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CONTENTS

STATE COMPLICITY IN THE EXTRALEGAL KILLING OF AHMADI MUSLIMS IN PAKISTAN: A CASE FOR BRUTALISATION

CHRISTOPHER ALEXANDER & MAI SATO *

Since 1984, at least 274 Ahmadi Muslims have been extralegally killed in Pakistan on account of their faith. Despite these killings being committed almost exclusively by non-state actors, this paper probes the extent to which such violence can be traced back to the state. We employ the brutalisation thesis to demonstrate how two landmark shifts in the law — the formal declaration of Ahmadis as 'non-Muslim' and the introduction of the death penalty for blasphemy — have, in conjunction with discriminatory policy and inflammatory rhetoric, shaped the sociocultural landscape so profoundly as to inspire anti-Ahmadi violence. By mapping data on the extralegal killing of Ahmadi Muslims against these pivotal events, we argue that the state's curation of an environment in which anti-Ahmadi violence is both enabled and condoned renders the extralegal killing of Ahmadi Muslims by non-state actors so indivisible from the state as to be deemed state sanctioned.

* Christopher Alexander is a Research Assistant at Eleos Justice, Faculty of Law, Monash University. Mai Sato is Associate Professor and Director of Eleos Justice at the Faculty of Law, Monash University.

CONTENTS

I INTRODUCTION

Since 1984, at least 274 Ahmadi Muslims have been extralegally[1] killed in Pakistan on account of their faith.[2] Such violence may, in large part at least, be attributed to the fact that many Muslims view Ahmadi Muslims as heretics. Indeed, this is a position shared with and endorsed by the Pakistani state, legitimised by its designation of Ahmadis as 'non-Muslim' in the country's Constitution and by its criminalisation of Ahmadi religious practices. Under Pakistani law, blasphemy carries the mandatory death penalty. While the state has never judicially executed on this basis, its legislative and rhetorical endorsement of the notion that blasphemers are deserving of death appears to have inspired widespread killing of accused blasphemers at the community level. Against this backdrop, by formalising the heretical status of the Ahmadiyya community, the state has implicitly designated Ahmadi Muslims as deathworthy.

A lack of direct state involvement in extralegal homicides should not be construed as diminishing the state's responsibility for such violence. Indeed, alongside judicial executions and extrajudicial killings by state actors, extralegal killings committed by non-state actors may be deemed 'state sanctioned' where the state 'endorses or condones

[1] The term 'extralegal killings' refers to all homicidal acts committed outside the parameters of the law (i.e., all killings other than the death penalty). Whereas extrajudicial killings are those committed by *state* actors in the absence of lawful authority, 'extralegal killings' is a broader category, including both extra-judicial killings and killings committed by *non-state* actors.

[2] Mahmood Iftikhar, *List of Ahmadis Killed for their Faith Since Promulgation of Ordinance XX 1984* (unpublished, 2021).

homicidal violence, or manifestly fails to prevent violence, protect victims, or bring killers to justice'.[3] Adopting this definition, this paper employs the brutalisation thesis to examine how the Pakistani state may — through law, policy, and rhetoric — have shaped the sociocultural landscape so profoundly as to inspire the extralegal killing of Ahmadi Muslims.

II THE BRUTALISATION THESIS

While the plight of Ahmadi Muslims in Pakistan has been the subject of widespread commentary, extant scholarship predominantly examines the ways in which the state has marginalised the Ahmadiyya community in law and politics.[4] However, academic attention is yet to be paid to the role of the state in facilitating the extralegal violence to which the Ahmadiyya community is endemically subjected. This paper employs the concept of brutalisation to argue that the civilian killing of Ahmadi Muslims should be considered state sanctioned.

The concept of 'brutalisation' was popularised by Mosse to explain the normalisation, or 'domestication', of war:

> *The first world war was an unprecedented experience in men's lives, one which had to be confronted and dealt with — on a personal, political, and cultural level. These levels of experience were closely related through the manner in which men and women confronted the war by building it into their lives — domesticating the war experience, as it were, making it an integral part of their environment, their cultural aspirations, and political dreams*.[5]

[3] Christopher Alexander, Mai Sato, Nadirsyah Hosen, and James McLaren (with Muzafar Ali and Mohammad Mahmodi), *Killing in the Name of God: State-Sanctioned Violations of Religious Freedom* (Eleos Justice: Report, October 2021) 12.
[4] See, e.g., Tahir Kamran, 'The Making of a Minority: Ahmadi exclusion through Constitutional Amendments, 1974' (2019) 4(1) *Pakistan Journal of Historical Studies* 55; Sadia Saeed, 'Political Fields and Religious Movements: The Exclusion of the Ahmadiyya Community in Pakistan' (2012) 23(1) *Political Power and Social Theory* 189; Sadia Saeed, 'The Nation-State and Its Heretics' in *Politics of Desecularization: Law and the Minority Question in Pakistan* (Cambridge University Press, 2017) 145; Ali Usman Qasmi, *The Ahmadis and the Politics of Religious Exclusion in Pakistan* (Anthem Press, 2014); M Nadeem Ahmad Siqqid, 'Enforced Apostasy: Zaheeruddin v State and the Official Persecution of the Ahmadiyya Community in Pakistan' (1996) 14(1) *Minnesota Journal of Law and Inequality* 275.
[5] George L Mosse, 'Two World Wars and the Myth of the War Experience' (1986) 21(4) *Journal of Contemporary History* 491, 491–492.

