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Critical Jurisprudential Analysis Under The Article 295 Framework,
Authored By: Sejal Bharti (LL.M (Constitution and Administrative Law),
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ABSTRACT:

“This article undertakes a dual jurisprudential inquiry. The first strand examines cannibalism — the consumption of human flesh — as a profound violation of constitutional rights pertaining to dignity, bodily integrity, the right to life, and protection against cruel or inhuman treatment. Drawing on comparative constitutional law, international human rights instruments, and forensic legal analysis, it demonstrates that cannibalism, whether consensual or non-consensual, collides irreparably with foundational constitutional guarantees. The second, and analytically dominant, strand re-frames this inquiry through the lens of Pakistan's Article 295 framework — the cluster of blasphemy provisions enshrined in Articles 295 through 298-C of the Pakistan Penal Code — and assesses the extent to which these laws themselves constitute violations of internationally recognised constitutional rights, including freedom of religion, the right to a fair trial, equality before the law, and freedom of expression. The article argues that the Article 295 framework, while ostensibly protective of religious sentiment, operates in practice as a structural mechanism for persecution, disproportionately targeting religious minorities and producing outcomes indistinguishable from the constitutional violations it purports to prevent. The paper recommends legislative reform anchored in proportionality, legality, and non-discrimination”.

Keywords: Cannibalism; Article 295; Blasphemy Laws; Constitutional Rights; Right To Life; Freedom Of Religion.

I. INTRODUCTION AND RESEARCH PROBLEM:

Few subjects occupy the intersection of taboo, law, and constitutional morality as uncomfortably as cannibalism. Across recorded history and anthropological literature, the eating of human flesh has occupied a contested space — simultaneously condemned as the ultimate violation of human dignity and, in isolated ethnographic and survival contexts,

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documented as a socially or biologically conditioned act.¹ This article, however, does not treat cannibalism as its primary analytical object. Rather, it uses the constitutional dimensions of cannibalism as a methodological gateway into a more pressing and contemporarily urgent inquiry: the constitutionality of Pakistan's Article 295 blasphemy framework. The two subjects share a common analytical thread — both concern acts (or alleged acts) that are said to violate foundational norms, whether those norms are the bodily integrity and dignity of the individual, or the religious sensibilities of a community. Both, this article contends, must be evaluated against the hard currency of constitutional rights rather than cultural intuition or majoritarian preference.²

Part II provides a historical and anthropological overview of cannibalism. Part III analyses cannibalism through the constitutional rights framework, examining violations of the right to life, human dignity, and freedom from cruel treatment. Part IV introduces the Article 295 framework and its legislative genealogy. Part V undertakes a systematic constitutional critique of Articles 295 through 298-C, assessing their compatibility with Pakistan's Constitution of 1973, international human rights law, and comparative constitutional norms. Part VI proposes a rights-compatible legislative reform model. Part VII concludes.

II. RESEARCH OBJECTIVES:

The objectives of this article are as follows:

First, to conduct a comparative constitutional analysis of cannibalism as a violation of the right to life, human dignity, and protection from cruel or inhuman treatment across multiple constitutional traditions. Second, to trace the legislative genealogy of Pakistan's Article 295 framework and document its transformation from a colonial public order provision into a theocratic instrument of persecution. Third, to undertake a systematic critique of Articles 295

¹W. Arens, *The Man-Eating Myth: Anthropology and Anthropophagy* (Oxford University Press, 1979) 9.

²C.G. Turner and J.A. Turner, *Man Corn: Cannibalism and Violence in the Prehistoric American Southwest* (University of Utah Press, 1999) 21.

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through 298-C of the Pakistan Penal Code against Pakistan's Constitution of 1973, the International Covenant on Civil and Political Rights (ICCPR), and comparative constitutional norms. Fourth, to identify the structural mechanisms by which the Article 295 framework produces systematic violations of freedom of religion, the right to a fair trial, the right to life, equality before the law, and freedom of expression. Fifth, to propose a rights-compatible legislative reform model for the Article 295 framework, anchored in the constitutional principles of legality, proportionality, non-discrimination, and procedural integrity.

