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Immunity Without Redress: Article 248 of the Constitution of Pakistan & The Assassination of Governor Salman Taseer

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ABSTRACT

This article examines how the constitutional immunity enjoyed by provincial governors under Article 248 of the Constitution of the Islamic Republic of Pakistan (1973) contributed to a sense of legal helplessness among sections of the public in the period before the assassination of Salmaan Taseer, then Governor of Punjab, on 4 January 2011. Using a qualitative, doctrinal method, the study draws on constitutional text, reported judgments, classical and modern Islamic jurisprudential literature, and press reporting. It asks whether the criminal immunity of a governor is justified under the Constitution, and whether it can be reconciled with the Islamic principles that Article 2A and the Objectives Resolution make binding on the state. The study finds that the immunity is temporary but absolute within its term, that it left aggrieved citizens with no practical avenue to register a complaint, and that the early Islamic tradition, as reflected in the conduct of the Prophet and the four Rightly Guided Caliphs, did not recognise a ruler's immunity from judicial process. The article stresses that the immunity was not the sole cause of the killing and that private violence cannot be justified by any grievance; the Supreme Court of Pakistan has said as much. It concludes by proposing the repeal or substantial narrowing of Article 248(2) and the introduction of procedural safeguards that preserve the dignity of high office without placing it beyond the reach of the law.

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1. Introduction

This article examines a significant event that occurred in Pakistan in recent years: the public grievance against Governor Salman Taseer and the legal obstacles that stood in the way of any remedy for it. The first part of the article explores the hindrances to the provision of redressal for the grievances against Governor Taseer and proposes a solution through the repeal of the immunity from criminal liability granted by Article 248 of the Constitution of 1973. It also considers the necessity of adhering to Islam under Article 2A and the teachings and practice of the Companions of the Holy Prophet (peace be upon him) regarding the immunity of the head of state and of governors. Through a systematic analysis of these matters, the article aims to contribute to the ongoing discourse on the accountability of high office-holders and to propose a reform that could improve the social and legal landscape of Pakistan.

The subject is delicate, and it is important to state the limits of the argument at the outset. The article does not claim that Article 248 caused the murder of Governor Taseer, and it does not suggest that a perceived absence of legal remedy can ever excuse private violence. The Supreme Court of Pakistan rejected that very proposition when it upheld the conviction of the assassin (*Malik Muhammad Mumtaz Qadri v. The State*, 2016). The argument advanced here is narrower. It is that a legal system which offers no forum in which a citizen's complaint against the holder of a high office can even be registered will, sooner or later, produce frustration, and that frustration of this kind is a danger to the rule of law. Such a system is also difficult to defend on the basis of the Islamic principles that the Constitution itself declares to be binding on the state.

1.1 Purpose of the Study and Research Questions

The purpose of this research is to examine the issues facing Pakistan that have caused turmoil in the country's socio-political atmosphere. Specifically, the study aims to identify the realities that have been ignored in the events surrounding the grievance against Salman Taseer. The research is descriptive, analytical, and suggestive in nature, and it seeks to provide arguments in favour of legislative reform to address this issue and similar ones in the future. The study aims to answer the following questions:

RQ1. Is the immunity of a governor under Article 248(2) of the Constitution of 1973 justified, and did it serve as fuel to the fire?

RQ2. Can the immunity of the head of state and of governors be reconciled with the Islamic principles that Article 2A of the Constitution makes binding on the state?

RQ3. What reforms would preserve the legitimate functions of high office while ensuring that grievances against office-holders are not left without a forum?

1.2 Research Method

For this research, a qualitative, doctrinal method was followed, and data were collected from books, reported judgments, constitutional and statutory texts, scholarly articles, and news sources on the topic. The research begins with an overview of immunity from liability in Islamic law, drawing on the classical literature of fiqh as well as the relevant constitutional provisions, and then proceeds to examine the way in which the immunity operated in practice in the case of Governor Taseer. The sources consulted cover a wide range of material in order to provide a comprehensive understanding of the issue at hand.

Three limitations should be noted. First, the study is a legal and conceptual analysis, not an empirical survey; it does not measure public opinion. Second, the account of the events of January 2011 relies on published press reports rather than on the trial record. Third, the discussion of Islamic sources is confined to the narrow question of the accountability of rulers and does not attempt to settle the wider jurisprudential debates on the law of blasphemy.

