



Print, Publish, Punish: The Qur'an and the Law from Colonial India to Contemporary Pakistan

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Received 25 November 2023 | Accepted 24 May 2024 |

Published online 14 June 2024

Abstract

This paper contributes a legal and a South Asian perspective to the emerging scholarship on the materiality of the Qur'an, exploring and analysing the development of the laws and regulations that protect the Qur'an as a sacred object against the risk desecration, defilement as well as heretical translations and interpretations. Starting with the enactment of Indian Penal Code, 1860 in colonial India and ending with amendments to the Punjab Holy Quran (Printing and Recording) Act, 2011 in 2022, this paper identifies multiple layers of statutes and regulations that accompany the life-cycle of the Qur'an from 'cradle to grave'. In analysing the legal developments that have fused the object and the text of the Qur'an into a legal entity that demands particular interpretations of Islam, this paper identifies an Islamic state doctrine that asks and expects the Pakistani state to protect and promote Islamic law and religion in an increasing number of contexts and occasions, the protection of the Qur'an being only one of them.

Keywords

British India – human rights – Islamic constitutionalism – Islamisation of laws – Qur'an – Pakistan – religion and material culture – South Asian legal history

1 Introduction

The incidents of Qur'an¹ burnings that took place in Sweden and in Denmark in the summer of 2023 were strongly condemned across the world.² The European Union called the desecration of the Qur'an offensive, disrespectful, and a clear provocation.³ At the end of a debate held at the request of Pakistan, the United Nations' Human Rights Council adopted Resolution 53/1, condemning all forms of religious hatred, including acts of desecration of the Holy Qur'an.⁴ The Human Rights Council urged states to adopt national laws to address acts of religious hatred that constituted incitement to discrimination, hostility, or violence. On 31 July 2023, the Council of Foreign Ministers of the Organisation of Islamic Cooperation ('OIC') adopted a Resolution on the 'Repeated Crimes of Desecration and Burning of Copies of al-Mush'haf ash-Sharif', condemning the incidents of Qur'an burnings as manifestations of Islamophobia. The OIC demanded 'the immediate cessation, and criminalization of such extremist provocative acts.'⁵ In response to the Qur'an burnings, Iraq expelled the Swedish ambassador and suspended the work permit of Ericsson, a Swedish telecom company.⁶ In Pakistan, thousands of people

- 1 With different transliterations in circulation — for instance 'Koran', 'Quran', and 'Holy Quran' — it is 'Qur'an' that is used in this paper.
- 2 For instance, the public burnings of the Qur'an in Sweden on 20 July 2023 and in Denmark on 24 July 2023; See Al Jazeera, *Two protesters burn Quran outside Iraqi embassy in Denmark*, available online at <https://www.aljazeera.com/news/2023/7/24/two-protesters-burn-quran-outside-iraqi-embassy-in-denmark> (accessed 28 January 2024).
- 3 EEAS Press Team, *Sweden/Denmark: Statement by the High Representative Josep Borrell on the burning of Quran and respect for community symbols*, available online at https://www.eeas.europa.eu/eeas/swedendenmark-statement-high-representative-josep-borrell-burning-quran-and-respect-community_en (accessed 1 November 2023).
- 4 UN Human Rights Council, *Countering religious hatred constituting incitement to discrimination, hostility or violence (A/HRC/RES/53/1)*, available online at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G23/145/38/PDF/G2314538.pdf?OpenElement> (accessed 1 November 2023).
- 5 Organisation of Islamic Cooperation, *Resolution on the Repeated Crimes of Desecration and Burning of Copies of al-Mush'haf ash-Sharif in the Kingdom of Sweden and the Kingdom of Denmark Approved by the 18th Extraordinary Session of the Council of Foreign Ministers of the Organization of Islamic Cooperation*, available online at https://www.oic-oci.org/topic/?t_id=39325&t_ref=26550&lan=en (accessed 1 November 2023).
- 6 Al Jazeera, *Outcry over Quran burning in Sweden: A timeline*, available online at <https://www.aljazeera.com/news/2023/7/20/outcry-over-quran-burning-in-sweden-a-timeline> (accessed 2 November 2023).

rallied across the country, following a call by Prime Minister Shahbaz Sharif to observe a 'Quran Sanctity Day' on 7 July 2023.⁷

Describing the Qur'an burnings as acts of desecration acknowledges the existence of the Qur'an as a material object, whose sacrality is preserved and protected by acts of consecration. As Parmenter observes with regard to the Bible, 'acts of desecration imply their opposite — the possibility of acts of consecration.'⁸ In turn, calling for the criminalization of acts of desecration acknowledges the role of law, and with that the role of the state, in preserving the sacredness of the Qur'an. In the context of South Asia, the actions adopted by state and society for promoting the sacredness of the Qur'an and preventing its desecration have received little scholarly attention. In her recent research on early Qur'an printing in colonial India, Ulrike Stark has highlighted the religio-cultural implications of 'subjecting the sacred scripture of Islam to the profane process of mass production' and the measures adopted by publishers to protect the Qur'an against the risk of defilement.⁹ However, the measures adopted by the state to protect the Qur'an as a material and ritual object against the risk of defilement, desecration, and damage remain unexplored.

In Pakistan, the Qur'an is wrapped in laws and regulations from cradle to grave. There are laws and rules that determine in exacting detail who is allowed to print the sacred book, that specify the paper's minimum quality, that exclude certain print technologies from being used in its production, that establish mechanisms to ensure that each publication of the Qur'an has been certified as correct, that exclude non-Muslims both from its production as well as its sale, and, finally, that regulate the disposal of damaged copies of the Qur'an. Since 1987, it has been an offence for non-Muslims to publish any translation or interpretation of the Qur'an that is contrary to the belief of Muslims. In the case of Punjab, Pakistan most populous province, a 2021 amendment extends this prohibition to both Muslims and non-Muslims, with imprisonment for life the only punishment.¹⁰

In interrogating how and why the Qur'an has moved to very centre of Pakistan's offences against religion, this paper offers a historical perspective,

7 Al Jazeera, *Protest rallies across Pakistan over Quran burning in Sweden*, available online at <https://www.aljazeera.com/news/2023/7/7/protest-rallies-across-pakistan-over-quran-burning-in-sweden> (accessed 1 November 2023).

8 D. Parmenter, 'A Fitting Ceremony: Christian Concerns for Bible Disposal', in K. Myrvold (ed.), *The Death of Sacred Texts* (London: Routledge, 2010) 55–70, 59.

9 U. Stark, 'Calligraphic Masterpiece, Mass-Produced Scripture: Early Qur'an Printing in Colonial India', in S. Reese (ed.), *Manuscript and Print in the Islamic Tradition* (Boston, MA: Walter de Gruyter, 2022) 141–180, 159.

10 Punjab Holy Quran (Printing and Recording) Act, Section 7 (2011).

tracing and documenting the development of the laws that were drafted and enforced to protect the holy book against the risk of desecration. Starting with the offences against religion as they protected sacred objects under the Indian Penal Code, 1860, this paper moves to the exploration of two provincial statutes, passed under the provisions of the Government of India Act, 1935, which aimed to ensure the purity of the Qur'an by excluding non-Muslims from its printing or sale. The analysis of the origins and the debates of the North-West Frontier Province Restricting the Sale of the Holy Quran Act, 1939 and the Sind Holy Quran, 1940 offers important and unique insights into the legal and political dynamics of what can be termed the very first Islamisation of criminal laws in South Asia. The controversies ranged from the legal and religious justifications for these statutes to the impassionate but unsuccessful appeals for their repeal by non-Muslim minorities, as well as parts of the British-Indian colonial government.

Reaching contemporary Pakistan, constitutional and legal safeguards of the Qur'an resurface under the Constitution of Pakistan, 1973, amendments to the Pakistan Penal Code, 1860 ('PPC') and under several dedicated statutes, all based on the template of the Holy Quran (Elimination of Printing and Recording Errors) Act, 1973. Like its predecessors from 1939 and 1940, the legal framework for the protection of the Qur'an as it obtains in Pakistan today has never been the subject of a focused analysis. In closing this gap in the knowledge of Pakistani law and society, this paper singles out the emergence of an entirely new type of offence against religion. Not concerned with the protection of Islam against the risk of blasphemy but with the correct interpretation of Islamic faith itself, this new type of offence against religion takes the divine text as its principal point of reference and criminalises any translation, interpretation, or commentary of the Qur'an that is contrary to the belief of Muslims.

Locating the laws that recognise and protect the Qur'an as a sacred object and a divine text within the constitutional framework of the Islamic Republic of Pakistan exposes the tensions and challenges that arise in the attempt to promote and protect a state endorsed definition of Islam, in the calls for the enforcement of the Islamic specific crimes of blasphemy and heresy, and in the state's constitutional obligation to protect the human rights of all citizens, including non-Muslim minorities. This paper places the legal developments that have fused the object and the text of the Qur'an into an entity that demands particular interpretations of Islam in the normative framework of an Islamic state doctrine that asks and expects the state to protect and promote Islamic law and religion in an increasing number of contexts and occasions, the protection of the Qur'an being only one of them. As it is emerging

in contemporary Pakistan, this Islamic state doctrine reflects one of the ten duties of a caliph, as listed by the Sunni theorist Ali ibn Muhammad ibn Habib ('al-Mawardi'), namely that the caliph 'must defend the faith and suppress heretics and rebels.'¹¹ In preparing the ground for this journey of legal discovery, this paper will start with an introduction to the Qur'an as a sacred object.

2 The Qur'an as a Sacred Object

The Qur'an as the speech of God manifests itself both as a text that is read and recited aloud¹² and as 'the Book' in the sense of a 'codex, that is, a collection of pages with written text on both sides and placed "between covers".'¹³ The difference between the text recited and the text as record is reflected in the Arabic terms used to describe it. In its physical form, the Qur'an is referred to with the Arabic term *muṣḥaf*, meaning codex or a collection of sheets, as is demonstrated by the OIC's condemnation of the burning of copies of *al-muṣḥaf ash-sharif*, i.e., the Qur'an in its written form. As a record of the direct speech of God, the Qur'an 'is believed to have a physical connection to the Divine, which is a link that transfers power, merits respect, and demands careful handling.'¹⁴ Or, as observed by Futatsuyama, 'the Qur'an has two opposing factors: one is the aspect of immutable verses to recite, and the second is that the text is described on some material things as such Muṣḥaf. However, the text of the Qur'an and the material things it contains are not separable.'¹⁵ As pointed out by Natalia K. Suit, in other Islamic traditions, such as the Salafi movement, 'an emphasis on the forms of material mediation of the Qur'anic text sounds too much like idolatry (...).'¹⁶

The scriptural reference to the role of purity in the careful handling of *al-muṣḥaf ash-sharif* is found in verse 56:77–79 of the Qur'an: 'That this is indeed a Qur'an most honourable. In a book [*kitab*] well-guarded, which none

11 S. Hashmi, 'War and Peace' in P. Bearman & R. Peters (eds.), *The Ashgate Research Companion to Islamic Law* (Farnham: Ashgate, 2014) 193–206, 200.

12 See M. Ayoub, *The Qur'an and its Interpreters* (Volume 1) (New York, NY: State University of New York Press, 1984), 7–16.

13 J. Svensson, 'Relating, Revering and Removing: Muslim Views on the Use, Power, and Disposal of Divine Words', in K. Myrvold (ed.), *The Death of Sacred Texts* (London: Routledge, 2010) 31–54, 34.

14 Svensson, *supra* note 13 at 33.

15 T. Futatsuyama, 'Thinking Islam through Things: From the Viewpoint of the Materiality of the Qur'an', *Kyoto Bulletin of Islamic Area Studies* 13 (2020): 69–80, 71.

16 N. Suit, *Qur'anic Matters. Material Mediations and Religious Practice in Egypt* (London: Bloomsbury Academic, 2020), 235.

shall touch but those who are clean [*mutahharun*].¹⁷ There is some controversy about the exact meaning of this verse.¹⁸ As Katz observes, the verse could be interpreted either as ‘a requirement of ritual purity for those who touch earthly copies of the Qur’ān or as a description of the heavenly exemplar of the Qur’ān touched only by the angels.’¹⁹ Svensson argues that the former represents the more wide interpretation, ‘although religious scholars (‘ulama) will differ among themselves concerning whether this precondition applies to the codex as such or only the text contained in the codex.’²⁰

In Cook’s blunt assessment, there are two aspects to ritual purity being a precondition for touching the Qur’an:

The first concerns Muslims. A Muslim may find himself — or herself — in a state of ritual impurity for a variety of reasons, most of which can be remedied by washing. While in such a state, then, a Muslim should not touch the Koran. The second aspect concerns non-Muslims, whose impurity is irremediable short of conversion to Islam. Unbelievers, accordingly, should never touch the Koran according to the majority view.²¹

In addition to the condition of the requirement of purity, there are also rules on how the Qur’an should be protected from impurities and desecration. Referred to by Svensson as the ‘Etiquette of the Qur’an’, these include:

A copy of the Qur’an should not be placed on the ground nor be left open after readings. When stapled together with other books the sacred text should occupy the topmost position. In general, the Qur’an should be placed on a high level when not being used. It should not be used as a pillow. It should not be carried into impure spaces, such as the bathroom. Another discussion has highlighted the question whether the sacred text can be taken into non-Muslim lands, in face of the fact that it may be lost and come into contact with impurities.²²

¹⁷ Svensson, *supra* note 13 at 36.

¹⁸ For an in-depth discussion of the debates surrounding the interpretation of this verse, see T. Jadeh, ‘Touching and Ingesting: Early Debates over the Material of the Qur’an’, *Journal of the American Oriental Society* 129(3) (2009): 443–466.

¹⁹ M. Katz, ‘Cleanliness and Ablution’, in J.D. McAuliffe (ed.), *Encyclopaedia of the Qur’an* (Boston, MA: Brill, 2001), doi: 10.1163/1875-3922_q3_EQSIM_00081 (accessed 15 October 2023).

²⁰ Svensson, *supra* note 13 at 36.

²¹ M. Cook, *The Koran: A Very Short Introduction* (Oxford: Oxford University Press, 2000), 56.

²² Svensson, *supra* note 13 at 36. Socially constructed, there is a wide range of these rules of Etiquette of the Qur’an. Svensson explored these rules of Etiquette in Kisumu, Kenya,

In his research on the disposal of copies of the Qur'an, Jonas Svensson observed that there was little academic research on the role of the Qur'an as a sacred object.²³ Ten years later, this situation has improved, with academic scholarship engaging more closely with the materiality of the Qur'an.²⁴ In the case of Pakistan, the large body of blasphemy cases offers the most frequent glimpses of the role of the Qur'an as a sacred text and object. The past three decades have witnessed prosecutions for the alleged damaging of pages of the Qur'an,²⁵ for placing it next to a pair of shoes,²⁶ for pages of the Qur'an being stored insolently in a gunny bag²⁷, for the use of its pages in amulets meant to ward off illness and evil,²⁸ for burying the Qur'an in the floor of a house,²⁹ for the use of objectionable wrappers for the binding of the Qur'an,³⁰ and for Ahmadis having 'maintained copies of the Holy Qur'an inside their place of worship.'³¹ The rationale that informs these cases is succinctly expressed in the case of *Sayed Ijaz Hussain vs The State* (1994 MLD 15):

Keeping copy of the Holy Qur'an in a bag with a pair of shoes and that too in the feet is a sign of showing dishonour and disrespect to the Holy Qur'an. [...] to show physical respect and honour to the Holy Qur'an is a legal, religious and moral duty of a person. The spiritual respect and

Futatsuyama, *supra* note 15, in Tunisia and, more recently, Suit, *supra* note 16, with a focus on contemporary Egypt. There does not seem to have been any research on the rules of 'Etiquette of the Qur'an' as they obtain in communities in Pakistan.

- 23 Svensson, *supra* note 13. Jonas Svensson cites two possible reasons for this neglect. First, an 'inherited Protestant bias within the academic study of religions, uncomfortable with ritual and adhering to a restricted view on 'religion' as first and foremost a set of beliefs, a message and ethics, for which sacred texts merely constitute sources for information.' Second, contemporary Muslim reformists' focus on the content of the Qur'an rather than its role as a sacred object, the latter often being associated with superstition. On what type of acts can constitute desecrations of the Qur'an, see J. Svensson, 'Hurting the Qur'an — Suggestions concerning the Psychological Infrastructure of Desecration', *Temenos* 53(2) (2017): 243–264.
- 24 For a comprehensive review of the development of this scholarship, see Futatsuyama, *supra* note 15. For fascinating insights into the production and religious significance of the Qur'an generally, and in Egypt particularly, see Suit, *supra* note 16.
- 25 For a recent case, see *Salamat Mansha Masih vs The State*, PLD 2022 SC 751, where a Christian sweeper had been accused of damaging copies of the Qur'an in a public park.
- 26 *Sayed Ijaz Hussain vs The State*, 1994 MLD 15.
- 27 *Muhammad Mashal vs The State*, 1999 YLR 1585.
- 28 *Abdul Ahad vs The State*, PLD 2007 Peshawar 83.
- 29 *Muhammad Shakir vs The State*, 2021 PCrLJ 1346.
- 30 *Muhammad Sadiq vs The State*, 2003 YLR 2114.
- 31 *Tahir Naqash vs The State*, PLD 2022 SC 385.

honour is matter of an individual relating to his thinking whereas the physical honour and respect is a matter of his action visible.

