

LAS

LEGAL AID SOCIETY

ASSESSMENT OF THE LEGAL SYSTEM FOR RELIGIOUS MINORITIES IN PAKISTAN:

EXPLORING ADJUDICATION CHALLENGES THROUGH A CASE-FILE ANALYSIS

Assessment of the Legal System for Religious Minorities in Pakistan:

Exploring Adjudication challenges through
a Case-file Analysis

Year of Publication: 2022

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Legal Aid Society is registered under the Societies Registration Act, 1860 on November 19, 2013 (Registration No. KAR 058 of 2013 – 14) and operates under the chairpersonship of Justice Nasir Aslam Zahid.

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Legal Aid Society has started the Religious Minorities (RM) project to build a holistic understanding of barriers against Access to Justice for RM communities in Sindh, Pakistan. Corollary to the research activities, the project also aims to add to the literature on Freedom of Religion & Belief (FORB) in Pakistan. The two main objectives of the project are: (i) Legally empower RM communities through education and provision of legal aid and support; and (ii) Assess the effectiveness of the justice system in responding to legal needs and protecting the legal rights of religious minority communities. This gap analysis is an in-depth and evidence-based study to capture the justice system's response to the legal issues of religiously marginalized communities (RMC).

The credit and appreciation is due to the team members of the Legal Aid Society. Special mention is to be made of Ms. Rukhsana Parveen Khokhar (Senior Program Manager), Mr. Shahzar Ilahi (Program Delivery Specialist), Kashmala Tahir (Assistant Research Manager), Mashal Gilani (Senior Delivery Associate), Farwa Pirbhoy (Delivery Associate), and Mehboob Ali Laghari (Program Officer). Finally, the supervision and guidance of Former Judge of Supreme Court and Former Chief Justice of Sindh, Justice Nasir Aslam Zahid (Chairperson - LAS), Former Judge of Supreme Court, Justice Arif Hussain Khilji (Chief Legal Advisor - LAS) and Ms. Haya Emaan Zahid (Chief Executive Officer - LAS) is acknowledged as the source for continued inspiration and motivation.

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Acronyms

ASA	American Sociological Association
CFA	Case File Analysis
CII	Council of Islamic Ideology
CJS	Criminal Justice System
CNIC	Computerized National Identity Card
CSJ	Centre for Social Justice
CrPC	Code of Criminal Procedure, 1898
CRSS	Center for Research and Security Studies
DSP	Deputy Superintendent of Police
FIDH	International Federation for Human Rights (Fédération internationale pour les droits humains)
FIR	First Information Report
FSC	Federal Shariat Court
FSC	Federal Shariat Court
HCJDA	... see legal cases cited (at the end)
HRCP	Human Rights Commission of Pakistan
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Convention on Economic, Social and Cultural Right
ICJ	International Commission of Jurists
IG	Inspector General of Police
IO	Investigation Officer
JSA	Justice Sector Actors
KAP	Knowledge, Attitude, and Practices
LAS	Legal Aid Society
LEA	Law Enforcement Agencies
LJCP	Law & Justice Commission of Pakistan
LNA	Legal Needs Assessment

MLD	... see legal cases cited (at the end)
MRG	Minority Rights Group International
NCHR	National Commission for Human Rights
PA	as in Exh.PA – see Table 8
PBUH	Peace be upon him
PCMR	People's Commission for Minorities' Rights
PLD	... see legal cases cited (at the end)
PPC	Pakistan Penal Code, 1860
PW	Prosecution Witness
RMC	Religiously Marginalized Community
SBA	Shaheed Benazirabad
SDPO	Sub-Divisional Police Officer
SHO	Station House Officer
SI	Sub-Inspector
SP	Superintendent Police
SSP	Senior Superintendent of Police
UDHR	Universal Declaration of Human Rights
UNPO	United Nations and Peoples Organisation
W.P.	... as in W.P. No. 4227 of 2021
WSC	World Sindhi Congress

Executive Summary

This report analyses the structural discrimination religiously marginalized communities face when they access courts to resolve legal disputes. Four thematic areas were chosen for analysis: family law (with an emphasis on marital law), criminal law, forced conversion and marriages, and finally, blasphemy law. Case files in these four areas were examined for substantive and procedural compliance with the law and for discrimination that litigants might have experienced when dealing with various actors in the criminal justice system.

In the area of family law, the report finds that lawyers and judges are often ignorant and apathetic about the laws governing minorities, which then affects the legal proceedings and final adjudication of cases. In petty crime and heinous offense prosecutions, there appear to be low acquittal rates because of

ineffective police investigations and weak prosecution due to lack of training. In forced conversions and marriage cases, public opinion weighs heavily on judicial decision-making, and, when combined with procedural lapses in investigations, leads to due process violations. And in blasphemy cases, a combination of social pressure and trials marred by defects at every stage result in staggering levels of injustice.

In light of case findings, this report offers some reflections and recommendations that would increase minority communities' trust in the justice system, which is currently at an all-time low.

1. Introduction

The 1973 Constitution of Pakistan ensures its citizens that the country will offer “fundamental rights, including equality of status, of opportunity and before law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to the law and public morality.”¹ However, abuse, harassment, and violence against religious minority communities (“RMCs”) of Pakistan has escalated dramatically in recent years.

Christians, Sikhs, and Hindus deal with daily challenges pertaining to forced conversions, child marriages, matrimonial disputes, and blasphemy offenses.² Such persecution is a direct consequence of the social and political disenfranchisement of RMCs that impede their access to basic rights. This includes lack of access to education, sanitation, discrimination within textbooks, separation of electorate vote, lack of access to employment, transportation and healthcare. Discrimination also seeps into everyday societal interactions leading to prejudice in schools and workplaces which further creates lack of employment opportunities and widespread hate speech and bullying.³ This in turn undermines RMCs’ economic growth and potential, and negatively affects their livelihoods and political participation. Significant numbers of RMCs live below the poverty line resulting in a socioeconomic loop, putting further constraints on their access to quality education, healthcare and employment.

The Legal Needs Assessment carried out by the Legal Aid Society (LAS) highlights that the RMCs in Pakistan have been confronted

with countless structural obstacles, specifically pertaining to consumer and civil problems. Challenges such as blasphemy and forced conversion/child marriages are indeed of key importance. However, there are various other day-to-day hurdles faced by the minority communities, which further adds to their lack of trust in the justice system of Pakistan.

Direct and indirect discrimination and violence against RMCs are identifiable and targetable policy, procedural, and law reform issues. Pakistan's formal justice system also reflects such entrenched structural discrimination patterns. The problem appears to be twofold. First, existing laws and processes are not being implemented due to a lack of institutional systems, structural breakdowns, and inefficiencies that affect all people in Pakistan, particularly RMCs. Second, the attitudes and behaviours of actors in the justice system actively harm RMCs.

This Case File Analysis Report (CFA) therefore attempts to locate obstacles RMCs might face when dealing with the formal legal system and justice system actors. Cases in four categories are analyzed for structural discrimination: matrimonial disputes, petty crime and heinous offenses, forced conversions and marriages, and blasphemy prosecutions.

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1. Constitution of Pakistan, Preamble – State of Human Rights 2009, Human Rights Commission of Pakistan
 2. Shikha Dilawri and others, 'Searching For Security: The Rising Marginalization Of Religious Communities In Pakistan' (Minorityrights.org, 2014) <<https://minorityrights.org/wp-content/uploads/old-site-downloads/mrg-searching-for-security-pakistan-report.pdf>> accessed 6 July 2022.
 3. Naumana Suleman, 'From Exclusion To Violence: The Case Of Religious Minorities In Pakistan - Minority Rights Group' (Minority Rights Group, 2022) <<https://minorityrights.org/2022/08/23/pakistan-forb-2022/>> accessed 30 August 2022.
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2. Methodology

This research report was designed to identify structural discrimination in the formal justice system that hinders RMCs' access to justice. It is the third report in a larger project that examines the socio-political and legal realities of religious minorities in Pakistan, and it should be read in context with the previous two reports as each one examines different but related obstacles RMCs face daily.

We limited our inquiry to four areas of law chosen through literature reviews and the experiential knowledge gained by lawyers at LAS and prior projects dealing with RMCs. We also utilized findings in our previous two research reports in this project, the first of which examined RMCs' legal needs and the second of which explored the perceptions and biases of actors in the justice system.^{4, 5}

The areas of law are as follows:

1. Family laws of RMCs:

Family law is an area which cuts across several projects as a major issue impacting women, and RMC women in particular, as highlighted in the Legal Needs Assessment⁶ report.

2. Petty crime and heinous offences:

To provide comparative analysis between treatment of Muslims and non-Muslim defendants, petty crime and heinous offences was chosen as the same law applies to both. It also allowed for convenience sampling of case files due to the ease of access

to data from a partner organisation.⁷

3. Forced Conversion and Marriages:

This is an area of law repeatedly highlighted by RMCs themselves, as well as the media.^{8,9} Without a law on forced conversion, we sought to understand gaps in formal justice processes and the behaviour of actors in the criminal justice system when dealing with these cases.

4. Blasphemy:

The misuse of blasphemy laws is one of the most critical issues faced by RMCs.¹⁰ The threat of blasphemy and the risks involved for those recommending its amendment or repeal highlights its impact and danger. Apart from the well-known discrimination in substantive law, this report analyses gaps in process within the context of a fair trial.

Case files were identified and collected on the basis of convenience sampling since there are no formal mechanisms in place that allow non-parties to a case to access certified copies of documentation pertaining to cases. While the legal documentation retrieved was limited, the data reached saturation in multiple analysis categories, even with this small sample set.

While each category of analysis adopted a different methodology in recognition of the different processes, procedures, and

4. Kashmala Tahir, 'Justice And Rights For Religious Minorities In Sindh, Pakistan: A Legal Needs Assessment Report' (Legal Aid Society 2021).

5. Kashmala Tahir, Mashal Gilani, 'Knowledge, Attitudes and Practices: Justice Systems' Response to Legal Issues of Religiously Marginalised Communities' (Legal Aid Society 2022)

6. Kashmala Tahir and Mashal Gilani, 'Knowledge, Attitudes and Practices: Justice Systems' Response to Legal Issues of Religiously Marginalised Communities' (Legal Aid Society 2022)

7. Committee of Welfare of Prisoners – Legal Aid Office, Government of Sindh which provides free legal aid to under trial prisoners, a large portion of which are petty crimes.

8. Dr. Iftikhar H. Malik, 'Religious Minorities In Pakistan' (Minority Rights Group International 2002) <<https://www.refworld.org/pdfid/469cbfc30.pdf>> accessed 28 June 2022.

9. Antoine Madelin and Michelle Kissenkotter, 'Minorities Under Attack: Faith-Based Discrimination And Violence In Pakistan' (International Federation For Human Rights [FIDH] & Human Rights Commission Of Pakistan [HRCIP]' (Refworld.org, 2014) <<https://www.refworld.org/pdfid/57fb91e54.pdf>> accessed 28 June 2022.

10. Ibid

practices relating to the issue, there was some methodological overlap. Four data analysis tools¹¹ were designed for each category. Only the diary sheet and judgment were read per case for uniformity. The data extracted from the files was analysed for delays, the quality of assistance provided, and deviations from law and procedure. The analysis was further supplemented by literature reviews and consultation with relevant practising lawyers. For confidentiality, case details such as the case number, FIR number, and names of parties have not been revealed. Case files have been allocated pseudonyms except for well-known cases reported in the media for which original names have been used (for example, the Asia Bibi case).

The remainder of this section explains the qualitative research methodology for each of the four case types in greater detail.

2.1. Family Law Cases

We collected twenty-two files¹² for concluded cases between 2015 – 2020, of which twenty were district court cases, and two were High Court cases – used primarily to analyse differences at the appellate level. The documents analysed were party pleadings, the diary sheet (which summarises what happened at each hearing), interim orders, witness and party testimonies, and the final judgment.

To supplement the above, we also examined fairness in legal procedure, which required evaluating diary sheets to show whether unnecessary adjournments were taken or any other procedural lapses that may have affected the case process or outcome.

2.2. Petty Crime and Heinous Offence Cases

For the criminal law cases obtained, we sought to understand RMCs' general experience of the criminal justice system through a variety of criminal cases. We procured twenty-five case files from various district courts within Sindh of which ten files consisted of a control group of cases with Muslim defendants. Our researchers ensured the files were matched with each other in terms of the type of offenses and profiles of the accused. This was done by procuring all the files from a legal aid clinic in Sindh, which represents litigants on a free-of-cost basis. The documents analysed in each case were the final judgment, the diary sheet, and ancillary documents. After these documents were analysed, the findings were corroborated by conducting interviews with twenty-six lawyers of the same legal aid clinic from where the files were procured.

Our file matching mechanism ensured that the following variables were kept constant:

1. The income levels of the subjects of the study
2. The specific crimes committed by the litigants¹³
3. District of the accused¹⁴

2.3. Forced Conversion and Marriage Cases

We sought to understand RMCs' experiences and legal outcomes in forced conversion and marriage cases. We procured eight judgements in which four cases involved a

11. Annex

12. (20 files were from various District Courts within Sindh, and 1 judgment each from the High Courts of Peshawar and Lahore)

13. The files were matched for the specific offences. Note, however, that the number of files in each category differs, and in the category of heinous crimes, there is a case of murder which was not present in the RMC sample of files.

14. The districts were not the same. However, this did not presumably make a significant difference in the competence of the JSAs.

minor girl from an RMC who forcibly converted to Islam and four cases involved the forced and underage marriage of Muslim girls. As there is a noticeable paucity of information, precedents, case files, and judgements available, the analysis restricts itself to comparing the quality of adjudication of cases involving RMCs versus those involving Muslims.

2.4. Blasphemy Law Cases

We procured ten files/judgements from various District Courts within Sindh, and the High Courts of Peshawar, Islamabad, and Lahore as well as judgements from the Supreme Court. The latter were procured after facing significant hindrances in accessing such files from the District Courts. The case documents analysed were party pleadings, party and witness testimonies, and the final judgment.

Our researchers had the benefit of the appellate courts' comments on the judgements of the trial court. The said comments were critical in identifying gaps in the litigation process at the trial and the necessary interventions needed to rectify the trial process.