III. RESEARCH QUESTIONS:

This article is guided by the following research questions:

- (1) In what manner does cannibalism, whether consensual or non-consensual, violate the foundational constitutional guarantees of the right to life, human dignity, and bodily integrity?
- (2) Can individual consent operate as a constitutional justification for cannibalistic acts, or does the constitutional order's commitment to human dignity as an objective, non-waivable good preclude such a defence?
- (3) How did Pakistan's Article 295 framework evolve from a colonial public order instrument to its current theocratic form, and what are the constitutional implications of this transformation?
- (4) In what specific respects are Articles 295 through 298-C of the Pakistan Penal Code incompatible with Pakistan's Constitution of 1973, the ICCPR, and internationally recognised constitutional rights?
- (5) What legislative reforms are constitutionally required to bring Pakistan's blasphemy provisions into conformity with international human rights standards and the rule of law?

IV. RESEARCH HYPOTHESES:

This article advances the following hypotheses:

First, that cannibalism constitutes an irreparable violation of the right to life and human dignity, and that consent cannot operate as a valid constitutional defence to such an act. Second, that

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Pakistan's Article 295 framework, in its current form, is systematically incompatible with the constitutional guarantees of freedom of religion, the right to a fair trial, the right to life, equality before the law, and freedom of expression. Third, that the Article 295 framework functions in practice as a structural mechanism for the persecution of religious minorities, producing constitutional violations as severe as any harm it purports to prevent. Fourth, that meaningful constitutional reform of the Article 295 framework is not merely desirable as a policy matter but is positively required by Pakistan's obligations under its own Constitution of 1973 and under the ICCPR, which Pakistan ratified in 2010.

V. RESEARCH METHODOLOGY:

This article employs a doctrinal and comparative legal methodology. The doctrinal strand involves the close analysis of primary legal sources, including constitutional texts, statutory provisions, judicial decisions, and international human rights instruments, to identify, classify, and evaluate legal rules and their application. The comparative strand situates Pakistan's Article 295 framework within a broader constitutional canvas, drawing on the constitutional jurisprudence of India, Germany, the United Kingdom, and the European Court of Human Rights to identify normative benchmarks against which domestic legislation may be assessed. Secondary sources — including academic scholarship, human rights reports by Amnesty International, Human Rights Watch, and the International Commission of Jurists, and the jurisprudence of the UN Human Rights Committee — are deployed to illuminate the empirical operation of the blasphemy provisions and to support the normative critique. The article does not employ empirical social science methodology, but engages with empirical data generated by human rights bodies where it illuminates the constitutional analysis. The selection of sources prioritises peer-reviewed legal scholarship, authoritative human rights reports, and judicial decisions from courts with developed constitutional jurisprudence.

VI. LITERATURE REVIEW:

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Scholarship on cannibalism has evolved considerably since William Arens's foundational but controversial critique of anthropological accounts, which challenged the evidential basis of many historical claims and exposed the ideological instrumentalisation of cannibalism narratives by colonial powers.³ Subsequent archaeological and forensic work by Turner and Turner on Ancestral Puebloan sites, and Villa's analysis of European Palaeolithic remains, has placed the phenomenon on more rigorous scientific footing.⁴ Goldman's edited volume remains the most comprehensive survey of the anthropology of the subject. Constitutional scholarship on cannibalism is, by contrast, sparse. The Meiwes litigation in Germany generated some doctrinal commentary on the intersection of autonomy and dignity in criminal law, and the House of Lords' decision in *R vs. Brown*⁵, has been extensively analysed for its implications regarding the limits of consent in bodily harm offences. However, no systematic treatment of cannibalism as a violation of constitutional rights exists in the English-language legal literature, and this article seeks to fill that gap. Scholarship on Pakistan's blasphemy laws is considerably more developed. Lau's analysis of the Hudud Ordinances provides essential legislative history.⁶ An-Na'im's comparative Islamic human rights scholarship offers a normative framework for Islamic law reform that is attentive to both constitutional and theological considerations.⁷ Ali and Rehman, Saeed and Saeed, and Rehman have each addressed the intersection of Islamic law, blasphemy provisions, and international human rights law.⁸ Reports by Amnesty International, Human Rights Watch, and the International Commission of Jurists provide indispensable empirical documentation of the provisions' practical operation. The *Asia Bibi* litigation has attracted scholarly commentary,⁹ but no article has yet subjected the Article 295

³E. Sagan, *Cannibalism: Human Aggression and Cultural Form* (Harper & Row, 1974) 14.