The status of the Qur'an as a sacred object can be glimpsed in other settings. In their research on the shrine of Sufi Barkat Ali in Faisalabad, a city in the province of Punjab, Alexandra Papas and Ghulam Shams-ur-Rehman present what they call a 'cult of the Qur'an', featuring a dedicated Qur'an Mahal:

This unique place established by Barkat Ali in 1984 and still developed by his successors today displays a collection of several thousand copies of the Quran in manuscript and print forms, standing on shelves in three walls covered by a black curtain resembling the *kiswa* upon the Kaaba. These copies were collected from various regions gradually. In the middle of the Quran Mahal stand four recent monumental manuscripts of the Quran entirely written in calligraphy by an anonymous disciple, with colorful illuminations and metallic or golden adornments [photo 3, 4, and 5]. Both the making of the giant Qurans, the collecting of copies, the preservation of books, and the pious visits (barefoot) to Quran Mahal are considered devotional acts in addition to the practices of reading and meditating on texts.³²

Mukulika Banerjee notes how in traditional Pathan society, peacekeepers and arbitrators used to carry Qur'ans on their heads as symbols of reconciliation and persuasion. In the context of the civil disobedience movement against British rule in the North-West Frontier Province in the early 1930s, Banerjee describes a demonstration where '200 to 300 women appeared on the scene with Qurans on their heads to persuade voters not to record their votes. In Charsada ... only one vote was recorded.'³³ Ilyas Chattha's presents the use of the Qur'an not as a symbol of peace but as an accelerant of communal violence in the agitation that engulfed the city of Manshera on 12 December 1946, leading to the death of 20 Hindus and Sikhs. The violence had been instigated by the Muslim League's paramilitary organisation, the Muslim League National Guard, which had 'distributed burnt[t] pages of the Quran in the areas [that

32 A. Papas & G. Shams-ur-Rehman, 'Neo-Traditional Sufism: The Books, the Shrine and the Relics of Sufi Barkat Ali in Faisalabad, Pakistan', *Kyoto Bulletin of Islamic Area Studies* 13 (2020): 14–30, 19.

33 M. Banerjee, *The Pathan Unarmed. Opposition & Memory in the North-West Frontier* (Karachi: Oxford University Press, 2000), 99.

they were inciting] [by saying] that they were burnt during the Bihar killings.³⁴ This theme finds itself repeated across the decades. Seventy years later, in the 2022 case of *Ali Ashgar vs The State*³⁵, the accused was charged with inciting mob violence against the victim by posting fake posts about the desecration of the Holy Qur'an. The accused had:

a grudge against the complainant and due to this reason he started false and fictitious campaign against him about desecration of Holy Quran on social media through his Facebook account titled "Ali Ashgar KD" and shared multiple posts on various dates, which provoked the general public against him and ultimately a mob encircled and attempted to set his house on fire.

Stark's pioneering work on Qur'an printing in early 19th century India offers important insight into the actions and measures that printers and publishers adopted voluntarily so as to assure believers that in the Qur'an's printing all of the demands for ritual purity had been satisfied. In 1828 and 1829, Sayyid 'Abdullah of Sawana used moveable print technology for the production of the very first edition of the Qur'an to be printed in India, making sure to record in the Qur'an's Epilogue that the 'pressmen assigned to the task were all pure (tahir) and constant in faith (namazi) and that "no kind of heedlessness or inelegance would occur in the printing".³⁶ Following the Great Rebellion of 1857, it was the Naval Kishore Press, founded by the Hindu proprietor Munshi Naval Kishore, that not only became South Asia's largest Indian-owned printer and publisher, but also the first publisher to print the Holy Qur'an on an industrial scale.³⁷ As Stark notes, Naval Kishore was well aware of the sensitivities of 'subjecting the sacred scripture of Islam to the profane process of mass production' and took a number of measures to eliminate the risk of defilement of the sacred script:

Qur'an printing at the press implied meticulous observance of Islamic precepts and was a task assigned exclusively to Muslim employees, who had to perform ablutions before embarking on their work. Smoking or chewing betel leaf (pan) was strictly forbidden while printing was under

34 I. Chattha, 'Looting in the NWFP and Punjab: Property and Violence in the Partition of 1947', *South Asia: Journal of South Asian Studies* 44(6) (2021): 1075–1089, 1080.

35 *Muhammad Rafique vs The State*, 2022 SCMR 970.

36 Stark, *supra* note 9 at 146.

37 *Ibid.*, p. 158.

way. Old lithographic stones bearing the words of the Qur'an were not destroyed but buried. In continuation of the manuscript tradition, printed editions regularly came with a cover page (either in lieu of or in addition to the title page) that reminded readers of the sacred nature and charismatic power of the Qur'an as text and object by citing the conventional verses from surah al-Waqi'ah (56:77–79): *'Innahu la-qur'ānun karīmun fī kitābin maktūnin lā yamassuhu illā 'l-muṭahharūna'* — 'That this indeed is a noble Qur'an, inscribed in a well-guarded book, which none but the pure may touch' (see Figs 7 and 8).³⁸

Further detail comes from Mohamad Tavakoli-Targhi's report of his fieldwork in Delhi and Lucknow in the early 1990 where he met descendants of Naval Kishore. In 'Rediscovering Munshi Newal [sic] Kishori', Tavakoli-Targhi recounts being told the story of 'how Newal [sic] Kishore had required all *daftari* workers to perform the *vuzu* (ablution) before starting their work on the binding of the Qur'an.'³⁹ The size of the business of Qur'an printing can be gauged from the fact that the Naval Kishore Press alone published 17 versions of the Qur'an, with its so-called 'Kanpur edition' having sold 19,000 copies by 1879.⁴⁰

Rather than being mandated by British Indian law, the many precautions taken by the publishers to assure their buyers that as printed and sold, the Qur'an was pure, had all been voluntary. It was the enactment of the Indian Penal Code, 1860 ('IPC') that recognised for the first time the existence of sacred objects and their protection. The effect of the IPC on the Qur'an as a sacred object will be considered in the next section.

3 The Indian Penal Code, 1860

The notion that sacred objects could be protected by law against defilement, desecration, or destruction does not form part of English law, perhaps as a

³⁸ *Ibid.*, p. 159.

³⁹ M. Tavakoli-Targhi, 'Rediscovering Munshi Newal Kishori', *South Asia Library Notes & Queries* 29 (1993): 14–22, 15.

⁴⁰ Stark, *supra* note 9.

result of the reformation.⁴¹ As it obtained in England until 2008,⁴² the common law offence of blasphemy was concerned solely with written or spoken words that denied the truth of Christianity,⁴³ the existence of God, and ‘any contemptuous reviling or ludicrous matter relating to God, Jesus Christ, or the Bible, or the formularies of the Church of England as by law established [...]’.⁴⁴ The focus of the offence of blasphemy on written and spoken words, rather than objects, is reflected in the provisions of the Blasphemy Act 1697 (9 Wii. 3. C.35) which made it a criminal offence — by writing or speaking — to deny the Holy Trinity, to claim that there is more than one God, to deny the truth of Christianity, or to deny the Bible as divine authority.⁴⁵

In turn, the notion of sacred objects forming part of Christianity was not only denied but actively rejected and penalised. Legislation passed England in 1571 made punishable by law ‘the bringing of any tokens by the name of Agnus Dei into the realm, or any crosses, pictures, beads or suchlike ... things from the bishop or see of Rome, or from any persons or persons authorised or claiming authority by or from the said bishop or see of Rome to consecrate or hallow

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- 41 In England, there remain in force specific statutes concerned with elements of Anglican worship and burials, such as section 36 of the Offences Against the Person Act, 1861 which makes it an offence to use ‘threats or force, obstruct or prevent or endeavour to obstruct or prevent, any clergyman or other minister in or from celebrating divine service or otherwise officiating in any church, chapel, meeting house, or other place of divine worship’.
- 42 The offence of blasphemous libel was abolished in May 2008 under section 70 of the Criminal Justice and Immigration Act, 2008. Blasphemy was a common law offence with strict liability and an unlimited penalty. For a succinct overview of the development of the offence, See Law Commission, *Offences against Religion and Public Worship* (LAW COM. No 145), available online at <https://publications.parliament.uk/pa/ld200203/ldselect/ldrelol/95/9505.htm#a2> (accessed 9 November 2023).
- 43 Since 1838, the common law offence of blasphemy was concerned solely with the established Church of England to the exclusion of all other faiths, including other Christian denominations. See E. Howard, ‘Freedom of Expression, Blasphemy and Religious Hatred. A View from the United Kingdom’, in J. Temperman & A. Koltay (eds), *Blasphemy and Freedom of Expression. Comparative, Theoretical and Historical Reflections after the Charlie Hebdo Massacre* (Cambridge: Cambridge University Press, 2017) 595–618: 597.
- 44 L. Sturge, *Stephen’s Digest of the Criminal Law* (London: Sweet and Maxwell, 1950), as quoted in *Whitehouse vs Lemon* [1979] A.C. 617, 665.
- 45 As Hare observes, ‘... blasphemy is concerned with the expression of ideas: it is about speech and writing and not freedom of opinion’. See I. Hare, ‘The Theory and Practice of Blasphemy in the Common Law. Slaying the Seven-Headed Beast’, in J. Temperman & A. Koltay (eds), *Blasphemy and Freedom of Expression. Comparative, Theoretical and Historical Reflections after the Charlie Hebdo Massacre* (Cambridge: Cambridge University Press, 2017) 576–594, 576, 577.

the same'.⁴⁶ As Parmenter observes, because of its tradition of anti-ritualism, Protestant Christianity not only denied that material objects could be revered but belittled as less advanced religions that centered 'around objects and actions rather than reading texts'.⁴⁷

Viewed from the perspective of the legal system of the Protestant colonial power then, the offences against religion as they appeared in Chapter xv of the Indian Penal Code, 1860 were nothing short of revolutionary. Two aspects stand out. First, the offences against religion would not be confined to protecting the tenets of the Anglican church alone. Instead, the offence against religion protected a person's 'religious feelings' against being deliberately wounded.⁴⁸ Lord Baubington Macaulay, who, as a member of the First Law Commission, had presented the first draft of the Indian Penal Code in 1837, explained in the 'Note J. on the Chapter of Offences Relating to Religion and Caste', that the principle informing the offences against religion '[...] is this, that every man should be suffered to profess his own religion, and no man should be suffered to offend the religion of another'.⁴⁹

The Indian Penal Code's second departure from English law was even more radical than creating a religiously neutral and watered down version of the common law offence of blasphemy: the Indian Penal Code would protect sacred objects and places of worship against the threat of destruction, damage, and defilement. In Macaulay's reasoning, there was no offence that was more likely to 'lead to tumult, to sanguinary outrage, and even to armed insurrection'.⁵⁰ Macaulay referred to two examples, the 'slaughter of a cow in a sacred place at Benares in 1809 caused violent tumult, attended with considerable loss of life' and 'The pollution of a mosque at Bangalore was attended with consequences still more lamentable and alarming'.⁵¹

Informed solely by concerns for the maintenance of public order, and with it the preservation of British rule over India, Section 295 of the Indian Penal Code provides:

46 A. Muller, 'The *agnus dei*, Catholic devotion, and confessional politics in early modern England', *British Catholic History* 34(1) (2018): 1–28.

47 Parmenter, *supra* note 8 at 55–56.

48 Section 298 of the Indian Penal Code: "Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year or with fine, or with both".

49 B. Macaulay, *Speeches and Poemes with the Report and Notes on the Indian Penal Code* (New York, NY: Hurd and Houghton, 1874), 400.

50 *Ibid.*, p. 401.

51 *Ibid.*

295. Injuring or defiling place of worship, with intent to insult the religion of any class: Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons 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 shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

The importance of protecting sacred objects and places of worships in Macaulay's scheme for the Indian Penal Code can be gleaned from the fact that Macaulay placed them at the very beginning of Chapter xv 'Offences against Religion' with the punishment of seven years' imprisonment — reduced to two year in the final version of the Indian Penal Code — being the most severe in that Chapter.

Neither the jurisprudence nor the academic research concerned with Section 295 come anywhere close to the importance that Macaulay had given to it. As applied by British Indian courts, the two leading cases revealed a significant gap in the way Section 295 had been drafted. In his explanatory text, Macaulay had referred to 'the slaughter of a cow in a sacred place at Benares in 1809'⁵² as a justification for the inclusion of Section 295 in the IPC. However, as drafted, the words 'objects held sacred' did not indicate whether a cow could be an 'object held sacred'. Thus, the leading cases are not concerned with the religious status of the Qur'an but with the question of whether a cow could be considered a scared object. In the case *Queen-Empress vs Imam Ali and Anr.* (decided on 20 December 1887),⁵³ the Allahabad High Court court quashed the conviction of two Muslim butchers who had been fined Rs 25 each for 'having

52 Beyond the scope of this paper is a discussion of Macaulay's use of the example of the Hindu-Muslim riots in Benares in 1809. The use of this example to justify the inclusion of Section 295 in the IPC lends support to Pandey's argument that the Benares riots of 1809 had been used in colonial discourses to construct a master narrative that 'acts as a sort of model for all descriptions, and hence evaluations, of communal riots in official (and, I might add, nationalist) prose. In the colonial case, this communal riot narrative [...] is simultaneously and necessarily a statement on the Indian 'past'. See G. Pandey, *The Construction of Communalism in Colonial North India* (Delhi: Oxford University Press, 2006), as quoted in E. Chalier-Visuvalingam & S. Visuvalingam, 'Violence and the Other in Hinduism and Islam: 1809 Lat Bhairon Riots of Banaras', in R. Tripathi & P. Singh (eds.), *Perspectives on Violence and Othering in India* (New Delhi: Springer India, 2016) 85–127, 85, 109.

53 (1888) ILR 10 All 150. For a discussion, See C. Hutton, *Word Meaning and Legal Interpretation: An Introductory Guide* (London: Red Globe Press/Bloomsbury Publishing, 2017).

destroyed each a cow by the side of a public highway', because as a matter of statutory interpretation, Section 295 referred only to inanimate objects 'such as churches, mosques, temples and marble or stone figures representing gods' but 'not the killing of a cow as a sacrifice or otherwise'.⁵⁴

Post-independence, only Indian, but not Pakistani courts, have considered whether the Qur'an could be regarded as a sacred object under section 295. In *S. Veerabadrar Chettiar vs E. V. Ramaswami Naicker & Others* (decided on 25 August 1958),⁵⁵ concerned with the destruction of an idol of the God Ganesha by a group of religious reformers, the Supreme Court observed that a 'sacred book, like the Bible, or the Koran, or the Granth Saheb' could be regarded sacred and that indeed 'Any object however trivial or destitute of real value in itself, if regarded as sacred by any class of persons would come within the meaning of the penal section.' The Qur'an was also recognised as the 'holy book of the followers of Islam' in the case of *Chandmal Chopra vs State Of West Bengal And Ors.* (decided on 24 November 1987).⁵⁶ Decided by the Calcutta High Court, the case was concerned with the maintainability of a petition seeking to ban the Qur'an because, as was alleged, the Qur'an 'incited violence, disturbed public tranquillity, promoted, on grounds of religion, feelings of enmity, hatred and ill-will between different religious communities and insulted the religion or religious beliefs of other communities in India.' With reference to section 295, Justice Shyamal Kumar Sen held:

Nobody can dispute that the Koran or the provisions contained in Koran are held in high esteem by large number of persons professing Islamic faith in India and abroad. Therefore, it appears to me that the provisions of Section 295, I.P.C. are intended to protect any object held sacred including the spiritual content contained in Koran.

In 2018, the legislative assembly of the Indian state of Punjab added a new Section 295AA to the Indian Penal Code, providing that '*whoever causes injury, damage or sacrilege to Sri Guru Granth Sahib, Srimad Bhagwad Geeta, Holy Quran and Holy Bible with the intention to hurt the religious feelings of the people, shall be punished with imprisonment for life.*'⁵⁷ However, with the Governor

54 See, also, *Romesh Chunder Sanyal vs Hiru Mondal And Anr.* (1890) 1LR 17 Cal 852.

55 1958 AIR 1032.

56 1988 CriLJ 739.

57 The Indian state of Punjab's government's earlier attempt to make it an offence to intentionally desecrate the 'Sri Guru Granth Sahib' had been rejected by the Central Government on the ground that 'since all religions are to be treated equally, the addition of a section for one particular religion was not possible.' See N. Gopal, *Punjab for tougher*

not having given his assent to the Bill, this amendment to the Indian Penal Code has not become a law as yet.⁵⁸

In the academic literature on the Indian Penal Code's offences against religion, the protection of sacred objects against defilement under Section 295 of the Indian and Pakistan Penal Code have received little attention.⁵⁹ One exception is Farhana Nazir's PhD dissertation 'A Study of the Evolution of Legislation on Offences Relating to Religion in British India and Their Implications in Contemporary Pakistan', which offers a detailed discussion of the development of the case law under Section 295.⁶⁰

From the above, it can be concluded that, as a matter of law as applied in British India and India, the Qur'an comes within the definition of a sacred object under Section 295 of the Indian Penal Code. However, as is evident from Macaulay's commentary and the case law, rather than protecting the sacredness of objects, Section 295 of the Indian Penal Code is concerned with the

desecration law: Can't single out religion, Centre returns Bill on Guru Granth Sahib, available online at <https://indianexpress.com/article/india/punjab-for-tougher-desecration-law-cant-single-out-religion-centre-returns-bill-on-guru-granth-sahib-4623132/> (accessed 7 February 2024). For a discussion of the new Section 295 AA, see R. Poddar, *Section 295AA: Punjab's Amendment to the Indian Penal Code is Constitutional Sacrilege*, available online at <https://www.sociolegalreview.com/post/section-295aa-punjab-s-amendment-to-the-indian-penal-code-is-constitutional-sacrilege> (accessed 7 February 2024).

58 See R. Vasudeva, 'Punjab CM Mann writes to Shah for President nod to sacrilege Bills', *Hindustan Times*, available online at <https://www.hindustantimes.com/cities/chandigarh-news/punjab-cm-writes-to-amit-shah-seeking-presidential-assent-on-life-imprisonment-for-sacrilege-accused-in-ipc-and-crpc-amendments-101685211025005.html> (accessed 7 February 2024).

