering its purpose. If an act is regarded as a crime, the purpose will be considered while calculating the appropriate punishment.⁵⁴

2.2 Meaning and Definition of Mens Rea and Actus Rea in Islamic Law

The term in question is of Arabic origin and refers to mens rea, which is the perpetrator's aim and reason for acting. Intention is a fundamental component of the Islamic legal system, as it is seen as the primary factor determining moral and legal liability. For example, Prophet Muhammad (peace be upon him) stated that "إِنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ، وَإِنَّمَا لِكُلِّ امْرِئٍ مَا نَوَى،" intentions determine actions, and each individual will receive what they intended" (Sahih al-Bukhari). This hadith demonstrates the importance of purpose in Islam about the Confederate States of America Act. It underlines that the legal status and permissibility of an action are determined by the purpose of the person performing it.⁵⁵

The concept of mens rea, which denotes criminal intent, is fully understood and accepted in Islamic law. The lack of unlawful purpose means that there is no crime. The importance of the subjective component of a criminal conduct, in addition to its outcome, became more apparent in Western Europe as criminal law spread, peaking during Charlemagne's reign. Criminal actions are grouped into two categories based on the criminal's intention:

- 1) Amd (intended crimes) and

⁵⁴ Ibn Munir, Amr. "Applying the Hadith 'Actions are to be Judged by Intentions' in the Pakistani Legal System: An Introduction." *Al-Duhaa* 5, no. 1 (May 15, 2024).

. Muhammad ibn Isma'il al-Bukhari, *Sahih al-Bukhari*, hadith no. 1 (Beirut: Dar Tawq al-Najah, 1422 AH).

⁵⁵ Douzenis, Georgios A., and Athanasios I. "Islam, Mental Health and Law: A General Overview." July 6, 2017.

- 2) Khaṭā' (inadvertent actions). Furthermore, there is a third classification that is only applicable to homicide cases
- 3) Shibh al-'amd, which denotes quasi-intentional homicide. The death penalty is used for all homicides. Nonetheless, the murderer will be released unless the authorities opt to impose additional punishment if the victim's family chooses compensation over legal vengeance against the culprit. If the family declines to accept the compensation, the judicial system cannot overturn their decision.⁵⁶

The tangible action or behaviour that forms a criminal offence is specifically referred to as "Fi'l" in Arabic, which is also used to refer to *actus reus*. While intention is important in defining moral blame, the actual conduct of an illegal act is also required to establish criminal liability under Islamic law. Acts are evaluated based on their compliance with Islamic legal principles and prohibitions as contained in the Qur'an and Sunnah (the Prophet Muhammad's traditions).⁵⁷

In Islamic criminal law, the concept of *actus reus* plays a crucial role in defining the harm caused to the victim and the wrongful actions of the defendant. Actus reus means the act which is a physical element in the crime and it specifies the voluntary character of the act and the connection between the act of the defendant and the result of the act, which is the harm. Traditional and customary view of Islamic jurisprudence identifies the external aspects of crime while the civil law tradition prioritizes mental elements as part of the legal definition. The development of legal conceptions such as mens rea is a process of harmonizing the contextual conditions with the compatibility and applicability of the definition in criminal law systems. Therefore, by studying the different legal systems and the various international criminal

⁵⁶ Ibid

⁵⁷ Ibid

tribunals, the idea is to come up with a united idea when it comes to mens rea in Islamic criminal law to have a fair approach to determining criminal responsibility.⁵⁸

The concept of Men's rea focuses on the mental element or intention in the process of determining guilt while the concept of actus rea is more of the factual aspect of the accomplishment of the prohibited acts. Thus, through the analysis of authentic Islamic journal articles, we have been able to grasp the specific meaning and usage of these concepts within the vast framework of Islamic law.⁵⁹

Following Shari'ah, individuals who are classified as lunatics (or Majnun, which can also be translated as teacher, sorcerer, or prophet) have impaired cognitive abilities and, as a result, are not accountable for their actions. The Arabic term for lunacy is Junūn, which is derived from the etymology of hidden or invisible. The etymology of this term is derived from the belief that insanity, a mental illness, is caused by the demonic possession of the patient by invisible or hidden entities termed jinn. The Arabic term jinn is used to describe a variety of concepts, such as refuge, protection, and barrier, unborn infant, and mental derangement. In Islamic theology, the term "jinn" denotes a supernatural entity that can assume the form of a human or animal being. These entities can demonstrate both positive and negative attributes. In numerous cultural contexts, the comprehension of mental instability through a demonological lens is evident. For example, the term *ilfiġ* was employed in the Old English language to denote both psychosis and

⁵⁸ Ahad, and Fatemeh. "Revisiting the Concept of Mens Rea: Challenging the Common Approaches Employed under Islamic Jurisprudence and Statute Law." *Journal of Politics and Law* 9, no. 4 (March 8, 2016). <https://doi.org/10.5539/jpl.v9n4p1>.

⁵⁹ Ibid

the influence of supernatural entities, such as elves. This is indicative of the prevalent belief that divine entities were responsible for inducing madness during that time.⁶⁰

2.3 Essential Elements of Strict Liability in Islamic Law

Strict liability in Islamic law encompasses various essential elements. The idea of fault in Islamic Jurisprudence includes intents, recklessness, negligence, constructive negligence and strict liability as provided under the domestic laws.⁶¹ Different authors of Islamic sciences have analysed some environmental problems within the Maqasid al-Shari'ah

, which is consistent with the concept of hifdz al-biah, considered one of the essential needs. Even though criminal intent is essential in offences, strict criminal liability has been acknowledged in some situations in Iran, including traffic and environmental offences, due to difficulties in proving criminal intent before the courts.⁶² Furthermore, Islamic jurisprudence also recognizes individual tort liability, which in a way is quite similar to the principle of strict liability that is prevalent in the tort law, according to which a person is not allowed to place the burden on another person and everyone is liable for what he or she does.⁶³ All such elements together define the broad perspective of strict liability in Islamic law at legal, environmental and ethical levels.⁶⁴

⁶⁰ Douzenis, Georgios A., and Athanasios I. "Islam, Mental Health and Law: A General Overview." July 6, 2017.

⁶¹ Hedayati-Kakhki, M. *Islamic Law*. 2022.

⁶² Luo and Siwei. *Actus Reus: The Conduct Element*. 2022.

⁶³ Khudaykulov and Feruzbek Khurramovich. "The Objective Side of Crime and the Actus Reus Concept: Comparative-Legal Analysis, Problems and Proposals." *International Journal of Advances in Scientific Research* 2, no. 12 (2022): 100–115.

⁶⁴ Bader and Mohamed. "The Concept of Mens Rea in International Criminal Law: The Case for a Unified Approach." 2013.