Mosse wrote on the brutalisation of politics in the Weimar Republic, contending that in the aftermath of World War I, the 'war experience' was transferred into the political arena, ensuing in the birth of Nazism.[6] Brutalisation has since been applied in political science literature to examine violence in various other contexts, such as the rise of the Bolsheviks and the 'uncontrolled violence' of Russia's Civil War (1918–21); [7] the 'systematic annihilation of the Spanish Left' during the Civil Guard repressions of the 1930s;[8] and the birth of 'new terrorism'.[9]

Whereas the political sciences are concerned with the brutalisation of politics and of warfare, criminologists have adopted the brutalisation thesis to make sense of the impacts (intended or otherwise) of law and policy on violence in the community. In death penalty literature, the brutalisation thesis has been used to hypothesise a link between judicial executions and increased murder rates on the basis that the death penalty, as a lawful form of killing by the state, inspires violence at the community level by legitimising and normalising homicide.[10]

In this paper, we do not set out to demonstrate the brutalising impact of Pakistan's death penalty law and practice on the general community. Rather, we use the brutalisation thesis to understand the extralegal killing of Ahmadi Muslims as state sanctioned. We model our approach on that taken by Kil, Menjívar, and Doty (2009), who use the concept of brutalisation to understand the relationship between militarised border policy and vigilante violence against immigrants in the United States:

> *We do not seek to prove that vigilantes react to border policies directly, but to point to how a militarized border policy might shape an environment in which violence becomes an acceptable and appropriate response to undocumented migration. The framing of immigrants as 'legitimate' targets based on moral*

[6] George L Mosse, *Fallen Soldiers: Reshaping the Memory of the World Wars* (Oxford University Press, 1990).
[7] Dietrich Beyrau, 'Brutalization Revisited: The Case of Russia' (2015) 50(1) *Journal of Contemporary History* 15.
[8] Foster Chamberlin, 'Policing Practices as a Vehicle for Brutalization: The Case of Spain's Civil Guard, 1934–1936' (2020) 50(4) *European History Quarterly* 650.
[9] Sebastian Jäckle and Marcel Baumann, '"New Terrorism" = Higher Brutality? An Empirical Test of the "Brutalization Thesis"' (2017) 29(5) *Terrorism and Political Violence* 875.
[10] William J Bowers and Glenn Pierce, 'Deterrence or Brutalisation: What Is the Effect of Executions?' (1980) 26 *Crime and Delinquency* 453, 456.

> *imperatives to 'defend the nation' is not isolated from the state's own practices for dealing with immigration. Thus, our use of brutalization theory helps show a militarized border paradigm as a framework for the possible appearance of vigilantes as well as for public sentiments that treat immigrants as the 'enemy'*.[11]

Adopting this approach, we use brutalisation as a lens through which to understand the influence of the Pakistani state, through its designation of Ahmadi identity as blasphemous and of blasphemy as a capital offence, on the Pakistani conscience, and argue that this may have opened space for, or inspired, or even invited, the extralegal killing of Ahmadi Muslims.

We acknowledge that it would be an overstatement to conclude that the state alone is responsible for inspiring the extralegal killing of Ahmadi Muslims. Indeed, Braithwaite and D'Costa's notion of 'cascades of violence' contends that violence is multidirectional and multifactorial,[12] capable of cascading 'down from commanding heights of power (as in waterfalls), up from powerless peripheries and undulate to spread horizontally (flowing from one space to another)'.[13] This theory accounts for the proliferation of crime through intergenerational cascades (e.g., from parent to child) and cascades of differential association (e.g., from friend to friend), through cascades of anomie (an absence of norms and of the authorities to (re)establish them) and hopelessness, and through cascades of war, civil unrest, and pro-violence politics — all of which may well be applicable in the Pakistan context.[14]

While it would be remiss not to acknowledge that factors extraneous to the state may contribute to anti-Ahmadi violence, it would be problematic to underplay the role of the state. We believe that a focussed examination of the relationship between the state and the extralegal killing of Ahmadi Muslims is crucial, as an understanding of the state's role in facilitating such violence may inform efforts to mitigate it.

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[11] Sang H Kil, Cecilia Menjívar, and Roxanne L Doty, 'Securing Borders: Patriotism, Vigilantism and the Brutalization of the US American Public' (2009) 13(1) *Sociology of Crime, Law and Deviance* 297, 301.
[12] John Braithwaite and Bina D'Costa, *Cascades of Violence: War, Crime and Peacebuilding Across South Asia* (ANU Press, 2018).
[13] Ibid 3.
[14] John Braithwaite, 'Tempered cascades of crime', in *Macrocriminology and Freedom* (Australian National University Press, 2022) 569.

