

PAKISTAN

@Five Ahmadi journalists charged with blasphemy

In January and February 1994, charges of blasphemy were brought against five journalists of the Ahmadiyya community; they were arrested on 7 February 1994 and held in Chiniot, Punjab province, till 7 March 1994. On 7 March they were released on bail but the charges against them remain pending. If convicted, the five men would be sentenced to death. The death penalty is the mandatory punishment for blasphemy.

Amnesty International believes that these men were prisoners of conscience. Amnesty International calls upon the government to ensure that the charges against the five journalists be dropped immediately as they appear to have been brought solely for the peaceful exercise of their religious beliefs and for the exercise of their freedom of expression.

Details of the present case

Over the years, various complaints have been brought against publications of the Ahmadiyya community under sections 295 to 298 of the Pakistan Penal Code (PPC), all of which relate to religious offences (see below). So far, 34 complaints have been registered against the daily "Al Fazal", 19 against the monthly "Ansarullah", 8 against the women's monthly "Misbah", 11 against the youth monthly "Khalid", 5 against the children's monthly "Tashhizul Azhan" and 5 against the fortnightly publication "Tehrike Jadid".

In the present case, complaints were registered on 15 January 1994 under section 298-C, PPC by the Deputy Commissioner of Jhang, Punjab province, against five journalists, viz. Noor Muhammad Saifi, aged 77, editor of the daily "Al Fazal", its publisher Agha Saifullah and its printer Qazi Munir Ahmed and the editors of the monthly "Ansarullah", Mirza Mohammad Din Naz and Mohammad Ibrahim.

Section 298-C says that any Ahmadi

"who, directly or indirectly, poses himself as a Muslim, or calls, or refers to, his faith as Islam, or preaches or propagates his faith, or invites others to accept his faith, by words, either spoken or written, or by visible representation, or in any manner whatsoever outrages the religious feelings of Muslims, shall be punished with imprisonment ... for a term which may extend to three years and shall also be liable to fine".

The complaints against the five journalists were of a general nature and related to several issues of "Al Fazal" which appeared in July 1993 and against the June 1993 issue of "Ansarullah". Filing the first mentioned charge, the Deputy Commissioner of Jhang wrote to the Superintendent of Police in Jhang: "Subject: Legal Action against Daily Al-Fazl. Memorandum: Please find enclosed a copy of the issue of Daily Al Fazl dated 2-11-1993, 20-9-1993, 20-10-1993 and 9-10-1993 in which Qadianis [i.e. Ahmadis] have propagated/preached their faith. They have passed themselves as Muslim and thereby have injured the religious feelings of Muslim. The editor and publishers in the opinion of District Attorney, Jhang, are prima facie guilty of section 298-C PPC. You are, therefore, requested to please take legal action against the publisher/editor accordingly." Similarly the charge against the monthly "Ansarullah" merely states: "An opinion from the District Attorney was obtained who is of the opinion that the editor/publisher ... has preached the religion of Ahmadiyyat in the said monthly and thus committed an offence under section 298/298-C".

On 21 January 1994, two more complaints under section 298-C and on 15 February four more such charges were filed against editor, publisher and printer of "Al Fazal". In all the cases, the Deputy Commissioner of Jhang, Punjab province was the complainant.

On 7 February the judge in the sessions court in Chiniot not only rejected the application for bail of the five men but added charges of blasphemy under section 295-C, punishable with death (see below), to those brought under 298-C. All five men were arrested in court and taken into judicial custody in Chiniot. Finally bail was granted to the five men on 7 March 1994 and they were released. The cases are now pending in the court of the Resident Magistrate, Rabwah, Punjab province. They are likely to be heard by the Additional Sessions Judge, Chiniot; a date for their hearing has not yet been set. Judging by other similar cases known to Amnesty International the completion of the preliminary police inquiry, the submission of the police report and the trial may take years, during which time the five journalists must live with the possibility of being sentenced to death.