2.5. Limitations

As pointed out above, case files were obtained through convenience sampling since there are no formal mechanisms to access certified copies of case documents. In addition, due to the lack of complete case documentation, we were unable to analyse problems that might have occurred during the recording of evidence, or the

cross-examination stages of a trial. Since the available documentation did not include trial transcriptions, we were also unable to test for evidence of prejudices or biases based on oral remarks made during the trial process.

Before analysing individual cases, some context on the trial process is necessary. The increasing caseload of the District Courts in Sindh, absent a corresponding increase in judges and court resources, is a problem that affects all litigants regardless of religion. The following chart is illustrative.¹⁵

Cases Pending on 1-Jan-2020	93,960
New Cases Filed during the year 2020	304,719
Cases Disposed of during the year 2020	288,443
Cases Pending on 31-Dec-2020	110,236

Table 1: Average Caseload.

In relation to 110,236 cases pending, there were only 570 judges in the District Courts in Sindh. This works out to an average caseload of 203 cases per judge¹⁶ in Sindh as a whole. For Karachi, this caseload was 331 cases per judge. Assuming every case gets fixed twice (every month) before the said judge, that would mean that judges generally have to preside over more than 28 cases on any particular day.¹⁷ Other generic problems that plague the district courts are excessive adjournments¹⁸ and hearings that are cursory at best to accommodate crippling case dockets.

15. 'Law And Justice Commission Of Pakistan' (2020) <<http://ljcp.gov.pk/nljcp/assets/dist/Publication/AR2020.pdf>>

16. Karachi has been analysed separately as well as a majority of the files analysed were from Karachi (12 of 22).

17. This is only an estimate, based on an assumption that an average case gets fixed once every two weeks.

18. Angbeen Atif Mirza. "Delay in Trial: Empirical Evidence from Magistrates' Court in Karachi." (Legal Aid Society, 2016). <<https://www.las.org.pk/wp-content/uploads/2018/09/Delay-in-Trial-September-02-2016Final-for-Printing-with-cover-page.pdf>>

3. Family (Matrimonial) Law Cases

Under Pakistani law, the adjudication of RMC family matters is dictated by their own religious rules, customs, and practices. Any legislation codifying these laws is a provincial matter, thus each province has its own legal framework. While the Muslim community has robust family laws that are amended from time to time, the same has not been the case for RMCs. For instance, Christian family law issues are dictated by the Divorce Act of 1869 and the Christian Marriage Act of 1872, which are outdated and have yet to be amended. On the other hand, the province of Sindh has enacted a specific law for the Hindu community, the Sindh Hindus Marriage Amendment Act 2018.

Due to the Muslim majority community, it is natural that a larger set of jurisprudence and

precedents have developed over the years on Muslim substantive laws and processes. Christian law, despite being enacted in the 1800s, has not benefited from a similar depth in jurisprudence and precedents, while the Hindu community has a scattering of jurisprudence on their personal laws, which are presumed not to have created a holistic legal framework.

3.1 Synopsis of Sample Used

The sample consisted of twenty-two files that were analysed. The bulk (20) were from District Courts, while two (2) were from High Courts. Among the plaintiffs, more were Christian (13) than Hindu (9). Somewhat more were from Karachi (12) than from districts outside Karachi (10).

Since some of the twenty-two files dealt with more than one matter being adjudicated, a total of thirty-eight pleadings had been entered. The table below encapsulates the varied pleadings of the respective plaintiffs when they appeared in court.

	Hindus	Christians	Total (Pleadings)
Maintenance Cases			5
Termination of marriage	4	10	14
Separation Cases	4	7	11
Termination/Separation of marriage with the return of dowry			5
Divorce or Separation in the alternative			3

Table 2: Breakdown of files analysed according to pleadings submitted in court.

Apart from the geographical distribution, another significant variable was the socio-economic background. The income segments were distributed into low, medium, and high tiers, which were determined through a consideration of occupation, utility bill expenses, education levels, and monthly expenses of the litigants. In some cases income levels were based on facts present-

ed by the litigants¹⁹ within the case. Going by the facts available to us we assessed that a majority of the sample (64%) belonged to households where income levels are likely to be less than PKR. 50,000/month. Merely 13% of the sample size belonged to high-income households,²⁰ and for the rest of the litigants, there was not enough data available to reasonably estimate their income levels.

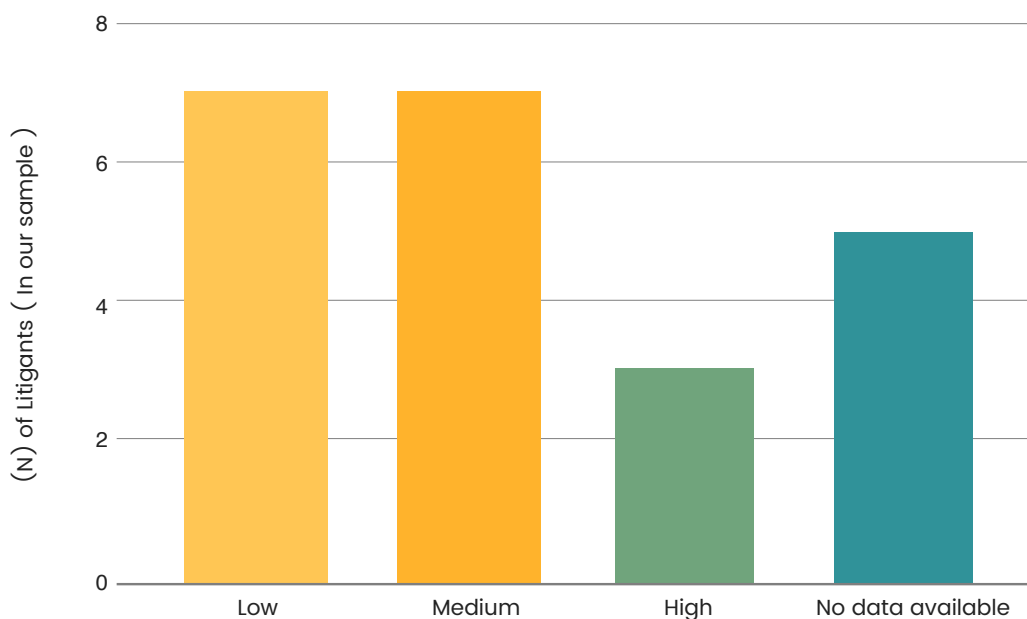


Figure 1: An estimate of the income levels of the litigants who had filed cases and were part of our research sample.

3.2 Findings

The case file analysis revealed certain trends and patterns throughout almost all cases. While there was no overt evidence of bias or prejudice, the findings reveal socio-economic challenges for RMCs, lack of knowledge, improper use of the law of evidence, and apathy or lethargy when it comes to dealing with the personal laws or cases of RMCs, particularly women. This section discusses each of these points in detail.

3.2.1. Mistakes and Omissions in Pleadings and Judgments

First, there was a clear lack of knowledge of the laws, precedents, supporting customs, and religious texts that regulate RMCs' personal laws. A significant number of our questions were designed to ascertain the knowledge of the legal fraternity of the specific laws, practices, and jurisprudence of RMCs.²¹ Based on our tool of analysis, we observed the following knowledge gap:

19. In some cases, there was not enough information available, hence, they have been marked as 'No Data Available.'

20. We assessed that their incomes were above 100,000 based on their electricity bills, occupations etc. This assessment is only a rough estimate given that the courts did not mandate a full declaration of income in any of the said cases.

21. The survey for our questions can be found in Appendix 'A', attached here: <https://docs.google.com/document/d/1ANAcCLXNW7X17ixqzQ20IB0CldgVIHgsPUEnzqBxw7s/edit>

Gauging Knowledge Gaps in lawyers:

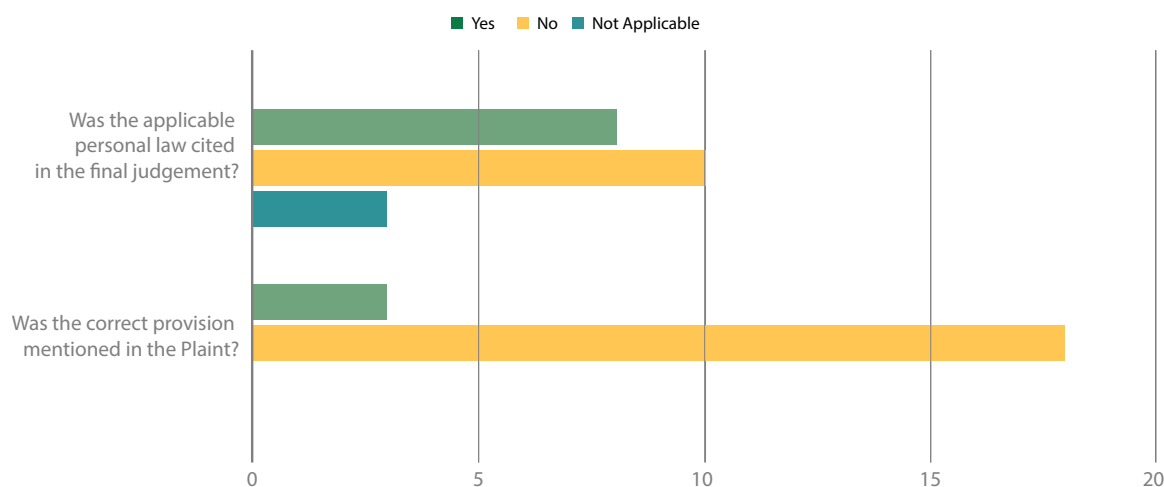


Figure 2: Number of judges and lawyers who may not be aware of the regulatory provisions of the cases under adjudication.

We examined whether the plaintiff's lawyer cited applicable legal provisions in pleadings in the relevant twenty-one cases. Of these, lawyers failed to cite the necessary legal provisions in eighteen cases and we surmised this was due to lack of knowledge and awareness of RMC personal laws. In eleven of the twenty-one cases, lawyers cited the wrong provisions. For instance, in Case Nos. 2 and 3,²² lawyers cited marital separation provisions in cases where plaintiffs sought a divorce.

Omissions in relevant legal citations extended to final judgments as well. In the eighteen cases decided on merits, only eight cited legal provisions in the final order. Although it is not entirely uncommon for district court judges to not cite the governing provisions, the judges in the files we analysed were often unaware of the governing precedents, and had, in fact, cited incorrect provisions. For instance, in Case No. 5, the judge granted a divorce to the litigant under Section 10 of the Divorce Act of 1869 without satisfying any of the grounds available under the said provision. This is simply against the intent of

the statute which requires that the said grounds be met before a divorce can be granted. The said case could have been granted under Section (7) – very easily – however, the judge was seemingly unaware of the said provision.

In addition to omissions and mistakes in pleadings, we also found that key documents and other evidence were missing from case files. Although it is common that client and witness testimonies are often the only piece of evidence in family cases, more evidence is required in maintenance and contentious divorce cases, with judges often requiring proof of cruelty or adultery. From the perusal of the sixteen relevant cases, our researchers observed that the lawyers had only provided the requisite documentation in 25% of the cases.²³ This undoubtedly had an adverse impact in some of the cases wherein the allegations required cogent evidence that was not presented to the Court.

In the Lillyan V. Miss Phyllis' case²⁴, the applicant stated that the adopted daughter of the deceased is entitled to half the inheritance

22. These are anonymous case identifiers to maintain the anonymity of the subjects of this study.

23. This question was applicable to only 16 of 22 files analysed, as in the other cases, there was not a need to provide extensive documentation.

24. PLD 2003 Karachi 270

based on Christian Canon Law, however, the court found no merit in the argument and did not award inheritance to the adopted daughter of the deceased. Perhaps if the required evidence and documentation was provided, a different result would have been present.

When viewed together, the above findings indicate a lack of knowledge and incorrect usage of law and legal provisions while dealing with cases of RMCs. This indicates that not only the lawyer, but also the judges have failed to fulfil their obligations by providing unsatisfactory counsel and oversight to RMCs. The knowledge gap amongst lawyers representing RMCs does, in some cases, lead to inadequate legal representation, as a failure to rely upon the correct legal provisions further leading to litigants not attaining the reliefs that they have approached the court for. A plausible reason for mistakes in applying or citing the correct law is gaps in knowledge. This assumption is also supported by KAP Analysis, which demonstrated that actors in the justice system do not have sufficient knowledge in relation to cases of RM communities.²⁵

3.2.2. Lengthy Time Periods

Unlike civil or most criminal cases, the Family Court Act of 1964 was enacted to shorten the trial periods in family cases. However, a study of our sample indicates that judges are liberal in allowing adjournments which affects elongated trial periods significantly. The average number of adjournments

was 9.1 (excluding adjournments taken because of COVID-19). When our researchers factored in adjournments from the pandemic, the number went up to 13 adjournments per case. When a case is adjourned, the next date of hearing is ordinarily fixed 10 - 14 days from after the previous date of hearing. This in-effect indicates that cases may be delayed by four or more months simply because of adjournments. This violates the internationally and nationally recognised principle of 'reasonable time' of trial within the concept of a fair trial.²⁶

3.2.3. Lack of Precedents and Clarity in the Law

RMCs, when litigating matrimonial disputes in court, often have to face numerous hurdles: archaic laws that do not reflect the reality of matrimonial disputes today, or in the case of updated laws, a near-total absence of precedent.

In Christian divorce cases, the overwhelming issue seems to be a lack of awareness regarding the complexity of the Divorce Act of 1869, and changes to the Act after the 'Ameen Masih Judgment of 2017.'²⁷ Prior to this Lahore High Court case, divorce could only be granted on the grounds of adultery, cruelty, desertion, and wilful neglect, but this judgment restored Section 7 of the Act, and with it, the possibility of obtaining a no-fault divorce.²⁸ However, there are no reported Sindh High Court judgments on this matter, and unless lawyers cite this case in their pleadings, litigants are deprived of the same.