59 Despite the paucity of academic literature, it is evident that from a comparative perspective, Section 295 has been highly influential. Because the Indian Penal Code, 1860 was transplanted to other British colonies or adopted by particular jurisdictions, Section 295, or provisions closely modelled on it, appear in the laws of Bangladesh, Brunei Darussalam, Cyprus, India, Malaysia, Pakistan, South Sudan, Sri Lanka, St Vincent and Grenadines and Tanzania, Vanatu, and Zambia. See J. Fiss & J. Kestenbaum, *Respecting Rights? Measuring the World's Blasphemy Laws*, available online at <https://www.uscirf.gov/sites/default/files/Blasphemy%20Laws%20Report.pdf> (accessed 9 November 2023).

60 F. Nazir, *A Study of the Evolution of Legislation on Offences Relating to Religion in British India and Their Implications in Contemporary Pakistan* (PhD Dissertation, Divinity School, University of Edinburgh, Edinburgh, 2013). In a recently published chapter, Syed Ali Raza examines the development of the Islamic anti-blasphemy laws in Pakistan generally, without any focus on the law on sacred objects under Section 295 Pakistan Penal Code or on the Qur'an under Section 295-B. See S. Raza, 'Forbidden Discourse: Evaluating the Transformation of Colonial-era Religious Penal Offences into Contemporary Pakistan's Blasphemy Laws', in L. Thio & J. Neo, *Religious Offences in Common Law Asia. Colonial Legacies, Constitutional Rights and Contemporary Practice* (London: Bloomsbury Publishing, 2021) 187–214.

maintenance of public order. If it was otherwise, the *mens rea* requirement could have been defined as the 'wilful destruction' of a sacred object, thereby ensuring that it is the sacred object and not just the intention to insult the religion that comes within the purview of Section 295. Instead, a successful prosecution under Section 295 requires proof of '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.' Seen in this light, the insertion of Section 295 Indian Penal Code was less revolutionary than it appears at first sight. The true revolution in the development of the law governing sacred objects occurred almost exactly 80 years after the enactment of the Indian Penal Code, 1860.

4 The North-West Frontier Province Restricting the Sale of the Holy Quran Act, 1939

4.1 *Historical Setting*

If not applied in practice, Section 295 of the Indian Penal Code had nevertheless been path breaking in recognising that sacred objects could not only form part of a religion, but that the law could be employed to protect them against the threat of defilement. Two statutes passed respectively in the North-West Frontier Province ('NWFP') in 1939 and in the Province of Sind in 1940 would take the legal recognition of sacred objects one step further. The North-West Frontier Province Restricting the Sale of the Holy Quran Act, 1939 and the Sind Holy Quran Act, 1940 expressly recognised the Qur'an as a sacred object and made it an criminal offence for non-Muslims to print, publish, or sell copies of the Qur'an.

Tracing the socio-religious and political developments that contributed and lead to the enactment of the two laws is challenging because both statutes disappeared from view at the very moment of their enactment. Sources that provide direct evidence of the origins of the acts consist of Amit Kumar Gupta's *North West Frontier Province Legislature and Freedom Struggle 1932–47*, published in 1976,⁶¹ and the debates of these statutes in the NWFP and the Sindh Legislative Assemblies. Gupta's book interprets the origins of North-West Frontier Province Restricting the Sale of the Holy Quran Act, 1939 as a concession of the Congress-led provincial government to the religious sentiments of Muslims, who felt that transactions concerning copies of the Qur'an should

61 A. Gupta, *North West Frontier Province Legislature and Freedom Struggle 1932–47* (New Delhi: Indian Council for Historical Research, 1976), 98.

not remain in the hands of non-Muslims 'who might not show the same veneration to the Holy Book the Muslims would expect.' Gupta describes the 'communal agitation' that followed the passage of North-West Frontier Province Restricting the Sale of the Holy Quran Act, 1939:

The Act was criticised by Hindu communalist members and appreciated by the conservative Muslim members. Some even applauded Dr Khan Saheb's devotion to "his religious obligations". The Hindu Booksellers' Association meanwhile apprehended huge losses on account of the operation of the Act. Its members already possessed a stock of thousands of copies of the Quran which could not be cleared off at the normal price within the stipulated period of one year. The communalists, therefore, had no difficulty in winning the support of the non-Muslim publishers and book-seller in their opposition to the measure. An agitation, in fact, developed against this "direct attack" on "Hindu" interest by "Muslims". Soon a counter Muslim communal agitation followed, affecting adversely the sensitive communal front in the Frontier — an outcome contrary to the Congress objective.⁶²

Further background can be gleaned from the statements made during the legislative assembly debates. Abdur Rab Nishtar, a member of the NWFP Legislative Assembly, stated that the law to protect the Holy Qur'an had been a long-standing demand of Muslims not just in Peshawar but the whole of India.⁶³ During the debates of the Sind Holy Quran Bill 1940, Pir Illahi Baksh, the head of the provincial government, justified the Bill on the basis that it had already been introduced in various Congress provinces 'simply on the basis of universal demand as it has been introduced in other provinces also.'⁶⁴

Six other legal initiatives that took place in the mid-1930s and early 1940s, suggest that the enactments of the North-West Frontier Province Restricting the Sale of Holy Quran Act, 1939 and the Sind Holy Quran, 1940 were part of a broader campaign for the promotion of Islamic law and the rights of the Muslim community. The first of these initiatives had taken place in the NWFP itself, where the demand for the application of the Islamic law resulted in the passage of the Muslim Personal (Shariat Application) Act, 1935.⁶⁵ The

62 *Ibid.*, p. 98.

63 IOR: L/P&J/7/3590, 'Extract from N.-W.F.P. Legislative Assembly Debates', 21st September 1939, 11.

64 IOR: L/P&J/4059, 'Official report of debates in the Legislative Assembly relating to the Bill': *Sindh Legislative Assembly Debates*, 12th February 1940, 3.

65 The North-West Frontier Province Muslim Personal (Shariat Application) Act (1935).

North-West Frontier Province Shariat Act was followed by the Muslim Personal Law (Shariat Application) Act, 1937 and the Dissolution of Muslim Marriages Act, 1939, both central statutes that applied in the whole of British India. In addition, three legislative initiatives broadly concerned with the Islamisation of laws were introduced as bills but were not passed as laws. The Muslim Intestate Succession Bill, introduced in the Central Legislative Assembly on 1st April 1939, aimed to ensure that 'the estate of a Muslim subject to the Muslim law of succession dying intestate without any heir shall devolve on the Muslim community and shall not escheat to the Crown.'⁶⁶ Condemned by Zafrullah Khan, a member of the Select Committee, as 'in effect discriminatory in favour of one community', it was never enacted.⁶⁷ There were two unsuccessful attempts to establish Kazi courts. The first attempt sought the addition of a new Section 7 to the Dissolution of Muslim Marriages Bill. The new Section 7 was to provide:

A Muslim Judge alone shall take cognizance of cases under this Act, and in respect of cases arising in a District where there is no Muslim Judge, the case shall be tried by a Muslim Judge to be specially empowered by the Provincial Government to tour about and try such cases.⁶⁸

When put to the vote, the bill was rejected.⁶⁹ Finally, on 18th February 1941, Qazi Muhammad Ahmad Kazmi introduced a bill 'for the appointment of persons to the office of Kazi and for performing and keeping a record of marriages and for the appointment of tribunals for trying and deciding cases of divorce and dissolution of marriage amongst Muslims.'⁷⁰ When put to the vote on 5th April 1945, the majority of members voted against the bill being referred to a Select Committee.⁷¹

Campaigns for the Islamisation of laws were particularly strong in the NWFP. The decade preceding the enactment of the North-West Frontier Province Restricting the Sale of Holy Qur'an Act, 1939 was marked by the highly visible

66 *The Legislative Assembly Debates, vol. v, 1937* (Government of India Press, Delhi 1938) 145 (per Maulana Zafar Ali Khan).

67 *The Legislative Assembly Debates, vol. v, 1937* (Government of India Press, Delhi 1938) 145 (per Zafrullah Khan).

68 *The Legislative Assembly Debates, vol. 1, 1939* (Government of India Press, Delhi 1939) 864 (per Maulvi Syed Murtaza Bahadur).

69 Bahadur, *ibid.*, p. 875.

70 *The Legislative Assembly Debates, vol. 1, 1941* (Government of India Press, Delhi 1941) 194 (Qazi Muhammad Ahmad Kazmi).

71 Kazmi, *ibid.*, p. 2552. There were 13 noes as opposed to 5 ayes.

and successful campaign of the Jamiyatul Ulama-yi Sarhad ('JUS'), a branch of the Jamiat-ul Ulama-i-Hind ('JUH'), for the introduction of Shariat and the boycott of colonial, 'English', courts.⁷² In their place, the JUS set up Shariat courts, called *Tahafuzz-i-Namus- Shari'at*, and encouraged the population to bring their disputes to the 'ulema rather than to the 'English courts'.⁷³ The campaign for the adoption of Shariat received further impetus when the NWFP Legislative Council was established in 1932. With a provincial legislative for the first time in existence in the NWFP, the JUS launched a campaign for the passage of a 'Shariat Act'. During the campaign, the JUS organised 'Provincial Shariat Conferences', celebrated 'Shariat Days' and announced strikes in order to drum up support.⁷⁴ In addition to a campaign of 'agitation and emotion', the JUS also realised the potential benefits of being directly involved in parliamentary politics. Being included in the Legislative Council would increase the chances of the Shariat Act being passed. In 1933, the JUS resolved to put forward one of its members at the next elections to the NWFP Legislative Council.⁷⁵ In the meantime, senior 'Ulamas of the JUS drafted the 'Shariat Bill' under the guidance of Maulana Mufti Kifayatullah, the President of JUH. It was introduced in the NWFP Legislative Assembly with the help of Khan Habibullah Khan, a non-official 'Muhammadan' member from Bannu South. The 'Statement of Objects and Reasons' attached Khan Habibullah Khan's Bill's recorded that 'For several years past it has been the cherished wish of the Muslims of the North-West Frontier Province that Customary Law should in no case take the place of Muslim Personal Law', that the 'matter had been repeatedly agitated in the press as well on the platform' and that the 'Provincial Jamiyatul Ulama has from time to time passed emphatic and decisive resolutions on the subject and invited the attention of all concerned to the urgent necessity of introducing a

72 *Ibid.*, p. 41.

73 *Ibid.* Shariat courts had also been set up in several parts of the NWFP by members of the Khilafat Movement. Abdul Rauf describes how in the early 1920 in the boycott of colonial courts in the NWFP, the 'Khilafatists' had set-up Shariat Tribunals at village level and Shariat Appellate Tribunals at district level, the latter being composed fifteen mullahs. As a result, the number of courts cases decreased in the years from 1919 to 1922 and the 'British courts wore a deserted look'. See A. Rauf, 'Khilafat Movement in the North-West Frontier Province: A Historical Perspective', *Journal of the Research Society of Pakistan* 36(3) (1999): 29–47.

74 J. Khan & F. Islam, 'The Popalzai Family: Its Role in Various Religio-political Movements in British North-West Frontier Province (NWFP), 1927–1940', *Journal of the Pakistan Historical Society* 69(2) (2021): 27–28.

75 M. Tariq, *Religio-Political Movements in the North West Frontier Province: A Case Study of Jamiat-ul-Ulama-i-Sarhad (1920–1947)* (PhD Dissertation, Department of History, University of Peshawar, Peshawar, 2018), 147.

measure in the Council to this effect.' Following on from report of the Select Committee, the Legislative Council of the NWFO passed the Muslim Personal (Shariat Application) Act, 1935 on 6th November 1935.⁷⁶

With its focus on the Qur'an, the passage of the North-West Frontier Province Restricting the Sale of the Holy Quran Act, 1939 can be viewed in the context of the objectives of the JUS for the Islamisation of laws as well as its strategic use of parliamentary processes to reach this goal. Gaining a better understanding of the social and political origins of this unprecedented statute requires more research, research that is beyond the scope of this paper.

4.2 *The Statement of Objects and Reasons*

The NWFP Legislative Assembly had come into existence following the provincial elections under the provisions of the Government of India Act, 1935 in February 1937. Out of a total of 50 seats, seven were occupied by Hindus and one by a Sikh. The first session of the NWFP Legislative Assembly took place on 1st September 1937. On 6 September 1937, the Frontier National Congress — which had won a total of 19 seats — formed the government of NWFP. After two tumultuous years in government, on Thursday, 21st September 1939, Chief Minister Dr Khan Sahib introduced the North-West Frontier Province Restricting the Sale of the Holy Quran Bill in the NWFP Legislative Assembly. The introduction of the bill was done hastily. In breach of parliamentary practice, the bill had not been circulated to the members prior to being tabled, nor had it been published in the official gazette. Unusual was also its presentation. Instead of a speech, Dr Khan Sahib announced that 'in making the motion it will be sufficient for me to read out the Statement of Objects and Reasons of the Bill.'

As read out by Dr Khan Sahib, the first part of the Statement of Objects and Reasons provided a succinct summary of the status of the Qur'an as a sacred object and the importance of purity in touching or handling it:

76 The North-West Frontier Province Muslim Personal (Shariat Application) Act, 1935 was far ahead of its time because it gave women the right to inherit landed property, including agricultural land, under the rules of the Islamic law of inheritance. In contrast, the India-wide Muslim Personal Law (Shariat Application) Act 1937, passed two years later, excluded inheritance to landed property from its provisions. Not wanting to see its progress on women's inheritance rights being reversed within the span of two years, the NWFP succeeded in its demand that the central Muslim Personal (Shariat Application) Act, 1937 would not apply to the NWFP, cf. section 1(2) of the Muslim Personal Law (Shariat Application) Act 1937 that defines its territorial application as 'excluding the North-West Frontier Province.'

There can possibly be no two opinions that the Muslims do attach the greatest esteem and show the greatest regard to the Holy Quran which is to them a code of life. They take all necessary precautions to purify themselves before they touch this Holy book and they cannot tolerate the said Holy book to be handled by any persons who is not pure in the sense in which a Muslim would regard him as pure and consequently who is not prepared to show that esteem and veneration thereto which a Muslim regards as due to the Holy Quran. It is therefore necessary to safeguard against this unintentional injuring of susceptibilities of the Muslim religious mind.⁷⁷

The second part of the Statement of Objects and Reasons explained why non-Muslims should not be allowed to sell, print, or publish the Qur'an:

With this object in view it is intended to restrict the publishing, printing and sale of the Holy Quran to Muslims alone. Regard being paid to the fact that before the passing of this Bill many non-Muslims who deal in the sale of books may have got certain number of copies of the Holy Quran in stock for sale, provision has been made to give them one year's time within which to clear off that stock of theirs.⁷⁸

Read together, the two parts of the Statement of Objects and Reasons presented fragmented and contradictory arguments for the protection of the Qur'an against the threat of defilement. The first part presented the majority view of Muslim jurists about the imperative of purity in the handling of the Qur'an. Islamic jurisprudence was, however, left behind in the Statement's second part: What was to be protected was not the Qur'an itself but the 'susceptibilities of the Muslim religious mind' against the risk of injury. The use of this phrase linked the offence described by the Statement to the principles that informed the offences against religion under Section 298 of the Indian Penal Code. Macaulay had formulated to the concept of 'wounding the religious feelings of any person' under Section 298 of the Indian Penal Code and the same phrase had been used again when Section 295-B was inserted in the Indian Penal Code 1860 in 1927.⁷⁹

77 IOR: L&PJ/7/3590.

78 *Ibid.*

79 In using this phrase, the drafters of the Statement of Objects and Reasons might have tried to embed the offence of mishandling the Qur'an in the same language as the one used in the Indian Penal Code's chapter on offences against a religion.

However, as similar as it sounded to the IPC's wording, the principles that informed the Statement of Objects and Reasons could not have been more different. First, there was the matter of criminal intent. Macaulay had insisted that only a deliberate intention to wounding the religious feelings of a believer would amount to an offence, whereas 'A warm expression dropped in the heat of controversy, or an argument urged by a person not for the purpose of insulting and annoying the professors of a different creed, but in good faith for the purpose of vindicating his own, will not fall under the definition contained in this clause.'⁸⁰ In contrast, the Statement of Objects and Reasons formulated the offence of 'injuring the susceptibilities of the Muslim religious mind' as one of strict liability: Because they could not purify themselves in the same way as Muslims could, non-Muslims were 'not prepared to show that esteem and veneration thereto which a Muslim regards as due to the Holy Quran' and it was therefore 'natural though unintentional' that if non-Muslims printed the Holy Qur'an, they could not help but disrespect it. In abandoning the requirement of *mens rea*, the Statement of Objects and Reasons' formulation of the offence not only anticipated the provisions of Pakistan's Islamic blasphemy laws, and in particular Section 295-C of the Pakistan Penal Code 1860,⁸¹ but also aligned the North-West Frontier Province Restricting the Sale of the Holy Quran Bill to the English common law offence of blasphemy as it stood in 1939.

The legal status of religious truth and doctrine can be identified as the second difference between the principles that informed the North-West Frontier Province Restricting the Sale of the Holy Quran Bill and those underlying the Indian Penal Code. Section 295 IPC had protected 'any object held sacred by any class of persons', whereas the proposed North-West Frontier Province Restricting the Sale of the Holy Quran Bill singled out the Qur'an as the only object that the law was meant to protect. The unequal treatment between the Qur'an and the books of other religions was one of the objections raised against the bill during the NWFP Legislative Assembly debates: the law should be called 'A Bill to Restrict the Sale of Holy Books.'