⁴P. Villa, 'Cannibalism in Prehistoric Europe' (1992) 1(3) *Evolutionary Anthropology* 93.

⁵*R v Brown* [1994] 1 AC 212 (House of Lords) — consent as no defence to assault causing actual bodily harm.

⁶M. Lau, 'Twenty-Five Years of Hudud Ordinances: A Review' (2006) 64(4) *Washington and Lee Law Review* 1291, 1299.

⁷A.A. An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* (Syracuse University Press, 1990) 51–66.

⁸S. Ali and J. Rehman, 'Freedom of Religion and the Clash with Other Fundamental Rights in Islamic Law' (2001) 2(1) *Muslim World Journal of Human Rights*, art 4.

⁹*Asia Bibi v State*, Criminal Appeal No 39-L of 2015 (Supreme Court of Pakistan, 31 October 2018).

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framework to the comprehensive constitutional critique offered here, integrating comparative analysis with systematic assessment against both Pakistani constitutional law and international human rights instruments. This article seeks to provide that analysis.

VII. RESEARCH AND ANALYSIS:

A. CANNIBALISM: HISTORICAL, ANTHROPOLOGICAL, AND LEGAL DIMENSIONS:

1. HISTORICAL AND ETHNOGRAPHIC OVERVIEW

Cannibalism — derived from the Spanish 'Caníbal,' itself a colonial corruption of 'Carib,' the indigenous peoples of the Caribbean — denotes the consumption of human flesh by human beings.¹⁰ Archaeological evidence suggests that the practice has existed since the Palaeolithic era, with skeletal remains from Neanderthal sites in Europe bearing cut marks consistent with defleshing and marrow extraction.¹¹ Evidence from the American Southwest, particularly among Ancestral Puebloan communities, has generated significant scholarly debate about the extent and purpose of such practices.¹² Anthropologists have distinguished several typological categories. Endocannibalism — the consumption of members of one's own social group — has been documented in funerary rites among the Fore people of Papua New Guinea, where eating the deceased was understood as a form of spiritual incorporation and respect.¹³ Exocannibalism — consuming members of an outside group — has been associated with warfare, ritual domination, and, in some accounts, with the symbolic assimilation of an enemy's power. Survival cannibalism, as illustrated by the 1972 Andes flight disaster, represents a categorically distinct phenomenon: the consumption of the already-deceased in extremis, driven by necessity rather than ritual or aggression.¹⁴ The colonial record of cannibalism is heavily contaminated

¹¹J. Kantner, 'Anasazi Mutilation and Cannibalism in the American Southwest' in L.R. Goldman (ed), *The Anthropology of Cannibalism* (Bergin & Garvey, 1999) 75.

¹²E. Culotta, 'Neanderthals Were Cannibals, Bones Show' (1999) 286(5437) *Science* 18.

¹³I. Brady, 'The Myth-Eating Man' (1982) 84(3) *American Anthropologist* 595.

¹⁴L.R. Goldman (ed), *The Anthropology of Cannibalism* (Bergin & Garvey, 1999) 3.

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by European projection and ideological instrumentalisation. As Arens famously argued, many accounts of cannibalism among non-European peoples were fabricated, exaggerated, or misinterpreted to justify conquest and civilisational hierarchies.¹⁵ This does not, however, negate the archaeological and forensic evidence for the practice's historical existence; it rather demands critical methodological caution in distinguishing documented instances from colonial myth.

2. LEGAL TREATMENT OF CANNIBALISM:

Remarkably few jurisdictions maintain explicit statutory prohibitions against cannibalism. Most legal systems address the act indirectly: through murder statutes where the act involves killing; through laws prohibiting the desecration of human remains; or through public health legislation. The United Kingdom, for instance, has no specific anti-cannibalism statute, though acts associated with it would invariably constitute murder, manslaughter, or offences under the Human Tissue Act 2004. In the United States, Idaho is the only state with an explicit cannibalism statute, though prosecutions are virtually non-existent. The German case of Armin Meiwes — in which a man killed and consumed a consenting victim he had met online — exposed a critical gap in legal frameworks. The Kassel Regional Court initially convicted Meiwes of manslaughter rather than murder, precisely because of the element of consent, before the Federal Court of Justice ultimately entered a murder conviction on retrial. This case crystallised the constitutional question: can consent vitiate the legal and moral wrong of cannibalism? The overwhelming answer of constitutional jurisprudence is negative, as explored in the following section.