III STATE-PERPETRATED MARGINALISATION OF THE AHMADIYYA COMMUNITY

Founded in 1889 by Mirza Ghulam Ahmad, the Ahmadiyya community is a revivalist movement within Islam.[15] According to the 2017 census, Pakistan's Ahmadiyya community represents 0.22 per cent of the total population, with 191,737 adherents.[16][17] By way of comparison, 96 per cent of the population is either Sunni or Shi'a Muslim,[18] with Sunnis constituting the overwhelming majority.[19] Many Ahmadi beliefs diverge from those of Sunnis and Shi'as, primary among them the reverence by Ahmadi Muslims of Mirza Ghulam Ahmad as a prophet. As Ahmad came after Muhammad, recognition of his prophethood is incompatible with the fundamental belief of Sunnis and Shi'as that Muhammad is the final prophet. This has resulted in Ahmadis being viewed by other Muslims as heretics and non-Muslims;[20] indeed, a 2011 Pew Research Center survey found that only 7 per cent of Pakistani Muslim respondents accepted Ahmadis as fellow Muslims.[21]

Historically, such excommunication of Ahmadi Muslims from the folds of Islam was not a position formally adopted by the Pakistani state in its laws or policy; on the contrary, it resisted calls to do so. Since at least 1934 — more than a decade before the Partition of India and creation of independent Pakistan in 1947 — right-wing religious group *Majlis-i-Ahrar-i-Islam* waged an anti-Ahmadi campaign, portraying the Ahmadiyya community

[15] Ahmadiyya Muslim Community, *Al Islam* (Web Page) <https://www.alislam.org/ahmadiyya-muslim-community/>.
[16] Population by religion, *Pakistan Bureau of Statistics* (Web Page, 2017) <https://www.pbs.gov.pk/sites/default/files//tables/POPULATION%20BY%20RELIGION.pdf>.
[17] The Ahmadi boycott of the 2017 census means there are no reliable statistics on the true size of the community. An estimated figure of 500,000–600,000 adherents has been cited — this would raise the Ahmadiyya community to 0.29 per cent of the total population: United Kingdom Home Office, *Country Policy and Information Note — Pakistan: Ahmadis* (Report, September 2021) 32; United States Department of State, *International Religious Freedom Report 2020: Pakistan* (Report, 2021) 4.
[18] Population by religion, *Pakistan Bureau of Statistics* (Web Page, 2017) <https://www.pbs.gov.pk/sites/default/files//tables/POPULATION%20BY%20RELIGION.pdf>.
[19] Alongside Ahmadi Muslims, the remaining 4 per cent of Pakistan's population is comprised of religious minorities including Baha'is, Buddhists, Christians, Hindus, Kalash, Kihals, Jains, Sikhs, and Zoroastrians: United States Department of State, *International Religious Freedom Report 2020: Pakistan* (Report, 2021) 4.
[20] Fatima Z Rahman, 'Pakistan: A Conducive Setting for Islamist Violence Against Ahmadis', in Jawad Syed, Edwina Pio, Tahir Kamran and Abbas Zaidi (eds), *Faith-Based Violence and Deobandi Militancy in Pakistan* (Palgrave Macmillan, 2016) 209, 211.
[21] Neha Sahgal, 'In Pakistan, most say Ahmadis are not Muslim', *Pew Research Center* (Web Page, 10 September 2013) < https://www.pewresearch.org/fact-tank/2013/09/10/in-pakistan-most-say-ahmadis-are-not-muslim/>.

as heretical.[22] In 1953, with the support of Punjab's[23] ruling party and the Islamist political party *Jamaat-e-Islami*, the group delivered an ultimatum to the Prime Minister, threatening direct action against the Government should the state fail to declare Ahmadis 'non-Muslim' and remove them from positions of authority.[24] The state rejected the ultimatum, arrested prominent members of *Ahrar* and affiliated groups, and declared martial law over the city of Lahore to quell the anti-Ahmadiyya riots and violence that had erupted.[25] A judicial inquiry concluded that there was no consensus among religious scholars as to the definition of 'Muslim', and cautioned the state against undermining democratic values for political gain or to appease radical forces.[26]

In 1973, Pakistan adopted a new Constitution,[27] declaring Islam the state religion.[28] The following year, state policy toward the Ahmadiyya community shifted dramatically. In the wake of reports of Ahmadi students attacking non-Ahmadi students at a train station in Rabwah ('the Rabwah incident'), anti-Ahmadi looting, arson, assaults, and homicides erupted throughout Pakistan.[29] In response to mounting pressure, Prime Minister Zulfiqar Ali Bhutto announced that the National Assembly would assess the Muslim citizenship of Ahmadis. On 7 September 1974, the National Assembly unanimously resolved to amend[30] the Constitution to declare Ahmadis 'non-Muslims'.[31]

In 1977, a military coup saw Prime Minister Bhutto deposed, with General Muhammad Zia-ul-Haq assuming office as Chief Martial Law Administrator and in 1978 as President.[32] Zia-ul-Haq fronted a regime of Islamisation, characterised by reforms such