80 Macaulay, *supra* note 49, 400.

81 As formulated under Section 295-C of the PPC, the offence of defiling the sacred name of the Holy Prophet Muhammad does not mention criminal intent, providing that 'Whoever by words, either spoken or written, or by visible representation or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Muhammad (peace be upon him) shall be punished with death, or imprisonment for life, and shall also be liable to fine.' However, in reviewing whether section 295-C PPC was repugnant to Islam, the Federal Shariat Court held that the offence of blasphemy under section 295-C was an 'intentional or reckless wrong' and therefore required 'intention, purpose, design or at least foresight' (*Ismael Qureshi vs The Government of Pakistan*, PLD 1991 FSC 10).

Finally, the Statement of Objects and Reasons' concerns for the sanctity of the Qur'an sounded hollow. If non-Muslims could not handle the Qur'an without injuring the susceptibilities of the Muslim religious mind, why would the proposed law confine its reach to the printing, publishing, or selling of the Qur'an? And given the importance of purity, why did the proposed law not include those Muslims who had not taken 'all necessary precautions to purify themselves before they touch this Holy book'?

4.3 *The North-West Frontier Province Restricting the Sale of the Holy Quran Bill*

The Statement of Objects and Reasons described and explained the proposed law, but the NWFP Legislative Assembly debated and voted on the North-West Frontier Province Restricting the Sale of the Holy Quran Bill's actual provisions. As introduced in the Legislative Assembly, the North-West Frontier Province Restricting the Sale of the Holy Quran Bill was a concise statute that followed the usual pattern of British Indian legislation, consisting of four sections, respectively titled Preamble, Title, Commencement and Extent, Definition, Penalty for printing etc. of Holy Quran by non-Muslims, and, finally, Procedure.

There were several divergences between the description of the bill as contained in the Statement of Objects and Reasons and its actual provisions, some cosmetic, others highly consequential. First, the North-West Frontier Province Restricting the Sale of the Holy Quran Bill's Preamble added to the concern that the Qur'an 'does not receive the same respect and regard in the course of its handling for sale and otherwise as is due to it from the Muslim view point', the statement that 'it has been observed that the Holy Quran when printed printed and published by persons other than Muslims is found replete with errors.' Not explained in the Statement of Objects and Reasons nor raised during the Legislative Assembly debates is the reason for adding a concern about the correct spelling of the Qur'an to the Preamble. If there was any evidence in support of this observation, it was not produced during the debate.⁸²

More far-reaching a divergence between the Statement of Objects and Reasons and the bill was the way the offence was defined. Section 3 of the bill not only made it a criminal offence for non-Muslims to sell, print, or publish

82 The need to ensure the correct spelling of the Qur'an was one of the resolutions adopted at the 8th Annual Conference of the Jamiat-ul Ulama-i-Hind in Peshawar from 2–5 December 1927. See Tariq, *supra* note 75 at 122. As will be explained in more detail further below, ensuring the correct spelling of the Qur'an became a duty of the state under Article 31 of the Constitution of Pakistan, 1973.

the Qur'an but also for non-Muslims to cause the Qur'an to be printed, published, or sold:

3. If any person other than a Muslim prints, publishes, or sells or causes to be printed, published or sold the Holy Quran he shall on conviction be liable to a fine which may extend to Rs. 1000 or in default to undergo imprisonment for a term which may extend to one year:

Provided that the provision of this section shall not apply in the case of a person, who before the passing of this Act has copied of the Holy Quran in stock for sale and which he must dispose of within one year of the passing of the Act. After the lapse of one year this proviso will not remain operative at all.

As a result of the inclusion of 'to cause', the entire business of selling, printing, or publishing the Qur'an in the NWFP would become unlawful for non-Muslims even if they employed Muslims to carry out any transaction that involved the handling or touching of the Qur'an. In adding 'to cause', Section 3 signalled that the aim of the law was not only the protection of the Qur'an against the risk of defilement but also to exclude non-Muslims from profiting from its trade. The latter finds further support from the grace period of one year within which non-Muslims could continue to sell their existing stock of copies of the Qur'an: if the issue was so fundamental to Islam, why legislate for the Qur'an's continued 'desecration' by non-Muslims for another year?⁸³

Not addressed in the Statement of Objects and Reasons was the severity of the offence. Section 4, the bill's last provision, classified the offence:

Notwithstanding anything contained in the Code of Criminal Procedure, 1889, the offences under this Act shall be cognizable and shall be tried by a Magistrate of the 1st class only.

In making it cognizable, the bill classified the offence as being part of the most serious and heinous offences under the Indian Penal Code. The police could investigate cognizable offences without an order from a court, could arrest a suspect without a warrant,⁸⁴ and the police were under an active duty to

83 This argument was raised by Ali Zafar Khan during the debate. In order to implement the law immediately, Ali Zafar Khan proposed the establishment of a fund to buy any stock of copies of the Qur'an held by non-Muslims, with himself ready to contribute Rs. 100 for that purpose. It seems that no such fund was ever established.

84 See The Indian Code of Criminal Procedure, Sections 4 and 54 (1889).

prevent the commission of a cognizable offence.⁸⁵ Despite categorizing the offence as cognizable, the envisaged punishment of a fine, albeit a high one, did not fit the crime. All other offences classified as cognizable under the Code of Criminal Procedure 1898 carried at least a sentence of imprisonment as one of the contemplated punishments.⁸⁶

4.4 *The Bill as Debated and Passed in the NWFP Legislative Assembly*

As it played out in the course of one day, the debate in the Provincial Legislative Assembly was one-sided, with only Rai Bahadur Mehr Chand Khanna, one of the seven Hindu members elected from Peshawar Cantonment, General, Urban, raising any objections against the bill. Khanna's objections were carefully phrased, with all of his proposals for amendments preceded by assurances that he did not reject the bill and that in his heart he had much respect for the Qur'an. Khanna's first proposal was concerned with the extent and the reach of the Act. Given that other communities also had sacred books — the Guru Granth Sahib was sacred for Sikhs, the Veda and Ramayana for Hindus, and the Bible for Christians — the proposed law should be named 'A Bill to Restrict the Sale of Holy Books' so that:

as per aims and objectives of our Hon'ble Prime Minister, non-Muslims could not have hurt the sentiments of the Muslims, and similarly any non-Sikhs could not do so to our Sikh brothers, any non-Hindus could not do so to our Hindu brothers, and any non-Christians could not have hurt our Christian brothers. I think this kind of Bill would have been better for this province.⁸⁷

Second, Khanna demanded that the bill should be moved to a Select Committee. Any delay caused by such a referral would not matter, given that even if passed, the law would not come into effect for another year. And finally, Khanna submitted, if not referred to a Select Committee, the government should at least give an assurance that if any bill was moved for the protection of the sacred books of Hindus, Sikhs, and Christians at the next session of the Legislative

85 The Code of Criminal Procedure, Section 149 (1989) obliged every police officer to prevent, 'to the best of his ability, the commission of any cognizable offence.' In turn, Section 151 allowed a police officer to make an arrest if they knew of a 'design to commit a cognizable offence.'

86 See The Indian Code of Criminal Procedure, Schedule II (1898).

87 IOR: L/P&J/7/3590, 'Extract from N.-W.F.P. Legislative Assembly Debates', 21st September 1939: 3.

Assembly, that bill should also be passed as presented, without being circulated for public opinion or being referred to a Select Committee.⁸⁸

The reactions to Khanna's speech were mixed. The demand to accord the same protection to the sacred books of other religions as the one given to the Qur'an found some support. S. Mohammed Aurangzeb Khan (Landholders) stated that 'just like I want that any non-Muslim cannot sell or publish the Holy Quran and no one can touch it with impure hands, I also want the same respect for sacred books of other religious communities.'⁸⁹ Nawab Muhammad Zafar Khan agreed, stating that Khanna should retract his proposal to refer the bill to the Select Committee because all of the members that Khanna had proposed for the Committee were in any event in favor of the bill, and that in return, if Khanna presented a similar bill to the one proposed for the Qur'an, he would be the first to support it.⁹⁰ Others were more critical. Abdur Rab Nishtar pointed out that the law to protect the Qur'an had been a long-standing demand of Muslims not just in Peshawar but the whole of India. In contrast, until Khanna's speech, no member of the Hindu community had ever demanded a law similar to one proposed for the protection of the Qur'an. However, if Hindus introduced such a law, Abdur Rab Nishtar would support it.⁹¹ For Pir Muhammad Kamran, there was no point to move the bill to a Select Committee because it was obligatory for Muslims to support the law given that it was a command of the Qur'an itself not to touch it in periods of impurity: 'They cannot refuse it.'⁹²

If Muslims could not refuse the law as a matter of belief, then, according to Khan Faqir Khan, non-Muslims should support it because the law was also in the interest of their safety, even if they lost some money as a result:

The Hon'ble Chief Minister has not just fulfilled the Islamic responsibility but has also done great kindness to the minorities because of the grudge that has been brewing among the minorities and the Muslims due to the selling and profit of the Holy Quran, will be resolved through this law. Where he has fulfilled the Islamic responsibility, he has also done

88 *Ibid.*, p. 4.

89 IOR: L/P&J/7/3590, 'Extract from N.-W.F.P. Legislative Assembly Debates', 21st September 1939, 5.

90 IOR: L/P&J/7/3590, 'Extract from N.-W.F.P. Legislative Assembly Debates', 21st September 1939, 9.

91 IOR: L/P&J/7/3590, 'Extract from N.-W.F.P. Legislative Assembly Debates', 21st September 1939, 11.

92 IOR: L/P&J/7/3590, 'Extract from N.-W.F.P. Legislative Assembly Debates', 21st September 1939, 6.

kindness to other communities who were raising grudges due to some profits. If some of their money is lost then it is not a big deal. The bitterness created by this money has been compensated. With these statements, I support this Bill and oppose proposal of Rai Bahadur Mehr Chand Khanna.⁹³

At the end of the debate, Rai Bahadur Mehr Chand Khanna eventually conceded defeat, stating that ‘once again sharing my thoughts regarding the respect for the Holy Quran in my heart and hearts of all the Hindus and Sikhs living in this province, I seek permission from the Hon. House to withdraw this amendment.’⁹⁴ With all clauses of the bill being carried, the North-West Frontier Province Restricting the Sale of the Holy Quran Act, 1939 was passed unanimously and received the assent of the Governor on 5 December 1939.

5 The Sind Holy Quran Act, 1940

5.1 *The Sind Holy Quran Bill*

Passed about six months after the North-West Frontier Province Restricting the Sale of the Holy Quran Act, 1939, the Sind Holy Quran Bill closely follows the provisions of its predecessor. Apart from changing a ‘while’ to ‘when’, its Statement of Objects and Reasons was identical to that of the NWPF precedent. However, there were significant differences in Sind Holy Quran Bill’s actual provisions, some cosmetic, others more substantive.

Starting with the Preamble, the Sind Holy Quran Bill omitted all references to non-Muslims producing copies of the Qur’an filled with errors or of injuring the susceptibilities of the Muslim religious mind by handling it, simply providing that ‘it is expedient to prohibit the printing, publishing or sale of the Holy Quran by non-Muslims.’ In referring expressly to the Arabic Qur’an, Section 2 of the Sind Holy Quran Bill provided a much more precise definition of what was to be protected by the Act, providing that “Holy Quran” means the Quran or any part of the Quran written or printed in Arabic but shall not include any translation of the Quran or any verse or verses printed or published for purposes of quotation or reference.’ Further, and perhaps most consequential, Section 3 of the Sind Holy Quran Bill did not make it an offence for

93 IOR: L/P&J/7/3590, ‘Extract from N.-W.F.P. Legislative Assembly Debates’, 21st September 1939, 12.

94 IOR: L/P&J/7/3590, ‘Extract from N.-W.F.P. Legislative Assembly Debates’, 21st September 1939, 14.

non-Muslims to cause to print, sell, or publish the Qur'an but expressly allowed non-Muslims to circumvent the prohibition by using 'Muslim agency', providing that:

3. Whoever not being a Muslim prints, publishes or sells or causes to be printed, published or sold the Holy Quran otherwise than through Muslim agency shall be punished with fine not exceeding one thousand rupees: [...]

In allowing for Muslim agency to circumvent the prohibition, the Sind Holy Quran Bill would allow publishers like the Nawal Kishore Press to continue their commercial transactions in the Qur'an provided that they ensured that only Muslim employees were involved on that side of the firm's business.

The punishment and classification of the offence was also toned down. While the fine of Rs. 1000 remained the same, the Sind Holy Quran Bill did not provide for any imprisonment in default of payment of the fine nor did it classify the offence as cognizable. Section 4(1) provided that, 'No court, other than that of a District Magistrate, shall take cognizance of an offence under this Act.'

5.2 *The Bill as Debated and Passed in the Sindh Legislative Assembly*

Sindh had been separated from the Bombay Presidency and become a separate province only in 1936. Despite constituting 71% of the total population of the province, in the Sindh Legislative Assembly Muslims were allocated only 34 of the total of 60 seats.⁹⁵ The months leading up to debate of the Sind Holy Quran Bill had seen serious communal riots in Sukkar, after Karachi the largest city in Sindh, resulting in the death of 57 Hindus and one Muslim in Sukkur District and the death of 19 Hindus and 15 Muslims in Sukkur City.⁹⁶ It was against this backdrop that on 12 February 1940, Sir Ghulam Hussain Hidayatullah introduced and moved the bill 'to prohibit the printing, publishing or sale of the Holy Quran by non-Muslims.' Unlike its NWFP predecessor, the introduction of the Sind Holy Quran complied with the Sind Legislative Assembly Rules, with the bill being read three times before it was tabled for adoption. And also unlike the debate in the NWFP, the provisions of the Sind Holy Quran Bill themselves were subjected to detailed comment and discussion. No member

95 N. Boreham, 'Decolonisation and Provincial Muslim Politics: Sind, 1937-47', *South Asia: Journal of South Asian Studies* 16(1) (1993): 53-72, 57.

96 A. Jones, 1907-1940: *Muslim Identity and the Demand for Pakistan* (Karachi: Oxford University Press, 2002), 144, note 40.

of the Sind Legislative Assembly rejected the bill outright but there was a sense of general dissatisfaction that such a law would have to be introduced and passed. Ghanshyam Jethanand started off his speech with an assurance that he had nothing to say against the bill being put forward by the government, but ended with criticizing it:

It has been shown that Muslims will take up the Quran with respect and pure hands which cannot be expected of non-Muslims. It may be correct that Hindus will not give the respect that Muslims give. But may I know what is the number of such Hindus? In these days everyone keeps all the religious books. ... It is said that Muslims purify themselves before they touch the Holy Quran. But I am sure the dealers would not purify themselves every now and then. Besides the pages of Holy Quran are to be composed and put in the printing machine. One cannot expect any amount of purity during the course of the printing of the book. With this, I am not opposing this Bill.⁹⁷

Apart from general dissatisfaction, there were debates about the internal consistency of the provisions of the bill itself. Could Muslims employ non-Muslims to print the Qur'an without being punishment? Was the fine too high? Should the government compensate those who were forced to but could not sell their exiting stock of copies of the Qur'an? How should the Qur'an be defined?

Regarding the first issue, the concern related to the bill's discrimination between Muslims and non-Muslims with respect to the use of 'Muslim Agency' in Section 3. As Mr. Djalma Doulatram pointed out, on a correct reading of the provision, if a Muslim caused the Qur'an to be printed by a non-Muslim, he would not be committing an offence under Section 3.⁹⁸ The Government agreed to amend Section 3 by inserting a 'whosoever causes to be printed', so as to ensure that Muslims would also be punished if they engaged a non-Muslim for the printing, publishing or selling of the Qur'an.⁹⁹

With respect to the level of the fine, Ghanshyam Jethanand observed:

97 IOR:L/P&J/4059, 'Official report of debates in the Legislative Assembly Debates relating to the Bill': *Sindh Legislative Assembly Debates*, 12th February 1940, 3.

98 *Ibid.*, p. 2.

99 As passed, Section 3 of the Sind Holy Quran Act, 1940 provides "3. Whoever not being a Muslim prints, publishes or sells or whosoever causes to be printed, published or sold the Holy Quran otherwise than through Muslim agency shall be punished with fine not exceeding one thousand rupees: [...]"

There are many Hindu merchants in villages who have got copies of the 'Holy Quran'. It is quite probable that the provisions of this Bill may not come to his notice and if he commits an offence under this Act, according to my amendment, he will be fined Rs 50 only and he will be careful in the future and he will not commit this offence for the second time.¹⁰⁰

The final issue raised was the provision of one year granted to non-Muslims in order to dispose of any stock of copies of the Qur'an. What would happen if a book dealer could not sell their stock within one year, Mr. C.T. Valecha asked: 'He must have some protection. Therefore it is desirable that until the present stock is sold, no action should be taken against the person.'¹⁰¹ The Sind Legislative Assembly agreed to add a new Section 3 that provided that any copies of the Qur'an remaining unsold after the one year period 'may be forwarded to the Provincial Government for disposal, on such terms and subject to such conditions as may be prescribed by the rules made in this behalf by the Provincial Government.' Before being passed into law, Mr. R.K. Sidhwa made a final observation on the bill. Emphasizing that he was not opposed to the law, Sidhwa reminded the Government that it should have asked itself whether this:

kind of bill would bring any good will or harmony between the communities. Two, it appears that the passing of this Bill into law will not smoothen in any way the feelings of the people. On the contrary the Government should bring measures so that there should be tolerance to all the communities. That should be the main object rather allowing only the Muslims to print the Holy Quran and disallowing the non-Muslims. I respect all the religions, and therefore why should I be deprived of printing the Holy Quran?¹⁰²

The bill was passed by the Sind Legislative Assembly as the Sind Holy Quran Act, 1940 on 27th March 1940.

100 IOR:L/P&J/4059, 'Official report of debates in the Legislative Assembly Debates relating to the Bill': *Sindh Legislative Assembly Debates*, 12th February 1940, 8.