Background

Ahmadis, members of a Muslim sect founded in the nineteenth century, consider themselves to be Muslim, but orthodox Muslims regard them as heretical. Of the estimated 10 million members of the Ahmadiyya community worldwide, between three and four million live in Pakistan. Their centre is located in Rabwah, Punjab Province.

Changes in the legal system of Pakistan introduced in the last few years make it a criminal offence for Ahmadis to profess, practice and propagate their faith. In 1974, a constitutional amendment introduced by the government of the then Prime Minister Zulfikar Ali Bhutto declared the Ahmadiyya community a non-Muslim minority. In April 1984 President Zia-ul Haq issued Ordinance XX which inserted sections 298-B and 298-C in the

Pakistan Penal Code (PPC) which make it a criminal offence for Ahmadis to call themselves Muslims, to employ Muslim terms and appellations associated with the prophet Mohammad, to use Muslim practices of worship or to propagate their faith. In addition, the West Pakistan Press and Publications Ordinance XXX of 1963 was amended by adding a new clause in section 24(1) which permits provincial governments to seize any published material which contravenes Ordinance XX, or "forfeit any security that had been deposited by the press responsible for printing the material involved".

In 1986 the penal code was further amended by Criminal Law Amendment Act, 1986, which added Section 295-C to the Pakistan Penal Code which provides the death penalty or life imprisonment for the criminal offence of defiling the name of the Prophet Mohammad. It reads:

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

In October 1990, the Federal Shariat Court, a court set up in 1980 with the task to "examine and decide the question whether any law or provision of law is repugnant to the injunctions of Islam" (Article 203-D of the constitution) ruled that "the penalty for contempt of the Holy Prophet ... is death and nothing else". The Court directed the government of Pakistan to effect the necessary legal changes and added, "in case this is not done by 30 April 1991 the words 'or punishment for life' in section 295-C, PPC, shall cease to have effect on that date". Decisions by the Federal Shariat Court are binding on the government under Article 203-D(3) of the Constitution. The Government has the possibility to appeal against such decisions to the Shariat Appellate Bench of the Supreme Court before the directive of the Federal Shariat Court takes effect. The government did not file an appeal against the decision to make the death sentence the only penalty for blasphemy; in July 1991, it announced that it had decided to amend section 295-C as directed. A bill to that effect was placed before parliament in 1992. While the Senate unanimously adopted the bill in July 1992, it was discussed at length but not passed by the lower house of parliament, the General Assembly, and eventually taken off the agenda. It was considered by the opposition parties as too vague and liable to abuse.

In February 1994, the Law Commission of Pakistan, presided over by the Chief Justice of Pakistan and the Minister for Law, Justice and Parliamentary Affairs, decided to send the draft of the blasphemy law amendment bill to the Council for Islamic Ideology for further scrutiny. According to reports, the Law Commission had noted with concern the abuse of authority by the police when dealing with blasphemy cases and the misuse of the law for ulterior purposes by various political and sectarian organizations. The Law Commission

reportedly also noted with concern the negative international reaction to the abuse of the blasphemy law in Pakistan.

The legal situation in respect of the blasphemy law is confusing and this confusion has frequently been used by the Government of Pakistan to confound human rights activists and critics. Following the directive of the Federal Shariat Court of 1990, the alternative punishment of imprisonment for life contained in section 295-C is void: the death penalty is the mandatory punishment for blasphemy. But as parliament has not passed the legislation required of it by the Federal Shariat Court, the clause "or imprisonment for life" is still part of section 295-C, though without force. Amnesty International has received numerous letters from the Government of Pakistan pointing to the alternative punishment of life imprisonment on the statute book to counter its concern about the death penalty as the only punishment available for anyone convicted of blasphemy - but this punishment cannot be imposed any longer.

The changes in the penalty for the offence of blasphemy or outraging the religious feelings of certain groups apply to anyone charged under these provisions. However, members of the Ahmadiyya community have over the years particularly suffered under this legislation and the ease with which it lends itself to abuse. Several Ahmadis have been charged with offences under section 295-C, but to Amnesty International's knowledge no Ahmadi has been sentenced to death under it. The large majority of Ahmadis charged with offences under Sections 298 and 295, including 295-C, are released on bail and sometimes have to wait years before being brought to trial.