[22] Sadia Saeed, 'Pakistani Nationalism and the State Marginalisation of the Ahmadiyya Community in Pakistan' (2007) 7(3) *Studies in Ethnicity and Nationalism: 2007 ASED Conference Special* 132, 136, 147.
[23] Punjab province is the home to many of Pakistan's Ahmadis, split between the cities of Rabwah and Lahore: Rahman (n 20) 211.
[24] Saeed (n 22) 136–137.
[25] Ibid 137.
[26] Bilal Hayee, 'Blasphemy Laws and Pakistan's Human Rights Obligations' (2012) 14 *University of Notre Dame Australia Law Review* 25, 28–29.
[27] *Constitution of the Islamic Republic of Pakistan 1973* (Pakistan).
[28] Ibid art 2.
[29] Tahir Kamran, 'The Making of a Minority: Ahmadi Exclusion through Constitutional Amendments, 1974' (2019) 4(1) *Pakistan Journal of Historical Studies* 55, 59–61.
[30] *Constitution (Second Amendment) Act 1974* (Pakistan) Act No. XLIX of 1974, ss 2, 3.
[31] For further context, refer to Ali Usman Qasmi, 'Understanding the Events of 1974', in Ali Usman Qasmi (ed) *The Ahmadis and the Politics of Religious Exclusion in Pakistan* (Anthem Press, 2014) 167; and Sadia Saeed, 'Political Fields and Religious Movements: The Exclusion of the Ahmadiyya Community in Pakistan' (2012) 23 *Political Power and Social Theory* 189.
[32] Kamran (n 29) 76.

as the introduction of *shari'a* law and religious appellate courts.[33] The 1984 promulgation of the *Anti-Islamic Activities Ordinance* ('Anti-Ahmadi Ordinance')[34] had the effect of introducing two new anti-Ahmadi sections to the *Pakistan Penal Code*[35] ('the Penal Code'). The first prohibits the 'misuse [by Ahmadis] of epithets, descriptions, and titles, etc., reserved for certain holy personages of places',[36] while the second bars Ahmadis from calling themselves 'Muslim', preaching, propagating, or proselytising their faith, or 'in any matter whatsoever outrag[ing] the religious feelings of Muslims'.[37] The Government rationalised the Ordinance by terming the Ahmadiyya community a 'heretical order':

> *The Qadiani [Ahmadiyya] movement is all the more pernicious since it seeks to operate surreptitiously from within the fold of Islam despite its clear status to the contrary, by virtue both of the law that prevails in Pakistan and the Qadiani community's own dissociation from the Muslim Ummah [community]. Muslims the world over need to be fully aware of the origin, the goals, and the activities of this heretical order. The government and the people of Pakistan continue their efforts to decisively isolate them from the Community of Islam to which they do not belong*.[38]

In 1993, the Supreme Court in *Zaheeruddin*[39] upheld the constitutionality of the Anti-Ahmadi Ordinance and,[40] by extension, the legality of the 1974 constitutional amendment.[41] The Ordinance, which remains in force to this day, has been condemned

[33] Moeen H Cheema, 'Beyond Beliefs: Deconstructing the Dominant Narratives of the Islamization of Pakistan's Law' (2012) 60 *The American Journal of Comparative Law* 875, 879-80.
[34] *Anti-Islamic Activities of the Quadiani Group, Lahori Group and Ahmadis (Prohibition and Punishment) Ordinance 1984* (Pakistan) Ordinance No. XX of 1984.
[35] *Pakistan Penal Code 1860* (Pakistan) Act No. XLV of 1860.
[36] Ibid s 298B.
[37] Ibid s 298C.
[38] Government of Pakistan, 'Qadianis: Threat to Islamic Solidarity… Measures to Prohibit Anti-Islamic Activities' (1984), 5 (cited in Sadia Saeed, *Politics of Desecularization: Law and the Minority Question in Pakistan* (Cambridge University Press, 2017) 165).
[39] *Zaheeruddin v the State* (1993) SCMR 1718 (Supreme Court of Pakistan).
[40] Ibid 1779 (cited in M Nadeem Ahmad Siddiq, 'Enforced Apostasy: *Zaheeruddin v State* and the Official Persecution of the Ahmadiyya Community in Pakistan' (1996) 14(1) *Minnesota Journal of Law & Inequality* 275, 291).
[41] M Nadeem Ahmad Siddiq, 'Enforced Apostasy: *Zaheeruddin v State* and the Official Persecution of the Ahmadiyya Community in Pakistan' (1996) 14(1) *Minnesota Journal of Law & Inequality* 275, 292–295.

as 'a form of state-sanctioned, institutionalized discrimination and exclusion of Ahmadis'.[42]

State-perpetrated discrimination against the Ahmadiyya community also extends to regulatory fora beyond the criminal law. When applying for national identity cards and passports, applicants must declare their religion. Ahmadi Muslims wishing to be recorded as 'Muslim' are required to swear their belief in the finality of Muhammad's prophethood, reject the prophethood of Mirza Ghulam Ahmad, and declare Ahmadis 'non-Muslim'.[43] In addition to forcing Ahmadis to deny and denounce their faith, this process incites sectarian tensions by requiring non-Ahmadi Muslims submitting such applications to make the same declarations against the Ahmadiyya community. Ahmadi Muslims are similarly disenfranchised in electoral policy: to vote as 'Muslims', they must denounce the Ahmadi faith. Those unwilling to do so must agree to be registered on a separate electoral list as 'non-Muslims' or relinquish their voting rights altogether.[44] These regulations and policies have wide-reaching implications: for instance, Ahmadis without a 'Muslim' designation on their passport are barred from making the *Hajj* pilgrimage to Saudi Arabia,[45] while the publication of electoral lists exposes Ahmadi Muslims to security risks by revealing their residential addresses alongside their faith.[46]