101 *Ibid.*, p. 9.

102 IOR:L/P&J/4059, 'Official report of debates in the Legislative Assembly Debates relating to the Bill': *Sindh Legislative Assembly Debates*, 27th March 1940, 17.

6 The Legal Protection of the Qur'an under the Government of India Act, 1935

Having received the assent of the Governor of Sindh on 26th April 1940, the Sind Holy Quran Act, 1940 was dispatched to the India Office in London where it was reviewed by the legal advisor, Sir V. Dawson. Dawson noted on the file that 'A similar measure was passed by the North West Frontier Province Legislative Assembly in 1939 and a query was raised as to whether it was *ultra vires* but the Secretary of State decided to leave the Act.' By hand, Dawson added that 'The Act's faults are the same faults as the N.W.F.P. one.'¹⁰³ Why the Secretary of State refused to invalidate the Act despite a query having been raised as to whether it was *ultra vires* is explained in a series of explosive memoranda produced by the officials of the India Office. The initial stages of the North-West Frontier Province Restricting the Sale of the Holy Quran Act, 1939 reception in London were unremarkable. The North-West Frontier Province Restricting the Sale of the Holy Quran Act, 1939 had received the assent of the Governor of the NWFP on 5th December 1939 and was dispatched to the Permanent Under Secretary of State for India in London on 30th January 1940. On 15 March 1940, the Public and Judicial Department opened a file under Register No. 1124/40 with the Subject 'North West Frontier Province Restricting the Sale of the Holy Quran Act, 1939.' Three entries were added to the file. Two stamps, respectively dated 5 April 1940 and 8 April 1940, show the act as having been 'Placed on Table for Perusal' and as 'Seen by the Advisor' and a third entry records that on 26th March 1940 the India Office had dispatched to the Governor of the NWFP its confirmation of having taken note of the act.¹⁰⁴

Any sense of administrative routine is demolished by an exchange of notes between four senior officials of the India Office, placed between the covers of file No. 1124/40 as loose sheets of paper, some typed, others handwritten.¹⁰⁵ Written between 17 April 1940 and 6 May 1940, these notes record a deep unease about the provisions of the act, ranging from its impact on trade to that of the

¹⁰³ IOR, L/P&J./4554/40.

¹⁰⁴ The dispatch dated 26 March 1940, confirming that the Secretary of State had taken 'note of the assent accorded by Your Excellency on behalf of His Majesty to the North West Frontier Province Restricting the Sale of the Holy Quran Act, 1939' sounded innocuously routine but would become an important consideration in the decision of whether or not the NWFP Quran Act should be 'disallowed', *i.e.*, invalidated, by the Crown for being *ultra vires* the provisions of the Government of India Act, 1935. If having taken note implied approval, then it would have been awkward, if not unlawful, to withdraw the Act at a later stage.

¹⁰⁵ IOR: L/P&J/7/3590.

rights non-Muslim minorities and British subjects, as well as several proposals to invalidate the act. The exchange ended with the Secretary of State for India's decision to override the concerns of his advisors and not to invalidate the Act for being *ultra vires* the Government of India Act, 1935.

In total, the advisers¹⁰⁶ identified six breaches of the North-West Frontier Province Restricting the Sale of the Holy Quran Act, 1939 with the provisions of the Government of India Act, 1935. Some of the breaches were regarded as so serious that, as expressed in the note of Mr. Raghavendra Rao dated 22 April 1940, 'it would be absurd for the Governor to bring into force an enactment the invalidity of which is so patent as in the present case.' The first four breaches were concerned with issues pertaining to the act's impact on trade in British-India, on the rights of British subjects and to what one of the adviser's referred to as the 'legislative field', namely whether the North-West Frontier Province Restricting the Sale of the Holy Quran Act, 1939 was unconstitutional because in passing it, the NWFP Legislative Assembly had exceeded its legislative powers under the Government of India Act, 1935. Some concerns were raised, but the advisers thought that, on balance, the NWFP Legislative Assembly had been competent to enact the North-West Frontier Province Restricting the Sale of the Holy Quran Act, 1939.

The fifth and the sixth breaches were arguably the most serious ones. Queen Victoria's Proclamation of 1858, issued within a year of the Great Rebellion of 1857, had promised the people of India that 'none be in any wise favoured, none molested or disquieted by reason of their Religious Faith or Observances; but that all shall alike enjoy the equal and impartial protection of the Law' and that 'it is Our further Will that, so far as may be, Our Subjects, of whatever Race or Creed, be freely and impartially admitted to Offices in Our Service, the Duties of which they may be qualified, by their education, ability, and integrity, duly to discharge.'¹⁰⁷ These assurances had been incorporated for the first time in the provisions of the Charter Act of 1833, and had also been included

¹⁰⁶ The Advisors to the Secretary of State for India replaced the Council of India and, as provided for under Section 278(1) of the Government of India Act, 1935, were tasked with advising the Secretary of State 'on any matter relating to India on which he may desire their advice.' Section 278 (6) provided that 'Except as otherwise expressly provided in this Act, it shall be in the discretion of the Secretary of State whether or not he consults with his advisers on any matter, and, if so, whether he consults with them collectively or with one or more of them individually, and whether or not he acts in accordance with any advice given to him by them.'

¹⁰⁷ Proclamation by the Queen in Council to the Princes, Chiefs, and People of India, available online at <https://archive.org/details/queens-proclamation/mode/iup> (accessed 7 February 2024).

in the Government of India Act, 1915, 1919, and 1935.¹⁰⁸ Headed 'Persons not to be subjected to disability by reason of race, religion &c.', Section 298(1) of the Government of India Act, 1935 provided that 'No subject of His Majesty domiciled in India shall on grounds only of religion, place of birth, descent, colour or any of them be ineligible for office under the Crown in India, or be prohibited on any such grounds from acquiring, holding or disposing of property or carrying on any occupation, trade, business or profession in British India.' In the absence of a Bill of Rights, Section 298(1) was the closest the Government of India Act, 1935 came to recognising a constitutionally guaranteed fundamental right. As pointed out by Mr. Raghavendra Rao of the India Office, by restricting the printing, sale, or publishing of the Qur'an to Muslims alone, the Act 'affects adversely non-Muslims within meaning of section 298(1).'¹⁰⁹

Sixth, in giving his assent to North-West Frontier Province Restricting the Sale of the Holy Quran Act, 1939, the Governor himself had breached the Government of India Act 1935. Section 52, headed 'Special Responsibility of Governor', provided that 'In the exercise of his functions the Governor shall have the following special responsibilities, that is to say:-(b) the safeguarding of the legitimate interests of minorities.' Non-Muslims constituted a minority in the NWFP according to Rao; therefore, 'the Governor should have borne in mind his special responsibility under Section 52(1)(b) before giving assent to the Bill.'¹¹⁰

Having identified up to six breaches of the Government of India Act, 1935, the officials of the India Office were divided on what could or should be done, given that the Act had already received the assent of the Governor of the NWFP. In a memo dated 18 April 1940, Dawson thought that even if the North-West Frontier Province Restricting the Sale of the Holy Quran Act, 1939 was *ultra vires* as being contrary to the provisions of the Government of India Act, 1935 there was nothing which could or ought to be done about it at the India Office because while:

108 For the Government of India Act, 1935, the demand for a longer list of fundamental rights had been rejected by the Joint Select Committee on the ground that 'they will either embarrass the legislature or be of such obtuse nature as to be useless for all practical purposes.' See J. Khosla, 'The Constitutional Validity of Racial and Communal Basis of Recruitment to Public Service in India', *The Indian Journal of Political Science* 2(1) (1940): 51. Cf. The Constitution of India, Article 15(1) (1950) "15 (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them".

109 IOR: L/P&J/7/3590.

110 *Ibid.*

It is theoretically still possible to advise the King to disallow it in spite of the decision implied in the Secretary of State's despatch to contrary: but it is accepted policy to withhold assent from or disallow an Act on the ground of its being ultra vires is not correct.¹¹¹

According to Dawson it was open to 'the Courts to decide in that sense when they get a case under the Act, and this would be the natural means of putting the matter right.'¹¹²

In a strongly worded response, Rhagavendra Rao disagreed. According to Rao, the solution to the problem could be found in the Act itself:

If you could be so good to glance at section 1(ii) of the Act you would find that it can only be brought into force on such date as Provincial Government may by notification direct. I am not aware if the Act has been brought into force. But I doubt if it has been as Provincial Governments often take a long time before they notify an Act by executive action. Whatever the motives of the Congress Ministry might have been in passing the law it would be absurd for the Governor to bring into force an enactment the invalidity of which is so patent as in the present case and at a time when the responsibility for the Government of the Province rests with the Secretary of State for India.

Having termed any attempt to enforce the law as 'absurd', Rao now turned to the debate of the bill in the NWFP Provincial Assembly where 'it was given out that similar legislation would be undertaken in Sind and the Punjab.'¹¹³ Rao's advice with regard to similar provincial law have an air of conspiracy and mystery. According to Rao, 'In the circumstances a departmental letter to the Governor General with the talismanic 'Zz'¹¹⁴ is all that is needed.'

Rao's note suggests that both the officials of the India Office and the Governor General of India knew the meaning of the '*talismanic* "Zz"' and what action should be taken on receipt. In the absence of any explanation, it seems plausible that given the context, the symbol 'Zz' is concerned with an action to prevent the enactment of patently invalid laws. However, what exactly the Governor General was meant to do on receipt of a departmental letter bearing

111 IOR: L/P&J/7/3590. The reference is to the dispatch dated 26 March 1940, *supra* note 104.

112 *Ibid.*

113 *Ibid.* Next to this sentence is added, in pencil, that a similar Act 'has been passed in Sind.'

114 On the original note, the lower 'z' and the capital 'Z' are written by hand on top of each, with the rest of the Rao's note being typed.

the '*talismanic Zz*' remains a mystery. The Government of India Act, 1935 did not provide for the Governor General's assent to provincial legislation. However, Section 54(1) of Government of India Act, 1935 accorded the Governor General a supervisory power over provincial governors, providing that:

In so far as the Governor of a Province is by or under this Act required to act in his discretion or to exercise his individual judgment, he shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given to him by, the Governor-General in his discretion, but the validity of anything done by a Governor shall not be called in question on the ground that it was done otherwise than in accordance with the provisions of this section.

It is possible that Rao's '*talismanic Zz*' referred to the Governor-General's general control over actions of provincial governors under Section 54(1), meaning that the Governor-General should give directions to provincial governors to prevent the enforcement of these 'absurd' acts, either by withholding assent or by refusing to notify their enforcement. If correct, the '*talismanic Zz*' could refer to the figure of a 'Z' drawn into the empty space of forms in order to signal that these spaces had been left blank on purpose and to prevent anyone from filling them in at a later stage.

Rao also disagreed with the policy of leaving it to the 'Courts to decide the invalidity of legislative enactments solely at the instance of private litigants.' In Australia, the principle of invoking the aid of the courts in order to have laws declared unconstitutional was well established and 'Some such procedure might have to be evolved in India as additional remedy.'¹¹⁵ In closing, Rao added a critical comment, writing that 'During the last years the Governors are making the discretion of silence [crossed out: inaction] the better part of constitutional valour!'¹¹⁶

On 6 May 1940, Sir Findlater Stewart, the Permanent Under-Secretary of State for India and the most senior civil servant in the India Office, communicated to Mr. Raghavendra Rao the Secretary of State's response to Rao's advice to disallow the North-West Frontier Province Restricting the Sale of the Holy Quran Act, 1939 or to instruct the Governor, if he had not already done so, not to bring it into operation. Convoluting in the extreme, it is best to reproduce it verbatim:

¹¹⁵ IOR: L/P&J/7/3590.

¹¹⁶ *Ibid.*

The Secretary of State would not be prepared to say that in no circumstances would he consider it appropriate to advise the Crown to disallow an Indian Act or to instruct the Governor-General or a Governor to withhold his assent from a Bill on the ground that its provisions were ultra vires: but he would hesitate, save in exceptional circumstances, to regard an allegation that the Legislature in question had exceeded its powers as a matter which could properly be determined by the Executive; this question, under the Indian Constitution, is well recognised as one which ought to be determined by the Courts. The Secretary of State can see nothing in the North West Province Act in question which would justify in treating it exceptionally.¹¹⁷

In focusing on the argument that the NWFP Legislative Assembly had exceeded its law-making powers and that this issue was one that should be decided by the courts, the Secretary of State had sidestepped Rao's most pressing concern, namely that in light of the British Government's constitutional responsibility to safeguard the rights of minorities, it was the duty of the Government to disallow a provincial law that violated these rights.¹¹⁸ The jurisprudence of the Federal Court lends support to Rao's concerns. As observed by Gadbois, in the eight years of its existence, the Federal Court had earned a reputation of being 'resolute, impartial and independent' and had 'exhibited no reluctance to declare unconstitutional an enactment or ordinance which it regarded as

¹¹⁷ IOR: L/P&J/7/3590.

¹¹⁸ That the withholding of assent could be an effective way of keeping laws already passed by a state or a provincial legislature can be seen in the case of the Indian state of Punjab's recent attempt to add a new section 295AA to the Indian Penal Code, *see supra* note 57. In Pakistan, it was also the withholding of the President's assent to a law passed by the NWFP Legislative Assembly that, for the first and only time in the history of Pakistan, prevented an Islamisation of laws' measure from becoming a valid law. In the case of *Reference No. 2 of 2005 (Reference by the President of Pakistan under Article 186 of the Constitution of the Islamic Republic of Pakistan, 1973)* (August 2005), the Supreme Court declared in an advisory opinion that the Governor of the North-West Frontier Province had acted lawfully in refusing to give his assent to the Hisba Bill, 2003, as passed by the N.W.F.P. Legislative Assembly, in order to set up an police force concerned with the enforcement of Islamic morality and rules, available online at https://www.supremecourt.gov.pk/downloads_judgements/CJD_Reference%20by_the_President_of_Pakistan_under_Article_186.pdf (accessed 9th February 2024). For a comprehensive review of this case, *see* S. Ali, "Sigh of the Oppressed"? "Islamisation" of Laws in Pakistan under Muttahida Majlis-e-Amal: The Case of the North West Frontier Province', *Yearbook of Islamic and Middle Eastern Law* 10(1) (2003): 107–124.

unreasonably restrictive of individual liberties.¹¹⁹ However, the Federal Court never invalidated a law for a breach of Section 298(1) of the Government of India Act, 1935.¹²⁰

As a result, the Sind Holy Quran Act, 1940 and the North-West Frontier Province Restricting the Sale of the Holy Quran Act, 1939 remained valid laws in British India at the time of independence and as such were transposed to the legal system of Pakistan pursuant to Section 18(3) of the India Independence Act, 1947.¹²¹ Both statutes remain in force in Pakistan today, albeit that both have undergone amendments. The terms 'province' and of 'Sind' were amended under the provisions of the West Pakistan Laws (Adaptation) Order, 1964. The name of the North-West Frontier Province Restricting the Sale of the Holy Quran Act, 1939 was amended under the provisions of the Khyber Pakhtunkhwa Act, 2011 to the Khyber Pakhtunkhwa Restricting the Sale of the Holy Quran Act, 1939.

The more significant amendment concerns the Sind Holy Quran Act, 1940 which was amended under the provisions of the Sind Holy Quran (Amendment) Ordinance, 1984. The ordinance was promulgated after the Federal Shariat Court had declared the mild punishment for the offence under the Sind Holy Quran Act, 1940¹²² to be repugnant to Islam. The amended Section 3 has increased the punishment from Rs. 50 to 'imprisonment of either description for a term that may extend to six months, or with fine which may extend to five thousand rupees or with both.' As a result of the amendment, the punishment under the Sind Holy Quran, 1940 is now stiffer than the one under the Khyber Pakhtunkhwa Restricting the Sale of the Holy Quran Act, 1939, where the punishment of imprisonment only applies in default of the payment of the fine.

119 See G. Gadbois, 'The Federal Court of India: 1937–1950', *Journal of the Indian Law Institute* 6(2–3) (1961): 253–315, 315.

120 See Ali, *supra* note 118.

121 Section 18(3) of the India Independence Act, 1947 provided, *inter alia*, that: 'Save as otherwise expressly provided in this Act, the law of British India (...) shall, as far as applicable and with the necessary adaptations, continue as the law of each of the new Dominions [...].'

122 Article 203D (1) of the Constitution of Pakistan 1973 empowers the Federal Shariat Court to examine and decide the question of whether a law is repugnant to the Injunctions of Islam. For an examination of the powers of the Federal Shariat Court, see M. Lau, *The Role of Islam in the Legal System of Pakistan* (Leiden: Martinus Nijhoff, 2006), 143 ff., and, more recently, D. Ahmed & M. Abbasi, *Democracy under God. Constitutions, Islam and Human Rights in the Muslim World* (Cambridge: Cambridge University Press, 2023), 153 ff.

7 The Qur'an as a Sacred Object: The Law in Pakistan

7.1 *The Holy Quran (Elimination of Printing and Recording Errors) Act, 1973*

In Pakistan, the state has spun an ever-tighter cocoon of laws and rules around the Qur'an, protecting the authenticity of the text, preventing any translation contrary to the belief of Muslims, stipulating the Qur'an's physical attributes and specifications as well as making provisions for its final resting place as the '*Shaheed* Qur'an', the martyred Qur'an.