25. Kashmala Tahir, Mashal Gilani, 'Knowledge, Attitudes and Practices: Justice Systems' Response to Legal Issues of Religiously Marginalised Communities' (Legal Aid Society 2022)

26. 'The Right To Due Process' (Icelandic Human Rights Centre) <<https://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/substantive-human-rights/the-right-to-due-process>>

27. Ameen Masih vs The Federation of Pakistan, W.P. No.623/2016 <<https://sys.lhc.gov.pk/appjudgments/2017LHC2488.pdf>>

28. The petitioner was a Christian who wished to divorce his wife because his marriage had broken down irretrievably. He could not do so under the Divorce Act 1869 because doing so would mean alleging and proving that his wife had been guilty of adultery (Section 10 of the Act). He did not wish to do so, as it was not true, and wanted a divorce on the basis of the fact that he had an unhappy union. The petitioner wanted the repealed Section 7 of the UK Matrimonial Causes Act 1973 to be reviewed. Section 7 provided grounds for divorce other than adultery, and was repealed in 1973 in the aftermath of General Zia's regime that had been particularly oppressive to religious minorities. He claimed that the amendment was unconstitutional and violative of minority rights in Pakistan. Decision: Section 7 of the UK Matrimonial Causes Act 1973, providing grounds for dissolution of marriage other than adultery, repealed in the aftermath of General Zia's regime, was to be restored, enforceable in the country and made available to the Christians of Pakistan. The restored section was to be read harmoniously with Section 10 of the Divorce Act 1869.

This is apparent from a perusal of Christian divorce cases where clients, who cited Section 7²⁹ of the Divorce Act, were much more likely to attain divorce as compared to those litigants whose lawyers relied upon more likely to attain divorce as compared to those litigants whose lawyers relied upon Section 10 of the Act. Since Section 7 allows

no-fault divorce, the parties need not meet the onerous evidentiary requirements of Section 10, which requires proof of charges of adultery or sodomy, for instance. The following chart shows the likelihood of being granted a divorce based on which section is cited in pleadings:

Impact Of Using The Correct Provision In Christian Divorce Cases

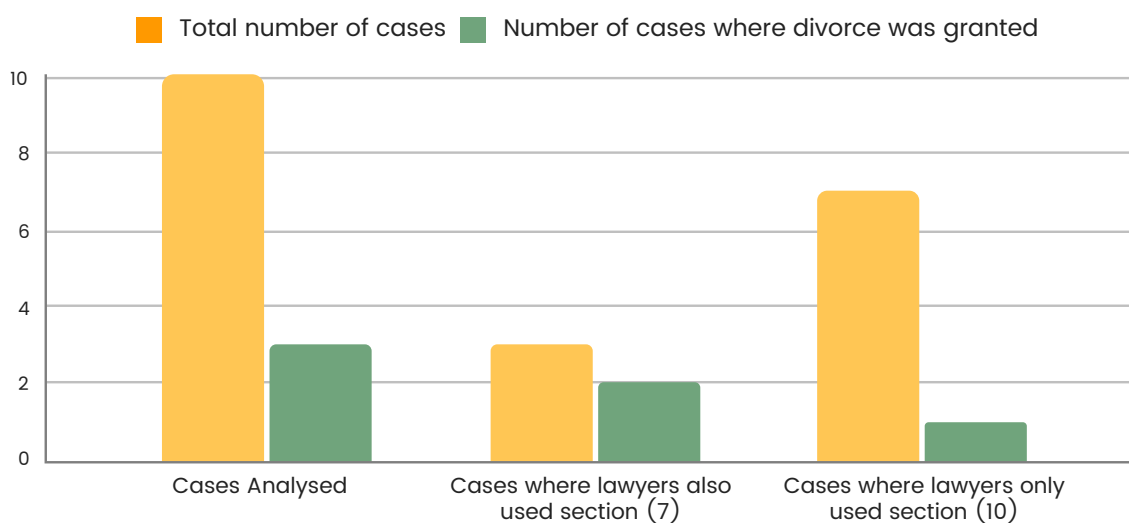


Figure 3: Impact of using the correct provision in Christian divorce cases

In addition, though, even when the Ameen Masih judgment is cited, the precedent is not binding in Sindh and does not reflect the settled law on the matter, which leads to conflicting judgments from the trial court. For instance, in a Christian divorce case (Case No. 15 of our analysis) that our team litigated itself, the trial court granted our clients judicial separation even though they had asked for a divorce. On appeal, the Additional District Judge stated that a divorce could not be granted without recording evidence despite the fact that the 2017 judgment allows for a no-fault divorce, which does not have evidentiary requirements. The judge stated that because the procedure for Christian divorce cases is unclear, she had to err

on the side of caution and record evidence. The confusion is there because there are no precedents that state the procedure to be followed in case Christians are to be awarded a case on mutual consent or on no-fault divorce.

The absence of precedent and lack of clarity in the law is also a problem for Hindu women seeking judicial separation from their husbands. The law states that cruelty is a ground for judicial separation. However, absent judicial interpretation of the word “cruelty,”³⁰ judges make determinations on an ad hoc basis. For instance, in two of four cases, the court stated that the woman’s unhappiness rose to the level of cruelty and

29. Section 7 of the Divorce Act, allowed divorce on the grounds of irretrievable breakdown of marriage

30. The Sindh Hindu Marriage. (Amendment) Bill, 2018 S.11 (1) (a)

granted the separation. In another two cases, women were held to a higher standard of proof for cruelty or non-maintenance to rise to the level of cruelty sufficient to grant a separation.

Previous research has shown that women's experiences at court already exist as a barrier to them seeking adjudication of issues.³¹ Therefore, the inconsistency in approach and standards of evidence causes confusion in the community, and for women, who wish to end their marriage, the uncertainty of outcomes is assumed to hamper their decisions to approach the court in the first place and choose to pursue out-of-court solutions.

3.2.4. Women Not Seeking Maintenance

Our case file analysis revealed an alarmingly low proportion of women seeking maintenance in cases of divorce or separation. This was noteworthy especially in cases of Christian divorce since the Divorce Act clearly allows for the provision of alimony in cases of separation or divorce.

Lack Of Women Pleading For Maintenance

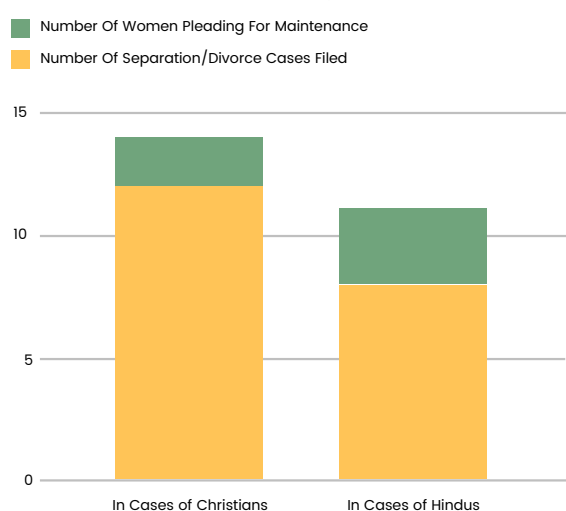


Figure 4 Number of women pleading for maintenance between Christians and Hindus

Women not pleading for maintenance might be due to any one or more of the following reasons:

1. Lawyers may not have read the statute in its entirety and thus may not be aware of the fact that women (notwithstanding whether they have children) are entitled to maintenance;
2. In cases of Hindus, courts do not award maintenance if women leave the house themselves.³² This may have led to some women not filing for maintenance;
3. Litigants may not want to subject themselves to harsh cross questions which question their motives and credibility and may want to end the case as soon as possible; or
4. Other factors such as the man not having enough money, the woman not needing maintenance, etc.

31. Khan, Ammaz, and Rabia Manzoor. "Women's Access to Justice in Pakistan: Understanding Barriers." Edited by Sarah S. Aneel, Uzma T. Haroon, and Imrana Niazi. Corridors of Knowledge for Peace and Development. Sustainable Development Policy Institute, 2020. <http://www.jstor.org/stable/resrep24374.26>.

32. The Sindh Hindu Marriage. (Amendment) Bill, 2018 S.II (1) (a)

3.3. Recommendations

Policymakers must investigate litigation in RMC cases in two stages. The first stage should consider issues in relation to litigation of family cases and gaps that all litigants

typically face when litigating cases before family courts in Pakistan. The second stage should shed light on issues related to a knowledge deficit within the judiciary in relation to the personal laws of RMC.

Problem	Recommendation
Knowledge gap in RM family cases (Judiciary)	<p>Specific training conducted by the Sindh Judicial Academy for District Court judges in order to familiarize them with the personal laws of RM communities.</p> <p>Distribution of books and other legal textbooks that can be consulted upon within hearings so that judges, when faced with areas of law that they are unfamiliar with, can consult texts that lay down the settled law on the matter.</p>
Contradictory, inconsistent judgments in RM family cases	<p>This issue could solve itself once a case gets appealed to the High Court and a judgment is issued which lays down the settled law on the matter.</p> <p>A public interest petition could also plead for the High Court to lay down the personal law for RM communities.</p>
Knowledge gap amongst lawyers	<p>Targeted training for lawyers by the Pakistan Bar Council and other legal education committees of those lawyers who are known to represent people from RM communities in order to better equip them</p>

Table 3: Problems and their policy recommendations

4. Petty Crime and Heinous Offence Cases

It is widely accepted that Pakistan's criminal justice system ("CJS") needs structural reforms to rectify incompetence, delays, and corruption at every level of the process. Two-thirds of the jail inmates in Pakistan are under-trial prisoners;³³ of which many do not qualify or are unable to pay for surety/bail and hence languish in prison for months, if not years, before the final judgment in their cases is announced.

Public surveys and reports of government accountability and redress institutions show that the police are one of the most widely feared, complained against, and least trusted arms of the Government in Pakistan, lacking a clear system of accountability and plagued by corruption at the highest levels.³⁴

The above-mentioned issues affect all litigants regardless of faith, but our research sought to understand whether RMCs face an additional layer of discrimination within the system. We, therefore, conducted an analysis of case files in which half our sample consisted of RMC defendants and the other half consisted of Muslim defendants. We chose petty crimes and heinous offenses as a category because it applies to all persons irrespective of religion or any other distinguishing characteristics. The chapter investigates the existing gaps in routine criminal cases but also attempts to identify any differences in the experiences of RMCs.

Shahzad Masih's³⁵ Experience in CJS in the District of Shaheed Benazirabad (SBA)

Shahzad, a Christian, was the accused at SBA in a case of unlawful possession of a gun in November of 2018, and the crime carried a punishment of 18 months. Subsequently, Shahzad applied for bail in December of the same year, and because of his relatively unsuspecting record was granted the same subject to furnishing a surety amount of PKR 30,000 (~USD 150).

Shahzad could not pay the said surety amount, and what ensued was an endless ordeal - where he felt the wrath of the State's negligence and apathy.

In order to get out of prison, Shahzad now had to wait for his trial to complete. Given the relatively high acquittal rates in Pakistan's CJS, it was likely that he would get acquitted.³⁶ His trial, from the very beginning, suffered from lags; it took the court eight months to record his evidence - a process that could have taken four weeks. It then took a further fourteen months for final arguments to be recorded by both sides, because the court was not in session.

By October of 2020, Shahzad had spent approximately 23 months in prison. At the end, he lost hope in the CJS and pleaded guilty. The judge sentenced him to 18 months of rigorous imprisonment, which he had already undergone. Thereafter, he was released.

33. Criminal Justice System - PKLJC 22' (Commonlii.org) <<http://www.commonlii.org/pk/other/PKLJC/reports/22.html>>

34. Kashmala Tahir, 'Justice and Rights For Religious Minorities In Sindh, Pakistan: A Legal Needs Assessment Report' (Legal Aid Society 2021). <<https://www.las.org.pk/wp-content/uploads/2021/10/LNA-Justice-Rights-for-Religious-Minorities-in-Sindh-Legal-Aid-Society.pdf>> accessed 7 June 2022.

35. Shahzad is a pseudonym used to maintain anonymity.

36. Statistics from a legal aid clinic demonstrated that only 25% of the prisoners undergo imprisonment in accordance with the crime committed. A great number of the said prisoners undergo the said imprisonment because of giving a plea of guilt such as the one Shahzad gave in the above said trial.

The trial itself is an outlier, in terms of what our data demonstrated, but it is not an anomaly. The judge, when he sentenced him, did not produce any remarks in which he regretted the avoidable delay. Our data highlights that while delays like Shahzad's are unusual, the problems that Shahzad faced are common enough without the right legal representation. It is important to note that Shahzad's experience was not primarily dictated by his faith, but his identity as a working-class individual which is determined (in-part) by his religion.

Table 4: Shahzad's experience within the Criminal Justice System

Stage 1: Arrest

25.10.2018 Case registered

Stage 2: Framing of Charges

02.01.2019 Charges Framed

Stage 3: Recording of Evidence

07.01.2019 Adjourned; No PWs Present

14.01.2019 Adjourned; No PWs Present

09.02.2019 Adjourned; No PWs Present

18.02.2019 Adjourned; No PWs Present

04.03.2019 Adjourned; No PWs Present

13.03.2019 Adjourned; No PWs Present

27.03.2019 Adjourned; No PWs Present

13.04.2019 Deposition Recorded

03.05.2019 Adjourned; No PWs Present

17.06.2019 Adjourned; No PWs Present

03.07.2019 Adjourned; No PWs Present

23.07.2019 Adjourned; No PWs Present

29.07.2019 Deposition Recorded

16.08.2019 Adjourned; No Mashir Present

06.09.2019 Adjourned; No Mashir Present

03.10.2019 Statement Recorded

Stage 4: Final Arguments

07.11.2019 Adjourned; Court is vacant

23.11.2019 Adjourned; Court is vacant

30.11.2019 Adjourned; Court is vacant

11.12.2019 Adjourned; Court is vacant

16.12.2019 Adjourned; Court is vacant

23.12.2019 Adjourned; Court is vacant

02.01.2020 Adjourned; Court is vacant

13.01.2020 Adjourned; Court is vacant

27.01.2020 Adjourned; Court is vacant

10.02.2020 Adjourned; Court is vacant

25.02.2020 Adjourned; Court is vacant

07.03.2020 Adjourned; Court is vacant

14.03.2020 Adjourned; Court is vacant

28.03.2020 Adjourned; Court is vacant

09.04.2020 Adjourned; Court is vacant

16.04.2020 Adjourned; Covid-19

30.04.2020 Adjourned; Covid-19

07.05.2020 Adjourned; Covid-19

21.05.2020 Adjourned; Covid-19

18.06.2020 Adjourned; Covid-19

16.07.2020 Adjourned; Covid-19

06.08.2020 Adjourned; Court is vacant

20.08.2020 Adjourned; Court is vacant

03.09.2020 Adjourned; Court is vacant

17.09.2020 Adjourned; Court is vacant

30.09.2020 Adjourned; Court is vacant

14.10.2020 Adjourned; Court is vacant

17.10.2020 Adjourned; Court is vacant

Stage 5: Judgment

22.10.2020 Pleaded Guilty

Note: Events highlighted in yellow represent progress; those in green, no progress.