Sectarian division within Pakistan's Muslim community is further exacerbated by inflammatory anti-Ahmadi rhetoric by politicians and other state officials. In justifying the promulgation of the Anti-Ahmadi Ordinance, the Government in 1984 described the Ahmadiyya community as an existential threat to both Pakistan and the Islamic faith:

> *The most sinister conspiracy of the Qadianis [Ahmadis] after the establishment of Pakistan was to turn this newly Islamic state into a Qadiani kingdom*

[42] Roswitha Badry, 'The Dilemma of "Blasphemy Laws" in Pakistan – Symptomatic of Unresolved Problems in the Post-Colonial Period?' (2019) 2(59) *Politeja* 91, 98.
[43] United States Department of State, *International Religious Freedom Report 2020: Pakistan* (Report, 2021) 9.
[44] Pakistan: Ensure Ahmadi Voting Rights, *Human Rights Watch* (Web Page, 28 June 2018) <https://www.hrw.org/news/2018/06/28/pakistan-ensure-ahmadi-voting-rights#>.
[45] United Kingdom Home Office, *Country Policy and Information Note – Pakistan: Ahmadis* (Report: September 2021) 30–31.
[46] Ibid 26.

> *subservient to the Qadiani's pay masters. The Qadianis had been planning to carve out a Qadiani State from the territories of Pakistan*.[47]

Sectarian rhetoric continues to this day.[48] During a televised interview in May 2020, Pakistan's Federal Minister for Religious and Inter-faith Harmony Affairs said, 'whoever shows sympathy or compassion towards [Ahmadis] is neither loyal to Islam nor the state of Pakistan'.[49] In July 2021, United Nations Special Procedures mandate holders issued a statement expressing renewed concern as to the ongoing and increasing marginalisation, discrimination, and persecution of the global Ahmadiyya community, including the propagation of disinformation that Ahmadis are 'responsible for the development and spreading of the COVID-19 virus'.[50] State perpetration of sectarian division also extends beyond the rhetorical: police have reportedly destroyed several Ahmadi mosques,[51] and have been implicated in the desecration of Ahmadi graves.[52]

As this brief overview illustrates, the Pakistani state has successfully marginalised the Ahmadiyya community by gradually encroaching on the notion of Muslim citizenship, taking the liberty of defining who is, and who is not, 'Muslim'. By denying Ahmadi identity and criminalising Ahmadi practices, the state has legitimised the popular belief that Ahmadis are heretics. Such institutionalisation of sectarian division has, as the following sections elucidate, had fatal consequences.

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[47] 'Qadianis: Threat to Islamic Solidarity… Measures to Prohibit Anti-Islamic Activities' (1984), 24–5 (cited in Sadia Saeed, *Politics of Desecularization: Law and the Minority Question in Pakistan* (Cambridge University Press, 2017) 166).

[48] For examples, see United Kingdom Home Office (n 45) 49–51.

[49] Niala Mohammad, 'Pakistani Ahmadi Leaders Fear Backlash After New Minority Commission Formation', *Voice of America* (online, 18 May 2020) <https://www.voanews.com/a/extremism-watch_pakistani-ahmadi-leaders-fear-backlash-after-new-minority-commission-formation/6189460.html >.

[50] Ahmed Shaheed, Irene Khan and Fernand de Varennes, 'International Community must pay attention to the persecution of Ahmadi Muslims worldwide', *United Nations Office of the High Commissioner for Human Rights* (Web Page, 13 July 2021) <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27305 >.

[51] 'Pakistan police attacks another Ahmadiyya Muslim mosque', *Coordination of the Associations and the People for Freedom of Conscience* (Web Page, 25 June 2021) < https://freedomofconscience.eu/pakistan-police-attacks-another-ahmadiyya-muslim-mosque/>.

[52] 'PAKISTAN: Police accused of desecrating Ahmadi graves', *Human Rights Without Frontiers* (Web Page, 10 February 2022) <https://hrwf.eu/pakistan-police-accused-of-desecrating-ahmadi-graves/>.

IV A FATAL SHIFT: THE DEATH PENALTY FOR BLASPHEMY

Pakistani law criminalises various offences against religion. In 1947, Pakistan inherited the offences of 'injuring or defiling a place of worship',[53] 'disturbing religious assembly',[54] 'trespassing on burial places',[55] and 'uttering words etc., with deliberate intent to wound religious feelings'[56] from the *Indian Penal Code*.[57] In 1980, Zia-ul-Haq criminalised the 'use of derogatory remarks against holy personages',[58] and in 1982 outlawed the defiling, damaging, or desecrating of a Qur'an.[59] The Anti-Ahmadi Ordinance discussed above was then introduced in 1984. Except for defiling a Qur'an (punishable by life imprisonment), each of these offences carries an imprisonment term of between one and three years and/or a fine.