At the time of independence, Pakistan inherited North-West Frontier Province Restricting the Sale of the Holy Quran Act, 1939 and the Sind Holy Quran Act, 1940 as well as Section 295 of the Indian Penal Code, 1860. Of these three laws, only the offence under Section 295 Pakistan Penal Code, 1860 ('PPC') has ever been considered by Pakistani courts, albeit none of the cases involve the Qur'an as a sacred object.¹²³

The first specific legal provision on the Qur'an appears in Pakistan's third constitution, the Constitution of Pakistan, 1973. Article 31(2)(a), headed 'Islamic way of life', enjoins the state 'to secure correct and exact printing of the Holy Quran.'¹²⁴ In the same year, this Principle of Policy was enacted as the Publication of the Holy Quran (Elimination of Printing Errors) Act, 1973. Section 4(3) introduced a scheme under which a government appointed Committee of '*Ulema* 'comprising prominent Ulema, *Huffaz* and Qaris of all schools of thought amongst Muslims' produced a master copy of the Qur'an. Referred to as the standard copy, this copy of the Qur'an can be accessed and downloaded via the website of the Federal Ministry of Religious Affairs and Interfaith Harmony.¹²⁵ Any printer or publisher of the Qur'an has to ensure that their copy of the Qur'an is certified as being in conformity with the official standard copy.

In addition to ensuring the correctness of the text of the Qur'an, the Publication of the Holy Quran (Elimination of Printing Errors) Act, 1973 contained two provisions concerned with the physical book itself. Section 5(1)

¹²³ See *Noor Muhammad vs Fiaz Ahmad*, PLD 1960 Lahore 567 and *Shafiqur- Rehman vs The State*, 1976 P.Cr. J. 1456 (Lahore). For a discussion, see Nazir, *supra* note 60 at 165 ff.

¹²⁴ Article 31(2)(a) forms part of Chapter 2 of the Constitution of Pakistan, 1973. Headed 'Principles of Policy', the provisions in Chapter 2 impose duties on the state albeit that these are 'dependent upon resources being available for the purpose' and as such are not enforceable in any court, see The Constitution of Pakistan, Article 29(1) (1973).

¹²⁵ Federal Ministry of Religious Affairs and Interfaith Harmony, *Qur'an*, available online at <https://mora.gov.pk/PublicationDetail/NmZjYzMwMTUtYmUwNC00NmNlLWJjNTYtMzU5NDMzMmY0MjIw> (accessed 28 October 2023).

excluded the 'litho process'¹²⁶ from the permitted printing processes and Section 5(2) provided that the printers and publishers were to use paper 'which is not prohibited by the Federal Government.'

In the period from 1973 until 2023, these humble beginnings have evolved into a detailed and all-embracing set of regulations concerned not just with the sanctity of the Qur'an as a text and material object but also its translation into other languages, its transmission on every conceivable medium, stretching from cyber space to the human body, and, finally, any commentary or interpretation that is contrary to the belief of Muslims. This evolution has taken place incrementally and unevenly, with currently five different laws dealing with the correctness of the Qur'an, its production, interpretation, and final disposal.

In 1976, a new Section 5A was added to the Publication of the Holy Quran (Elimination of Printing Errors) Act, 1973, making it a criminal offence for printers or publishers to produce a literal distortion of the Qur'an by a change of word or sequence in a copy of the Holy Quran or in an extract thereof published in a text-book, prayerbook, religious treatise, or otherwise that altered its meaning. In 1987, the state's control over the publication of the Qur'an was extended further, now covering also sound recordings of the Qur'an. Significantly, the 1987 amendment also extended the reach of the law from the object of the Qur'an and its correct spelling and recording to the correct interpretation and commentary of the Qur'an itself. A new section 5B provides that:

5B. Translation or interpretation of the Holy Qur'an contrary to belief of Muslims. Where, in a copy or record of the Holy Qur'an, or in any extract thereof published in a text book, prayer book, religious treatise or other book, an Ayah of the Holy Qur'an is translated, interpreted or commented upon by a non Muslim contrary to the belief of Muslims, the author, printer or publisher, or the person who prepared the record, whether registered under this Act or not, shall unless, he can prove that such translation, interpretation or commentary occurred only due to a printing or mechanical error, be liable to the punishment provided for in section 6.¹²⁷

126 The exclusion of the 'litho process' is surprising given that it was the invention of this very print technology that had triggered the mass production of the Qur'an in British India, See Stark, *supra* note 9 at 149.

127 See The Publication of the Holy Quran (Elimination of Printing and Recording Errors) (Amendment) Act, Section 5 (1987). Section 2 extended the scope of the 1973 Act to 'the Holy Qur'an recited in human voice and recorded by any modern means of recording conforming to the text thereof contained in the standard copy.'

It is difficult to categorise this new offence of non-Muslims being prohibited from publishing a commentary or translation of the Qur'an contrary to the belief of Muslims. In England, heresy, *i.e.*, 'a belief that is against the principle of a particular religion',¹²⁸ was an offence punishable by either death or forfeiture, or both.¹²⁹ Its closest equivalent in Islamic law could be the crime of *zandaqa*.¹³⁰ According to Bernhard Lewis, this offence of heresy 'was generalised to cover all holders of unorthodox, unpopular and suspect beliefs, particularly those considered dangerous to the social order and the state.'¹³¹ Aimed exclusively at non-Muslims, however, Section 5B implies that Muslims continue to be permitted to produce translations or commentaries of the Qur'an that are contrary to the belief of Muslims.¹³² As far as non-Muslims are concerned, it must be implied in that very designation that a non-Muslim's interpretation of the Qur'an would always be in some religiously significant way contrary to the belief of Muslims. If it were otherwise, they would be Muslims. Interpreted in this light, the true import of Section 5B could be to prohibit non-Muslims from interpreting and translating the Qur'an altogether, or at least to the extent that such an interpretation is contrary to the belief of Muslims.

Following the Constitution (18th Amendment) Act, 2010, the subject of religious affairs was transferred from the Federation to the four provinces of Pakistan. As a result, the provinces of Sindh,¹³³ Baluchistan,¹³⁴ Punjab,¹³⁵ and

128 See 'Heresy', *Cambridge Dictionary*, available online at <https://dictionary.cambridge.org/dictionary/english/heresy> (accessed 3 February 2024).

129 See P. Cavill, 'Heresy, Law and the State: Forfeiture in Late Medieval and Early Modern England', *The English Historical Review* 129(537) (2014): 270–295.

130 B. Lewis, 'Some Observations on the Significance of Heresy in the History of Islam', *Studia Islamica* 1 (1953): 43–63, 55. See M. Ibrahim, 'Religious Inquisition as Social Policy: The Early Persecution of the Zanadiqa in the Early Abbasid Caliphate', *Arab Studies Quarterly* 16(2) (1994): 53–72. For a comparative study of heresy, see J. Henderson, *The Construction of Orthodoxy and Heresy. Neo-Confucian, Islamic, Jewish and Early Christian Patterns* (Albany, NY: New York State University Press, 1989).

131 See Lewis, *supra* note 130 at 55.

132 Added within three years of the passage of the Anti-Islamic Activities of Qadiani Group, Lahori Group and Ahmadis (Prohibition and Punishment) Ordinance, xx of 1984, it is possible that the reference to non-Muslims was aimed at members of the Ahmadi community albeit that section 5B of the Holy Quran (Elimination of Printing and Recording Errors) Act, 1973 is not referred to in any of the publications concerned with the laws as they apply specifically to Ahmadis.

133 *Auqaf Religious Affairs Zakat & Ushr Department*, available online at <https://arazud.sindh.gov.pk/about-auqaf> (accessed 15 January 2024).

134 *Religious Affairs Department*, available online at <https://ra.balochistan.gov.pk> (accessed 15 January 2024).

135 *Auqaf and Religious Affairs Department*, available online at <https://auqaf.punjab.gov.pk/functions> (accessed 15 January 2024).

Khyber Pakhtunkhwa¹³⁶ have established religious affairs departments of their own. All of them have slightly different names and all four provinces have repealed the Holy Quran (Elimination of Printing and Recording Errors) Act, 1973 and enacted their own laws to ensure that the Qur'an is printed and interpreted correctly.¹³⁷ At the centre, the Federal Ministry of Religious Affairs and Interfaith Harmony remains responsible for the printing of the Qur'an in the Islamabad Capital Territory, where the Holy Quran (Elimination of Printing and Recording Errors) Act, 1973, as amended in 2023, remains in force.

The four provincial acts follow the template of the Federal Holy Quran (Elimination of Printing and Recording Errors) Act, 1973 but have added to varying degrees particular provisions on the quality of the printing, on ensuring that only Muslims can print the Qur'an, on the correctness of both the text as well as its translations as well as the disposal of old or damaged copies of the Qur'an. By way of example, the Khyber Pakhtunkhwa Publication of the Holy Quran (Elimination of Printing and Recording Errors) Act, 2012 and the Khyber Pakhtunkhwa Publication of the Holy Quran (Elimination of Printing and Recording Errors) Rules, 2013, regulate in exacting detail the production of the Qur'an as well as the resting place for old and damaged copies of the Qur'an. According to Section 3(1)(4) of the Rules, publishers of the Qur'an have to submit an affidavit to the effect that they are 'a true Muslim who believes in the oneness of Almighty Allah and accepts Muhammad (Sallal la ho alehe wsallam) as the last prophet of Almighty Allah.' Publishers of the Qur'an also have to ensure that the production conforms to particular specifications, including the quality of the paper used. Section 8(3) of the Rules, 2013 prohibits the printing of the Qur'an on newsprint paper and Section 8(2) of the Rules 2013 stipulates that:

(2) A publisher shall not use paper for printing of the Holy Quran of less than fifty-two grams of pure pulp paper or wood-free local or imported offset paper/printing paper, white or coloured, weighing fifty two grams

136 *Directorate of Auqaf & Religious Affairs*, available online at <https://auqaf.kp.gov.pk>. (accessed 15 January 2024).

137 The Baluchistan Holy Quran (Printing and Recording) Act, (2015); the Sindh Holy Quran (Printing, Recording and Disposal of Damaged or Shaheed and Sacred Auraqs) Act, (2018); the Khyber Pakhtunkhwa Publication of the Holy Quran (Elimination of Printing and Recording Errors) Act, (2012); and the Punjab Holy Quran (Printing and Recording) Act, (2011). In 2022, in the province of Punjab, 129 publishers had been issued licences to print copies of the Qur'an, see Government of Punjab, *List of Registered Holy Quran Printers/Publishers authorised by Auqaf & Religious Affairs Department*, available online at https://www.pta.gov.pk/assets/media/registered_publishers_printers_punjab_25022022.pdf (accessed 28 January 2024).

and above or any wood-free coated and uncoated paper like art paper or matt paper weighing fifty two grams and above.

In turn, Section 8(3) of the Rules 2013 instructs publishers to ensure that 'rough prints and waste papers of the Quranic text are not thrown away carelessly and are carefully collected and dealt with according to the tenets of Islam and the recommendations of the Quran Board.' In turn, Sections 9(b) and (c) of the Rules require the Quran Board to make recommendations for the 'disposal of damaged or worn out or torn pages of the Holy Quran and other papers containing and sacred printed materials' and for the 'establishment of the Quran Mahal.'

The provinces of Sindh, Baluchistan and Khyber Pakhtunkhwa as well as the Islamabad Capital Territory have retained the prohibition on non-Muslims to publish interpretations of the Qur'an contrary to the belief of Muslims. In Punjab, with a population of about 100 million people Pakistan's largest province, the prohibition on the publication of incorrect interpretations or translations of the Qur'an was significantly expanded in 2021 and 2022. The new Section 7 of the Punjab Holy Quran (Printing and Recording) Act, 2011, added in 2021, provides:

7(1) Where, in a copy or record of the Holy Quran, or in any extract thereof published in a text book, a prayer book, a religious treatise or any other book, an Ayah is translated, interpreted or commented upon, disseminated, uploaded, shared, produced, reproduced, converted into portable document through any information system or electronic device into cyberspace by any person contrary to the belief of Muslims, the author, the printer or publisher, or the person who prepared the record, downloader, creator, possessor, modifier, disseminator whatsoever, whether or not registered under this Act, shall, unless he proves that such translation, interpretation, commentary, dissemination, uploading, sharing, production, reproduction or conversion occurred only owing to a printing or mechanical error, be liable to punishment provided for in section 9.

As a result, in the province of Punjab it is now a criminal offence for anyone, *i.e.*, both Muslims and non-Muslims, to produce or circulate a translation, interpretation or commentary of the Qur'an or part thereof that is contrary to the belief of Muslims. In its reach, the new Section 7 is all embracing covering not only printers and publishers but also the author 'or the person who prepared the record, downloader, creator, possessor, modifier, disseminator whatsoever' as well as any conceivable mode of storage or communication, such

as electronic devices stored or communicated through cyber space. Further, the offences are made cognizable and non-bailable.¹³⁸ In 2022, a newly added Section 7(2) now extends the reach of the Act further, providing that whoever ‘willfully degrades, derogates and disrespect the Holy Quran or any part thereof while putting or writing it on any part of the human body in sacrilegious manner in any form of printing and recording (audio & video) including any electronic form through modern electronic devices or techniques on internet and social media for any unlawful purpose.’¹³⁹

The only punishment for an offence under Section 7 is life imprisonment.¹⁴⁰ The amendments enacted in 2022 provide for the establishment of a Special Cell of the law enforcement authorities empowered, *inter alia*, to ‘analyze and enquire complaints forwarded by the Punjab Quran Board regarding commission of an offence under this Act’ and to ‘submit findings and recommendations to the Punjab Quran Board for further decision.’¹⁴¹ In turn, a new Section 10 AAA, titled ‘Proceeding against Offenders’, empowers the Quran Board to reject the findings or recommendations of the Special Cell and to advise the Special Cell to take up the matter again and to ‘recommend legal action to an Law Enforcement Agency under this Act.’¹⁴²

The most recent development in the development of the law surrounding the Qur’an and its interpretation is an amendment to the original Holy Quran (Elimination of Printing and Recording Errors) Act, 1973. Introduced in 2023, a new Section 5A provides that the ‘Arabic text of the Holy Quran shall not be printed on newspapers, flexes, hand bills, brochures or any other such disposal forms, and only its translation in such forms were required.’¹⁴³ In prohibiting the printing of the Arabic text of the Qur’an on ‘disposable forms’, the new Section 5A is in direct conflict with Section 5(6) of Holy Quran (Elimination of Printing and Recording Errors) Act, 1973 which provides that ‘No translation of the Holy Quran shall be published or recorded without its Arabic text’.¹⁴⁴

138 The Punjab Holy Quran (Printing and Recording) Act, Section 10A (2011).

139 The Punjab Holy Quran (Printing and Recording) Act, Section 7 (2011), as amended in 2021 and 2022.

140 The Punjab Holy Quran (Printing and Recording) Act, Section 9(1A) (2011). Offences committed in respect of other provisions of the Act are punished with imprisonment that may ‘extend to seven years but which shall not be less than three years or with fine which shall not be less than one hundred thousand rupees, or with both.’

141 The Punjab Holy Quran (Printing and Recording) Act, Section 10AA (2011).

142 *Ibid.*

143 Holy Quran (Elimination of Printing and Recording Errors) Act, Section 5C (1973).

144 Holy Quran (Elimination of Printing and Recording Errors) Act, Section 2(b) (1973) defines: “Holy Quran” means the Holy Quran in the Arabic text, published in complete

So far there have only been handful of cases under the Holy Quran (Elimination of Printing and Recording Errors) Act, 1973 and its provincial siblings, but there are indications that this could change in the near future. Both courts and activists have been calling for a stricter enforcement of these laws. One of the first cases is *Muhammad Nazim-Ud-Din vs The Federal Secretary*, decided by the Lahore High Court on 23rd March 2011. The petitioner complained about the lack of enforcement of the Punjab Holy Quran (Printing and Recording) Act, 2011, claiming that publishers of the Qur'an 'nowadays even do not shy in using 35 gramme [paper] equivalent to the paper of an ordinary newspaper, which worn out or damaged after a short span of time.'¹⁴⁵ The Lahore High Court issued a number of orders directed at both the Federal and the Punjab government, including 'to consider the feasibility of making recommendations to the Federal Government for importing the required paper on payment of concessional duty' and to devise means and procedures for the collection and disposal of dilapidated scripts of the Qur'an.¹⁴⁶

The case law takes a more serious turn in 2018. In a writ-petition filed in the Lahore High Court, the petitioner complained that public authorities had failed to take action against individuals, and in particular against, 'the various activities of Qadianis/Lahoris/Ahmadis', who, it was alleged, published and printed of the 'Holy Qur'an and other religious books of the Muslims by using names of the Muslim authors with distorted and mutilated translation.'¹⁴⁷ In a detailed judgement that paid particular attention to and reiterated the prohibitions imposed on Ahmadis in their constitutional designation as non-Muslims,¹⁴⁸ the Lahore High Court found that 'neither the non-Muslims, in particular Ahmadis/Qadianis/Lahoris, can pose themselves as Muslims nor can they publish any material by using the names of the books of the Muslims, in particular Holy Qur'an, with the names of the Muslim authors just to portray that the same belongs to Muslim.' The Lahore High Court issued a number of orders concerned with preventing the production of and access to illegally produced religious texts or Qur'ans.

form, or the form of parts (paras) or Chapters (Surahs), but does not include extracts published in text-books or prayer-books or religious treaties'.

145 PLD 2011 Lah 441, para. 3. The petition had been filed in respect of the Holy Quran (Elimination of Printing and Recording Errors) Act, (1973) but by the time it was heard, the Punjab Holy Quran (Printing and Recording) Act, (2011) had already come into force.

146 *Ibid.*, para. 6.

147 *Muhammad Hussain Muawiyah vs Inspector General of Police, Punjab and others*, PLD 2019 Lah 448, para. 2.