Table 5: Detailed diary sheet of Shahzad Masih's trial

4.2. Synopsis of Sample Used

For our analysis, we examined twenty-five district court case files from 2016 to 2021 that were litigated by the legal aid clinic. The table below shows the distribution of districts

and case types that were chosen. The case files for Muslims represent our control group, to determine whether similarly situated RMCs faced additional problems during their court processes.

RMCs		Muslims (Control)			RMCs	Muslims
Districts	Cases (#)	Districts	Cases (#)	Offence	Cases (#)	Cases (#)
Karachi	1	Dadu	3	Narcotics (U/PEHO ³⁷)	3	0
Sanghar	5	SBA	1	Narcotics (U/Gutka ³⁸)	4	3
Mirpurkhas	5	Mirpurkhas	2	Narcotics (U/Narc Act ³⁹)	2	2
SBA	1	Nausheroferoze	2	Unlicensed Arms ⁴⁰	2	3
Tando Allahyar	4	Tando Allah yar	1	Theft/Robbery ⁴¹	5	1
		Sukkur	1			
Total Files	16	Total Files	10	Total Files	16	10

Table 6: Distribution of sample, by districts, and offense committed

In terms of the specific demographic, the majority of the litigants who undertake the services of the said legal aid clinics belonged to low-income groups, as the figure below illustrates.

Estimated Income Breakdown in Our Sample ⁴²

29 responses

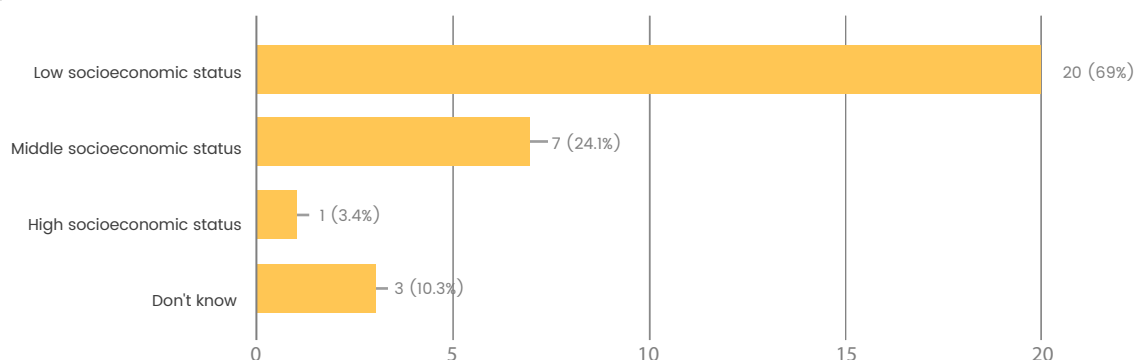


Figure 5: Breakdown of the sample based on their socioeconomic status

37. Prohibition (Enforcement of Hadd) Order, 1979

38. Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Act, 2019

39. Control of Narcotic Substances Act 1997

40. Sindh Arms Act 2013

41. Various provisions of the Pakistan Penal Code

42. The socio-economic status of the litigants is derived from how the clients themselves identified in their Interview Forms - filled by the litigants before seeking legal aid.

4.3. Findings

Our case file analysis focused on procedural compliance with the law during the investigation and trial process. We could not make a determination of substantive justice as that would have required access to police diaries and other documents that are privileged and confidential. The purpose of the analysis was to obtain a deeper understanding of the following topics:

- i. Police investigations in criminal cases of RMCs;
- ii. Whether there is any evidence that RMCs are discriminated against in routine criminal cases;
- iii. Areas in a police investigation that require reform for RMCs;
- iv. Areas in Sindh's judicial system that require reform for RMCs; and
- v. Areas for further improvement of the CJS in general for RMCs.

4.3.1. Police Investigations in Criminal Cases of RMCs

To assess the general state of police investigations in RMC criminal cases, we analyzed basic factors such as compliance with Section 103 of the Code of Criminal Procedure (CrPC) (hereinafter "s. 103")⁴³; issues in the recovery, transmission, and safe custody of evidence; and whether the police contributed to unnecessary delays. We also analyzed findings from a detailed survey circulated amongst lawyers who have represented members of RMCs in criminal cases.

Our research indicates that the problems plaguing police investigations in general also apply to RMC cases. This includes delays in investigations, arrests without probable cause, proceedings in flimsy cases, and ineffective or complete absence of legal representation. Such problems disproportionately affect socioeconomically vulnerable

communities, and the historic disenfranchisement of RMCs in every avenue of life makes them especially vulnerable, as well.

Our findings have led us to believe that there is sufficient cause for concern in regards to the Sindh Police's ability to filter out flimsy cases from genuine ones. This means that the police and the prosecution forward cases that have a high probability of being dismissed. This is demonstrated by the fact that within our RMC sample, in seven out of nine cases related to petty crimes and four out of seven related to heinous offenses, the defendants were acquitted. A significant majority of the acquittals were awarded due to a lack of sufficient evidence, lack of witnesses, the police's non-compliance with Section 103 CrPC, inconsistencies in the prosecution witnesses' testimonies, and mishandling of evidence that led to a failure to prove the case beyond a reasonable doubt. Lawyers interviewed for this research stated that the acquittal rates ranged from 70% to 90% which further corroborates the findings of our research.

The Police's compliance with s. 103, often treated as a mandatory requirement under the law which requires the police to produce independent witnesses, was alarmingly low. This provision is meant to prevent the police from malicious prosecution against suspects by falsely implicating them in cases. Lack of compliance with this section led to dismissals in many cases. In all of the sixteen cases analysed where RMCs were the primary defendants, the police had not produced an independent witness in any of the said cases. In all of the acquittals awarded to litigants belonging to RMCs, the judge had used s. 103 as a tool to doubt the prosecution's version of events. Lawyers interviewed for this study corroborated this finding and stated that their primary legal defense inter-alia is non-compliance with s. 103. The following table demonstrates that acquittals

43. Code of Criminal Procedure 1898, s. 103(1)

"Search to be made in presence of witnesses: (1) Before making a search under this chapter, the officer or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search and may issue an order in writing to them or any of them so to do."

are largely a product of mistakes by the police.

Reasons For Acquittal	Percentage of Respondents Who Answered 'Yes'. ⁴⁴ (N = 26)
Non-Compliance of Section 103 CrPc	62.5%
Frivolous Prosecution of Cases	8%
Issues in the Recovery of Evidence	33.3%
Lack of Evidence	70.8%
Issues in Maintaining the required Chain of Custody	25%
Contradictory Statements issued by the Police	83.3%

Table 7: Reasons for acquittal given, as mistaken by the police.

The findings from the discussions with the lawyers corroborate findings from the case files. In fourteen of the sixteen cases we studied, the judge pointed out mistakes in the recovery and custody of evidence. These mistakes were often, if not always, one of the most important reasons in the subsequent acquittals of the defendants. These mistakes also further the assumption that the police, because of their weak compliance, can implicate a suspect of their choice.

Our findings also showed that the police are ill-equipped to help the prosecution in securing a conviction because they are unable to substantiate their findings in court. This is because, in 80% (n= 16) of the cases we their own statements or other irrefutable

pieces of evidence. These contradictions almost invariably lead judges to acquit the accused. The lawyers we interviewed, who provided context to these proceedings, stated that these mistakes should not only be interpreted as a reflection of the police's lack of training but also a deliberate intent to implicate an innocent person. Although the evidence does not suggest that RMCs are being targeted over other litigants, it is clear that the poor state of police investigations often allows innocent people to be victimized, and guilty people to be acquitted.

4.3.2. Evidence that RMCs are directly discriminated against in routine criminal cases?

The Becker Friedman Institute's report on measuring racial discrimination in bail decisions highlighted that discrimination in legal processes can be measured via comparisons of white and black release dates.⁴⁵ Thus, following similar patterns, for the purpose of this report, we studied the acquittal rates of RMCs and Muslims. The reason behind drawing on an international example (incarceration and prosecution of African Americans) is because one could argue that discrimination against and the treatment of the racial minorities in the United States of America within the Criminal Justice System can be used to allegorize and draw parallels with the treatment of religious minorities in the Criminal Justice System of Pakistan.

Research by the American Sociological Association (ASA) on the racial and ethnic disparities in crime and the criminal justice system of the United States highlights the extent of the racial divide in America, specifically stemming from crime and punishment.⁴⁶ The report by Nellis on the Racial and Ethnic Disparity in State Prisons in State Prisons in

44. The respondents could choose more than one option as a reason for acquittal.

45. David Arnold, Will Dobbie and Peter Hull, 'Measuring Racial Discrimination In Bail Decisions' (2020).

46. Katherine J. Rosich, Race, Ethnicity, and the Criminal Justice System. (Washington, DC: American Sociological Association 2007)

the United States highlights that Black Americans⁴⁷ are incarcerated in state prisons at 5 times the rate of white Americans. Similarly, the author notes that the incarceration rate of African Americans is 1240 per 100,000 while white individuals are incarcerated at a rate of 261 per 100,000.⁴⁸

Research indicates that such high incarceration rates are due to structural disadvantages, racial subordination, and biased policies.⁴⁹ African American communities tend to be handicapped due to social factors pertaining to poverty, housing, and employment.⁵⁰ Most African Americans live in low-income neighbourhoods (62%) which have high degrees of crime. Criminologists note that such living environments lead to family and community violence, high levels of unemployment, higher school dropout rates, etc. and thus, consequently add to crime rates of African Americans along with other social problems.⁵¹ Hence, they are perceived to be dangerous and a threat to public safety. The extent of such prejudice and the belief in the superiority of Caucasian individuals leads to harsher punishments for African Americans. Likewise, the introduction of policies that negatively impacted African Americans such

as increasing the use of imprisonment (such as arrests for low-level drug offenses) as well as having lengthier prison sentences further helps explain the varying levels of disparity between races in the United States.

In our sample of cases which was extracted from the same legal aid clinic, we attempted to ensure that case facts and defendants were as similarly situated as possible. This was to isolate any difference in the cases that might have arisen due to the parties' religious affiliation. We then studied acquittal rates, the language employed in the cases, procedural compliance in investigations, and socioeconomic status to determine if there were differences in how Muslims and RMCs were treated.^{52 53}

First, the marginal difference in acquittal rates does not suggest any differences between Muslims and RMCs. The detailed reading of the files demonstrates that in two of the cases, the accused confessed initially - which deviated from the acquittal rate. The graphs below as well as our readings of the case resoundingly demonstrate that in routine criminal cases, there is no determinative evidence of faith-based discrimination.

Comparison Of Acquittal Rates In Similar Cases

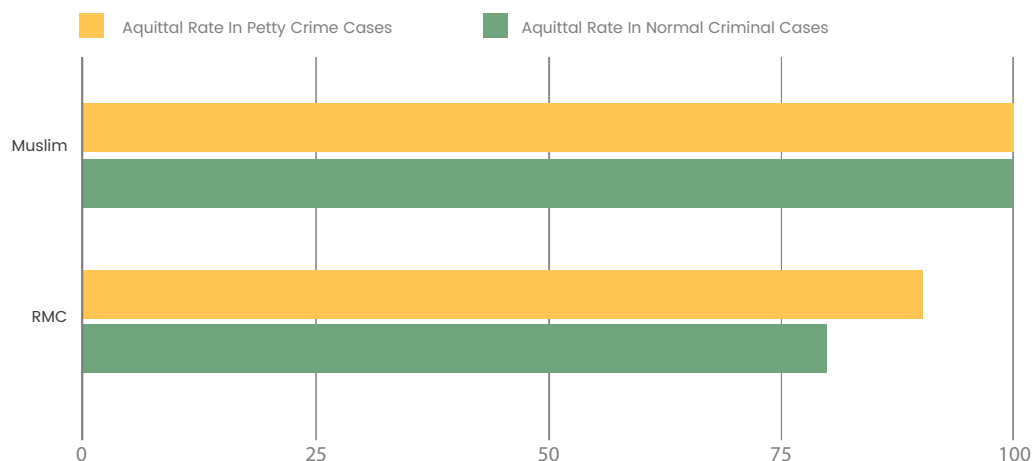


Figure 6: Acquittal rates in petty crime cases vs. normal criminal cases

47. Ashley Nellis, 'The Color of Justice; Racial and Ethnic Disparity in State Prisons (The Sentencing Project, 2021)

48. Figure 1, page 6, Ibid

49. Page 12, Ibid

50. Page 15, Ibid

51. Krivo, L., & Peterson, R. 'Extremely disadvantaged neighbourhoods and urban crime.' *Social Forces*, 75(2), (1996). 619- 647.

52. *Beyond Bias And Barriers: Fulfilling The Potential Of Women In Academic Science And Engineering* (National Academies Press 2007).

53. David Arnold, Will Dobbie and Peter Hull, 'Measuring Racial Discrimination In Bail Decisions' (2020).

Second, no evidence of discriminatory language being employed by the judges was found in the case files. While this might hold true for routine criminal cases, this conclusion cannot be extended to more religiously charged cases such as blasphemy. Furthermore, of the twenty-six responses from lawyers to the question of whether comments were often passed about the religion of the accused which did not make it into the judgment, the overwhelming majority (96%) responded in the negative.⁵⁴

Third, the percentage difference in cases where the police complied with CrPC between Muslim and non-Muslim defendants was negligible, and statistically, our data did not suggest that there was any overt faith-based discrimination. This corroborates our discussion with the lawyers, where all of the lawyers stated that a Muslim accused is treated no differently than a person of another religion when charged under the main case types examined for this research. However, these views should not be considered wholly representative, as all lawyers in the sample were Muslims themselves, and the influence of personal views cannot be ruled out.