Other related principles include the principle of strict liability also known as ‘Daman’ in Islamic legal system which is also a principle which operates under justice and accountability. This is in contrast to the Western legal systems where one cannot be made to compensate if he or she was not careless in the performance of his/her duties. This concept has its roots in several Quranic verses and Hadith that relate to people’s justice and obligation to pay compensation for the harm caused.⁶⁵

a) *Causation:*

This is because, according to Islamic law, there is no strict liability and the liability only comes in where the act of the defendant led to the loss incurred. This causation does not need proof of negligence but is based on the immediate effects of the act in question. When it comes to determining the level of damage, be it a physical or monetary one, the defendant is deemed responsible if their actions led to the harm.⁶⁶

b) *Harm:*

Another thing that cannot be missing is the proof of loss or damage that has been occasioned by the defendant’s conduct. This harm can present in the form of damage to the body, to property, to money, or to rights. It is important to note that Islamic law has adopted the principle of restitution where the aim is to restore the victim to their original position or make them whole through awards.⁶⁷

c) *Capacity:*

⁶⁵ Mohammad and Abdul Basir Bin. "Strict Liability in the Islamic Law of Tort." *Islamic Studies* 39, no. 3 (2000): 445–62.

⁶⁶ Ibid

⁶⁷ Ibid

It is also important to note that strict liability only binds those who are legally capable of entering into a contract, meaning those who are above the age of majority, sane, and not coerced into the contract. This criterion can be seen as preventing people from being punished for things that they cannot control or comprehend.⁶⁸

d) *Foreseeability:*

Even for the concept of strict liability, which does not entail the need to prove intent or negligence, the notion of foreseeability is still relevant to the extent of liability. If the loss flowing from the defendant's action was reasonably probable or should have been reasonably contemplated, then it goes a long way in supporting the proposition of strict liability.⁶⁹

2.4 Shariah Take on Strict Liability in Blasphemy Cases

Blasphemy laws have remained a subject of discussion and criticism in the societies of the world where religion greatly influences the legal structure and the society. This area still has a lot of controversies such as the principle of strict liability where a person can be charged with criminal blasphemy without necessarily meaning to or even being aware of the offence. However, it should be pointed out that on the issue of strict liability in blasphemy cases under the Islamic legal tradition of Shari'ah the position is not very clear and depends on certain legal principles and theological justifications. Shari'ah is Islamic law that has been derived from the holy Qur'an and Hadiths or sayings of Prophet Muhammad (PBUH). It ranges from individual behaviour to family problems, economics, politics, and many more. From the Shari'ah perspective blasphemy

⁶⁸ Ibid

⁶⁹ Ibid

is a prohibited sin because it entails disrespect or mockery of the divine and holy phenomenon of Islam.⁷⁰

2.4.1 Qur'an on Blasphemy Laws

The Qur'an asserts that God sent many prophets to the earth at various times and locations throughout history. Every single one of these prophets was subjected to severe treatment, ridicule, and treatment that was degrading. Hundreds of passages provide evidence that prophets were blasphemed and called liars, possessed frauds, and ignorant persons. Prophets were also termed foolish men. God did not say in the Qur'an that anyone who blasphemed should be put to death, despite the fact that the prophets were subjected to persecution and abuse. In fact, prophets were able to forgive people who inflicted false accusations against them. As an illustration of how to conduct oneself in this manner, the life of the prophet serves as a model. On the other hand, God makes it quite apparent that he will carry out the ultimate judgement. There are numerous verses in the Holy Qur'an: ⁷¹ وَالَّذِينَ يُؤْذُونَ رَسُولَ اللَّهِ لَهُمْ عَذَابٌ أَلِيمٌ "Wa alladhīna yu'dūna rasūlallāhī lahum 'adhābun alīm." ("And among them are those who hurt the Prophet and say, 'He is an ear.' Say, 'An ear of goodness for you that believes in Allah and believes the believers and is a mercy to those who believe among you.' And those who hurt the Messenger of Allah—for them is a painful punishment.")

⁷⁰ Peters, Rudolph. *Crime and Punishment in Islamic Law*. Cambridge University Press, 2005.

⁷¹ The Quran, 9:61 (Saheeh International). *The Quran: English Translation of the Meanings and Commentary*. Madinah: King Fahd Complex, 1999.

⁷² إِنَّ الَّذِينَ يُؤْذُونَ اللَّهَ وَرَسُولَهُ لَعَنَهُمُ اللَّهُ فِي الدُّنْيَا وَالْآخِرَةِ وَأَعَدَّ لَهُمْ عَذَابًا مُهِينًا "Inna alladhīna yu'dūna allāha wa rasūlahu la'anahumu allāhu fī ad-dunyā wal-ākhirah wa a'adda lahum 'adhāban muhīnan."

("Indeed, those who harm Allah and His Messenger—Allah has cursed them in this world and the Hereafter and prepared for them a humiliating punishment.")

⁷³ إِنَّا كَفَيْنَاكَ الْمُسْتَهْزِئِينَ "Innā kafaināk al-mustahzi'īn."

("Indeed, We are sufficient for you against the mockers.")

⁷⁴ وَقَدْ نَزَّلَ عَلَيْكُمْ فِي الْكِتَابِ أَنْ إِذَا سَمِعْتُمْ آيَاتَ اللَّهِ يُكْفَرُ بِهَا وَيُسْتَهْزَأُ بِهَا فَلَا تَقْعُدُوا مَعَهُمْ حَتَّى يَخُوضُوا فِي حَدِيثٍ غَيْرِهِ إِنَّكُمْ إِذًا مِثْلُهُمْ "Wa qad nazzalna 'alaykum fī al-kitābi an idhā sami'tum āyāti Allāhi yukfaru bihā wa yustahza'u bihā falā taq'udū ma'ahum ḥattā yakhūdhū fī ḥadīthin ghayrihi innakum idhān mith'lhum."

("And it has already come down to you in the Book that when you hear the verses of Allah [recited], they are denied [by them] and ridiculed; so do not sit with them until they enter into another conversation. Indeed, you would then be like them.")

⁷⁵ إِنَّ شَانِئَكَ هُوَ الْأَبْتَرُ "Inna shāni'aka huwa al-abtar."

("Indeed, your enemy is the one cut off.")

⁷² The Quran, 33:57 (Yusuf Ali). The Quran: English Translation of the Meanings and Commentary. Madinah: King Fahd Complex, 1999.

⁷³ The Quran, 15:95 (Pickthall). The Quran: English Translation of the Meanings and Commentary. Madinah: King Fahd Complex, 1999.

⁷⁴ The Quran, 4:140 (Saheeh International). The Quran: English Translation of the Meanings and Commentary. Madinah: King Fahd Complex, 1999.

⁷⁵ The Quran, 108:3 (Muhsin Khan). The Quran: English Translation of the Meanings and Commentary. Madinah: King Fahd Complex, 1999.

All these verses of Qur'an explain the dignity and respect of the prophet (PBUH) and also explain the punishment of the blasphemous acts but there is nothing mentioned regarding the intention that a person who committed this sin shall be punished without intention, means that there is nothing mentioned regarding the strict liability in blasphemy acts.