148 The Constitution of Pakistan, Article 260(3) (1973).

These directions include ordering the government to block access to websites that show proscribed religious material, ordering the Ministry of Foreign Affairs to ensure that the Google Play Store, App Store, and Windows Store ‘remove every application containing unauthentic text of the Holy Qur’an and other religious books of Muslims’, that all ‘non-Muslim communities shall be sensitised about the repercussions of printing/publishing by using the names of the religious books of the Muslims, in particular the Holy Qur’an ...’, as well as take necessary measures to promote interfaith harmony amongst citizens and for ‘necessary measures to be taken for safe guarding the rights of minorities in terms of Articles 20 and 36 of the Constitution provided they are not involved in any activity which offends against the legislation discussed supra.’ More criminal complaints are pending. According to newspaper reports, Muhammad Hussain Muawiyah, the petitioner in *Muhammad Nazim-Ud-Din vs The Federal Secretary*, filed a criminal complaint against five Ahmadis in 2023, accusing them of having distributed an altered copy of the Qur’an in violation of, *inter alia*, the Punjab Holy Quran (Printing and Recoding) Act, 2011.¹⁴⁹

The political sensitivity of legal issues concerned with the correct interpretation of the Qur’an are demonstrated by the events as they unfolded during the final revisions to this paper in February 2024. On 6 February 2024, in the case of *Mubarik Ahmad Sani vs The State*, the Supreme Court ordered the release on bail of a petitioner, who had been accused of ‘distributing/disseminated a proscribed book — Tafseer-e-Sagheer.’¹⁵⁰ Decided by Chief Justice of Pakistan Qazi Faez Isa, who wrote the judgment, and Justice Musarrat Hilal, the Supreme Court reviewed the offences with which the accused had been charged, quashing the charges under Sections 295-B and 298-C as unfounded and, in the case of the offence under Section 7 of the Punjab Holy Quran Act, 2011, removing the charge because Section 7 had not been in force at the time when the offence was alleged to have been committed. Regarding the remaining charge under the Criminal Law Amendment Act, 1932, the Supreme Court found that the accused had already spent 13 months in prison on remand awaiting trial, much longer than the maximum sentence of six months imprisonment for an

149 See News Desk, ‘Five Ahmadis Booked for Distributing ‘Altered’ Version of Quran in Chiniot’, *The Friday Times*, available online at <https://thefridaytimes.com/09-Jan-2023/five-ahmadis-booked-for-distributing-altered-version-of-quran-in-chiniot> (accessed 7 February 2024).

150 *Mubarik Ahmad Sani vs The State and another*, Criminal Petitions No.1054-L and 1344-L of 2023, available online at https://www.supremecourt.gov.pk/downloads_judgements/cr.p_1054_1_2023.pdf (accessed 9 February 2024).

offence under that Act.¹⁵¹ By way of *obiter dictum*, the Supreme Court stressed that, 'Courts must exercise extreme caution when dealing with matters of faith. The Islamic faith is based on the Holy Qur'an, which in *surah Al-Baqarah* (chapter 2), verse 256 reproduced hereunder, expounds that there must not be any compulsion in religion.' According to the Supreme Court, 'Freedom of faith is one of the fundamental tenets of Islam. But sadly, in matters of religion tempers flare up and the Qur'anic mandate is forsaken.'¹⁵²

The reactions against Justice Isa's judgment were swift. Two weeks after the date of the decision, a news item in the Dawn newspaper — headed 'Some religious leaders oppose sc ruling in 'proscribed literature' case' — reported that several 'religio-political parties' had made 'inflammatory remarks against the Chief Justice.' As reported, leaders of the Jamiat Ulema-e-Islam Pakistan (Fazl) and the Jamaat-i-Islami had taken exception to the Supreme Court's decision, calling on their followers to become active and to 'take action against the chief justice for hurting the sentiments of their followers.' According to the Dawn newspaper, even the 'banned militant group, Tehreek-i-Taliban Pakistan (TTP), has issued a statement in the matter, expressing similar sentiments.'¹⁵³

Later on the same day, the Supreme Court reacted and issued a press release¹⁵⁴, stating that, as summarised by the Dawn newspaper, 'misreporting of its verdict was creating "many misunderstandings" with the impression being created that the court had denied the Second Amendment (September 1974), designed to declare Ahmadis as non-Muslims, or called for the elimination of relevant sections for crimes against religion in the country's legal codes' and that avenues for legal recourse and review of the judgment were always open.¹⁵⁵ In turn, the government announced that no one 'would be allowed to disturb law, order and peace or create the conditions for discord in the country in the

151 The Criminal Law Amendment Act, Section 5(1) (1932) provides '5. Dissemination of contents of proscribed document. (1) Whoever publishes, circulates or repeats in public any passage from a newspaper, book or other document copies whereof have been declared to be forfeited to Government under any law for the time being in force, shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both.'

152 *Ibid.*, para. 7.

153 Staff Reporter, 'Some religious leaders oppose sc ruling in 'proscribed literature' case', *Dawn*, available online at <https://www.dawn.com/news/1816145/some-religious-leaders-oppose-sc-ruling-in-proscribed-literature-case> (accessed 22 February 2024).

154 Supreme Court of Pakistan, *Press Release*, available online at https://www.supremecourt.gov.pk/downloads_judgements/press_release/Press_Release_22022024_r.pdf (accessed 22 February 2024).

155 H. Bhatti, 'sc deplures unfortunate criticism, misreporting of ruling in 'proscribed literature' case', *Dawn*, available online at <https://www.dawn.com/news/1816278> (accessed 22 February 2024).

name of the Holy Prophet (Peace Be Upon Him)' and that 'All foreigners living in Pakistan must feel assured that they're safe and nobody will be able to hurt them. They should feel safe and secure. The State of Pakistan will guarantee their safety and peace.'¹⁵⁶ At the end of a day filled with press releases and official announcements, it was reported that the Federal Investigation Agency had arrested the 'suspect behind the social media campaign against the chief justice' and that the government would take 'strict action against those using social media platforms for incitement of violence.'¹⁵⁷

7.2 *Section 295-B of the Pakistan Penal Code, 1860*

After the enactment of Holy Quran (Elimination of Printing Errors) Act, 1973, the second Qur'an specific law was introduced in 1982 by adding a new criminal offence to the chapter on offences against religion in the Pakistan Penal Code, 1860. The new Section 295-B of the PPC provides:

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

According to Asad Ahmed, the enactment of Section 295-B PPC was induced by a media-led moral panic, with Urdu newspapers reporting about Qur'anic texts being discovered in rubbish heaps and sewage.¹⁵⁸ Viewed from the perspective of the Qur'an as a sacred object, Section 295-B contains several innovations. First, in being named as the object that is protected against the risk of defilement and desecration, the prosecution does not have to prove that the Qur'an was an object held sacred by a class of persons, as would have been the case under Section 295 PPC. Second, rather than having to prove that the desecration of the Qur'an had been done with the intention to insult the religion of a class of persons, the new Section 295-B PPC applies the *mens rea* requirement to the act of damaging the Qur'an itself, thereby making it an offence of strict liability.

The majority of cases under Section 295-B of the PPC involve allegations that a person had either destroyed or in some other way damaged a copy of

¹⁵⁶ *Ibid.*

¹⁵⁷ *Ibid.*

¹⁵⁸ A. Ahmed, 'A Short History of the Anti-Blasphemy Laws', *Herald*, available online at <https://herald.dawn.com/news/1154036> (accessed 22 February 2024).

the Holy Qur'an.¹⁵⁹ For instance, in the case of *Dilshad Hussain vs The State*¹⁶⁰ (Karachi, 2002) the Karachi High Court heard an appeal against a conviction to life imprisonment awarded to a cloth merchant, who, it had been alleged, had admitted to a street sweeper that he had thrown a copy of the Holy Qur'an into the gutter. Before the trial court, the accused denied the allegation. The accused's counsel submitted that his client was mentally unstable and adduced evidence from a hospital to this effect. The trial court found the accused guilty on the basis of his 'extra-judicial' confession made to the sweeper and sentenced him to life imprisonment.

Twelve years later, the Karachi High Court observed that 'convicting a Muslim on the charge under section 295-B, P.P.C. to imprisonment for life when he clearly denies the charge and claims that he is a true Muslim and cannot even think of such an act and when the only evidence available with the prosecution is that of extra-judicial confession, shall be clearly without any lawful justification' and set aside the conviction. In a paper published in 2014, Muzaffar Husain observes that many of those accused of having desecrated or defiled copies of the Qur'an under Section 295-B PPC suffered from mental health illnesses, such as 'Individuals with autism, with varying degrees of intellectual disability, are another diagnostic group also at risk of not being able to follow social rules of due reverence and regard for what the community holds sacrosanct'.¹⁶¹

Modern technology, in particular electronic devices for the storage of digital copies of the Qur'an and its translations, have generated a new class of cases under Section 295-B PPC, with the accused facing, *inter alia*, prosecutions for either having accessed, distributed or up-loaded digitized copies of the Qur'an which are alleged to have been desecrated by a wrong translation of the Qur'an. Given limitations of space, only two of these cases are referred to, one concerned with a confirmation of two death sentences by the Lahore High Court in 2022, and the other case concerned with the Supreme Court of Pakistan's rejection of a bail application of three members of the Ahmadiyya community.

In the case of *Qaiser Ayub vs The State*, the Lahore High Court heard an appeal against the death sentences imposed on Qaiser Ayub and Amoon Ayub

159 For a review of Section 295-B PPC cases up to 2010, see M. Lau, 'Offences against Religion in Pakistan: A Review' in S. Deva (ed.), *Law and (In) Equalities: Contemporary Perspectives: Festschrift in Honour of Professor Mahendra Singh* (Lucknow: Eastern Book, 2010) 159–186. For references to more recent cases involving alleged desecrations of the Qur'an, see *supra* notes 25–31.

160 2003 P Cr. LJ 206.

161 M. Husain, 'Blasphemy and Mental Illness', *The Psychiatric Bulletin* 38(1) (2014): 40–44.

for offences committed under Section 295-A, 295-B and 295-C PPC.¹⁶² The appellants, both ‘followers of Christianity’, had been found guilty of having set up a ‘wordpress’ website with the name ‘United Christians Organization Pakistan’ in order to upload and publish ‘blasphemous material in the shape of portraits and articles through their website and gave wrong references from the Holy Qur’an in order to derogate and insult the Holy Prophet Hazrat Muhammad () and excruciated the feelings and emotions of Muslims all over the world, particularly those living in Pakistan’ (para. 2). After a review of the evidence and a lengthy account of the offence of blasphemy in Christianity, Islam, and other jurisdictions; the Lahore High Court dismissed the appeals and maintained the death sentences awarded by the trial court.

In the case of *Rohan Ahmad vs The State*, an appeal against the refusal to grant bail was rejected by the Supreme Court of Pakistan on the ground that the prosecution had sufficient material on record to connect the accused to the alleged crimes.¹⁶³ The three petitioners were members of the Ahmadiyya community and had been accused of having used WhatsApp to send a link to a website which included a ‘desecrated and defiled translation’ of the Holy Qur’an and a number of books banned by the Punjab Government.¹⁶⁴ As summarised at paragraph 20 of the Human Rights Council’s Working Group on Arbitrary Detention’s ‘Opinion No. 35/2023 (23 October 2023) concerning Rohan Ahmad, Usman Ahmad and Tariq Ahmad Shehzad (Pakistan)’, all three are accused of, *inter alia*:

20. Mr. Rohan Ahmad, Mr. Usman Ahmad and Mr. Tariq Ahmad Shehzad, with common intention, had wilfully defiled or desecrated a copy of the Holy Qur’an by changing the content and translation thereof, which is prohibited by law, in violation of section 295-B of the Penal Code.¹⁶⁵

¹⁶² 2023 YLR 2663.

¹⁶³ 2022 P Cr. LJ 259, available online at https://www.supremecourt.gov.pk/downloads_judgments/crl.p._1313_1_2021.pdf. (accessed 7 February 2024).

¹⁶⁴ A detailed description of the criminal charges can be found in the earlier decision of the Lahore High Court refusing bail, see *Rohan Ahmad vs The State*, Crl. Misc. 18739-B/2021 and *Usman Ahmad vs The State*, Crl. Misc. 18729-B/2021, available online at <https://sys.lhc.gov.pk/appjudgments/2021LHC4279.pdf> (accessed 7 February 2024).

¹⁶⁵ United Nations Working Group on Arbitrary Detention, *Opinions adopted by the Working Group on Arbitrary Detention at its 97th session*, available online at <https://www.ohchr.org/en/special-procedures/wg-arbitrary-detention/opinions-adopted-working-group-arbitrary-detention/opinions-adopted-working-group-arbitrary-detention-its-97th-session> (accessed 24 November 2023).

In its Disposition, the Human Rights Council rendered the opinion that the 'deprivation of liberty of Rohan Ahmad, Usman Ahmad and Tariq Ahmad Shehzad, being in contravention of articles 2, 3, 7, 9, 18 and 19 of the Universal Declaration of Human Rights and articles 9, 14, 18, 19 and 26 of the International Covenant on Civil and Political Right, is arbitrary and falls within categories I, II, III and V' and requested the Pakistan Government to bring its laws, in particular Sections 295-A, 295-B, 295-C, and 298-C of the PPC, in conformity with international law.

7.3 *The Shaheed Qur'an*

In looking after the Qur'an from 'cradle to grave', Pakistani fiscal rules promote its production, with the 'supply of Paper weighing 60 g/m² for printing of Holy Quran imported by Federal or Provincial Governments and Nashiran-e-Quran [Quran printers]' being exempted from both sales tax and import duties.¹⁶⁶ The charitable 'Rabita-e-Islami's Project for printing copies of the Holy Quran' is included in a list of 62 non-governmental organisations that are entitled to tax concessions under the Tax Law (Second Amendment) Ordinance, 2021.¹⁶⁷

Pakistani law also provides for the treatment of the Qur'an at the end of its use because of damage or being worn out. In that process of disposal of old copies of the Qur'an, not only the law but also the terminology have evolved. In 2013, provisions for the final stage of the Qur'an's existence were referred to as 'the disposal of damaged or worn out or torn pages of the Holy Quran', as provided for Section 9(b) of the Khyber Pakhtunkhwa Publication of the Holy Quran (Elimination of Printing and Recording Errors) Rules, 2013. More recently, the law has coined the term 'shaheed copy of the Holy Quran', meaning the 'martyred Qur'an', to describe damaged or worn out copies of the Qur'an, as in the Publication of the Holy Quran (Elimination of Printing and Recording Errors) Amendment Act, 2023.

¹⁶⁶ The Finance Act, Section 12 (A)(f) (2022).

¹⁶⁷ See CT Report, 'FBR issues list of non-profit organizations eligible for tax credit', *Customs Today*, available online at <https://customstoday.media/fbr-issues-list-of-non-profit-organizations-eligible-for-tax-credit/> (accessed 27 January 2024). The Rabita-e-Alam-e-Islami or Muslim World League is a non-governmental organisation engaged in 'missionary work, jurisprudence, and social welfare' and is funded by the government of Saudi Arabia, see J. Esposito (ed.), 'Muslim World League', *The Oxford Dictionary of Islam* (Oxford: University of Oxford, 2003), available online at <https://www.oxfordreference.com/display/10.1093/acref/9780195125580.001.0001/acref-9780195125580-e-1652> (accessed 27 January 2024).

As far as the actual disposal of the Qur'an is concerned, the Publication of the Holy Quran (Elimination of Printing and Recording Errors) Amendment Act, 2023 defines the term 'disposal' as the recycling 'in such a manner as conforms to its holiness and sanctity.' Across Pakistan, there have been several projects to organise the appropriate disposal of the *Shaheed* Qur'an, some private, some public. For instance, the Karachi based Al-Shareef Foundation ('ASF'), a charity that provides social services such as vocational training courses, also offers a disposal service for old copies of the Qur'an, stating on its website that 'ASF collects old and torn out holy papers (Islamic scriptures) (Holy Quran, papers with Quranic verses) from different spots of the city and save them. Later on a ship is used to carry these papers and materials to the middle of the sea and laid to it.'¹⁶⁸ In the province of Punjab, the Punjab Quran Board commissioned the construction of nine 'Quran Mahals', one for each district, for the 'safe and secure storage of old/shaheed Quranic Papers and other old religious books' in 2018. With a simple and modern design — the front of the building is in the shape of an open book — all nine buildings have been constructed.

In December 2023, I visited the Quran Mahal in Lahore. Situated some 30 kilometres from the city centre in a gated residential housing scheme — called Green Acres and still largely empty — the Quran Mahal occupied the middle of a compound that was surrounded by a high wall. Attached to one of the side-walls of the Quran Mahal was an open-air prayer area with awnings for protection against the sun. The long distance from the city centre, freshly planted tree saplings and a flock of white geese running round a small pond gave the compound a rustic atmosphere. The building itself seemed largely empty, apart from a few book shelves on the upper floor. How exactly the Quran Mahal will dispose of the *Shaheed* Qur'an is not clear. The March 2023 Evaluation Report of the Directorate General Monitoring and Evaluation, Government of Punjab, stated that the 'recycling process and quality of printing process of sacred shaheed Quranic Papers were not carried out yet' and that 'there was no proper defined mechanism for collection of shaheed Quranic Papers from those Mosques which are under the Auqaf organization as well as from other

168 Tahuffuz-e-Muqaddas Auraq, available online at <https://al-shareef.org/service/tahuffuze-muqaddas-auraq/20> (accessed 8 February 2024).

Mosques which are not under Auqaf Organization.¹⁶⁹ According to media reports, the province of Sindh has also decided to construct a Qur'an Mahal.¹⁷⁰

8 Conclusion

Protected by the colonial state against the risk of desecration not because it was considered sacred by Muslims, but because its defilement could trigger riots, the Qur'an has gradually moved to very core of the offences against religion. In contemporary Pakistan, the book and the text are becoming increasingly fused, with the differentiation between the Qur'an as a sacred object, protected against the risk of desecration under the North-West Frontier/Khyber Pakhtunkhwa Restriction on the Sale of the Holy Quran Act, 1939, the Sind Holy Quran Act, 1940, and Section 295-B of the Pakistan Penal Code, and as a text that has to be protected against the risk of errors under the Holy Quran (Elimination of Printing and Recording Errors) Act, 1973 and its provincial siblings, having given way to a new offence of religion that criminalises translations and interpretations of the Qur'an that are contrary to the belief of Muslims.