Fourth, it must be noted that as with the other categories in this research, the vulnerabilities of RMCs due to their lower socio-economic status and income play a massive role in their experience and treatment in the law. Looking at the poverty rates amongst the Hindu community, over 85% of the lower caste Hindus earn less than the minimum wage and their literacy rates are 25% (even less - 10%) for women in particular.⁵⁵ Money and financial security gives power to litigants in the court systems and delayed trials wreak havoc on the employment of litigants who

have to regularly attend court. Socioeconomic status also has an impact on the quality of legal representation a litigant can afford. As noted throughout this research, correct and effective legal representation is a critical component in how a case is managed and the potential for success in the CJS.

To conclude, while the case file analysis may have shown no bias towards minorities, it is important to note that this does not translate into trust by the RMCs in the justice system. Our previous research conducted with members of RMCs showed that they believe the police disproportionately collude with aggressors and harbour a bias in favour of the Muslims. This also corroborates the findings of the Knowledge, Attitudes, and Practices: Justice Systems' Response to Legal Issues of Religiously Marginalized Communities (2022), which indicate an inherent bias and prejudice in the thoughts and behaviours of key personnel in the CJS including the police. In particular, it highlighted an 'us vs. them' approach and a superiority of Islam/Muslims. Some RMC members also added that while the police might not harbour any conscious, malignant "ill-intent" or "conspiracy" against them, they are nevertheless institutionalised within an organisation that is helpless when met with the mere possibility of mob violence, especially in blasphemy cases.^{56 57}

54. It is important to note that context, one's subjective interpretations dictate what a discriminatory remark is, thus while the lawyers may not have observed any comments, that does not mean that they specifically were cognizant of the judge's remarks in the justice system.

55. Silvia Huang, 'The Connection Between Religion And Poverty In Pakistan' (BORGEM, 2020) <<https://www.borgenmagazine.com/the-connection-between-religion-and-poverty-in-pakistan/>>

56. Kashmala Tahir, 'Justice And Rights For Religious Minorities In Sindh, Pakistan: A Legal Needs Assessment Report' (Legal Aid Society 2021). <<https://www.las.org.pk/wp-content/uploads/2021/10/LNA-Justice-Rights-for-Religious-Minorities-in-Sindh-Legal-Aid-Society.pdf>> accessed 7 June 2022.

57. Kashmala Tahir and Mashal Gilani, 'Knowledge, Attitudes and Practices: Justice Systems' Response to Legal Issues of Religiously Marginalised Communities' (Legal Aid Society 2022)

4.4. Recommendations

After analyzing the criminal cases of RMCs and conducting interviews with lawyers who routinely represent them in court, we have categorized the problems encountered by order of importance in the following table. The level of urgency has been decided by our researchers by taking into account the frequency of the said mistakes/gaps and their significance to the outcome of the trial.

Issue	Level of Urgency
No filtration of Frivolous Cases	Very Urgent
Non-Compliance with Criminal Procedural Laws	Very Urgent
Registration of Fake Cases	Very Urgent
Unnecessary Adjournments	Urgent
Lack of Effective Legal Representation	Very Urgent
Incorrect or Judgments based on 'Bad-Law'	Further Examination Required
Socio-economic Discrimination	Urgent

Table 8: Level of urgency for reforms for said gaps/mistakes in trials

Our recommendations for the police are based on findings related to faulty investigative processes, a lack of training and resources, and institutional apathy. An accountability

system is needed that ensures that the police (including senior policemen such as inspectors, SHOs, and SPs) are reprimanded when there are issues in investigation.⁵⁸ This may also be done through Criminal Justice Coordination Committees in Districts formed under the Sindh Police Act 2014, with a specific focus on mitigating failures in the investigation.⁵⁹ Furthermore, there is a need for a funded statutory committee that caters to and focuses on, cases of RMCs by monitoring them and escalating issues when needed. The Sindh Police should also establish an 'Internal Accountability Branch' which is well positioned to monitor investigations.⁶⁰

Our recommendations for the Prosecution Department⁶¹ are based on our observations that frivolous cases are taken forward and prosecuted absent any scrutiny. The Prosecution, if it believes a case is built on flimsy grounds, has the power to quash it.⁶² However, several lawyers that we interviewed stated that the Prosecution always proceeds with cases because they have not examined the contents of the case, or because they do not want to be accused of colluding with the accused. As a result, a high proportion of RMCs in the cases we examined were arrested, imprisoned, and then eventually acquitted. This is an injustice and goes against the principles of due process and fair trials. The Prosecution must be empowered and encouraged with evaluation incentives that increase scrutiny on frivolous charges. Furthermore, the number of Prosecutors must be increased to decrease the burden on each prosecutor.

58. 'Police Reforms: Way Forward' (Ljcp.gov.pk, 2019)

<<http://ljcp.gov.pk/nljcp/assets/dist/Publication/b1896-title-brochure-final-14-01-2019-pdf.pdf>>

59. "Sindh forms Criminal Justice Committees."

<<https://www.thenews.com.pk/print/528967-sindh-forms-criminal-justice-coordination-committees>>

60. Ibid

61. The Prosecution department functions under the Provincial Law & Parliamentary Affairs department.

62. Sindh Criminal Prosecution Service (Constitution, Functions and Powers) Act 2009, s 11(8)(a)

5. Forced Conversion and Marriage Cases

One of the most notorious forms of violence against women of RMCs is forced conversions and marriages. The People's Commission for Minorities' Rights (PCMR) and Centre for Social Justice (CSJ) reported that there has been a 177% increase in forced conversion cases from 2020 to 2021.⁶³

According to a report by the Movement of Solidarity and Peace, approximately 1,000 underage girls, are converted to Islam each year in Pakistan.⁶⁴ The Senate Parliamentary Committee formed in 2019 to protect minorities from forced conversions, noted in October 2020 that 81 cases of forced conversion were registered in Sindh (77 Hindu and 4 Christians).⁶⁵ Forced conversions are reportedly one of the main reasons Hindu families flee from Pakistan and according to the Pakistan Hindu Council, 50 families migrate from Sindh to India every month due to persecution.⁶⁶ The Hindu community's susceptibility to forced conversions is related, among other factors, to social and economic vulnerability, further compounded by misogyny and rigid patriarchy which affects women and hinders their access to education and participation in the job market.⁶⁷

By 2021, a Bill called 'The Prohibition of Forced Conversion Bill, 2021'⁶⁸ was present

ed, but eventually dropped due to threats of violence. A provincial bill⁶⁹ was introduced in the Sindh Assembly, which if passed, would become the first law in Pakistan to introduce a punishment for forced conversions. It defines forced conversion as "forcing a person to adopt another religion under duress, force, coercion or threat."⁷⁰ This definition also extends to converting from one denomination to another within the same religion; for example, from Shi'a to Sunni Islam.⁷¹

This chapter looks at the existing research on forced conversion and marriages in the Pakistani context, highlighting the prevalence not only of forced marriages but also child marriages. It sheds light on how to report a forced conversion/marriage, how such cases proceed in courts of law, and what confusions might arise during the process.

5.2. Synopsis of Sample Used

A breakdown of the files procured by the offense is as follows:⁷²

1. Kidnapping, abducting, or inducing woman to compel for marriage (5)
2. Kidnapping or abducting a person under the age of fourteen (1)
3. Prevention of Trafficking in Persons Act 2018 (2)
4. Criminal Intimidation (1)
5. Zina-bil-jabar (1)

63. Kamran Chaudhry, 'Pakistan Sees Record Leap In Forced Conversions' (ucanews.com, 2021)

<https://www.ucanews.com/news/pakistan-sees-record-leap-in-forced-conversions/94582>

64. Forced Marriages & Forced Conversions in the Christian Community of Pakistan, prepared by Movement for Solidarity and Peace (MSP Inc., 2014). Page 5

65. Senator Anwaar Ul Haq Kakar, 'Final Report Of The Senate Parliamentary Committee To Protect Minorities From Forced Conversions' (2021).

66. Huma Yusuf and Syed Shoaib Hasan, "Conflict Dynamics in Sindh," United States Institute of Peace, Peaceworks, no 104, (2015): p. 7. Available at: <https://www.usip.org/sites/default/files/PW104-Conflict-Dynamics-in-Sindh-Final.pdf>

67. Forced Conversion Of Minority Girls And Women In Pakistan, prepared by the World Sindhi Congress (WSC, 2017).

68. Senator Anwaar Ul Haq Kakar, 'Final Report Of The Senate Parliamentary Committee To Protect Minorities From Forced Conversions' (2021).

69. Criminal Law (Protection of Minorities) Bill 2015

70. Criminal Law (Protection of Minorities) Bill 2015 Section 5

71. P L D 2020 Lahore 489, 11.

72. A case could concern multiple offenses.

The absence of legislation on forced conversion limits victims to filing cases under other related legal provisions, including a combination of laws on kidnapping, trafficking of humans, or child marriage restraint charges. This is why our case file sample broadly considers these areas of law. These files were procured on a convenience basis from all over Pakistan as there are no mechanisms in place for formally procuring files for research. The researchers perused files from outside of Sindh province as well to complete a sample of 10 files.

5.3. Findings

Based on the case-files we were able to access, this analysis presumes that incidents of forced conversions are rarely pursued in a court of law and that even when a case is taken to court, it is filed under provisions of the law relating to underage marriage or kidnapping due to the absence of any specific legislation on forceful conversions, as stated above. This assumption is also supported by informal discussions conducted with leaders of religiously marginalized communities.

5.3.1. Problems Faced in Reporting an Incident of Forced Conversion

Conversions must be registered in local religious institutions in order to have legal status. These institutions issue certificates that are given credibility by the law, but many of them produce these documents without inquiring about the nature of the process. Certificates are, therefore, often built on false

information given by the abductors, and can be used before the police and before courts to excuse violations.⁷³ Some religious institutions, such as Mian Mithu, Pir Jan Sarhandi, Sayeen Saadram in Binori Town Karachi, and a dargah at Minar Road Sukkur,⁷⁴ are key actors in the maintenance and strengthening of the practice of forced conversions, as well as in hampering the establishment of a legal framework dedicated specifically to this abuse.⁷⁵

Reporting a forced conversion requires registering a First Information Report (FIR) of the abduction at a police station, which is typically done by the family of the victim.⁷⁶ Nonetheless, if influential members of the community are involved in the abuse, the registration tends to be delayed, compromised, or even dropped. Hence, it is clear that the political and traditional allegiances recurrently hinder effective police action against forced conversions.⁷⁷ If the Police report is filed and the case is brought before a Court, the victim's family is rarely given custody of the victims, regardless of their age. As a result, under pressure and in fear of retaliation, the victim is more prone to produce testimony in favour of the abductor/abuser.⁷⁸

5.3.2. Forced Marriages

According to a report, approximately 1,000 non-Muslim girls, aged 12 to 25, are converted to Islam each year in Pakistan. The report estimates that up to 700 of these women are Christian and 300 Hindu.⁷⁹ Multiple organisations have discovered a pattern that is usually followed in cases of forced conversions: young girls and women, typically 12 to 15 are abducted, converted to Islam, and then

73. Forced Marriages & Forced Conversions in the Christian Community of Pakistan, prepared by Movement for Solidarity and Peace (MSP Inc., 2014). Page 25

74. Ravi Dawani; General Secretary, All Pakistan Hindu Panchayat, Meeting with LAS-RM team, November 25th, 2020.

75. Submission to the UN Office of the High Commissioner for Human Rights for the consideration of the 3rd Universal Periodic Review of the Islamic Republic of Pakistan during the 28th Session, prepared by the Nonviolent Radical Party, Transnational and Transparty (NRPTT, 2016).

76. Forced Conversion Of Minority Girls And Women In Pakistan, prepared by The World Sindhi Congress (WSC, 2017). Page 7

77. Forced Marriages & Forced Conversions in the Christian Community of Pakistan, prepared by Movement for Solidarity and Peace (MSP Inc., 2014). Page 23

78. Ibid. Page 24

79. Ibid. Page 5

married to the abductor or a third party. The victim's family then files an FIR for abduction or rape at the local police station. The abductor, on behalf of the victim, files a counter-FIR accusing the victim's family of harassing the willingly married and converted girl and of conspiring to convert the girl back to her original religion. The girl is then asked to testify in court whether she married and converted of her own free will or was abducted. In most cases, the girls remain in the custody of the abductor during the course of the judicial proceedings, and are so often subject to further threats, intimidation and brainwashing and therefore, very likely, testifies in favour of the abductor due to coercion and threat.^{80 81}

5.3.3. Status of Forced Conversions and Marriages in Courts

While many incidents of forced conversion and coerced marriages are reported every year in Pakistan,⁸² only some of these cases are taken to court. This is corroborated by the research team's interviews with the community leaders who indicated that RMCs prefer to settle these matters out of Court. This is for two reasons. One, there is no law on forced conversions and RMCs fear that if a minor girl has been allegedly forcefully converted and then married to a Muslim man, it is more likely than not that the court will honour and accept the girl's conversion. Two, by bringing attention to an incident of alleged forced conversion, RMCs fear they will draw the public and the media's attention to the case which may further endanger the minor girl and the community, and may also result in the alleged abductors moving the girl to a new place to hide her.

On the rare occasion, a forced conversion case is taken to Court, the absence of a law on forced conversions limits the petitioners to rely on other laws to argue their case and

the case is then litigated and decided on factors other than the issue of forced conversion. When a court considers a case of forced marriage, it asks the following two questions:

1. Whether to apply Pakistani law or Islamic law in the case of Muslim marriage?
2. Can a High Court exercise jurisdiction outside its province?

We shall look at each of these questions in turn and see how the courts have tried to answer them.

Whether to apply Islamic Law or Pakistani Law

The minimum age to marry is eighteen for both males and females in Sindh⁸³ and is eighteen for males and sixteen for females in the rest of Pakistan.⁸⁴ However, these set minimum ages to marry have often come in conflict with the Islamic interpretation of the requirements of a marriage which dictate that any person who has attained puberty has the capacity to enter into a marriage. In four of the seven cases that we analyzed; it was determined by the court through medical examinations that the girl was under the age of sixteen. In all four of those cases, the court debated whether the girl nonetheless had the capacity to enter into a marriage as she had attained puberty.

