

# PAKISTAN

## @Legal changes: the death penalty made mandatory for defiling the name of the Prophet Mohammad

The Pakistan federal cabinet on 29 July 1991 decided to amend Section 295C of the Pakistan Penal Code which read:

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

The amendment to the Pakistan Penal Code decided upon by the federal cabinet removes the alternative punishment of imprisonment for life. The amendment makes the death penalty mandatory for the offence of defiling the name of the Prophet Mohammad.

Minister for Law, Justice and Parliamentary Affairs, Chaudhary Amir Hussain, stated to the press that this decision had been taken by the federal government in accordance with the verdict of the Federal Shariat Court.

The Enforcement of Shariat Act 1991 passed in May 1991 in both houses of parliament requires the government to bring all laws into conformity with Islam. It states that the state has the duty "... to ensure an Islamic system of justice ...". In order to become law the amendment to Section 295C will need to be approved by parliament; its passage is highly likely as the government enjoys a large majority in both houses of parliament.

Amnesty International is concerned that under the amended form of Section 295C of Pakistan Penal Code members of the minority Ahmadiyya community may face the death penalty as a mandatory punishment for the exercise of their religious beliefs. The Ahmadis' reference to the Prophet Mohammad is considered by orthodox Muslims as defiling the name of the Prophet Mohammad.

### Background

Though Section 295C is applicable to anyone showing disrespect to the Prophet Mohammad, the legislation is of significance particularly in the context of the Pakistan Government's policy towards the  
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minority Ahmadiyya community.

The Ahmadiyya movement was founded in the nineteenth century by the followers of Mirza Ghulam Ahmed, who is regarded as a prophet by Ahmadis. Ahmadis consider themselves as Muslims but they are regarded by orthodox Muslims as heretical because they call the founder of the movement al-Masih (the Messiah); this is taken to imply that Mohammad is not the final "seal of the prophets" as orthodox Islam holds. According to Ahmadis, their faith does not involve the denial of the Prophet Mohammad's status because Mirza Ghulam did not claim to bring a new revelation of divine law which could replace or supersede the Koran. There are an estimated three to four million Ahmadis in Pakistan.

In 1974 the government of Zulfikar Ali Bhutto amended the constitution to declare the Ahmadiyya community a non-Muslim minority. In April 1984 President Zia-ul-Haq promulgated Ordinance XX, by which two new sections, namely 298B and 298C, were added to the Penal Code. They prohibit Ahmadis from calling themselves Muslims, using Muslim practices in worship or propagating their faith in any form. These new offences are punishable by up to three years' imprisonment and a fine. The Criminal Law Amendment Act 1986 added Section 295C to the Pakistan Penal Code to provide the death penalty or life imprisonment for the criminal offence of defiling the name of the Prophet Mohammad.

Ahmadis are frequently charged and sentenced under Section 298B and 298C. According to a report in *Nawai Waqt* of 11 September 1988, some 3,113 Ahmadis had been charged under Ordinance XX up to September 1988. Several cases of Ahmadis tried and sentenced under it have come to Amnesty International's attention since. Some Ahmadis are also reported to have been charged under Section 295C, but Amnesty International is not aware of anyone having been sentenced under it.

Amnesty International does not take a position on the question whether Ahmadis should be considered Muslims or not. It is, however, concerned that Ahmadis are often arrested and in future may face the death sentence as a mandatory punishment for the peaceful exercise of their religious beliefs. In Amnesty International's view, such persecution and punishment would be in violation of Article 18 of the Universal Declaration of Human Rights and the United Nations Declaration of the Elimination of All Forms of Intolerance and of Discrimination Based on Religion and Belief.

Amnesty International also opposes the present amendment in the context of its general and unconditional opposition to the death penalty. The organization believes the death penalty violates the right to life and the prohibition of cruel, inhuman and degrading punishment, as proclaimed in Articles 3 and 5 of the Universal Declaration of Human Rights. In Amnesty International's view the death penalty is inherently unjust and arbitrary.

Worldwide nearly half the countries have abolished the death penalty in law or practice. In countries which have not yet abolished the death penalty, international standards require that the strictest possible procedural and substantive safeguards are applied. These minimum safeguards and restrictions are set down in a number of documents, including the United Nations Economic and Social Council "Safeguards guaranteeing protection of the rights of those facing the death penalty" which were adopted by the UN Economic and Social Council in 1984 (ECOSOC resolution 1984/50) and endorsed by the UN General Assembly the same year. Safeguard 1 requires that

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"capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes, with lethal or other extremely grave consequences."

The UN General Assembly resolution 32/61 of 1977 states that "the main objective to be pursued in the field of capital punishment is that of progressively restricting the number of offences for which the death penalty may be imposed with a view to the desirability of abolishing this punishment". The provision of the death penalty, as a mandatory penalty, under Section 295C of the Pakistan Penal Code for an offence of a religious nature, not involving the loss of life or even the use of violence, appears to be incompatible with ECOSOC safeguard 1 quoted above. The amendment of the Pakistan Penal Code making the death sentence mandatory for this offence runs counter to the spirit of UN General Assembly resolution 32/61 of December 1977 calling for the progressive restriction of the death penalty.

## Recommendations

Amnesty International has urged successive governments in Pakistan to consider the abolition of the death penalty and to reduce the number of offences subject to the death penalty as a first step towards abolition. It last raised the issue in March 1991 after Pakistan had enacted legal changes providing the death penalty for kidnapping for ransom and empowering courts established under the Suppression of Terrorist Activities (Special Courts) Act of 1975 to try this offence. (For details see *Pakistan: Legal Changes Affecting the Application of the Death Penalty*, AI Index: ASA 33/03/91 of March 1991)

Amnesty International urges the Government of Pakistan to reconsider its decision to amend Section 295C of the Pakistan Penal Code and to delete the provision that makes the death penalty mandatory for some forms of the exercise of the right to freedom of religion. In addition to its general opposition to the death penalty, Amnesty International believes that such a provision is contrary to the Universal Declaration of Human Rights and other international standards on freedom of religion and the restriction of the use of the death penalty.

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