Amnesty International's concerns and recommendations

Amnesty International has repeatedly raised its concerns about the violation of human rights of Ahmadis with the Government of Pakistan. In September 1991 it published a report, Pakistan: Violations of human rights of Ahmadis, (AI Index: ASA 33/15/91) in which it expressed its concern about reports that members of the Ahmadiyya community in Pakistan continue to be charged, and convicted to prison terms solely for the peaceful exercise of their religious beliefs. In March 1994 following a series of attacks on Ahmadis in Lahore by unidentified armed men, during which two Ahmadis were killed and at least a dozen Ahmadis were seriously injured, Amnesty International expressed its concern that the authorities in Pakistan were failing to protect the lives and physical safety of members of the Ahmadiyya community.

Amnesty International takes no position on the question whether Ahmadis should be considered Muslims or not. Amnesty International is concerned that under the increasingly stringent legislation in Pakistan, members of the Ahmadiyya community in Pakistan can be imprisoned and even sentenced to death solely for the exercise of their right to freedom of

expression and their right to freedom of religion, including the right to express their religious beliefs.

Legislation regarding religious offences contained in section 295 to 298 of the PPC make it possible for Ahmadis to be imprisoned solely on grounds of religious belief and for exercising their right to freedom of expression. Such legislation violates the right to freedom of religion and freedom of expression contained in Articles 18 and 19 of the Universal Declaration of Human Rights. Article 18 expressly says that the right to freedom of thought, conscience and religion "includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance". The right to freedom of opinion and expression includes, according to Article 19, "freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media ...". Article 29(2) of the Universal Declaration of Human Rights lays down the only permissible limitations to the freedoms proclaimed in it: "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare on a democratic society."

The legislation regarding religious offences in Pakistan is also contrary to the United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion and Belief proclaimed by the General Assembly in November 1981. Its preamble reads: "... it is essential to promote understanding, tolerance and respect in matters relating to freedom of religion and belief and to ensure that the use of religion and belief for ends inconsistent with the Charter of the United Nations, other relevant instruments of the United Nations and the purposes and principles of the present Declaration is inadmissible ...". Article 6 of the Declaration lays down in detail the freedoms included under the right to freedom of thought, conscience and religion; among these is the freedom "to write, issue and disseminate relevant publications ..." (Art. 6(d)). Article 1(3) states: "Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others."

In August 1985 the United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities passed a resolution expressing "grave concern at the promulgation of Ordinance XX" and called for its repeal.

Amnesty International is particularly concerned about the judicial amendment of section 295-C, PPC which makes the death penalty mandatory for the criminal offence of defiling the name of the Prophet Mohammad. The organization unconditionally opposes the death penalty. 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.

In countries that have not abolished the death penalty, international standards require that the strictest possible procedural and substantive safeguards be 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 "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 provision of the death penalty, as a mandatory punishment for an offence of a religious nature, not involving the loss of life or even the use of violence, is incompatible with ECOSOC safeguard 1. Making the death sentence the mandatory punishment for the offence of blasphemy runs counter to the spirit of the UN General Assembly resolution 32/61 of December 1977 which calls for "progressively restricting the number of offences for which the death penalty may be imposed with a view to the desirability of abolishing this punishment".

Amnesty International urges the Government of Pakistan to take steps to bring its laws into line with international standards on rights of religious freedoms such as the United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion and Belief. It should also urgently consider adopting these standards.

Amnesty international calls on the Government of Pakistan to:

- drop the charges against the five Ahmadi journalists arrested on 7 February 1994 as they violate their right to freedom of expression and freedom of religion;
- ensure that no other Ahmadis are charged, tried and convicted for the peaceful expression of their religious beliefs;
- declare a moratorium on carrying out the death penalty imposed under Article 295-C and take steps to abolish the death penalty for this offence;

- repeal all laws affecting the freedom of religion such as the freedom to profess, practice and propagate beliefs and the freedom of expression;
- and implement international standards such as the United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion and Belief.