From the sample of cases analysed, the courts, when presented with the idea that puberty alone should determine a girl's capacity to marry, were reluctant to accept this. The courts held that to hold the capacity to enter into a marriage under Islam, multiple factors besides puberty need to be considered. These include free consent, the ability to exercise free choice, a mature mind that understands one's own interests and benefits, and the availability and assistance of the

80. Ibid. Page 2

81. Status of Human Rights in 2016, prepared by the Human Rights Commission Pakistan (HRCP). Pages 94-95

82. Forced Marriages & Forced Conversions in the Christian Community of Pakistan, prepared by Movement for Solidarity and Peace (MSP Inc., 2014). Page 5

83. Sindh Child Marriages Restraint Act 2013 s 2(a), 2(b)

84. Child Marriage Restraint Act 1929 s 2(a), 2(b)

girl's wali and wakil (guardian-counsel).

However, it was also repeatedly mentioned that while the girls in these marriages did not have the capacity to enter into a marriage, the marriage was not invalid as the traditional principles of valid, void, and voidable cannot be applied to religious rights. Therefore, such coerced marriages could only be annulled, not invalidated.

Another reason why the courts argued that the marriage should be annulled is that they found that even if the minimum ages to marry set by the Government were to be considered inapplicable, the adult party to the marriage would incur criminal liability upon consummation. It is also recognized and acknowledged that the Pakistan Penal Code makes it illegal for anyone to engage in sexual acts with a child. They particularly focused on section 375⁸⁵ which makes it illegal to engage in sexual intercourse with someone under the age of sixteen, even with their explicit consent, and section 377A⁸⁶ which makes it a crime to engage in any kind of sexually explicit conduct with a person under the age of eighteen regardless of their consent. Considering that the maximum punishment for these crimes is twenty-five years of imprisonment, the courts concluded that even if Islamic principles were to supersede Pakistani law, Islamic law would not permit a contract that creates criminal liability for one of the parties upon consummation of the contract.

Can the High Court exercise jurisdiction outside its province?

This question is relevant because abducted girls are often moved to new locations, sometimes in another province, and are therefore not presented in court. This can affect the court's ability to make an age determination, which is crucial given that most such cases involve underage girls. Conflicting documents are presented by either party causing

the courts to rely on medical examinations which are only possible to conduct if the girl remains in the same place. We observed that in almost all cases, the girl would not be presented to the court as she had been moved to a new location, often in another province. While the judges did order the local province's police to find and bring the girl with the collaboration of the relevant authorities, this would often take months.

In one particular case, a girl was presented once in court and since then had been moved several times, could not be located and no decision could be reached as the girl's age could not be determined. During this entire time, the girl was assumed to be with her alleged husband.

In another case, a senior official was tasked with the responsibility of finding the girl and presenting her before the court, but he was unable to do so. The court found that he was unsuccessful in his duties as instead of locating the girl, the official decided to attend training on human trafficking. While the court condemned the officer's actions, they found that they were unable to do anything about it as they had no powers in the officer's jurisdiction.

This meant that the judges were faced with the realization that their court's jurisdiction does not extend to police officers in other provinces. This meant that adjudicating on a time-sensitive matter such as forced marriages and conversion would prove to be more difficult as the cases in which the parties move to avoid being caught would take time, resources, and authority that the courts could not always afford.

5.4. Recommendations

While one superior court case we analysed seem to bring forth and discuss progressive

85. Pakistan Penal Code 1860 s 375(v)

86. Pakistan Penal Code 1860 s 375(v)

principles, the same was not common within the other judgments. Judges are limited by the court of public opinion as they are hesitant to make decisions which may appear to be contrary to the majoritarian understanding of Islamic principles.

Much of this is due to a lack of judgments and laws, which can prevent these marriages. The Prohibition of Forced Conversions Bill (2021) which was not approved may act as a measure which could hinder conversions, however, until suitable adjudication occurs within courts, RMCs will remain reluctant or suspicious of Courts, and would rather prefer dealing with this matter out of Court.

Our researchers' ability to comprehensively assess these issues faced many roadblocks, including the procurement of relevant case files and judgements. Nevertheless, this limited analysis has provided some key insights.

First, RMCs' confidence in courts will only be improved if they receive relief in cases of forced marriages. This requires that courts and presiding judges begin exercising age limitations, which have been similarly applied in cases of Muslims⁸⁷. This in particular demonstrates structural discrimination, where practices and principles used for one group are not used for another without any basis for such differential treatment. Further, this is clear evidence of inconsistent treatment of children and violation of their human rights, including access to justice, satisfactory investigation, and fair trial.

Second, the Prohibition of Forced Conversion law must be tabled in Parliament and voted through to ensure that these violations can be curtailed. This is a critical aspect for equality in the law. Where clear violence occurs against a particular group of people, affirmative action or special treatment is called for.

Third, given the sensitive nature of proceed

ings during such cases, including possible pressures from religious elements, underage girls should receive protection in adherence to due process in a suitable environment, while the case is in progress. Special protections fall within the scope of a fair trial and formulate a critical part of access to justice for vulnerable individuals.

Finally, a lack of information, which was experienced by our researchers, illustrates that legal academia and practitioners may similarly have been unable to generate much evidence on the subject, which likely impacts the guidance received by presiding judges. To resolve this, a larger study may be conducted, in collaboration with the judiciary and relevant policymakers.

87. Islamabad High Court (W.P. No. 4227 of 2021)

6. Blasphemy Law Cases

Blasphemy laws have a complex history in Pakistan. Their first iteration was a colonial inheritance through the Pakistan Penal Code (PPC) sections 295(A) and (B).⁸⁸ Then, former Prime Minister Zulfikar Ali Bhutto passed a subsequent bill to amend the Constitution of Pakistan 1973, with the aim of targeting the Ahmadi population.⁸⁹ The third stage was introduced by former President Zia-ul-Haq who incorporated section 295-C⁹⁰ into blasphemy law, which introduced the death penalty for committing blasphemy.⁹¹ This change was part of a larger Islamization policy pursued by Zia.⁹² The fourth intervention was when the Federal Shariat Court (FSC) declared that the punishment for the offense of blasphemy could only be the death penalty.⁹³ It was further held that this punishment was ‘Hadd’ and therefore could not be commuted or pardoned even if the convict had repented and that only Prophet Muhammad had the authority to waive a punishment in this case.^{94 95}

The abuse of this law to target and endanger the lives of RMCs has been well documented and even the former Chief Justice of the Supreme Court has stated, in a landmark judgment: “The majority of blasphemy cases are based on false accusations stemming from property issues or other personal or

family vendettas rather than genuine instances of blasphemy and they inevitably lead to mob violence against the entire community.”

According to the Centre for Research and Security Studies (CRSS), there were approximately 434 blasphemy offenders documented between 1953 and 2012, of whom 258 were Muslims, 114 Christians, 57 Ahmadis, and 4 Hindus. This highlights that despite making up a small percentage of the population, Christian and Ahmadis respectively represent 26% and 13% of those charged with blasphemy. For our study of the blasphemy law, we focus on three aspects of the criminal justice system—the police, the trial court, and in some cases, the appellate courts as their judgments offer significant insights.⁹⁶

6.2. Synopsis of Sample Used

A sample of ten files was analyzed: two from the district courts, six from the High Court, and two from the Supreme Court. Although blasphemy cases are decided at the trial court level, we were unable to obtain more case files because the sensitive nature of the topic made access impossible. For this reason, we included cases that had been appealed to the High Court because the High Court scrutinizes the trial court’s legal shortcomings throughout the investigation and trial process. We also analyzed two notable Supreme Court decisions because the apex court acts as the final forum of adjudication in all cases, and it sets the

88. Penal Code, Act No 45 of 1860 (India), s 295–A

89. Munir Ahmed, ‘Pakistan: The Dream of an Islamic State’ in Carlo Caldarola (ed) *Religion and Societies: Asia and the Middle East* (Berlin, Mouton De Gruyter 1982), 276.

90. Section 295–C of the Pakistan Penal Code instituted the death penalty for derogatory remarks against the Holy Prophet.

91. Asad Ahmed, ‘A Brief History Of The Anti–Blasphemy Laws’ (Herald Magazine, 2018) < <https://herald.dawn.com/news/1154036> > accessed 13 December 2018.

92. Osama Siddique and Zahra Hayat, “Unholy Speech and Holy Laws: Blasphemy Laws in Pakistan – Controversial Origins, Design Defects and Free Speech Implications” *Minnesota Journal of International Law*, 17 (2), (2008), 311

93. *Muhammad Ismail Qureshi v Pakistan* (PLD 1991 Federal Shariat Court 10).

94. Though this interpretation has been brought into question over the years through an in–depth analysis of the concept of *Ijma* used to formulate the said laws

95. See Arafat Mazhar and Zain Molvi, *Challenging Apostasy and Blasphemy Laws*, (I.B TAURIS 2021) :133–141.

96. *Malik Muhammad Mumtaz Qadri v. the State*, [2015], Criminal Appeals No. 210 and 211,26.

state's narrative on the blasphemy law.⁹⁷ Our sample size, as stated, has been taken on a convenience basis which limits our ability to generalize about the entire judicial system. Still, it serves as a strong indicator of the red flags within the system.

6.3. Findings

6.3.1. Problems in Police Investigation

A 2004 amendment to the law requires that investigation of Section 295-C (blasphemy) offenses be carried out by an officer no less a rank than Superintendent of Police (SP).⁹⁸ It was hoped that senior police officials with superior training would take more care in investigating these cases than Investigation Officers had been able to. However, in practice, lower ranks officers continue to investigate these cases. Since no rules have been framed per this amendment, even if the SP is assigned the investigation job, he does not necessarily conduct the whole investigation himself.⁹⁹

In the case of Ghulam Ali Asghar vs. The State & another, the judge encapsulated the importance of involving the senior police officials at the inception of the case by the following statement: "A Police Officer of Inspector level started the investigation, who statedly after consultation of some Ulema, gave the final verdict as to the guilt of the present appellant."¹⁰⁰ In this case, the complainant stated that he first recorded his statement with the I.O on 04.11.2011, two days after the alleged blasphemy. He then recorded another statement before the DSP in his office on 10.11.2011. It is imperative to note that rudimentary mistakes such as

forgetting to name the religious cleric who confirmed that the statement was blasphemous and failing to record them as a witness may have been prevented if there had been direct supervision from well-trained senior police officials. Senior police officials also may have exercised more prudence by deciding on the guilt of the accused on the basis of concrete evidence rather than the opinion of a religious cleric who may not have been privy to all the facts of the case. In this case, it was especially alarming that the opinion of any religious scholar was not made part of the initial record.¹⁰¹

In the case of Asia Bibi, the investigation was also initially entrusted to a junior ranked police officer who undertook many of the initial stages of the investigation until it was transferred twelve days after the alleged incident of blasphemy to an SP in compliance with Section 156-A.

In another case in Jhelum,¹⁰² the judge noted that a Sub-Inspector of Police investigated the entire case. The lapse in the police investigation is apparent from the fact that the material exhibited in court to prove blasphemy contained no content that could reasonably be construed as blasphemy. The High Court noted that although the Additional Sessions Judge, who conducted the trial and sentenced the appellant, failed to reproduce the contents of said objectionable material, and even the prosecution during the investigation has not provided any transcripts. These are alarming gaps, and it does indicate that Senior Police Officers who have more security detail, the better context of the law, and the CJS may have investigated the case less partially.

Our case file analysis also found that courts also do not necessarily enforce the amendment requiring that investigation be carried

97. Shikha Dilawri and others, 'Searching For Security: The Rising Marginalization Of Religious Communities In Pakistan' (Minorityrights.org, 2014) <<https://minorityrights.org/wp-content/uploads/old-site-downloads/mrg-searching-for-security-pakistan-report.pdf>> accessed 6 July 2022. Section 156-A, Criminal Procedure Code 1898

98. The burden of procedures, Shahzada Irfan Ahmed The News on Sunday, 6 April 2014, <http://tns.thenews.com.pk/burden-procedures-blasphemy-laws/#.VCvBpvmSwXk>

99. Criminal Appeal No. 29 of 2013, 2

100. Ibid, 4

101. 2017 LHC 939

amendment requiring that investigation be carried out by an officer no less in rank than a Superintendent of Police. For example, in the case of defendant Akram Saeed (pseudonym), the matter was not investigated by the SP, and the trial Court judgment that convicted and sentenced him to death under Section 295-C stated: “It would suffice to say that conduct of the investigation by an unauthorized person is just an irregularity which does not vitiate trial of any accused.”¹⁰³

On the other hand, because of the heightened pressure from the international community, the investigations of blasphemy cases are also sometimes dealt with at the highest levels. For instance, a case recently disposed of in Ghotki, Sindh, was directly invigilated upon by a DSP - and forwarded by the Inspector General of Police (I.G), Sindh, which is extremely unusual unless the matter relates to public security or attracts a lot of media attention.

In the above-said case at Ghotki, however, the investigation was entrusted to the SSP ten days after the commission of the offense. Another interesting finding from the case file is that the investigation was further delegated to the Sub-Divisional Police Officer (SDPO) by the SSP. The said SDPO then further delegated to the relevant police personnel. Another interesting fact is that the Deputy Sub-Inspector of the Police admitted in the cross-examination that the SSP was in another district for an investigation, which compelled him to exercise the functions of the SSP.

This is also evident from the fact that on many of the notices issued by the Police, there were no signatures of the SSP. However, the case record shows that the SSP managed and conducted a great majority of the investigation once it was assigned to him. It is pertinent to note that this personal supervision may have been a product of the fact that the very next day after the alleged

blasphemy, a large number of extremist Muslims desecrated three Hindu temples, and a private school and attacked shops and houses belonging to the Hindu community in the Ghotki over the allegation of blasphemy against the Hindu principal of the Sindh Public School made by a school student. Despite this public outrage, it still took ten days for the SSP to be assigned to the incident. The case record also makes it evident that there is no clarity on the role of an SSP within a blasphemy investigation and the mode of supervision required of him.

6.3.2. Trial Court’s Inability to See Reasonable Doubt

A review of reported judgements in blasphemy cases revealed that in twenty-four (sixty percent) of the forty cases, weakness and lack of integrity of evidence was an issue; in nine (twenty-two percent) of the forty cases, process violations and/or weaknesses in an investigation, prosecution and/or trial processes was an issue; and in twelve (thirty percent) of the forty cases they found mala fide intent and vendetta to be a major or important factor in the implication of the accused.¹⁰⁴ These are mistakes that either the researcher or the Appellate Court identified, and the preceding section demonstrates that the trial Court may be unable or reluctant to identify gaps in the Prosecution's case - gaps that potentially lead to an acquittal.