In combining concerns for the materiality and the textual authority of the Qur'an in one offence, Pakistan's Qur'an laws also gather Salafi visions of Islam and — using Suit's description — 'folk Islamic traditions' under one legal umbrella.¹⁷¹ As formulated and enacted under Section 7 of the Punjab Holy Quran (Printing and Recording) Act, 2011, this new offence of 'Islamic heresy' has global reach and application, creating potential liabilities for anyone who produces, publishes or downloads a Qur'an or a translation, interpretation or

169 See Directorate General Monitoring and Evaluation, Planning & Development Bard, Government of the Punjab, *Evaluation Report of the Construction of 09-Nos Quran Mahal for Shaheed Quranic Papers at Divisional Level in Punjab*, available online at <https://dgme.punjab.gov.pk/system/files?file=EVL-880%20Evaluation%20Report%20On%20Construction%20Of%2009%20Quran%20Mahal%20For%20Shaheed%20Quranic%20Papers%20At%20Divisional%20Level%20In%20Punjab.pdf>. (accessed 20 November 2023). This Evaluation Report contains photographs of all of the nine Quran Mahals in the province of Punjab.

170 International Quran News Agency, *Pakistan's Sindh Gov't Ensuring Publication, Printing, Recording of Quran without Mistakes: Official*, available online at <https://iqna.ir/en/news/3477670/pakistan-s-sindh-gov-t-ensuring-publication-printing-recording-of-quran-without-mistakes-official> (accessed 9 February 2024).

171 Suit, *supra* note 16 at 235.

comment on the Qur'an that is contrary to the belief of Muslims, with the only punishment being imprisonment for life.¹⁷²

Within the constitutional discourse before Pakistan's high courts and the Supreme Court, the enactment of a wide range of criminal laws concerned with the protection and promotion of Islam is justified on the grounds of 'Islamic state doctrine' and public order.¹⁷³ With regard to the former, it is argued that having been founded in the name of Islam, the Pakistani state is under a constitutional duty to enable Muslims 'to order their lives in the individual and collective sphere in accordance with the teachings and requirements of Islam as set out in the Holy Quran and Sunnah'.¹⁷⁴ The case of *Muhammad Hussain Muawiyah vs Inspector General of Police, Punjab and others*¹⁷⁵ serves as a recent expression of this Islamic state doctrine, with Justice Shujaat Khan describing the duties of the Islamic state as follows:

After departure of the Holy Prophet Hazrat Muhammad (P.B.U.H.) from this impermanent world the task to preserve the Holy Qu'ran was completed by the pious Caliphs, namely Hazrat Abu Bakar Siddique (R.A.), Hazrat Umar-e-Farooq (R.A.) and Hazrat Ali (R.A.). After their death, this obligation has been discharged by the Muslim rulers and other pious Muslims all over the world. Since the creation of our beloved country was based on two-nation theory the Legislators made the Objective Resolution as part of the Constitution of Pakistan, 1973 (the Constitution) through insertion of Article 2-A according to which sovereignty belongs to Allah Almighty and the basis for creation of Pakistan was to provide an atmosphere where the Muslims could lead their lives according to the injunctions of Islam. Further, the law-makers, as per Article 31 of the Constitution, have mandated encouragement of Islamic way of life for the Muslims of the country. [quote of Article 31] According to the afore-quoted Article it is the bonden duty of the State to encourage

¹⁷² The Punjab Holy Quran (Printing and Recording) Act, Section 7 (2011).

¹⁷³ The Islamic state doctrine has an earlier precedent in one of Sunni theorists' ten caliphal duties, namely that the caliph 'must defend the faith and suppress heretics and rebels, by force if necessary.' See Hashmi, *supra* note 11.

¹⁷⁴ The Objectives Resolution (7 March 1949), The Constitution of Pakistan, Article 2A (1973).

¹⁷⁵ *Muhammad Hussain Muawiyah vs Inspector General Of Police, Punjab and others*, PLD 2019 Lahore 448.

Islamic way of life as embodied in the Holy Quran and practiced by Hazrat Muhammad (P.B.U.H.)¹⁷⁶

Under this constitutional doctrine, the duty of enabling Muslims to live in accordance with Islam not only justifies but compels the Islamic state to protect and promote an increasing number of aspects and facets of Islam, ranging from the protection of the name of the Holy Prophet against the risk of defilement to the protection of the Qur'an against the risk of desecration and heretical translation, interpretation or commentary. The duty to promote and protect Islam is reflected in the language used, with, for instance, Justice Shujaat Khan of the Lahore High Court describing Muhammad Hussain Muawiyah's petition to order the state to enforce the Punjab Holy Quran (Printing and Recoding) Act, 2011 as part of a 'noble struggle wherein the petitioner has agitated against inaction on the part of the public functionaries to take action against individual(s)/publisher(s)/community(ies)/organization(s) involved in the preparation/publication of books by using the names of religious books of Muslims, in particular Holy Qur'an and their Muslim authors or similar names having distorted Arabic text or mutilated translation or both.'¹⁷⁷

The argument that Islam specific criminal laws are required to maintain public order emerges in a variety of contexts. In the context of law making, reference can be made to Khan Faquir Khan's statement — made in the course of the debate of the North-West Frontier Restricting the Sale of the Holy Quran Bill, 1939 — that prohibiting non-Muslims from selling the Holy Quran was, in fact, a kindness to minorities because the law would bring to an end Muslim resentment of seeing non-Muslims profiting from the sale of the holy book.¹⁷⁸ In the 1993 case of *Zaheer-ud-din vs The State*, Justice Abdul Qadeer Chaudhry — after having quoted from the writings of Mirza Ghulam Ahmed,

176 See The Constitution of Pakistan, Article 31 (1973). 'Islamic way of life.

Steps shall be taken to enable the Muslims of Pakistan, individually and collectively, to order their lives in accordance with the fundamental principles and basic concepts of Islam and to provide facilities whereby they may be enabled to understand the meaning of life according to the Holy Quran and Sunnah.'

'The state shall endeavour, as respects the Muslims of Pakistan —

to make the teaching of the Holy Quran and Islamiat compulsory, to encourage and facilitate the learning of Arabic language and to secure correct and exact printing and publishing of the Holy Quran;

to promote unity and the observance of the Islamic moral standards; and

to secure the proper organisation of zakat, auqaf and mosques.'

177 *Ibid.*

178 IOR: L/P&J/7/3590, 'Extract from N.-W.F.P. Legislative Assembly Debates', 21st September 1939, 12.

the founder of the Ahmadi community — referred to the risk of civil war if there was no law that prohibited members of the Ahmadiyya community from calling themselves Muslims, posing the question ‘Can then anyone blame a Muslim if he loses control of himself on hearing, reading or seeing such blasphemous material as has been produced Mirza Sahib?’¹⁷⁹ In the case *Mumtaz Qadri vs The State*, Justice Asif Khosa of the Supreme Court acknowledged the ‘strong religious sentiments in our society’, stressing that any call for introducing reforms against the misuse of laws regarding religion should not be ‘construed as a call against the religious aspects of the offences covered by such laws.’¹⁸⁰

Concerns that the legal protection of the object and the text of the Qur’an against the risk desecration and heretical interpretations might have negative impact on the rights of non-Muslims minorities have never prevented any of these Islamic criminal laws from being enacted or enforced. In 1939 and 1940, in both the provincial assemblies of the North-West Frontier Province and of Sind, even those parliamentarians who were opposed to the North-West Frontier Restrictions on the Sale of the Holy Quran Act, 1939 and the Sind Holy Quran Act, 1940 eventually conceded defeat, acknowledging that there was nothing that could or should be done to stop these bills from being enacted. In the case of the Sind Legislative Assembly, parliamentarians at least managed to compensate non-Muslims for the financial loss they would suffered as a result of not being able to trade in copies of the Qur’an. The Sind Assembly also ensured that the punishment for the first offence under the Sind Holy Qur’an Act, 1940 was a light one. At the level of the British Indian government, there was a reluctance to stand up for the rights of minorities. In the spring of 1940, these two provincial Qur’an laws were left in place, despite provisions of the Government of India Act, 1935 that imposed a duty on the colonial government to protect the rights of religious minorities, despite strongly expressed opposition from senior civil servants to the constitutional *vires* and despite a petition asking for an repeal of the law having been submitted by the Hindu Book Sellers Association in Peshawar to the Governor-General of India.

In contemporary Pakistan, a number of judgments handed down by the high courts and the Supreme Court contain passages supportive of the rights of non-Muslim minorities. By way of recent example, reference can be made to

179 *Zaheer-ud-Din vs The State*, 1993 SCMR 1718.

180 *Malik Mumtaz Qadri vs The State*, Criminal Appeals No. 95 and 96 of 2019, Civil Appeal No. 10-L of 2017, and Criminal Appeal No. 63 of 2013, available online at https://www.supremecourt.gov.pk/downloads_judgements/crl.a._95_2019.pdf (accessed 4 February 2024).

the case of *Tahir Naqash vs The State* (decided by the Supreme Court of Pakistan on 12 January 2022)¹⁸¹, a case concerned with a petition of two Ahmadis — accused of having posed as Muslims contrary to Sections 298-A and 298-B PPC — to remove the charges under Sections 295-B and 295-C PPC from the charge sheet, which had been added at later stage of the criminal proceedings. In allowing the petition, Justice Mansoor Ali Shah of the Supreme Court stressed not only the rights of non-Muslim minorities to exercise their right to practice their religion but also voiced concerns about the reputational damage that ‘religious bigotry’ was inflicting on Pakistan’s international reputation:

To deprive a non-Muslim (minority) of our country from holding his religious beliefs, to obstruct him from professing and practicing his religion within the four walls of his place of worship is against the grain of our democratic Constitution and repugnant to the spirit and character of our Islamic Republic. It also deeply bruises and disfigures human dignity and the right to privacy of a non-Muslim minority, who like all other citizens of this country enjoy the same rights and protections under the Constitution. Bigoted behaviour towards our minorities paints the entire nation in poor colour, labelling us as intolerant, dogmatic and rigid. It is time to embrace our constitutional values and live up to our rich Islamic teachings and traditions of equality and tolerance. (at para. 11)

With the Constitution as well as the law expressly privileging Muslims as well as Islam, Justice Mansoor Ali Shah’s statement that non-Muslim minorities enjoy the same rights and protections under the Constitution is open to challenge.¹⁸²

181 *Tahir Naqash vs The State* (Crl.P.916-L/2021), available online at https://www.supremecourt.gov.pk/downloads_judgements/crl.p._916_L_2021.pdf (accessed 7 February 2024).

182 Several provisions of the Constitution of Pakistan, 1973 expressly privilege Islam and/or Muslim citizens. See, e.g., Article 1 (‘...Islamic Republic of Pakistan ...’); Article 2 (‘Islam shall be the State religion of Pakistan.’); Article 2A (‘Objectives Resolution’ — ‘Whereas sovereignty over the entire universe belongs to Allah Almighty alone and the authority which He has delegated to the State of Pakistan, through its people for being exercised within the limits prescribed by Him is a sacred trust ...’); Article 41(2) (‘A person shall not be qualified for election as President unless he is a Muslim ...’); Article 91(3) (‘...the National Assembly shall ...proceed...to elect one of its Muslim members to be the Prime Minister.’); Article 203(E)(4) (‘A party to any proceedings before the [Federal Shariat] Court under clause (1) of Article 203D may be represented by a legal practitioner who is a Muslim ...’); Article 31 (‘Islamic Way of Life’); Article 277 (‘All existing laws shall be brought in conformity with the injunctions of Islam as laid down in the Holy Quran and Sunna’); Article 92(2) (Third Schedule, Oaths of Office) (‘I ... do swear solemnly ... That I will strive to preserve the Islamic ideology which is the basis for the creation of Pakistan ...’). For a comprehensive review of these articles, see P. Jacob, ‘The

Section 7 of the Punjab Holy Quran (Printing and Recording) Act, 2011 creates particular legal hazards for Ahmadis because Ahmadi religious writing have been held to be heretical.¹⁸³ As a result, any Ahmadi who possesses, downloads or shares Ahmadi religious writings risks criminal prosecution, casting doubts on the accuracy of the Supreme Court's judgment that Ahmadis are free to practice their religion within the four walls of their places of worship.

With the state regulating what is and what is not contrary to the belief of Muslims, the Qur'an specific statutes meant to uphold the 'purity' and the authority of the Qur'an as an object and as a text risk producing the legal system that Abdullahi Ahmed An-Na'im had warned against, namely a country where 'Muslims are allowed to prescribe for me what can or cannot be part of my religious experience in the name of a so-called Islamic state.'¹⁸⁴ Across Pakistan, the Islamisation of law and society progresses unevenly and inconsistently, creating a complex landscape of Islamic offences against religion. By way of example, only in the province of Punjab is it a criminal offence for Muslims to publish a commentary on the Qur'an that is contrary to the belief of Muslims, or to show on human skin a phrase of the Qur'an in a sacrilegious manner. In contrast, in the Islamabad Capital Territory and in the provinces of Sindh, Khyber Pakhtunkhwa and Baluchistan, only non-Muslims are prohibited from publishing interpretations of the Qur'an that are contrary to the belief of Muslims. Only in the provinces of Sindh and Khyber Pakhtunkhwa is it an offence for non-Muslims to sell the Qur'an, albeit that in Sindh, a non-Muslim is still permitted to sell a copy of Qur'an by using 'Muslim agency.' In all four provinces, translations of the Qur'an have to be accompanied by the (approved) Arabic Qur'anic original, albeit that with regard to documents in disposable form, at least in the Islamabad Capital Territory, it is a criminal offence to show the translation of the Qur'an with its Arabic original. In June 2023, the Punjab Qur'an Board prohibited printing Qur'anic verses on sheets which are placed on shrines and graves.¹⁸⁵

Constitution: Restricted Growth at 50', *The Friday Times*, available online at <https://thefridaytimes.com/o8-Apr-2023/the-constitution-restricted-growth-at-50> (accessed 7 February 2024).

183 *Zaheer-ud-din vs The State* 1993 SCMR 1718.

184 A. An-Na'im, *Islam and the Secular State: Negotiating the Future of Shari'a* (Cambridge, MA: Harvard University Press, 2008), 293. For the notion of purity and authenticity, see Svensson, *supra* note 13 at 49.

185 The News International, 'Quran board bans printing of Quranic verses on sheets laid on graves', *The News*, available online at <https://www.thenews.com.pk/print/1079845-quran-board-bans-printing-of-quranic-verses-on-sheets-laid-on-graves> (accessed 7 February 2024).

The significant differences in the laws pertaining to the Qur'an across Pakistan reflect the power of provinces to make 'laws with respect to criminal law, criminal procedure and evidence.'¹⁸⁶ As a result, processes for the Islamisation of laws have both national and provincial dimensions, with the latter garnering significantly less media attention and scrutiny than bills introduced in the National Assembly. The significant expansions of the criminal offence under Section 7 Punjab Holy Quran (Printing and Recording) Act, 2011 in 2021 and 2022 received scant attention by Pakistani media. By way of example, the well-established *Business Recorder* merely reported that 'Punjab Assembly on Tuesday unanimously passed the Holy Quran (Printing and Amendment) Bill 2021 and The Provincial Assembly of the Punjab (Amendment) Bill 2021. The session started 1 hour 46 minutes late under the chair of Speaker Punjab Assembly Chaudhry Pervez Elahi.'¹⁸⁷

From an international perspective, Pakistan's efforts to protect the Qur'an as a sacred object and divine text have achieved mixed results. Having played a large part in convincing the United Nations' Human Rights Council to condemn all forms of religious hatred, including acts of desecration of the Holy Qur'an, in July 2023, the very same Human Rights Council found that Pakistan's legal framework of religious offences, including those that protect the Qur'an under the PPC, to be in breach of its international obligation to protect human rights only three months later, in October 2023.¹⁸⁸ As can be deduced from this paper, predictions for the success or failure of Pakistan's attempts to reconcile the Islamic state's 'caliphal duty to defend the faith and to suppress heretics' with its constitutional and international duty to protect the human rights of all citizens, irrespective of religion, are difficult to make. Much of the success of such a process of reconciliation will depend on Pakistan's higher judiciary who have both the duty and the power to ensure that all laws comply with the constitutionally guaranteed fundamental rights, whether secular or otherwise.

Acknowledgements

The author's thanks go to the anonymous reviewers and to the many colleagues who provided feedback, insights, and reflections; to Dr Umair Saleem, BA/LLB (LUMS), LL.M (KU Leuven, Leuven), LL.M (Pace University, New York, NY) and

¹⁸⁶ The Constitution of Pakistan, Article 142 (b) (1973).

¹⁸⁷ H. Abbas, *Punjab Assembly passes two Bills*, available online at <https://www.brecorder.com/news/40103892> (accessed 7 February 2024).

¹⁸⁸ UN Human Rights Council, *supra* note 4.

s.J.D. (Pace University, New York, NY), who translated the North-West Frontier Legislative Assembly debates concerning the passage of the North-West Frontier Restricting the Sale of the Holy Quran Act, 1940 from Urdu to English; and to the Partners and Associates of Cornelius Law & Mufti, Advocates & Solicitors, at whose invitation an earlier version of this paper was presented as the 6th Cornelius Memorial Lecture at Faletti's Hotel in Lahore, Pakistan, on 22 December 2023.