A major shift occurred in 1986, when Section 295C of the Penal Code was introduced[60] to provide the death penalty for blasphemy:

> *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, and shall also be liable to fine.*[61]

The insertion of Section 295C signalled the first time in Pakistan's history that offending religion had been punishable by death. When first introduced, Section 295C provided for life imprisonment as an alternative to the death penalty; however, sentencing discretion was removed in 1991 following a 1990 decision of the Federal Shariat Court, rendering

[53] *Pakistan Penal Code 1860* (Pakistan) Act No. XLV of 1860, s 295.
[54] Ibid s 296.
[55] Ibid s 297.
[56] Ibid s 298.
[57] *Indian Penal Code 1860* (India) Act No. 45 of 1860.
[58] *Pakistan Penal Code 1860* (Pakistan) Act No. XLV of 1860, s 298A; inserted by *Pakistan Penal Code (Second Amendment) Ordinance* (Pakistan) Ordinance XLIV of 1980, s 2.
[59] *Pakistan Penal Code 1860* (Pakistan) Act No. XLV of 1860, s 295B; inserted by *Pakistan Penal Code (Amendment) Ordinance 1982* (Pakistan) Ordinance 1 of 1982, s 2.
[60] *Criminal Law (Amendment) Act* (Pakistan) Act No. III of 1986, s 2.
[61] *Pakistan Penal Code 1860* (Pakistan) Act No. XLV of 1860, s 295C (Emphasis added).

the death penalty mandatory.[62] That same decision also expanded the scope of Section 295C to blasphemous remarks made in relation to *any* prophet.[63]

Prior to the introduction of Section 295C, only seven blasphemy cases were ever filed.[64] Since the 1986 amendment, this number has soared: as of 2020, at least 1,855 blasphemy cases had been registered.[65] A record 200 cases were filed in 2020 — the highest of any year to date, and almost double the previous record of 113 cases in 2009.[66] Moreover, blasphemy accusations are disproportionately levelled against religious minorities who, despite constituting less than 5 per cent of Pakistan's population, are implicated in approximately 50 per cent of all cases.[67]

This demographical bias is particularly pronounced vis-à-vis Ahmadi Muslims. Approximately one-third of blasphemy cases have been registered against members of the Ahmadiyya community,[68] despite Ahmadi Muslims comprising only 0.22 per cent of Pakistan's total population.[69] This equates to one in 310 members of the Ahmadiyya community being implicated in a registered blasphemy case.[70] By way of comparison, one in 9,822 Christians have been accused of blasphemy, as have one in 225,380 non-Ahmadi Muslims.[71] Such gross overrepresentation of Ahmadi Muslims amongst those formally accused of blasphemy is likely a by-product of the state-perpetrated marginalisation of the Ahmadiyya community. The designation of Ahmadis as 'non-Muslim' in both the Constitution and in official discourse legitimises — and legally formalises — the popular

[62] *Ismail Qureshi v The Government of Pakistan* (1990), PLD 1991 FSC 10 (Federal Shariat Court of Pakistan) [67].
[63] Ibid [68].
[64] Arafat Mazhar, *The Untold Truth of Pakistan's Blasphemy Law: A Reconciliation with the Past and a Way Forward* (Engage Pakistan: Report, 2018) 126.
[65] Centre for Social Justice (2021), *Factsheet on Abuse of Blasphemy Laws* (unpublished, 2021).
[66] Ibid.
[67] Centre for Social Justice (2021), *Factsheet on Abuse of Blasphemy Laws* (unpublished, 2021); Sana Ashraf, 'Honour, purity and transgression: understanding blasphemy accusations and consequent violent action in Punjab, Pakistan' (2018) 26(1) *Contemporary South Asia* 51, 68.
[68] Centre for Social Justice (n 65).
[69] Population by religion, *Pakistan Bureau of Statistics* (Web Page, 2017) <https://www.pbs.gov.pk/sites/default/files//tables/POPULATION%20BY%20RELIGION.pdf>.
[70] 'Table 9 – Population by sex, religion and rural/urban', *Pakistan Bureau of Statistics* (Web Page, 2017). <https://www.pbs.gov.pk/sites/default/files//population_census/census_2017_tables/pakistan/Table09n.pdf>.
[71] Centre for Social Justice (2021), *Factsheet on Abuse of Blasphemy Laws* (unpublished, 2021); 'Table 9 – Population by sex, religion and rural/urban', *Pakistan Bureau of Statistics* (Web Page, 2017). <https://www.pbs.gov.pk/sites/default/files//population_census/census_2017_tables/pakistan/Table09n.pdf>.

belief that Ahmadis are heretics. Against this backdrop, the introduction of Section 295C has created a legal avenue by which Ahmadis may be persecuted because their very identity — that is, their claim to be Muslims despite their disbelief in the finality of Muhammad's Prophethood — is deemed blasphemous.[72]

V THE CASE FOR BRUTALISATION

Supporters of Section 295C offer an array of justifications for its retention.[73] One such claim is that it protects those accused of blasphemy by preventing aggrieved civilians from taking the law into their own hands. In 1994, former President of Pakistan and Supreme Court Justice Muhammad Rafiq Tarar declared:

> *If this law [Section 295C] is not there the doors to courts will be closed on the culprits and the petitioners provoked by them, and then everyone will take the law in his own hands and exact revenge from the criminals. As a result anarchy will prevail in the country.*[74]