B. CANNIBALISM AS A VIOLATION OF CONSTITUTIONAL RIGHTS

1. THE RIGHT TO LIFE AND BODILY INTEGRITY

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The right to life is the bedrock of every constitutional system. Article 3 of the Universal Declaration of Human Rights (1948) guarantees to every person the right to life, liberty, and security.¹⁶ Article 6 of the International Covenant on Civil and Political Rights (ICCPR, 1966) makes this right non-derogable even in states of emergency.¹⁷ Article 21 of the Constitution of India provides perhaps the most expansive judicial interpretation: 'No person shall be deprived of his life or personal liberty except according to procedure established by law,' with the Supreme Court reading into it a right to live with dignity.¹⁸ Where cannibalism involves the killing of a victim, it constitutes the most absolute violation of the right to life conceivable. The act not only extinguishes life but frequently degrades the body thereafter, compounding the violation. Even where the victim is already deceased, the consumption of remains implicates a derivative constitutional interest — the right to posthumous dignity — increasingly recognised in European constitutional systems and under the jurisprudence of the European Court of Human Rights.

2. HUMAN DIGNITY AND THE OBJECTIFICATION

PROHIBITION:

Constitutional systems grounded in the Kantian inheritance — that human beings must be treated as ends in themselves, never merely as means — regard the instrumentalisation of the human body for consumption as a categorical affront to dignity. The German Basic Law's Article 1(1), which declares human dignity inviolable, has been interpreted by the Federal Constitutional Court to prohibit any reduction of a person to a mere object. Cannibalism, even post-mortem, reduces the human body to the status of foodstuff — an objectification of the most radical kind. The Eighth Amendment to the United States Constitution prohibits cruel and

¹⁶Universal Declaration of Human Rights, GA Res 217A (III) (10 December 1948) art 3: 'Everyone has the right to life, liberty and security of person.'

¹⁷International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) arts 6 and 7.

¹⁸Constitution of India 1950, art 21: 'No person shall be deprived of his life or personal liberty except according to procedure established by law.'

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unusual punishment.¹⁹ While addressed to state actors rather than private conduct, its underlying principle — that human beings retain an irreducible dignity that prohibits their degradation — resonates in broader constitutional theory. Article 3 of the European Convention on Human Rights similarly prohibits inhuman or degrading treatment in absolute terms.²⁰ Where state authorities facilitate, overlook, or fail to criminalise cannibalistic acts, they may be held to have breached their positive obligation to protect individuals from violations of dignity.

3. THE CONSENT PROBLEM: AUTONOMY AGAINST DIGNITY:

The Meiwes case and theoretical consent-cannibalism scenarios raise the difficult question of whether autonomous individual choice can authorise conduct so destructive of foundational constitutional values. The House of Lords' decision in *R vs. Brown*²¹ — affirming that consent cannot render lawful the infliction of serious bodily harm — establishes an important precedent. The constitutional logic is compelling: the right to autonomy operates within, not against, the constitutional order; it cannot be wielded to dissolve constitutional protections that exist for the protection of human dignity as a public good, not merely as a private interest. Several courts and tribunals have addressed related questions in homicide and bodily harm contexts.²² At the international level, the International Criminal Court has treated acts of cannibalism committed in armed conflict as potential war crimes under the Rome Statute, indicative of the norm's *jus cogens* character.²³

C. THE ARTICLE 295 FRAMEWORK: LEGISLATIVE HISTORY AND SCOPE

¹⁹Constitution of the United States 1791, amend VIII: 'Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.'

²⁰European Convention for the Protection of Human Rights and Fundamental Freedoms, opened for signature 4 November 1950, ETS 5 (entered into force 3 September 1953) art 3.

²²*People v Arreola*, No 12CF0776 (Orange County Superior Court, 2012) — cannibalistic acts in homicide context.