1. *“He has already revealed to you in the Book that when you hear Allah’s revelations being denied or ridiculed, then do not sit in that company unless they engage in a different topic, or else you will be like them. Surely Allah will gather the hypocrites and disbelievers all together in Hell.”*⁷⁶
2. *“They swear by Allah that they never said anything ‘blasphemous’, while they did in fact utter a blasphemy, lost faith after accepting Islam, and plotted what they could not carry out. It is only through resentment that they pay Allah and His Messenger back for enriching them out of His bounty! If they repent, it will be better for them. But if they turn away, Allah will torment them with a painful punishment in this world and the Hereafter, and they will have no one on earth to protect or help them.”*⁷⁷
3. *“That is their reward: Hell, for their disbelief and mockery of My signs and messengers.”*⁷⁸
4. *“And when you come across those who ridicule Our revelations, do not sit with them unless they engage in a different topic. Should Satan make you forget, then once you remember, do not ‘continue to’ sit with the wrongdoing people.”*⁷⁹

⁷⁶ Quran 4:140

⁷⁷ Quran 9:74

⁷⁸ Quran 18:106

⁷⁹ Quran 6:68

5. *“And the evil ‘consequences’ of their deeds will unfold before them, and they will be overwhelmed by what they used to ridicule.”*⁸⁰

All of these scriptures instruct us to avoid blasphemers, to treat them with respect, and to keep the hope alive that they may eventually come to their sense of conviction. They will be punished by God in the hereafter if they do not change their beliefs as soon as possible. However, often two verses are quoted to support punishment for blasphemy in Islam⁸¹.

1. *“If the hypocrites, and those with sickness in their hearts, and rumour-mongers in Medina do not desist, We will certainly incite you ‘O Prophet’ against them, and then they will not be your neighbours there any longer.”*
2. *“‘They deserve to be’ condemned. ‘If they were to persist,’ they would get themselves seized and killed relentlessly wherever they are found!’”*

In the commentary that he has written on the Qur'an, Maulana Yusuf Ali asserts that they ought to be executed because they were not only blaspheming but also overthrowing the government⁸².

Another verse that is frequently cited in support of the death penalty for blasphemy is: *إِنَّمَا جَزَاؤُا الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِّنْ خَلْفٍ أَوْ يُنْفَوْا مِنَ الْأَرْضِ ذَلِكَ لَهُمْ خِزْيٌ فِي الدُّنْيَا وَلَهُمْ فِي الْآخِرَةِ عَذَابٌ عَظِيمٌ* (Innamā jazā'ul-ladhīna yuḥāribūna Allāha wa Rasūlahū wa yas'awna fil-arḍi fasādan ay yuqattalū au yuṣallabū au tuqaṭṭa'a aidīhim wa arjuluhum min khilāfin au yunfau minal-arḍ; dhālika lahum khizyun fid-dunyā wa lahum fil-ākhirati 'adhābun 'aẓīm.)

“The punishment of those who fight against God and His Prophet or create disorder in the territory is that they are executed in an exemplary manner or be crucified or have their hands

⁸⁰ Quran 39:48

⁸¹ Surah Ahzab 33:60:61

⁸² Commentaries on the Quran <https://quranyusufali.com/commentaries-on-the-quran/>

and feet cut off from opposite sides or be banished. This disgrace is theirs in the world, and in the Hereafter, severe retribution shall they have, except those who repent before you overpower them. So [do not exceed in severity with them and] know well that Allah is Oft-Forgiving, Ever-Merciful.”⁸³

Only the punishments that should be meted out to those who continue to engage in obvious blasphemy or stir up trouble (for example, by battling against God and/or the Prophet Muhammad) are discussed in this verse. The accused cannot be punished with blasphemy in any way if they deny culpability, provide an explanation for their actions, and declare a desire to be found not guilty of the charges against them. Individuals who have expressed a change in their opinions will not be subject to these punishments.

2.4.2 Principles of Islamic Jurisprudence

Islamic jurisprudence has some basic and vital concepts these principles as to how the laws should be understood and applied, they include those concerning blasphemy laws.⁸⁴

Blasphemy commonly known in the Arabic language as ‘Sabb Ar-Rasūl. means speaking ill, jeering or insulting the religious leader Muhamad or any aspect of the Islamic religion. In Sharī’ah, blasphemy is seen as a threat to the unity of the Muslim community and the credibility of their faith. For this reason, it is commonly considered prohibited, although the level of prohibition, as well as the conditions, under which one can be charged with it, may differ within various branches of Islamic law.⁸⁵

⁸³ *The Quran, 5:33, trans. Saheeh International (Jeddah: Abul-Qasim Publishing House, 1997).*

⁸⁴ Ibid

⁸⁵ Ibid

The idea under the strict liability regime is that people must be punished for their actions regardless of whether they knew about the consequences or not. In some legal systems, there is the doctrine of strict liability, which in the context of blasphemy encompasses individuals who contribute to the dissemination of blasphemous content. Nonetheless, the Law of strict liability in Shari'ah is something that is still a subject of controversy among scholars and jurists.⁸⁶

The majority of jurists tend to connect this matter to the concept of apostasy. This is due to the fact that blasphemy against the Prophet (peace be upon him) is generally synonymous with apostasy. On the other hand, there are still jurists who maintain that blasphemy is a distinct offence that carries a distinct sentence. According to Qāḍī 'Iyāḍ., Abū Bakr b. al-Mundhir is quoted as saying, *"Scholars have a consensus that whosoever commits blasphemy against the Prophet (peace be on him), he must be punished with death."* A number of people, including Al-Layth, **Aḥmad, Ishāq, Mālik b. Anas** are in agreement with this statement. With this Ash-Shāfi'ī. is in agreement⁸⁷. This quotation is frequently used by contemporary researchers to demonstrate that the majority of jurists are unable to alter the punishment for blasphemy because it is one that has already been decided upon. That being stated, it is of the utmost importance to emphasize that Abu Hanifah, along with many other scholars are not specifically addressed in this statement, in the list of jurists who have a consensus on this point.

2.5 Strict Liability in the Islamic Law of Tort

The notion of tort, which refers to the legal protection of civil liberties, is also present in Islam. Due to the lack of codification, judges must rely on interpretations and precedents when dealing

⁸⁶ Peters, Ruud. *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-First Century*. Cambridge University Press, 2005.