2. Literature Review and Conceptual Framework

2.1 Immunity of Heads of State and Governors in Constitutional Thought

Immunities for holders of high office are common in constitutional systems, and they are usually justified on functional grounds. The argument is that the head of state or the representative of the head of state must be free to discharge public duties without being distracted by vexatious litigation or being exposed to harassment by political opponents. Even among the systems that accept this argument, however, the scope of immunity varies considerably. In the United States, for example, the Supreme Court held in *Clinton v. Jones* (1997) that a sitting president enjoys no immunity from civil litigation arising from unofficial conduct. The Court reasoned that the Constitution does not place the president above the ordinary processes of the law in respect of acts unrelated to the office. Article 361 of the Constitution of India provides that no criminal proceedings whatsoever shall be instituted or continued against a governor in any court during his term of office (Constitution of India, 1950, art. 361), a formula that closely resembles the Pakistani provision.

The comparative lesson is not that immunity is illegitimate in itself. It is that immunity is an exception to the general principle of equality before the law and, being an exception, requires continuing justification. A rule that was designed to protect the performance of public functions is hard to defend when it also protects conduct that has nothing to do with those functions, and harder still when it leaves citizens with no practical way of even recording a complaint.

2.2 The Constitutional Position in Pakistan

Article 248 of the Constitution of the Islamic Republic of Pakistan (1973) has several parts. Clause (1) provides that the President, a Governor, the Federal Minister, the Minister of State, the Chief Minister and a Provincial Minister are not answerable to any court for the exercise of the powers and performance of the functions of their offices. Clause (2) provides that no criminal proceedings whatsoever shall be instituted or continued against the President or a Governor in any court during his term of office. Clause (3) bars the issue of any process for the arrest or imprisonment of the President or a Governor during his term, and clause (4) allows civil proceedings in respect of acts done in a personal capacity only after the giving of a notice of at least sixty days.

Two features of this scheme deserve emphasis. The first is that the protection in clause (2) is temporal. It operates "during his term of office," which means that it suspends proceedings and does not extinguish liability. The second is that it covers "criminal proceedings whatsoever," a phrase wide enough to be read as covering not only trial but every stage of the criminal process, including, in practice, the registration of a first information report. As the later sections of this article show, that breadth is the source of the difficulty.

2.3 Blasphemy, Public Grievance, and the Law in Pakistan

The grievance against Governor Taseer cannot be understood apart from the wider legal and political history of the blasphemy laws in Pakistan. Siddique and Hayat (2008) trace the origin of these laws to colonial-era provisions that were framed in general terms to preserve public order, and they argue that the amendments made from the 1980s onwards changed their character, so that the form and design of the present provisions invite abuse. Zaman (2018) places the same developments in the broader history of Islam in Pakistan, and Ispahani (2017) examines their consequences for religious minorities. Lau (2006) provides a general account of the role of Islam in the legal system of the country, including the relationship between constitutional text and Islamic injunctions.

These studies do not address the question that is the subject of this article, namely whether the immunity of a high office-holder contributes to the sense of grievance when a public figure is believed to have spoken in a way that offends religious sentiment. The question is a legal one, and this article treats it as such: the

interest is in what a citizen can do under the law, and not in whether the grievance was well founded. It is worth noting that no court has held that Governor Taseer committed any offence, and that the Supreme Court has, on the contrary, rejected the contention that his remarks justified the violence that was done to him.

2.4 Accountability of the Ruler in Islamic Constitutional Thought

The third body of literature concerns the accountability of rulers in Islamic law. Classical writers on government, of whom al-Mawardi (1996) is the best known, treated the office of the head of state as a contract with obligations on both sides and set out the duties of the ruler towards the community. Modern scholars have examined how those ideas bear on constitutional questions. Abou El Fadl (2001, 2004) argues that the classical tradition contains strong resources for limited government and for the accountability of rulers, while acknowledging that the juristic preference for stability sometimes weakened the practical means of enforcing that accountability. Hallaq (2009) stresses that the classical legal system was one in which the judge had authority over all, including the ruler, and Kamali (2008) discusses the principles of justice, equality and consultation that run through the sources of Shari'ah. Mawdudi (2005) offers a Pakistani perspective, comparing the rule of the Rightly Guided Caliphs with later monarchical government.

Against this background, the questions that this article addresses are whether the criminal immunity of a governor in Pakistan can be justified and whether it is consistent with the Islamic principle of equality before the law.

3. The Grievance of the Public and the Murder of Salman Taseer

Salman Taseer, the Governor of Pakistan's Punjab province, spoke on television about the blasphemy law in the country and about his support for clemency for Asia Bibi, a Christian woman who had been sentenced to death under that law (Wright, 2011). On 4 January 2011, Taseer was assassinated by one of his bodyguards, Malik Mumtaz Qadri, who used an AK-47 assault rifle to shoot him 27 times at Kohsar Market in Islamabad, a popular shopping and café spot for the city's elite and expatriates (British Broadcasting Corporation [BBC], 2011). Taseer had tweeted an Urdu couplet by Shakeel Badayuni eight hours before the assassination (Hanif, 2011).