²³*Prosecutor v Bemba Gombo (Judgment)* ICC-01/05-01/08 (International Criminal Court, 21 March 2016).

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1. CONSTITUTIONAL ARCHITECTURE: ARTICLES 295–298-C OF THE PAKISTAN PENAL CODE

The 'Article 295 framework,' as this article terms it, refers to the cluster of blasphemy provisions contained in Articles 295 through 298-C of the Pakistan Penal Code (PPC) of 1860, as amended, together with Article 295 of the Constitution of Pakistan (1973), which provides the structural protection of places of worship.²⁴ The legislative provisions are as follows:

Section 295-A PPC prohibits 'deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs,' carrying a maximum penalty of ten years' imprisonment.²⁵ Section 295-B prescribes imprisonment for life for 'defiling, damaging or desecrating a copy of the Holy Quran.'²⁶ Section 295-C — the most frequently litigated and the most constitutionally controversial provision — mandates the death penalty or life imprisonment for the 'use of derogatory remarks, etc., in respect of the Holy Prophet.'²⁷ Section 298 and 298-A through 298-C extend protections to other religious figures and, critically, single out members of the Ahmadiyya community for prosecution merely for practising their faith as Muslims.

2. HISTORICAL GENESIS:

The foundational provision, Section 295 PPC, was introduced by British colonial authorities in 1860 and modestly amended in 1927, primarily to prevent communal religious violence between Hindus and Muslims. Its original legislative purpose was thus public order rather than theological enforcement. The transformation of this modest public order provision into a theocratic instrument of persecution occurred during the regime of General Zia-ul-Haq (1977–1988), when Sections 295-B and 295-C were inserted through the Criminal Law (Amendment) Act of 1986. This Islamisation programme, motivated by political consolidation rather than

²⁴Constitution of Pakistan 1973, art 295; Pakistan Penal Code 1860 (PPC), ss 295–298-C.

²⁵Pakistan Penal Code 1860 (PPC), s 295-A: 'Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs.' Maximum penalty: ten years' imprisonment.

²⁶Pakistan Penal Code 1860 (PPC), s 295-B: 'Defiling, etc, of Holy Quran.' Penalty: imprisonment for life.

²⁷Pakistan Penal Code 1860 (PPC), s 295-C: 'Use of derogatory remarks, etc, in respect of the Holy Prophet.' Penalty: death or imprisonment for life.

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genuine religious scholarship, fundamentally altered the character of the blasphemy laws.²⁸ The mandatory death penalty in Section 295-C — without any judicial discretion — was a novel and extreme addition with no clear precedent in classical Islamic jurisprudence, contradicting even traditionalist *fiqh* scholars who insisted on stringent evidentiary standards and judicial discretion in *hadd* offences.²⁹

D. CONSTITUTIONAL CRITIQUE OF THE ARTICLE 295

FRAMEWORK:

1. VIOLATION OF FREEDOM OF RELIGION AND BELIEF:

Article 18 of the ICCPR guarantees freedom of thought, conscience, and religion, encompassing the freedom to change one's religion or belief and to manifest it in teaching, practice, worship, and observance.³⁰ The UN Human Rights Committee's General Comment No. 22 (1993) explicitly states that the right to hold a belief is absolute and not subject to any restriction whatsoever.³¹ Section 298-C PPC criminalises members of the Ahmadiyya community for calling themselves Muslims, using Islamic terminology, or practising Islamic rites — conduct that is an expression of sincerely held religious conviction. This provision does not merely restrict the manifestation of religion (which Article 18(3) ICCPR permits on narrow grounds of proportionality and necessity³²); it directly targets the holding of a religious identity. Such legislation constitutes a facially unconstitutional violation of freedom of religion under both international law and Article 20 of the Constitution of Pakistan, which guarantees every citizen 'the right to profess, practise and propagate his religion.' The Ahmadiyya provisions are particularly egregious because they impose criminal penalties — imprisonment for up to three

²⁹Human Rights Watch, 'Pakistan: Blasphemy Laws Endangering Lives' (18 February 2014) <hrw.org>.