⁸⁷ Iyāḍ, *al-Shifā*

with non-monetary damages such as emotional anguish, mental torment, defamation, and other comparable difficulties. When evaluating non-monetary injury and determining suitable compensation, judges encounter more difficult challenges. Moral and legal requirements are recognised and established in Islamic jurisprudence, and Muslims are expected to follow them in the vast majority of circumstances. To accomplish this responsibility, Muslims must conduct themselves in such a way that others are protected from potential risk. As a result, Islamic law requires that every Muslim be held accountable for their conduct, both legally and morally. If he fails to meet this commitment, he will be held accountable and may be ordered to make restitution or face punishment.⁸⁸

The term tort has a literal meaning that is akin to Arabic terminology like *madarrah*, *darar*, and *khasarah*.⁸⁹ The term '*fil-darar*' is translated as 'tort' in the al-Mughni al-Akhbar. Faruqi's Law Dictionary defines 'tort' as '*fil al-darr*'. Furthermore, in Islamic jurisprudence, the term *jinayah* refers to tort. Classical Islamic jurists used it to provide recompense, or *diyah*, to victims who suffered deadly or non-fatal injuries. The practice was then broadened to encompass cases where the legal heirs do not seek retaliation (*qisas*). Sanhoury defines a tort as a breach of a legal responsibility. It can also be seen as a promise to compensate for harm done to others. To put it simply, a tort is a violation of a legal obligation under Islamic Law that requires restitution in the form of damages. This commitment stems from the purpose of safeguarding and promoting individuals' rights to life and property by discouraging criminals, as stated in Islamic law.⁹⁰

⁸⁸ Sajjad, Hafiz Ghulam Abbas, and Muhammad. "The Concept of Tortuous Liability under Islamic Law: An Inquiry into Question of Compensatory Damages." *Al-Aijaz Research Journal of Islamic Studies & Humanities* 5, no. 2 (2021): 68–80.

⁸⁹ Mohamad and Abdul Basir Bin. "The Islamic Law of Tort." 1997

⁹⁰ Sajjad, Hafiz Ghulam Abbas, and Muhammad. "The Concept of Tortuous Liability under Islamic Law: An Inquiry into Question of Compensatory Damages." *Al-Aijaz Research Journal of Islamic Studies & Humanities* 5, no. 2 (2021): 68–80.

Individuals' civil rights are protected under Islamic law, which prohibits any interference with their freedom, bodily health, or belongings. The Quran and Ahadīth depict these concepts from various perspectives and settings. For example, the Qur'an expressly prohibits the use of illegal means to obtain property from others to safeguard one's own. Similarly, it empowers the victim to take legal action against the perpetrator for the harm they have caused them. Nonetheless, it requires that retribution against the culprit be proportionate to the damage produced by the criminal himself. The Quran encourages the idea that people should seek the bounties that Allah has bestowed upon others because everyone will receive their portion based on their efforts. As a result, Islamic law strictly outlaws any sort of damage to others, whether physical or moral. It has a mechanism to compensate for a negative action. Although the notion of compensating victims for physical and psychological suffering is recognised, there are practical challenges in identifying the proper compensation sum, method of evaluation, and variables to be considered. Nonetheless, Fiqh's literature offers assistance on this topic.⁹¹

2.6 Comparative Analysis of Blasphemy Laws in Other Muslim Majority Jurisdictions

The nation having the largest Muslim population worldwide is Indonesia. Those who "deliberately in public express thoughts or commit an act" may face a maximum five-year prison sentence, according to the Indonesian Penal Code, which are mostly set apart by the quality of being either to mistreat, pervert, or defile a religion that is followed in Indonesia.⁹² Law No. 1/PNPS/1965, a decision pertaining to the prohibition of abuse and/or defamation of religion, was issued by the President of Indonesia in 1965. This law forbids people from engaging in

⁹¹ Ibid

⁹² Indonesian Penal Code (1982), art 156a

religious activities that resemble those of the religion in question or from knowingly discussing or trying to gain support for interpretations of that religion that are practiced in Indonesia, provided that those interpretations and activities diverge from the core teachings of the religion. Additionally, it states that Islam, Buddhism, Protestantism, Catholicism, Hinduism, and Confucianism are the six recognised religions of Indonesia. The Constitutional Court upheld the president's decision and the relevant section of the Penal Code in April 2010.⁹³

Brunei's 2013 public release of the Syariah (Sharī'a) Penal Code Order includes a list of several religious crimes. The Code states that blasphemy is a crime that is similar to apostasy. Claiming to be God, a Messenger, or a Prophet of God, as well as disparaging or mocking the Holy Prophet Muhammad, certain passages of the Quran, hadith (a collection of traditions that contain the sayings of the Prophet Muhammad), or other Islamic precepts are all considered acts of blasphemy. Depending on the strength of the evidence, those found guilty of these crimes could face corporal punishment, the death penalty, or a maximum of thirty years in jail.⁹⁴ However, If a Sharī court is convinced that the accused has had a change of heart, they must be released from their punishment.

The Penal Code of Malaysia defines "religious offences" under Chapter XV, a fine, or up to two years in jail, or both can be imposed for injuring or defiling a place of worship with intent to insult the religion of any class⁹⁵. Furthermore, the "*sedition tendency*" of "*to promote feelings of ill will, hostility or hatred between persons or groups of persons on the ground of religion*" was added to the Sedition Act 1948 in an amendment made in 2015. The Act stipulates that a person could face a sentence of three to seven years in prison if they print, publish, distribute, or

⁹³ Constitutional Court Decision No 140/PUU-VII/2009 (April 2010)

⁹⁴ Syariah Penal Code Order 2013 (Brunei), pt IV, ch I 'Irtidad (Apostasy) & ch IV 'General Offences'

⁹⁵ Malaysian Penal Code (Act 574) (as amended to 1 January 2015), ch XV

copy any seditious publication, utter any seditious words, attempt to engage in, plan to engage in, or collaborate with another individual to engage in any action that has or would have a seditious tendency⁹⁶. Additionally, regulations regarding wrong worship, the spread of false doctrines, the promotion of non-Muslim religious

s beliefs and doctrines, the claim that one is a prophet or has knowledge of supernatural events, the insulting or ridiculing of Islam as a religion, and the insulting or ridiculing of Quranic verses are among the fifty-plus federal and state laws that define Syariah (Sharī'ah) crimes (exclusively for Muslims)⁹⁷.

If we examine the blasphemy laws in other Muslim states, while these laws are strict, however, the intensity of these punishments are rather mitigated, as it could be noted from Indonesia's and Malaysia's law, since the punishment of committing blasphemy is imprisonment rather than death sentence. Furthermore, even the harsh punishment under Brunei's blasphemy law, i.e., death sentence, is subject to pardon if the accused repents, unlike Pakistan, where regardless of repentance, a strict penalty of death sentence is imposed.

Conclusion

Islamic law's concept of strict liability is a promising value in a society in any legal system because it aims at individuals to be held legally responsible regardless of intent. Based on Quranic verses and hadiths about *riba* this concept includes causation, harm, capacity and

⁹⁶ Sedition (Amendment) Act 2015 (Act A1485) (Malaysia) ss 3-4.

⁹⁷ Syariah Criminal Offences (Federal Territories) Act 1997 (Act 559) (as amended to 1 January 2013) (Malaysia) ss 3-8

foreseeability. Through imposing strict liability across different fields, Islamic jurisprudence aims to reward justice, indemnify the victims and prevent dangerous actions that can cause harm to ensure that society is just.

In conclusion, the Shari'ah approach to strict liability in blasphemy cases is not a simple affair, as it may be observed from the above discussion that different schools of Islamic jurisprudence may offer various ways of approaching strict liability. In Islam, blasphemy is usually considered a grave offence. Still, the use of strict liability is not consistent, and some scholars have called for condemning the practice as justifying innocent people's deaths, or for using a less strict approach when it comes to intent and circumstances. It is critical to raise awareness about the issues of religion, tolerance, and freedom of expression and find the best fit to respect religious people and consider the aspects of law and human rights as well.