Recently ousted Prime Minister Imran Khan echoed this sentiment, claiming that without Section 295C, lynchings and anarchy would erupt across the country.[75]

The evidence disagrees with these claims — indeed, the opposite appears to be true. Between 1987 and 2020, at least 78 people were extralegally killed after being accused of blasphemy.[76] By way of comparison, prior to the introduction of Section 295C, only two such killings were recorded.[77] This increase in extralegal violence appears to be a direct corollary of blasphemy becoming a capital offence, forming the cornerstone of our brutalisation argument. In short, we contend that as an 'official declaration by the state

[72] Siddiq (n 41) 289.
[73] For a discussion of such justifications, refer to Qaiser Julius, 'The Experience of Minorities Under Pakistan's Blasphemy Laws' (2016) 27(1) *Islam and Christian-Muslim Relations* 95.
[74] 'Blasphemy law revisited' *DAWN* (online, 29 July 2010) <https://www.dawn.com/news/833067/blasphemy-law-revisited>.
[75] Aakar Patel, 'Pakistan's blasphemy law', *The Express Tribune* (online, 26 August 2012) <https://tribune.com.pk/story/426498/pakistans-blasphemy-law>.
[76] Centre for Social Justice (n 65).
[77] Mazhar (n 64) 127.

that blasphemers deserve to die',[78] Section 295C legitimises the killing of alleged blasphemers, thus opening space wherein such violence may transpire extralegally.

The courts have not refrained from imposing death sentences for blasphemy: in 2018, between 17 and 29 people convicted under Section 295C were on death row.[79] By 2020, this number rose to between 35 and 40.[80] While this increasing number of death sentences may be deemed an indicator of the state's strict anti-blasphemy stance, no execution has ever been carried out on this basis.[81] It has been postulated that this fundamental contradiction between policy and practice has inspired civilian vigilantes and mobs to 'take matters in their own hands'.[82]

This hypothesis is corroborated by empirical findings. A 2011 survey found that a resounding 84 per cent of the 1,450 Pakistani Muslims interviewed endorsed 'making *shari'a* the official law' of Pakistan,[83] while 76 per cent supported the death penalty for apostasy.[84] 45 per cent of the respondents were of the belief that the country's current laws did not adhere closely enough to the *shari'a*, and 91 per cent of those said that this was unacceptable.[85] These figures give credence to the proposition that civilians might carry out extralegal violence in response to the perceived failure of the state to hold 'offenders' accountable. Such a claim is bolstered by the fact that the notion of committing violence 'to protect or perform a religious obligation' is widely endorsed in Pakistani society.[86]

Ahmadi Muslims account for nine of the 78 persons extralegally killed following a formal accusation of blasphemy.[87] This equates to one in 21,304 Ahmadi Muslims in Pakistan

[78] Christopher Alexander, Mai Sato, Nadirsyah Hosen, and James McLaren (with Muzafar Ali and Mohammad Mahmodi) (n 3) 74.
[79] 'Pakistan: Events of 2018', *Human Rights Watch* (Web Page) <https://www.hrw.org/world-report/2019/country-chapters/pakistan#>; United States Department of State, *International Religious Freedom Report 2020: Pakistan* (Report, 2021) 10.
[80] United States Department of State (n 43) 11.
[81] Ibid.
[82] Kunwar Khuldune Shahid, 'How Pakistan's Constitution Facilitates Blasphemy Lynching and Forced Conversions', *The Diplomat* (online, 27 March 2019) <https://thediplomat.com/2019/03/how-pakistans-constitution-facilitates-blasphemy-lynching-and-forced-conversions/>.
[83] Pew Research Center, *The World's Muslims: Religion, Politics and Society* (Report, 30 April 2013) 15.
[84] Ibid 55.
[85] Ibid 57–58.
[86] Raza Rumi, 'Unpacking the Blasphemy Laws of Pakistan' (2018) 49(2) *Asian Affairs* 319, 322.
[87] Centre for Social Justice (n 65).

having been killed on this basis.[88] By way of comparison, 23 victims were Christians,[89] representing one in 114,872 of Pakistan's Christian community,[90] while 42 victims — or one in 4,770,541 — were non-Ahmadi Muslims.[91] Such significant overrepresentation of Ahmadi Muslims among the victims of such violence may be attributable to the state's marginalisation of the Ahmadiyya community. By formally declaring Ahmadis 'non-Muslim' and constantly reinforcing this through regulations and rhetoric, the state may have inflamed the already brutalising potential of Section 295C by validating popular belief in the heretical status of the Ahmadiyya community.