³⁰UN Human Rights Committee, General Comment No 22: Article 18 (Freedom of Thought, Conscience or Religion), CCPR/C/21/Rev.1/Add.4 (30 July 1993) [2].

³¹UN Special Rapporteur on Freedom of Religion or Belief, Report, UN Doc A/HRC/28/66 (29 December 2014) [22]–[26].

³²International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 18(3).

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years under Section 298-C — for the exercise of constitutionally protected religious identity, rather than for any objectively harmful conduct. The provision functions, in essence, as a legislatively encoded denial of the Ahmadiyya community's existence as a religious minority.³³

2. VIOLATION OF THE RIGHT TO A FAIR TRIAL AND DUE

PROCESS:

A constitutionally valid criminal prohibition must satisfy the requirements of legality: it must be accessible, foreseeable, and formulated with sufficient precision to enable individuals to regulate their conduct accordingly. Section 295-A's prohibition of 'deliberate and malicious acts intended to outrage religious feelings' fails this test manifestly. The definition of 'outrage,' 'religious feelings,' and the threshold of 'deliberate malice' are so vague and subjective that they vest effectively unlimited discretion in the investigating officer, the prosecutor, and the trial judge.³⁴ This vagueness problem is compounded by structural procedural failures documented extensively by human rights bodies. Human Rights Watch has reported that accusations under Section 295-C are frequently lodged on the basis of single-witness testimony, often by the complainant alone, without corroborating evidence.³⁵ Magistrates, facing intense social and clerical pressure, routinely remand accused persons without bail — a de facto punishment applied before conviction. Defence lawyers are frequently threatened, and in several documented cases, attacked or killed. The trial process has, in multiple cases, been converted into a mob-controlled spectacle rather than a judicial proceeding.³⁶ Article 10-A of the Constitution of Pakistan (inserted by the Eighteenth Amendment, 2010) guarantees the right to a fair trial. Article 14(1) ICCPR guarantees equality before courts and the right to a fair and public hearing by a competent, independent, and impartial tribunal. The systemic failure of the Pakistani legal system to provide these guarantees in blasphemy cases represents a

³³Amnesty International, *As Good as Dead: The Impact of the Blasphemy Laws in Pakistan*, Index: ASA 33/4330/2016 (Amnesty International, 2016).

³⁴Shafiq ur Rehman v The State 2005 PCr.LJ 1588 — illustrating how vagueness in s 295-C enables misuse.

³⁵Human Rights Watch, 'Pakistan: Blasphemy Laws Endangering Lives' (18 February 2014) <hrw.org>.

³⁶International Commission of Jurists, *On Trial: The Implementation of Pakistan's Blasphemy Laws* (ICJ, 2011).

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constitutional breach of the first order.³⁷ The Supreme Court of Pakistan's landmark judgment in the *Asia Bibi* case³⁸ — acquitting a Christian woman who had spent nearly a decade on death row on the basis of evidentiary insufficiency — illustrates both the capacity of the superior courts to apply constitutional standards and the scandalous failure of the lower courts to have done so for over a decade. The decision also triggered violent mass protests demanding the court's reversal, illustrating the existential pressure under which Pakistani judges operate in blasphemy cases.

3. VIOLATION OF THE RIGHT TO LIFE: THE MANDATORY DEATH PENALTY:

Section 295-C PPC mandates the death penalty for blasphemy against the Prophet — a mandatory sentence that eliminates any judicial discretion. International human rights law has moved decisively against mandatory capital punishment. The UN Human Rights Committee has repeatedly held that mandatory death penalties violate Article 6 ICCPR's requirement that the deprivation of life not be 'arbitrary,' because mandatory sentencing prevents courts from giving individualised consideration to mitigating factors.³⁹ The Supreme Court of Pakistan has itself expressed reservations about the constitutionality of mandatory death sentences in other contexts, but has not directly struck down Section 295-C. The Federal Shariat Court, which has jurisdiction over the consistency of laws with Islamic injunctions, has instead entrenched the provision further, holding in 1990 that life imprisonment is insufficient and that death is the only Islamically permissible penalty — a ruling that itself was constitutionally challenged but not successfully overturned.⁴⁰ From a comparative constitutional perspective, courts in Bangladesh, India, and Indonesia have all struck down mandatory capital sentences in various contexts as violations of the right to life and the constitutional prohibition on arbitrary state

³⁷*Bhatti v State* PLD 2014 Lahore 406 — High Court discussing procedural safeguards in blasphemy cases. See also Constitution of Pakistan 1973, art 10-A; ICCPR art 14(1).