Chapter No. 3

The Study of Pakistan Apex Court Judgments about Strict Liability in the Light of Shariah

3.1 Introduction

In an explanation of Pakistan's strict liability about the blasphemy laws through the lens of the Supreme Court judgments of this chapter, the analysis is grounded on the Sharī'ah jurisprudence. The Pakistan Supreme Court has dealt with strict liability in several cases and it has tried to solve complex problems in adjusting between the reign of law and justice with the element of mercy. This paper identifies that the judiciary, in its consideration of strict liability, has been influenced by the constitutional requirements of the country which includes the provision of Islamic values and the protection of minorities. In this chapter, the author employs a critical evaluation of selected cases in an attempt to understand the court's position regarding the doctrine of strict liability through the examination of case laws such as Ismail Qureshi, AIR 1984 SC 624, Shehbaz Masih 2007 SC GLR 329, and more contemporary cases like the Asia Bibi case 2018. In light of this, it is important to find out whether the judicial narrative on this concept is consistent with Sharī'ah in light of the apex court's application of strict liability to the blasphemy law and whether this application has enhanced the proper implementation of this law in Pakistan.

3.2 Ismail Qureshi vs the State

The Hudood Ordinances were passed in 1979 by General Zia-ul-Haq in Pakistan soon after he seized power and sought to enforce Islamic law. These have been a subject of concern, especially

on issues to do with women and on procedural issues that are deemed by the critics as unfair leading to injustice.

In 1984, Muhammad Ismail Qureshi, a Supreme Court counsel, filed a legal appeal with the Federal Shari'ah Court (FSC) challenging the legality of Section 295A. He contended that these bans were in direct conflict with Islamic beliefs.⁹⁸ The petitioner's main point was that Section 295A punishes those who make blasphemous utterances about the Prophet (peace be upon him) with imprisonment, although Islamic law prescribes the death punishment for this serious violation.⁹⁹ The complete panel of justices on the FSC deliberated the matter of Ismail Qureshi v. General Muhammad Zia-ul-Haq and Others, but they postponed its decision. Before the court's verdict, Parliament adopted Section 295C into the Pakistan Penal Code (PPC).¹⁰⁰

Ismail Qureshi launched the legal dispute by drafting new laws and submitting it to Parliament with the support of Apa Nisar Fatima, a National Assembly member. The punishment for the criminal was only prescribed by the original legislation: execution. Nonetheless, Minister for Religious Affairs Iqbal Ahmad Khan has requested that the court be granted the jurisdiction to impose either the death penalty or life imprisonment as a form of punishment. The Parliament embraced this advice in 1986, and the full language of the Act is as follows:

Whoever by words, either spoken or written, or by visible representations, or by any imputation, innuendo, or institution, directly or indirectly, defiles the sacred name of the Holy Prophet

⁹⁸ Shariat Petition no. 1/L/84 of 1984.

⁹⁹ Qureshi, Qanoon-i tauhīd n-i risālat, 365–78.

¹⁰⁰ Ahmad, Muhammad Mushtaq. "Pakistani Blasphemy Law between Ḥadd and Siyāsah." *Islamic Studies* 57, no. 1 (2018): 9–44. <https://www.jstor.org/stable/26617665>.

*Muhammad (peace be upon him) shall be punished with death, or imprisonment for life, and shall also be liable to fine.*¹⁰¹

The law remained in place for nearly five years before being changed by the FSC in 1991 in a different instance. Ismail Qureshi expressed dissatisfaction with Section 295C's Islamicity after it was amended to include the possibility of life imprisonment. As a result, he filed an extra Shariat petition with the FSC, challenging the new statute. In December 1991, the FSC decided the matter of Ismail Qureshi vs. the Government of Pakistan. In his appeal, the petitioner expressed two main issues. First, he stated that blasphemy is punishable by death, as established in Hadd, according to Islamic law. Second, he maintained that people who commit the same act against another prophet should face the same punishment. The Federal Government has been required to implement the Section 295C amendments by April 30, 1992, following approval of both submissions by the FSC's full Bench. If no action is taken, the same alterations will be made automatically.¹⁰²

The government responded to the ruling by filing an appeal with the Supreme Court's Shari'ah Appellate Bench (SAB). Nonetheless, Ismail Qureshi successfully persuaded Mian Muhammad Nawaz Sharif, the Prime Minister at the time, to withdraw the request. The case was ended after the government decided to withdraw its appeal, making it ineligible for consideration by the SAB. At the same time, the FSC's deadline for modifying the law had passed, preventing the Parliament from making the necessary amendments to the statute. However, the changes were inescapable given that the FSC's decision had become legally enforceable and operational. Therefore, the expression or imprisonment for life in Section 295C has no legal significance.

¹⁰¹ Section 295C, inserted in PPC through Section 2 of the Criminal Law (Amendment) Act (III of 1986)

¹⁰² Ibid

Furthermore, Section 295C specifically mentions the name of Prophet Muhammad (peace be upon him). However, in the Ismail Qureshi case, the FSC ruled that this statute also covers blasphemy against other prophets.¹⁰³

The FSC's definition of apostasy, which is an unchangeable Hadd punishment under Islamic law, is essentially dependent on the legal facts of the punishment. Nonetheless, it did not sufficiently address the question of how a non-Muslim may face the punishment for apostasy. In the same line, the FSC concluded that the offender's repentance did not warrant an interim suspension of his sentence. The event was unexpected because it contradicted the established Islamic law premise that the penalty for apostasy is temporarily postponed upon demonstrating regret. The court's verdict is based on the argument that apostasy violates the Prophet's (peace be upon him) fundamental rights. The FSC failed to follow a specific legal principle in this case, as well as many others. Nonetheless, it has succeeded in gathering the opinions of legal professionals from various educational institutions; however, it has yet to build a cohesive analytical framework. Without a detailed assessment of the basic legal foundations that underpin them, Hanafi jurists' rulings have been accepted. The SAB would have had the opportunity to address these flaws if the government had not withdrawn its appeal.¹⁰⁴

3.3 Asia Masih vs the State

Asia Bibi is accused of making offensive remarks about the Holy Prophet Muhammad (Peace Be upon Him) and the Holy Qur'an on June 14, 2009, while picking falsa (purple berries) with other Muslim women in Muhammad Idrees' fields in the village of Ittanwali, District Nankana, Punjab province. Two Muslim ladies, Mafia and Asma Bibi, notified the complainant, Qari Muhammad

¹⁰³ Ibid

¹⁰⁴ Ibid

Salaam, about the incident. On June 19, 2009, he summoned the accused to a public meeting, where she purportedly admitted her guilt. On the same day, a First Information Report (FIR) was filed against Asia Bibi at Police Station Sadar, District Nankana, under Section 295-C of the Pakistan Penal Code. The prosecution's case was based mostly on eyewitness testimony and the defendant's claimed extrajudicial admissions. Asia Bibi has refuted the claims.