The landmark case of Asia Bibi demonstrates that the trial court or even the High Court is susceptible to failing to identify alarming gaps in the Prosecution’s case. The table below illustrates this phenomenon:

102. Citation withheld for security reasons.

103. Ibid. Page 2

104. See n (4), 24

Allegation		Discrepancy
1.	After Asia Bibi committed the alleged Blasphemy, she allegedly confessed to the said blasphemy in front of thousands of witnesses.	<p><i>Ambiguity in reference to the number of people present during the alleged confession:</i></p> <ul style="list-style-type: none"> ● PW-1 stated that there were 100 people. ● PW-2 stated that there were a 1000 people. ● PW-3 stated that there were more than 2000 people. ● PW 4 stated that there were 250-350 people.
2.	Who was present when the witnesses informed the complainant about the alleged Blasphemy?	<p><i>It was unclear who was present when the Complaint was informed about the said offense:</i></p> <ul style="list-style-type: none"> ● Qari Muhammad Salaam (complainant/PW.1) in his statement stated that he was present in the village when Mafia Bibi (PW.2), Asma Bibi (PW.3) and Yasmin Bibi (given up PW) came to him and informed him of the occurrence, at that time Muhammad Afzal and Muhammad Mukhtar (Other PWs) were also present there, however, in his complaint he stated that Mafia Bibi (PW.2), Asma Bibi (PW.3) and Yasmin Bibi (given up PW) and others informed him of the Occurrence as well as informing the other people of the village. The key difference is that he first stated that the witnesses came to him specifically and later stated that they came to villagers. ● Another contradictory statement put forward by Mafia Bibi stated the matter was complained to Qari Muhammad Salaam (complainant/PW.1) by her sister Asma Bibi (PW.3) even though she earlier stated that she provided the details of the incident to the complainant.
3.	The time of the alleged public gathering is also in dispute:	<p>The witnesses disputed the time of the public gathering:</p> <ul style="list-style-type: none"> ● PW-2 stated that it took place on Friday at 12 noon and lasted for 15/20 minutes; ● PW-4 stated that the public gathering took place at 11/12 noon and lasted for 2/ 2.5 hours ● Complainant (PW-1) did not mention the time and duration of the gathering.
4.	Contradictions regarding the submission of the FIR:	<p>Three different versions in relation to the mode of registration of the FIR:</p> <ul style="list-style-type: none"> ● At the bottom of the FIR, the place of registration of the FIR has been mentioned that the FIR was registered by Mehdi Hassan, SI at "bridge canal Chandar Cot" and the time of registration is given as "5:45 pm". ● Conversely, the complainant (PW-1), in his statement, mentioned that the FIR was registered by delivering the application to the SHO concerned. ● However, Muhammad Rizwan, SI (PW-5), stated that the complainant presented before him the complaint (Exh. PA) upon which he formally registered the FIR (Exh.PA/1).

Table 9: Discrepancies in alleged facts in the Asia Bibi Case

From the above table, it is clear that there were numerous red flags in Asia Bibi's case. First, the FIR was lodged after a five-day delay. Second, the Prosecution's case revolved around the statement of two women (PW.2) when the FIR stated there

were 25-30 women present when the allegedly blasphemous remarks were made, yet none were interviewed. Finally, the trial court relied on the evidence of the witnesses regarding the extra-judicial confession to convict the appellant.

All these contradictions are sufficient to entitle the appellant to the right of the benefit of the doubt. It is well settled that if a single circumstance creates reasonable doubt in a prudent mind about the apprehension of guilt of an accused, then they shall be entitled to such benefit as of right.¹⁰⁵The Asia Bibi judgment, while arguably the most widely

publicized judgment on Blasphemy Law, is not unique in its many failures of procedural and substantive due process.

The table below demonstrates some startling shortcomings on the part of the police or the trial court in other cases that our researchers investigated:

Blasphemy Case	Allegation of Blasphemy	Loopholes in the Evidence:
SALAMAT MASIH v. THE STATE ¹⁰⁶ (1995)	<p>The complainant alleged that about a year prior to the registration of the case, “objectionable words about the Holy Prophet” were discovered scrawled in the toilet of this mosque.</p> <p>After some time, a piece of paper containing “derogatory words about the Holy Prophet” was thrown at the mosque’s door; later, similar pieces of paper were thrown near the area designated for ablutions.</p>	<p>The High Court acquitted the three accused after, inter alia, finding the following weaknesses in the judgment given by the Trial Court:</p> <p>The complainant stated that in view of the danger to his life, he no longer wished to pursue the case.¹⁰⁷ Thus, the High Court found him to be an unreliable witness.</p> <p>During cross-examination, this witness admitted that the first time he saw the two pieces of paper obtained from the complainant was two days after the registration of the case.</p> <p>The prosecution’s second witness testified that as he was emerging from the mosque with the complainant and the third witness, he saw Salamat Masih writing something on the wall with a stone, while the two co-accused stood nearby. However, whereas the second witness claimed that only Salamat was writing on the wall, the third claimed to have seen all three accused writing on the walls with stones</p> <p>To encapsulate, the Trial Court convicted the accused despite the fact that witnesses made contradictory statements, there was evidence of personal enmity, the prosecutors hid evidence for an entire year, and the alleged derogatory words on the wall of the mosque were wiped out immediately by the witnesses and were not reproduced and stated in Court by the witnesses</p>

105. See generally Tariq Pervaiz Vs. The State (1995 SCMR 1345) and Ayub Criminal Appeal No.39-L of 2015

106. Salamat Masih v. State, (1995) 28 P.Cr.L.J. 811 (Lahore) (Pak.).

107. Ibid, 814-815

Blasphemy Case	Alleged Facts	Loopholes in the Evidence of Blasphemy
<p>MEHMOOD ALI V. THE STATE (2015)</p>	<p>The complainant stated that his business was on the rocks and he desired to go abroad for a better financial future and for that he was in search of an exorcist to assist in the same.</p> <p>The claim is that the accused, on different occasions, received a sum of Rs.25,00,000 and thus defrauded the complainant and the P.Ws.</p> <p>The application stated that the accused committed contempt of the Holy Prophet (P.B.U.H) as well as of other holy personages besides depriving them of a huge amount.</p>	<p>The High Court acquitted the three accused after, inter alia, finding the following weaknesses in the judgment of the Trial Court:</p> <p>A specific request on day one for registration of a case against the appellants under sections 295-B and 295-C is highly conspicuous.</p> <p>The judge found the facts unbelievable given that a small shoe vendor in a small town with his business running into losses desired to go choose a Peer instead of approaching an emigration agent. Also, despite bad business, they were still in a position to offer 2.5 million to the appellants</p> <p>The High Court found it very concerning that the Prosecution had cross examined the DSP (their own witness), because the said police officer found the charges of blasphemy frivolous and removed them from the initial complaint.</p>

Blasphemy Case	Allegation of Blasphemy	Loopholes In the Evidence
<p>MUHAMMA D ISHAQ V. THE STATE</p>	<p>The facts of this case as contained in FIR are that on 07.07.2009, at night time, one Mehfil was held where the appellant introduced himself as Peer/Sufi and in the said Mehfil, there beating of drums, dances, etc. acts seemingly against Sharia were done, which outraged feelings of Muslims.</p> <p>A meeting of Ulema and people was convened, in which, it was decided that the appellant be conveyed the feelings of Muslims. For that purpose, he (complainant) met the appellant in Bethik of Malik Saleem Iqbal. He was appraised about the facts, whereupon he allegedly said that the people, who prostrated him, might see God in him and if people called him Ya Rasool Ullah, it is their belief</p>	<p>The High Court acquitted the three accused inter alia, finding the following weaknesses in the judgment of the Trial Court:</p> <p>The case was mainly investigated by a Sub Inspector of Police. However, after completing all formal investigation, Muhammad Zulfiqar, Superintendent of Police has also been shown to have partially investigated the case.</p> <p>Asad Ullah Khan—complainant of this case appeared in the witness box as P.W.2. He stated that he did not witness the accused making any blasphemous speech. PW- 3, one of the witnesses, also refuted that there was any objectionable material stated. The rest of the two private witnesses also stated on record that there was no blasphemy.¹⁰⁸</p> <p>The judge also noted that the CDs, the most important piece of evidence available against the accused, contained no evidence of blasphemy. It also seemed as though the Trial Court did not watch the contents of the CDs himself.¹⁰⁹</p>

108. 2017 LHC 939, 12

109. Ibid, 14

Blasphemy Case	Allegation of Blasphemy	Loop-holes In the Evidence
GHOTKI CASE	<p>In the said case, a student accused his school principal (a Hindu) of Blasphemy after he interrupted a lesson and asked the said student to read a chapter in Urdu.</p> <p>According to the student, the Defendant commenced referring to the Holy Prophet in demeaning terms. He then told the said fact to his father, who, along with his companions, initiated to lodge a case of blasphemy.</p>	<p>The Trial Court convicted the accused; however, our researchers did find gaps and procedural non-compliances within the judgment which could be grounds for an Appeal:</p> <p>The specific derogatory words not mentioned in the FIR. This means that most material facts in relation to the offense are absent from the initial reporting of the offense.</p> <p>None of the other teachers or students went to lodge an FIR against the teacher, despite the fact that there should have been at least twenty witnesses to the alleged blasphemy.</p> <p>There was no discussion on the motive or mens rea of the accused. Although it is a strict liability offense, lack of motive leads to questions relating to the act itself.</p> <p>The investigation was transferred to the SSP after 10 days.</p>

Table 10: Shortcomings on the part of the police and the court amongst various cases

6.3.3. Differences Between Muslims & Non-Muslims

Unlike other offenses within the Penal Code of Pakistan, in cases of blasphemy, there are textual, statutory, and accepted differences and discrimination between how Muslims are treated in comparison to how non-Muslims are treated. This section, however, focuses on a judge's interpretation of the testimony of accused persons who are Muslims versus those who are non-Muslim.

Amongst various privileges available to Muslims in a blasphemy trial, one is that judges are reluctant to believe that Muslims would commit blasphemy whereas it does not seem to be unfathomable in cases of non-Muslims. Judges may be inclined to believe the accused by virtue of their Muslim faith as seen by the quote below:

“Ordinarily, a believer is not expected to offer contempt to his own beliefs and convictions. Verbal denial by the accused should be preferred over verbal accusations of the prosecution. Another more important reason for stringent scrutiny of evidence in offences relating to religion is that Islam provided most effective and meaningful safeguards to an accused facing a criminal charge.”¹¹⁰

Our researchers perused five of the cases procured to compare the comments of judges in cases of Muslims versus RMCs. We have also recorded the pleas taken by RMCs in order to evaluate the quality of defense available to them.

The judgment of Muhammad Mahboob alias Booba vs. The State,¹¹¹ is illustrative of how Muslims may have a presumption of ‘truth’ attached to them in a trial of blasphemy. In the said case, the judge stated that the accused through his affidavit had expressed his profound respect for the Holy Prophet in

his own words. In another more recent case, the accused when making his plea stated, “I believe in one Almighty Allah. Hazrat Muhammad (P.B.U.H.) is the last Holy Prophet of Almighty Allah. By the grace of Almighty Allah, I am Muslim having Sunni Brailvies faith.”¹¹² In another case last year, the defense lawyer stated that the Petitioner was a devout Muslim and could not think of defiling the Holy Quran.¹¹³ This is not a defense available to a Christian or a Hindu.

Asia Bibi did not have any such privileges. In fact, in her statement recorded u/s 342 Cr.P.C, she expressed her full respect to the Holy Prophet and the Holy Quran and she offered to take an oath on the Bible to the Investigation Officer (IO)¹¹⁴ to prove her innocence, which was refused by the IO. She did not have the recourse to reaffirm her faith or to declare her love for Islam. Her defense was that she was ignorant of any Islamic thought, thus how could she have derogatory remarks against the beloved Prophet (PBUH) of Allah and the Divine book viz Holy Quran.¹¹⁵

The Ghotki Case, perhaps is the where this issue manifests itself the most. As previously stated, in this case, a Hindu professor was accused of using derogatory words for the Prophet. The accused in this case offered to take oath on the Geeta but that option was seemingly not availed, there is no evidence of the judge taking it into consideration at the time of the final judgment. The accused even went to the lengths of stating that he believes that the Holy Prophet is the last Prophet of Allah. The said statement could be construed as a gesture of respect, but given the context, it is clearly coerced.

Similarly, the case, Salamat Masih V. The State¹¹⁶, shows a thirteen-year-old Christian boy sentenced to death for blasphemy for scrawling offensive words on the wall of a

110. 2015 M L D 1560, 3

111. PLD 2002 Lahore 587

112. Criminal Appeal No.48 of 2012.

113. CrI. Misc. No.3742/B/2020 Muhammad Shakir Vs. The State, 3

114. Criminal Appeal No.39-L OF 2015, 17

115. Ibid, 20

116. (1995) 28 P.Cr.L.J. 811 (Lahore) (Pak.).

mosque. The High Court judgment is a stinging critique of the Sessions Court judgment, which was held to display a gross disregard of evidentiary requirements, as well as being based on tenuous grounds.

Likewise, in the Muhammad Ali v. Qadir Khan Mandokhail case¹¹⁷, we see how the Sindh High Court state that the life of the Prophet (PBUH) clearly showed that where a person had repented after insulting him, he had forgiven that person.

6.4. Recommendations

There have been numerous past attempts to reform the blasphemy law, but none have succeeded. In 2010, former Senator Sherry Rehman sponsored a bill that proposed less severe sentences for blasphemy offences¹¹⁸ but the effort was disbanded for political reasons and a lack of grounding in Islamic jurisprudence to support the lesser punishment. Later, the Council of Islamic Ideology (“CII”) supported another reform effort that suggested false accusations of blasphemy be punished with the death penalty.¹¹⁹ This suggestion was criticized and revoked a few days later by the CII when conservative parties labelled the effort as a deliberate attempt to subvert blasphemy law. Most recently, an unofficial and concealed effort from the general public came in the form of a proposal to moderate the law, by the human rights ministry who had sought proposals from researchers on this contentious and dangerous topic.¹²⁰ All attempts have failed, which is why there is an urgent need to focus on reform in the trial process where possible.

Based on the above analysis, the following table provides recommendations for areas of reform. The recommended reforms are not exhaustive; however, they are easily achievable even with minimal resources.