³⁹UN Human Rights Committee, General Comment No 36: Article 6 (Right to Life), CCPR/C/GC/36 (30 October 2018) [35].

⁴⁰Federal Shariat Court of Pakistan, Judgment on s 295-C PPC (26 October 1990) — holding death to be the only permissible penalty.

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action. Pakistan's retention of a mandatory death penalty for an offence defined in terms so vague as to make consistent application impossible is constitutionally untenable.

4. EQUALITY BEFORE THE LAW: STRUCTURAL

DISCRIMINATION:

Article 25 of the Constitution of Pakistan guarantees equality of all citizens before the law and prohibits discrimination on grounds of religion. The Article 295 framework comprehensively violates this guarantee in multiple respects. First, the provisions establish a legal hierarchy of religious protection that privileges Islam over all other faiths. Sections 295-B and 295-C protect only Islamic scripture and the Islamic Prophet, with no equivalent protection for the scriptures or prophets of Christianity, Hinduism, Sikhism, or other traditions practised in Pakistan. This differential treatment — prescribing the death penalty for blasphemy against the Prophet of Islam while offering no comparable protection to non-Muslim religious figures — is facially discriminatory on the ground of religion.⁴¹ Second, empirical data demonstrates that the provisions disproportionately target members of religious minorities. Despite representing less than 4% of Pakistan's population, Christians, Ahmadis, and Hindus account for a disproportionate share of blasphemy accusations. Amnesty International's 2016 report documented that the Ahmadiyya community has been subject to mass prosecution under Section 298-C for the simple act of practising their faith.⁴² This pattern of disproportionate impact transforms what might appear facially neutral into structurally discriminatory enforcement. Third, the social and communal dynamic of blasphemy accusation — in which local disputes, property conflicts, and personal vendettas are routinely resolved through blasphemy allegations — means that the law functions as an instrument of social oppression against the most vulnerable members of Pakistani society, including religious minorities, Shia

⁴²Amnesty International, *As Good as Dead: The Impact of the Blasphemy Laws in Pakistan*, Index: ASA 33/4330/2016 (Amnesty International, 2016).

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Muslims, and women.⁴³ This instrumentalisation of law for private oppression, facilitated by state structures, constitutes a systemic violation of equal protection guarantees.

5. FREEDOM OF EXPRESSION AND ACADEMIC INQUIRY:

Article 19 ICCPR guarantees freedom of expression, subject only to restrictions that are provided by law, necessary, and proportionate to the aims of protecting the rights of others or public order. Section 295-A's prohibition on speech that 'outrages religious feelings' fails the proportionality test comprehensively.⁴⁴ The European Court of Human Rights, in its jurisprudence on Article 10 ECHR, has held that while states may restrict speech that constitutes gratuitous religious insult, any such restriction must be narrowly tailored and subject to independent judicial oversight.⁴⁵ The Article 295 framework, by contrast, extends to academic theological criticism, minority religious practice, and even private speech reported by complainants — none of which would satisfy proportionality requirements. The chilling effect on free expression, scholarship, and inter-religious dialogue is severe and well-documented.⁴⁶ Pakistani academics, journalists, and lawyers who have engaged critically with the blasphemy laws have faced threats, criminal complaints, and, in several cases, assassination. The murder of Governor Salmaan Taseer in 2011 — by his own bodyguard, who claimed religious justification — graphically illustrated the degree to which the Article 295 framework has fostered a culture of violent intolerance incompatible with constitutional democracy.

VIII. SUGGESTIONS AND RECOMMENDATIONS:

A. PRINCIPLES OF REFORM:

⁴³Freedom House, *Freedom in the World 2020: Pakistan Country Report* (Freedom House, 2020).

⁴⁴ICCPR art 19(3); UN Human Rights Committee, General Comment No 34: Article 19 (Freedom of Opinion and Expression), CCPR/C/GC/34 (12 September 2011).