On November 8, 2010, the trial court found Asia Bibi guilty of violating Section 295-C of the Pakistan Penal Code 1860. She was sentenced to death and fined Rs. 1,000,000. If the money is not made, she will face six months of simple jail. Asia Bibi filed an appeal against her conviction in the Lahore High Court. Nevertheless, the court refused her appeal on October 16, 2014. In response to an appeal against the prior judgment, the Supreme Court reevaluated the evidence given in the case and eventually found Asia Bibi innocent. The court determined that the prosecution failed to prove her guilt beyond a reasonable doubt.

The Lahore High Court upheld the death sentence pronounced by the trial court on the following grounds:

1. There is no doubt that the appellant and the eyewitnesses were there in the falsa field at the appropriate moment.
2. During cross-examination, the defense did not challenge the witnesses on the appellant's claimed blasphemy offence.
3. The defense was unable to uncover any preexisting hatred, antagonism, or hidden agenda among the eyewitnesses toward the defendant, implying a created involvement in this case.

4. The court witness, Muhammad Idrees, gives compelling support for the evidence offered by the eyewitnesses.

In the Asia Bibi case, the Supreme Court used the Qur'ān, Sunnah, and the Prophet Muhammad's (Peace Be Upon Him) covenant with the non-Muslim minority to support its claim. The Supreme Court (SC) maintains its power to interpret Islamic law on blasphemy. According to a careful review of the legislation, the State is the only organization with the right to make decisions regarding heresy. This decision concerns the conduct of the subordinate courts in the appraisal of evidence. However, it does not provide advice to subordinate tribunals in examining evidence in blasphemy trials. Despite noting the misuse of blasphemy laws in Pakistan, the Supreme Court (SC) makes no recommendations to ensure the protection of minority groups. The Supreme Court severely condemns the activities of those who have filed spurious blasphemy cases against minority groups. Nonetheless, it did not propose an adequate punishment for people of this sort.¹⁰⁵

3.4 Shabazz Masih v. State, 2007 MLD 1040 (Lahore)

A witness saw the defendant, Shehbaz Masih, purposefully crushing and ruining the pages of the Holy Qur'ān. He then proceeded to rip the pages and throw them into graves. He was captured during the incident and later surrendered to the authorities, along with the damaged pages of the Holy Qur'ān. The defendant received a life sentence from the trial court. The defendant filed an appeal with the superior court. The appellate court absolved the defendant based on the following grounds:

¹⁰⁵ Ranjah, Zia Ullah. "A Critical Review of Asia Bibi Case | SAHSOL." Welcome to SAHSOL | SAHSOL. Accessed July 7, 2024. <https://sahsol.lums.edu.pk/node/12860>.

- I. The defence has presented enough evidence to show that the accused was mentally ill and uninformed of the nature of his acts at the time of the incident. The prosecution provided no evidence to counter the accused's narrative, which was supported by the medical findings. It was critical to determine the accused's intent before convicting them under Section 295-B.

3.5 Critical Analysis of the Case Studies

Pakistan has a blend of legal systems that include Islamic, traditional and legislation: where the Islamic law known as Sharī'ah and customary laws are used together with the statutory laws. Human and legal interpretation and the implementation of such laws must not contradict the teachings of the Qur'ān and the Sunnah.¹⁰⁶

To comprehend the physiological response to transgression. The case of Ismail Qureshi v. State (1966 PLD SC 65) exemplifies the Supreme Court of Pakistan's Shariah-compliant interpretation of blasphemy legislation. This case sets a key legal precedent. The court maintained the accused's conviction under Section 295-A of Pakistan's Penal Code. According to this text, an individual is guilty of an offense if he or she wilfully and maliciously conducts an act that is likely to provoke a riot and insults the religious views of any class, causing offense. The court based its ruling on Article 166 (a) of the Pakistani Penal Code, which expressly forbids the act of defaming or disparaging the Prophet Muhammad (peace be upon him).¹⁰⁷

Additionally, the most recent case of Asia Masih vs the State showed a rigid approach of the court on the blasphemy laws where the accused was even found guilty without any intention of

¹⁰⁶ Mughal, Munir Ahmad, Juvenile Justice in Pakistan -- How to Achieve Desired Results? (August 3, 2014). Available at SSRN: <https://ssrn.com/abstract=2475676> or <http://dx.doi.org/10.2139/ssrn.2475676>

¹⁰⁷ Ibid

the offence.¹⁰⁸ This case note discusses the Supreme Court's ruling in the Asia Bibi case using known criminal and evidence law standards. These notions include the prosecution's responsibility to prove its case beyond a reasonable doubt and the presumption of innocence unless proven guilty. The Lahore High Court's ruling in the Asia Bibi case was fundamentally flawed. The Supreme Court acquitted Asia Bibi based on well-established criminal law grounds and convincing logical reasoning.¹⁰⁹

The court's decision in *Shabazz Masih v. State* 200 MLD 104 however pointed towards the need for a new approach to the enforcement of blasphemy laws where the courts stressed on the need to look at the circumstances and intention of the alleged offence.¹¹⁰

The above-mentioned case studies give a clear picture of the relationship between Sharī'ah, the enacted laws and the judicial decisions in Pakistan.

In Pakistan, the question of blasphemy has been widely discussed. Critics argue that this regulation is being abused and unfairly targets minority groups. The law is considered vague and broad and has been applied for revenge. On a similar line in *Ayub Masih v The State*, the Supreme Court held that the complainant produced a false blasphemy charge with the ulterior motive to unlawfully apprehend Ayub Masih and take over his and his father's house. Misuse of this rule in Pakistan has come from a very arbitrary application of the rule which in majority has targeted non-Muslims. The usage and modification of this legislation have also come under criticism and there have been retaliations against individuals who have voiced their opinions. A

¹⁰⁸ Riaz, Jawwad, Zakia Suleman, and Zaheer Iqbal Cheema. 2020. "Confrontations and Limitations on the Freedom of Expression in Pakistan." *Global Mass Communication Review*, V (IV): 136-146 doi: 10.31703/gmcr.2020(V-IV).10

¹⁰⁹ Ranjah, Zia Ullah. "A Critical Review of Asia Bibi Case | SAHSOL." Welcome to SAHSOL | SAHSOL. Accessed July 7, 2024. <https://sahsol.lums.edu.pk/node/12860>.

¹¹⁰ Ibid

High Court Judge Arif Iqbal Bhatti who acquitted Salamat Masih and Rehmat Masih in blasphemy charges was assassinated in 1997. Within the last few years, one can observe a tendency of more often violent events related to sacrilege. Therefore, it was proposed that people who fabricate defamation cases should be punished. However, Justice Shaukat Aziz Siddiqui who was a judge of the Islamabad High Court added that it made more sense not to let the law be applied than to completely ban it.¹¹¹

The effects of this legal system on the liberty of the people and other political rights such as freedom of speech under the blasphemy laws have remained contentious.