Stage of Trial	Required Reform
Recording of Witness Statements	Judges need to increase their due-diligence when recording witness statements and ensure that the finer details narrated by the witnesses corroborate with each other. In the absence of such corroboration, there ought to be reasonable grounds for doubting the Prosecution’s version of events.
Recovery of Media/Documentation containing alleged blasphemy	Judges need to ensure that recovery and transmission of such evidence is in compliance with the CrPc, and more than the standard due diligence needs to be exercised in cases of blasphemy because of the context in which these cases are being investigated.
Procedural Compliance of Section 156-K	The police have installed mechanisms to ensure that investigations under Section 295-C are carried out by SPs or their seniors. However, generally, these investigations are transferred only after the I.G issues the said instruction. This could be a week after the initial investigation has begun, and the direction has already been set by then the SPs intervention may or may not be a mere formality.

117. (2006) 613 P.L.D. (Karachi)

118. The Express Tribune, “Bill to amend blasphemy laws submitted in NA secretariat (Express November 26, 2010) <<https://tribune.com.pk/story/82002/bill-to-amend-blasphemy-laws-submitted-in-na-secretariat>> accessed March 3, 2022

119. Dawn News, ‘CII reviews ruling on DNA admissibility in rape cases’ (DAWN.COM, September 18, 2013) <<https://www.dawn.com/news/1043783>> accessed 30 October 2021.

120. In an interview conducted in 2019 with a leading researcher on blasphemy law, (s)he stated that the Human Rights Ministry had contacted their organisation to consult them on the feasibility of dismantling the law

Motive	Although proving motive (depending on the nature of blasphemy) is not an essential element to prove blasphemy, lack of motive on part of the accused should be taken into consideration when evaluating whether the case is fabricated and based on malice.
Context and Background	Trial Court judges scarcely paid attention to the context within which the alleged Blasphemy took place. The High Court judges did take into consideration whether the background story was credible which invariably impacted the final verdict.

Figure 5: Breakdown of the sample based on their socioeconomic status

Gauging the impact of religious clerics in routine blasphemy cases, particularly in case registration	Reforms in case registration, because of the presence of religious clerics, are the most difficult to enforce, thus their importance needs to be gauged before an attempt is made to reform the same
Assessing the impact of hearsay witnesses and whether reforms in relation to their testimony will have material changes to regulation of blasphemy law	Hearsay witnesses are very common in blasphemy cases. Accurate data in relation to their frequency will help persuade a change in policy in relation to the validity of their testimony
Calculating the percentage of cases wherein the evidence makes it clear that the case has been registered with malicious intentions because of ulterior motives.	Accurate data in relation to their frequency will help persuade a change in policy in relation to punishing individuals who falsely testify in blasphemy cases.

Table 12: Data required to carry out subsequent interventions

Areas of Further Research	
Measuring the number of cases wherein witness statements have material contradictions with each other.	This will help ascertain the extent of abuse in blasphemy cases and whether reforms in relation to the recording of evidence will have a significant impact on the final outcome of the case.

It should be noted that despite alarming shortcomings in blasphemy trials, the research teams' perusal of case files highlights that there are some small improvements in how these cases are adjudicated. First, there were many cases in which the entire trial proceeded without mention of the precise act of blasphemy but police officials and trial courts are now recording the alleged blasphemy which makes it easier to adjudicate. Second, police officials also flagrantly violated the requirement laid out by Section 156-A. However, the Police have started complying with the said provision, nonetheless, complete compliance is yet to be achieved.¹²¹ Third, high court judgments reveal a growing critical consciousness about the context of blasphemy requirements that did not exist before.¹²² Last, our jurisprudence has significantly developed to lay down principles regulating best practices when investigating cases of blasphemy.

121. The International Commission of Jurists, 'On Trial: The Implementation Of Pakistan'S Blasphemy Laws' (2015).

122. Osama Siddique and Zahra Hayat, 'Unholy Speech And Holy Laws: Blasphemy Laws In Pakistan - Controversial Origins, Design Defects, And Free Speech Implications' [2008] *The Minnesota Journal of International Law* <<https://core.ac.uk/download/pdf/217210186.pdf>> accessed 22 September 2022.

7. Conclusion

There is a general consensus that RMCs are discriminated against by justice system actors in various legal matters and during the adjudication of court cases. Our research found that the prejudice faced by RMCs in Pakistan is largely centred around apathy, which is not always intentional. Apathetic attitudes are generally influenced by, and a result of, an overwhelming and undue reliance on legal texts and traditions of the majority group (Muslims, in this case), due to which legal actors tend to be inconsiderate of the subjective and legal significance of the personal laws of RMCs. This attitude is further perpetuated by the lack of legal knowledge about laws, which may be due to gaps in training or curricula of actors in the justice system. We observed that this is a two-pronged phenomenon; firstly, lack of legal knowledge results in a lack of concern in an effort to conceal the knowledge gap, and secondly, an individual's own apathetic attitude inhibits them from acquiring the relevant information about RMCs' personal laws.

Our findings indicate that discriminatory attitudes and practices are a result of the internalization of prejudice, rather than an intentional act. The justice sector actors require training on the importance of application of RMCs personal laws. It is the RMCs constitutional right, and as representatives of the justice system, it is integral that the concerned actors play their part in upholding the Constitution.

Based on the analyses presented in the previous sections, our researchers conclude with a variety of learnings, recommendations, and proposals for future research.

First, in relation to family laws, excessive adjournments require curtailment. The Family Court, which prescribes those cases in relation to the dissolution of marriage ought to be disposed of within six months should also be applicable to cases of dissolution of RMCs, while adjournments should

also be limited to no more than 4 times. Similarly, guidelines should be drawn up to prescribe a timeline for various stages of the trial, such as limiting the service stage to 2 weeks and so on. These cases must also be adjudicated by judges who have received the requisite training in RMCs' personal laws, with caseloads appropriately assigned to ensure smooth and expeditious litigation.

The knowledge-building component requires specific training, under the Federal and Provincial Judicial Academies, for District Court judges in order to familiarize them with the personal laws. The issue of poor knowledge also afflicts lawyers, which represent RMCs, and thus training courses for lawyers will be beneficial as well. Overall, personal laws need to be in line with the communities' current needs, but this is not the case in Pakistan. As of now, only Sindh province has legislated a Hindu marriage law, while Christian matrimonial law is still based on a colonial-era Act. This leads to inconsistent judgments in RMCs' family cases, and therefore it would be appropriate to plead for Higher Courts to lay down the personal law for RMCs through public interest litigation.

Second, in relation to cases of petty and heinous crimes, it was found that the police are not only under resourced and under trained but it is fair to say that there is observable institutional apathy to some extent. The analysis found that a case or FIR may be fabricated in that it states the facts of the case in a manner that is not reflective of the actual events that took place. The Police do not comply with mandatory provisions of the Criminal Procedure either out of mala fide, negligence or lack of resources. It is further susceptible to bribes or other influences which is a persistent barrier to an impartial investigation, and does not provide the necessary support to the Prosecution during the trial, which leads to an inconsistent case. These problems lead to frivolous cases, high acquittal rates, and a disproportionately high under trial prison population. Accordingly, interventions to resolve them need to be developed. An accountability system is required which ensures that the police (including senior policemen such as inspec

tors, SHOs, and SPs) are reprimanded when there are issues in investigation. Further, a funded statutory committee should be formed which caters to, and focuses on, cases of RMCs by monitoring them and escalating issues when needed. The prosecution department, apart from providing representation to the complainants in criminal cases, is also responsible for forwarding and prosecuting only those cases that merit prosecution. The prosecution, if they believe that the case is built on flimsy grounds, has the power to quash it. The latter job is not actively performed leading to an excessive load on prosecutors. Although there are other issues with the prosecution department, their main shortcoming with respect to the accused in cases of RMCs is that a high proportion of RMCs who are arrested and in prison, are eventually acquitted. Hence, the prosecution must also be empowered and encouraged with evaluation incentives that increase scrutiny on frivolous charges. Increasing the number of prosecutors will also reduce the load on each of them, increasing overall efficiency and reducing the time taken for acquittal or penalization.

Third, in the analysis of forced conversions and marriages, lack of precedent acutely affects adjudication, as lower court judges are reluctant to go against perceived public opinion i.e. dictated by majoritarian pressures. Furthermore, where courts are able to adhere to due process in order to deal with cases concerning child marriages involving Muslim girls, the same is not possible for instances involving RMCs. Without suitable adjudication within courts, RMCs will remain untrustworthy of courts in such sensitive cases, and would rather prefer dealing with this matter out of court. Thus, the key towards settling these cases requires the judiciary to bring in established precedents, based on principles of fundamental rights and legal norms, especially the age of majority, as many forced marriages involve underage girls. Another much needed reform, the Prohibition of Forced Conversion Bill must be tabled in the parliament and voted through to ensure that these violations can be curtailed.

Fourth, analysing Blasphemy cases revealed considerable misuse of its provisions, and repeated instances of procedural lapses, which has resulted in innocent individuals languishing in prisons, with threats to their lives. Trials pertaining to the Blasphemy law require significant improvements at various stages, which can curtail its misuse. The recording of witness statements should go through strict due-diligence to ensure witness narratives corroborate with each other. In the absence of such corroboration, there ought to be reasonable grounds for doubting the prosecution's version of events. Similarly, recovery or any media or documentation containing alleged blasphemy should be done in compliance with the CrPc, and more than standard due diligence needs to be exercised. Furthermore, procedural compliance of 156-K must be mandatory, which mandates that only Superintendent Police (SPs) or a more senior ranking official conduct the investigation, should become the norm rather than requiring special instructions from higher authorities. Within the investigation, it is important to explore the context and motive; lack of motive on part of the accused should be taken into consideration when evaluating whether the case is fabricated and based on malice.

Last, our investigation also revealed that not enough evidence exists on the Blasphemy law from a legal lens. The literature on this law is heavily skewed towards narrating the problem, which highlights poor performance on part of policymakers whose task it is to have resources devoted towards solving the problem of misuse or poor adjudication. In order to identify the problems within the CJS, there needs to be data driven research which depolarizes the debate, closes gaps in its administration, and drives subsequent interventions required to reform it. Therefore, it would be of significant research and policy value that the interventions highlighted above are also individually examined, with the required data-points analysed and providing a practicable shape to these interventions.

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Annexure

The Case File Analysis Tool for Maintenance Cases

Concept Note

After studying a few family cases, it becomes apparent that a potentially interesting finding that needs to be investigated is that Hindu or Christian women pursuing separation or divorce cases are not pursuing maintenance from the husbands they previously cohabited with. Another interesting finding is the number of compromises and the amount of time a particular case takes.

The cases themselves do not reflect that the matter has been adjudicated any differently because of the religion of the parties in litigation. It does not seem to matter whether the parties are non-Muslim. What a lot of the cases demonstrate is that the problems religious minorities face when litigating their cases in the district courts are problems that Muslims face as well. Thus, while I could carry out a comparative analysis with cases of Muslims as well, it is very likely that when all of the other variables such as income, the competence of the lawyer, judge and the facts are kept constant, the end finding would be that there is no difference whatsoever. I have come to this conclusion after reading the files that we have on record, which do not show any procedural or substantive irregularity that is not present in other family cases.

The findings from our own research of the 200 cases may help shed light on this matter i.e. point towards specific gaps or biases that we need to look out for.

Thus, taking these factors into consideration, the tool has been developed, which has been designed to gauge the following aspects:

Sample

The sample size is currently 15-20 cases but efforts shall be made to reach an ideal sample of 25-30 cases. The cases are from throughout Sindh, with some reported judgments included as part of the sample to increase overall size.

Most of these are standard divorce/judicial separation cases wherein the woman has not asked for maintenance for themselves or their children.

Some of them are maintenance cases, where the woman has asked for maintenance for the child, but not for herself.

I. Whether women from RM communities are seeking maintenance?

This would be interesting because Muslim women, after divorce, are not entitled to maintenance. And lawyers and judges, as they generally practice cases of Muslims predominantly, are not used to awarding women maintenance. But in order to prove that this is because of a knowledge gap, it would need to be investigated whether women even wanted maintenance in the said cases.

II. Whether a culture of compromise exists in RM cases?

Ideally a large sample size would be needed, but qualitative research could help answer this question. The evidence, on the face of it, definitely suggests that a lot of couples decide to go into compromise. These compromises could be a product of the community pressure that many of these women face and a long/inconvenient litigation procedure just exacerbates the problem.

III. Whether the current legal procedure in place in terms of maintenance cases is inconvenient and unfriendly towards the parties?

Reading the case diaries does reveal that there are many problems that men/ women face in litigation. And these problems could be highlighted. However, these are not problems that are indigenous to RM communities, but again they could be highlighted.

Taking the aforementioned findings into consideration, the following tool has been designed;

Factual Details of the Case:

- 1. Religion of the Parties**
(Hindu/Christian)
- 2. District**
(District Name)
- 3. Socio-Economic Status (Can be ascertained from the occupation)**
(Low-Medium-High)
- 4. What was the case filed for?**
(Maintenance/Separation/Divorce/ Custody)
- 5. Did the wife ask for maintenance for herself?**
(Yes/No)
- 6. Was the wife granted maintenance?**
(Yes/No)
- 7. Were the appropriate personal laws cited in support of the claim?**
(Yes/No/Some)
- 8. Were the applicable case laws cited in support of the ruling in the said judgement?**
(Yes/No/Some)
- 9. How many adjournments were taken in order to decide this matter?**
(NO. of adjournments)
- 10. How much time did it take to decide this matter?**
(Number of months from when the case was filed till when the case was decided)

- 11. Did the court use any discriminatory language against the lawyer or the client?**

(Quote Language) – Unlikely that we'll find something here.

- 12. Were there procedural lapses within this case?**

(State procedural lapse)

- 13. If yes, state the number of procedural lapses?**

(NO. of procedural lapses)

- 14. Did the Judge commit an error in his final finding?**

(Yes/No/Debatable) give detailed reasons

The Proposed Final Report on This Category:

The proposed final report, as suggested, will answer the above-mentioned questions, and will give a holistic finding in terms of the issues that RM communities face, when in court in maintenance cases, and also in family cases in general.

Some of these issues will just be standard issues that people face in Pakistani Courts, some of these issues will actually be interesting and indigenous to RM communities such as women not asking for maintenance.