⁴⁵*I.A. v Turkey* (App No 42571/98) [2005] ECHR; *Otto-Preminger-Institut v Austria* (App No 13470/87) [1994] ECHR.

⁴⁶A.H. Nayyar and A. Salim (eds), *The Subtle Subversion: The State of Curricula and Textbooks in Pakistan* (SDPI, 2004).

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Any reform of the Article 295 framework must be anchored in four constitutional principles. The first is legality: criminal offences must be defined with sufficient clarity and precision to give individuals fair notice of prohibited conduct and to constrain arbitrary enforcement. The vague 'outrage religious feelings' standard in Section 295-A must be replaced with a specific, objectively verifiable definition of harm.⁴⁷ The second is proportionality: the severity of criminal sanctions must be proportionate to the severity of the harm caused. The mandatory death penalty in Section 295-C has no place in a constitutional order that protects the right to life. Even accepting *arguendo* that blasphemy may be legitimately regulated in the interest of public order, a mandatory capital sentence for speech is grossly disproportionate and must be replaced with a discretionary sentencing regime.⁴⁸ The third is non-discrimination: any reformed framework must apply equal protection to all religious traditions practised in Pakistan. Provisions that single out a particular community — such as Section 298-C's targeting of the Ahmadiyya — must be unconditionally repealed. The fourth is procedural integrity: robust safeguards against malicious prosecution, including requirements of senior police and prosecutorial authorisation before registration of blasphemy complaints, must be legislatively enacted.

B. COMPARATIVE MODELS:

Comparative constitutional experience offers instructive models. The United Kingdom repealed its common law blasphemy offence in 2008, replacing it with the religiously aggravated version of the offence of incitement to hatred in the Criminal Justice and Immigration Act 2008 — an offence that requires proof of actual incitement to hatred, not merely offensive speech. Canada's Criminal Code was similarly amended in 2018 to repeal its blasphemous libel provision. Germany's Section 166 StGB prohibits disturbance of the public peace through attack on the religious beliefs of others — an objective harm standard that satisfies proportionality requirements. A reformed Article 295 framework for Pakistan might

⁴⁸J. Rehman, 'The Sharia, Islamic Family Laws and International Human Rights Law' (2010) 21(1) *International Journal of Law, Policy and the Family* 108.

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adopt a similar harm-based model: prohibiting only those acts of religious desecration or incitement that demonstrably incite or are calculated to incite violence or serious disorder, with the incitement element subject to objective judicial determination, full due process protections, and appropriate non-mandatory sentencing ranges. Section 298-C, having no legitimate constitutional basis whatsoever, must be repealed in its entirety.⁴⁹

IX. CONCLUSION:

This article has traced the constitutional dimensions of two distinct but jurisprudentially connected phenomena. As regards cannibalism, the analysis demonstrates that the act — whether involving killing, consent, or post-mortem consumption — violates the foundational constitutional values of the right to life, human dignity, bodily integrity, and freedom from cruel treatment. The consent defence, while grounded in the constitutional value of autonomy, cannot override the constitutional order's commitment to human dignity as an objective, non-waivable good. As regards the Article 295 framework, the analysis demonstrates a comprehensive and systematic incompatibility with constitutional rights. The provisions violate freedom of religion by targeting the Ahmadiyya community's religious identity; they violate the right to a fair trial through vague definitions, structural procedural failures, and the elimination of judicial discretion; they violate the right to life through a mandatory death penalty that is per se arbitrary; they violate equality before the law through discriminatory protection and disproportionate enforcement against minorities; and they violate freedom of expression through overbroad and unchilling restrictions on speech that fall outside any permissible limitation. The Article 295 framework, ostensibly enacted to protect religious sentiment, has become a constitutional liability of the first order — a mechanism of persecution that produces constitutional violations as systematic and severe as the harms it purports to prevent. Reform is not merely desirable; it is constitutionally imperative. Pakistan's

⁴⁹R. Hassan, 'Rights of Women Within Islamic Communities' in J.D. van der Vyver and J. Witte Jr (eds), *Religious Human Rights in Global Perspective* (Martinus Nijhoff, 1996) 361.

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commitment to its own Constitution of 1973, to the ICCPR which it ratified in 2010, and to the rule of law demands nothing less.

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