3.6 Exceptions

In the case of Engineer Iftikhar Ahmad Khilji v. Deputy Post Master General¹¹², the petitioner requested that the court inform the respondent that the respondent was not permitted to write in black ink on postal cards since the cards contained verses from the Qur'ān. A violation of section 295-B, which addresses the act of defiling the Holy Qur'ān, was allegedly committed by the respondent, as stated by the petitioner. It was stated by the court that the objective of the defacement was not to degrade or disdain the Qur'ān verses that were printed on them; rather, it was to prevent money laundering by preventing people from using them in the future. The court dismissed the appeal. In addition, the court stated that there was “*no intention of malice, hatred, or ridicule,*” and as a result, Section 295-B was completely irrelevant to the situation¹¹³.

¹¹¹ Ranjah, Zia Ullah. "A Critical Review of Asia Bibi Case | SAHSOL." Welcome to SAHSOL | SAHSOL. Accessed July 7, 2024. <https://sahsol.lums.edu.pk/node/12860>.

¹¹² Engineer Iftikhar Ahmad Khilji v Deputy Post Master General (2004) 6 YLR (Azad J & K) 1736 (Pak).

¹¹³ *ibid*

The case of *Mirza Mubarak Ahmed v. the State*¹¹⁴ is yet another illustrative example that is crystal apparent. It possesses all the hallmarks of a defamation case against Ahmadis. The concerned individual penned a letter in which they expressed their desire for blessings to be bestowed upon the Prophet Muhammad (PBUH) and Mirza Ghulam Ahmed, who the F.I.R. asserted was not a supporter of Islam. Through the act of blessing Ghulam Ahmed beside the Prophet (PBUH), the accused committed a violation of Section 295-C and caused harm to the reputation of the Holy Prophet (PBUH). The following is the statement that Justice Imam Ali Kazi made: *“it is a cardinal principle of our penal law that 'mens rea' criminal intention, or guilty mind, evil intention or knowledge of the wrongfulness of the Act, is an essential ingredient of guilt of a criminal offence.”*¹¹⁵

Sections 295, 295-A, and 295-C were the charges that were brought against the defendant in the case of *Akbar v. State*¹¹⁶. In light of the fact that the accused's criminal intent had not yet been established during the course of the trial and that the claimed remarks or actions did not appear to be disrespectful to the Prophet (PBUH), the Sind High Court decided to give bail to the accused.

Conclusion

These cases establish that the Pakistani legal framework applies Shari'ah law when dealing with strict liability while placing considerable importance on the ethical considerations of justice. The judgments show a reasonable degree of the observation of Shari'ah by trying to avoid both retribution and the motives of the accused. The case of Ismail Qureshi introduces the reader to

¹¹⁴ *Mirza Mubarak Ahmed v State* (1989) 7 MLD 896 (Pak).

¹¹⁵ *ibid*

¹¹⁶ *Akbar v State* (2004) 6 YLR (Karachi) 2249 (Pak).

the judiciary's stance on state laws about Sharī'ah laws. In *Asia Masih vs. The State* also stress was paid to the fact that strict liability could not be applied in a manner that would produce an unjust result. *Shabazz Masih vs. State* also aimed at the problem of consistency and justice in the sharia's decisions. In these cases, the interconnection between Shariah and the structure of the Pakistani legal system regarding the issue of strict liability is apparent. The comparison emphasizes the judiciary's attempt to provide justice, following the religious laws and guidelines, attempting to be as strict as needed, as well as moral in most cases.

Chapter No. 4

Recommendations

Shari'ah law on blasphemy is right while penal law is based on strict liabilities and also misused by the people therefore, the following recommendations are suggested:

1. Element of intention in blasphemy law should be included,
2. The quantum of punishment of false accusation falling under section 182 PPC should be enhanced from six months to six years.
3. The element of repentance should be considered in blasphemy law.
4. Imbecile minded person involved in blasphemy case should be examined by medical authority during the early stage of the investigation.
5. Counsel engaged in blasphemy cases are often threatened by different segments of the society, so in this regard the punishment mentioned in Lawyer protection Act is 3 years it should be enhanced up to 7 years.
6. Hanfi School of thoughts in blasphemy cases should be incorporated in existing Pakistan blasphemy law.
7. International law and Pakistan blasphemy law are in stark contradiction with each other it should be reconciled.
8. The quantum of punishment in false accusation against Muslim and non-Muslim should be differentiated.

9. In investigation team dealing with blasphemy cases an Islamic scholar should be included so that the findings and conclusion of investigation should be in conformity with Islamic law.
10. Jail manual should be amended in a way that inmates involved in blasphemy cases should be segregated in terms of lodgements.
11. While the punishment under 295c PPC for the derogatory remarks against the prophet (PBUH) is death sentence , the punishment for derogatory remarks against other prophets is 10 years imprisonment it should be either death sentence or imprisonment in both cases , as it has also been proposed by FSC in Ismail qureshi vs the state case.
12. There should be special law statute for blasphemy offences, so it will expedite the process of blasphemy cases.
13. Amend Schedule II of the Code of Criminal Procedure to provide the bail release of all defendants charged with blasphemous offences before their trial. If there are good reasons to think that releasing a person on bail may cause problems for the legal system, then bail shouldn't be granted.
14. Make certain that judges, prosecutors, and law enforcement personnel who handle blasphemy cases are protected from coercion and threats.
15. When looking into blasphemy claims, it is advised to assemble a team of investigators who are directly assigned to the highest levels of the provincial government and work with the Superintendent of Police in order to reduce the possibility of pressure and threats from the person making the claim or other people. There could be more than one

investigator in the investigation squad. It could include the officers of the district commissioner, the district provincial, and/or the top police officers.

16. When it comes to blasphemy prosecutions, those who work for the police, the prosecutor, or the court have an obligation to make sure that the accused is given a fair trial that respects international law, fair trial norms, and the presumption of innocence. People who are charged with blasphemy charges must have access to knowledgeable legal counsel from the beginning of the investigation and throughout the legal process.
17. Given that children's physical and mental development varies from that of adults, treatment of minors accused of sacrilege should take this into consideration. In every case involving children, the best interests of the kid must always come first, and the juvenile justice laws must be followed.

Bibliography

Articles

1. Ahad, and Fatemeh. 2016. "Re-visiting the Concept of Mens Rea: Challenging the Common Approaches Employed under Islamic Jurisprudence and Statute Law." *Journal of Politics and Law* 9 (4). <https://doi.org/10.5539/jpl.v9n4p1>.