Just as supporters of Section 295C have advocated that it protects accused blasphemers from the wrath of the masses, similar justifications have been offered for the Anti-Ahmadi Ordinance. In *Zaheeruddin*, the Court rationalised the stifling of Ahmadi religious practices in the name of maintaining public order:

> *It is the cardinal faith of every Muslim to believe in every Prophet and praise him. Therefore, if anything is said against the Prophet, it will injure the feelings of a Muslim and may even incite him to the breach of peace, depending on the intensity of the attack. […] Can then anyone blame a Muslim if he loses control of himself on hearing, reading, or seeing such blasphemous material as has been produced by Mirza [Ghulam Ahmad]?*[92]

Again, the evidence disagrees. The nine Ahmadi Muslims killed following a formal accusation of blasphemy represent only a fraction of the victims of anti-Ahmadi violence. Like all Pakistani citizens, Ahmadi Muslims may be accused of blasphemy on grounds of offensive words or conduct on which criminal charges may be laid. However, due to the

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[88] 'Table 9 — Population by sex, religion and rural/urban', *Pakistan Bureau of Statistics* (Web Page, 2017) <https://www.pbs.gov.pk/sites/default/files//population_census/census_2017_tables/pakistan/Table09n.pdf>.

[89] Centre for Social Justice (n 65).

[90] 'Table 9 — Population by sex, religion and rural/urban', *Pakistan Bureau of Statistics* (Web Page, 2017) <https://www.pbs.gov.pk/sites/default/files//population_census/census_2017_tables/pakistan/Table09n.pdf>.

[91] Centre for Social Justice (2021), *Factsheet on Abuse of Blasphemy Laws* (unpublished, 2021); 'Table 9 — Population by sex, religion and rural/urban', *Pakistan Bureau of Statistics* (Web Page, 2017) <https://www.pbs.gov.pk/sites/default/files//population_census/census_2017_tables/pakistan/Table09n.pdf>.

[92] *Zaheeruddin v the State* (1993) SCMR 1718 (Supreme Court of Pakistan) [83]–[84] (cited in International Commission of Jurists, *On Trial: The Implementation of Pakistan's Blasphemy Laws* (Report, November 2015) 35).

state's manufacturing of an environment wherein Ahmadi identity itself is construed as blasphemous (predominantly by operation of the Anti-Ahmadi Ordinance), Ahmadi Muslims may also be viewed as heretical despite an absence of any act capable of being the subject of any criminal charges. In practice, this means that killings are often carried out in instances altogether divorced from any formal blasphemy accusation. When such violence is accounted for, the number of fatalities climbs drastically: between the promulgation of the Anti-Ahmadi Ordinance in May 1984 and September 2021, at least 274 Ahmadi Muslims were killed on account of their faith.[93] By way of comparison, in the 35 years prior to the enactment of the Ordinance, 55 Ahmadi Muslims were killed, with more than half these homicides being committed in the mere months following the Rabwah incident.[94]

The brutalising potential of the laws, policies, and rhetoric discussed may be exacerbated by state responses to the extralegal killing of Ahmadi Muslims. In high profile blasphemy cases, the state has taken a strict stance against extralegal violence: for example, following the 2011 assassination of Salman Taseer, then Governor of Punjab and outspoken critic of the blasphemy law, his killer was prosecuted, convicted, and executed.[95] By way of contrast, in instances of anti-Ahmadi violence, police are often hesitant to file charges or pursue killers, ensuing in a 'total absence of justice'.[96] This stark disparity demonstrates how the state has not only designated Ahmadi Muslims as deathworthy, but has tacitly approved of their extralegal execution. Whereas genuine law enforcement efforts may be capable of interrupting the brutalisation process, such gross impunity resulting from state inaction almost certainty contributes to the creation of a culture wherein anti-Ahmadi violence is legitimised, normalised, and thus enabled.

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[93] Iftikhar (n 2).

[94] Mahmood Iftikhar, *List of Ahmadis Murdered Only For Their Faith From 1947-1984 (Promulgation of Ordinance XX)* (unpublished, 2021).

[95] 'Pakistan hangs Mumtaz Qadri for murder of Salman Taseer', *Al Jazeera* (online, 29 February 2016) <https://www.aljazeera.com/news/2016/2/29/pakistan-hangs-mumtaz-qadri-for-murder-of-salman-taseer>.

[96] Zohra Yusuf, former Chairperson of the Human Rights Commission of Pakistan, in Asad Hashim, 'Pakistan's Ahmadiyaa: An 'absence of justice'', *Al Jazeera* (online, 7 August 2014) <https://www.aljazeera.com/features/2014/8/7/pakistans-ahmadiyya-an-absence-of-justice.>

VI CONCLUSION

In this article, data on the extralegal killing of Ahmadi Muslims have been mapped against pivotal shifts in Pakistan's law to ascertain the degree to which the state may be viewed as having facilitated such violence. Despite the overwhelming majority of extralegal killings being carried out by non-state actors, the brutalisation thesis serves as a compelling framework by which these homicides can be traced back to the state as products of its official designation of Ahmadis as heretics and of heretics as deathworthy. The state's introduction of the death penalty for blasphemy is a formal declaration that blasphemers ought to be killed, and the marked increase in the extralegal killing of accused blasphemers following the introduction of Section 295C gives credence to the brutalising tendencies of this law. Against this backdrop, the manifest upswing in extralegal killings of Ahmadi Muslims suggests that the state's marginalisation of the Ahmadiyya community through law, policy, and rhetoric has exacerbated these brutalising tendencies vis-à-vis Ahmadi Muslims. In sum, the state has curated an environment in which anti-Ahmadi violence is not only enabled but condoned, thereby rendering the extralegal killing of Ahmadi Muslims so indivisible from the state as to be deemed state sanctioned.

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