2. Cheema, M. H. 2012. "Beyond Beliefs: Deconstructing the Dominant Narratives of the Islamization of Pakistan's Laws." *American Journal of Comparative Law* 60.
3. Cox, Neville. 2020. "Justifying Blasphemy Laws: Freedom of Expression, Public Morals, and International Human Rights Law." *Journal of Law and Religion* 35 (1): 33–60.
<https://doi.org/10.1017/jlr.2020>
4. Douzenis, Georgios A., and Athanasios I. 2017. "Islam, Mental Health and Law: A General Overview."
5. Ibn Munir, Amr. 2024. "Applying the Hadith 'Actions are to be Judged by Intentions' in the Pakistani Legal System: An Introduction." *Al-Duhaa* 5 (1).
6. Imtiaz, S. 2010. "In the Name of Religion: 32 Blasphemy Cases in Sindh." *The Express Tribune*, December 13. <http://tribune.com.pk/story/89374/in-the-name-of-religion-32-blasphemy-cases-in-sindh/>.
7. Iqbal, Nadeem. 2001. "Only Death Will Do." *NEWSLINE*, June.
<http://www.newsline.com.pk/NewsJune2001/humanR.htm>.
8. Khudaykulov, and Feruzbek Khurramovich. 2022. "The Objective Side of Crime and the Actus Reus Concept: Comparative-Legal Analysis, Problems and Proposals." *International Journal of Advances in Scientific Research* 2 (12): 100–115.
9. Mahmood Ahmad, Shaikh. 2015. "Legal Aspect of Sense of Capability (Mens Rea to Actus Reus) as the Main Cause." November.
<https://pr.hec.gov.pk/jspui/handle/123456789/13124>.

10. Mohammad, and Abdul Basir Bin. 2000. "Strict Liability in the Islamic Law of Tort." *Islamic Studies* 39 (3): 445–62.
11. Munir, Amr Ibn. 2024. "The Elements of Crime under the Pakistani Legal System: An Overview." *Pakistan Journal of Criminology* 16 (2): 75–86.
12. Mushtaq Ahmad, Muhammad. 2018. "Pakistani Blasphemy Law between Ḥadd and Siyāsah." *Islamic Studies* 57 (1): 9–44. <https://www.jstor.org/stable/26617665>.
13. Nazar Hussain, Asif Khan, and Dr. Liaquat Ali Chandio. 2023. "Legal Safeguards Against Mob Justice: An Analysis of Blasphemy Laws in Pakistan and International Human Rights Norms." *Al-Qamar*, March 31, 13–26. <https://doi.org/10.53762/alqamar.06.01.e02>.
14. Riaz, Jawwad, Zakia Suleman, and Zaheer Iqbal Cheema. 2020. "Confrontations and Limitations on the Freedom of Expression in Pakistan." *Global Mass Communication Review* 5 (4): 136–146. [https://doi.org/10.31703/gmcr.2020\(V-IV\).10](https://doi.org/10.31703/gmcr.2020(V-IV).10).
15. Sajjad, Hafiz Ghulam Abbas, and Muhammad. 2021. "The Concept of Tortious Liability under Islamic Law: An Inquiry into Question of Compensatory Damages." *Al-Aijaz Research Journal of Islamic Studies & Humanities* 5 (2): 68–80.

Books

16. Abbas, Shemeem Burney. 2013. *Pakistan's Blasphemy Laws: From Islamic Empires to the Taliban*. United States: University of Texas Press.
17. Ahmad, Mushtaq. 2018. *Pakistani Blasphemy Law between Ḥadd and Siyāsah*.

18. Bader, Mohamed. 2013. The Concept of Mens Rea in International Criminal Law: The Case for a Unified Approach.
19. Bukhari, Al, and Muslim.
20. Cheema, M. H. Beyond Beliefs: Deconstructing the Dominant Narratives of the Islamization of Pakistan's Laws.
21. Curzon, L. B. 1973. Criminal Law. United Kingdom: The M&E Handbook Series.
<https://www.ojp.gov/ncjrs/virtual-library/abstracts/criminal-law>.
22. Eko, Nur, and Cahyo. "The Application of Strict Liability on Corporation of Forest and Land Fires on the Perspective of Environmental Law and Fiqh Al-Biah (An Analysis of Decision Number: 456/Pdt.G-LH/2016/PN Jkt. Sel)."
23. Hedayati-Kakhki, M. 2022. Islamic Law.
24. Hussain, Adeel. 2022. Revenge, Politics and Blasphemy in Pakistan. United Kingdom: Hurst Publishers.
25. Khan Niazee, Imran Ahsan. 2010. General Principles of Criminal Law: (Islamic and Western).
26. Mehdi, Rubya. 2013. The Islamization of the Law in Pakistan (RLE Politics of Islam). United Kingdom: Taylor & Francis.
27. Mohamad, and Abdul Basir Bin. 1997. The Islamic Law of Tort.

28. On Trial: The Implementation of Pakistan's Blasphemy Laws. 2015. Switzerland: ICJ, International Commission of Jurists.
29. Outrage: The Rise of Religious Offence in Contemporary South Asia. 2019. United Kingdom: UCL Press.
30. Peters, Rudolph, and Ruud Peters. 2005. Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-First Century. Cambridge University Press.
31. Qureshi, Sājīd Khān Atlavī. 2012. Tauḥīn-i Risālat Kā Shar‘ī Ḥukm. Lahore: Maktabah-i Abū Bakr ‘Abd Allāh.
32. Sājīd A‘vān. 1996. Taḥaffuz-i Nāmūs-i Risālat Aur Gustākh-i Rasūl Kī Sazā. Multan: ‘Ālamī Majlis-i Taḥaffuz-i Khatm-i Nubuvvat.
33. Vikor, K. 2005. Between God and the Sultan: A History of Islamic Law. London.
34. Waheed, Sarah Fatima. 2022. Hidden Histories of Pakistan: Censorship, Literature, and Secular Nationalism in Late Colonial India. India: Cambridge University Press.

Case Laws

1. Akbar v State (2004) 6 YLR (Karachi) 2249 (Pak).
2. Asia Bibi Case (2010).
3. Asia Bibi vs. The State (2018).
4. Ayub Masih vs. The State (1994).

5. Engineer Iftikhar Ahmad Khilji v Deputy Post Master General (2004) 6 YLR (Azad J & K) 1736 (Pak).
6. Ghāzī ‘Ilam al-Dīn Shāhīd v State. Lahore: Jang Publishers, 1988.
7. Ismail Qureshi vs The State of Pakistan (1997).
8. Mirza Mubarak Ahmed v State (1989) 7 MLD 896 (Pak).
9. Punjab Religious Book Society v State (1960) 12 PLD 1.
10. Shahbaz Masih vs. State (2007 MLD 1040 Lah).
11. Shariat Petition No 1/L/84 of 1984.
12. State v Muhammad Arshad Javed (1995) 13 MLD 667, 669 (Lahore) (Pak).
13. Wajih-ul-Hassan v Ismail Qureshi (2010 Lahore High Court) (unreported).

Legal Codes

1. **Indonesian Penal Code** (1982), art 156a.
2. **The Code of Criminal Procedure, 1898** (V of 1898), s 196.
3. **The Code of Criminal Procedure, 1898** (V of 1898), s 196-B.
4. **The Code of Criminal Procedure, 1898** (V of 1898), s 156-A.
5. **Sedition (Amendment) Act 2015** (Act A1485) (Malaysia) ss 3-4.

6. **Syariah Criminal Offences (Federal Territories) Act 1997** (Act 559) (as amended to 1 January 2013) (Malaysia) ss 3-8.
7. **Syariah Penal Code Order 2013** (Brunei), pt IV, ch I ‘Irtidad (Apostasy) & Ch. IV, “General Offences”.