The next day, Taseer's funeral took place in Lahore, despite denunciations from some Sunni clerics and religious scholars. The funeral prayers were led by Allama Afzal Chishti of the Ulema wing of the Pakistan Peoples Party (PPP) after the chief cleric of the Badshahi Mosque withdrew at the last minute, claiming he needed to leave town (Al Jazeera, 2011). His burial place is a military cantonment in Lahore.

Qadri, who was part of Taseer's security detail provided by the Elite Police and who hailed from Punjab, reportedly threw down his weapon and asked to be arrested after the shooting. More than 500 clerics voiced support for the murder and called for a boycott of Taseer's funeral, as they believed that Taseer had supported a blasphemer. Qadri was sentenced to death by an anti-terrorism court on 1 October 2011 and was executed on 29 February 2016. Some supporters of Qadri blocked the police and showered him with rose petals when he was brought to the Anti-Terrorism Court in Rawalpindi ("Taseer's Killer Mumtaz Qadri Hanged," 2016).

3.1 The Judicial Response

The courts treated the killing as a plain case of murder. In *Malik Muhammad Mumtaz Qadri v. The State* (2016), the Supreme Court of Pakistan upheld the conviction and the death sentence and rejected the argument that the Governor's remarks about the blasphemy law could provide any legal justification for what had been done. The Court's reasoning was later recalled in *Mst. Asia Bibi v. The State* (2019), where the Supreme Court observed that the power to award punishment belongs to the state acting through its courts and that no parallel authority is vested in any individual or group. The same judgment also

emphasised that a false accusation of blasphemy is as grave as the offence itself and that the state has a duty to ensure that an innocent person is not made to face such an allegation.

These decisions are central to the argument of this article for two reasons. They show, first, that the law of Pakistan provides no defence of provocation or religious motivation for the killing of a person who is thought to have spoken blasphemously. They show, second, that the judicial process is, in principle, the only legitimate forum for deciding whether any such words were spoken and what follows from them. The question is therefore why, in the case of the Governor, that forum was unavailable to those who believed that they had a complaint.

4. Hindrance to the Provision of Redressal

One issue that was a source of frustration for sections of the general public was the inability to hold Salman Taseer answerable under the law for the words that he was alleged to have spoken, because he enjoyed immunity from criminal liability under Article 248 of the Constitution of 1973. This article grants certain high-ranking officials, including the Governor, immunity from criminal prosecution while in office. As a result, even if Taseer had made statements that a court would have considered blasphemous, he could not have been held legally accountable for them during his term. Additionally, the fact that no police station was willing to register an FIR against an office-holding Governor further exacerbated the public's frustration, as it seemed to indicate that Taseer was being given special treatment and was not subject to the same legal standards as ordinary citizens. This issue generated significant public debate, and many called for the repeal or modification of Article 248 to allow for the prosecution of high-ranking officials who engage in criminal conduct.

To comprehend the flaws of the system and the failure of Pakistan as a nation to handle this event, the reasons are set out below in order to elaborate on the aspects in context.

4.1 Widespread Failure of the Aggrieved Public to Register an FIR

The inability to hold Salman Taseer accountable for any alleged blasphemous statements he may have made was a source of significant frustration for the general public. This was due, in part, to the fact that no police station was willing to register an FIR against an office-holding Governor, which led many to believe that Taseer was being given special treatment and was not subject to the same legal standards as ordinary citizens. This perception of a double standard generated widespread outrage and contributed to a sense of disillusionment with the legal system and its ability to hold those in positions of power accountable for their actions.

The point has a doctrinal side. In the ordinary course of the criminal process in Pakistan, the registration of a first information report is the first step by which the state is set in motion, and a citizen who reports a cognisable offence is entitled to have the information recorded. If a police officer takes the view that the person complained of cannot lawfully be proceeded against, the complaint will not be recorded and no investigation will follow. The immunity of the Governor therefore did not operate only at the stage of trial. It operated at the very threshold of the process, and it left the complainant with nothing to do but to wait for the Governor's term to end.

The views of the television anchor and commentator Orya Maqbool Jan on this issue have been noteworthy, as he has been vocal in his criticism of the legal immunity enjoyed by Taseer and other high-ranking officials (Maqbool Jan, n.d., 11:15). Jan argued that such immunity is fundamentally unfair and undermines the principle of equal justice, as it allows certain individuals to escape legal consequences for their actions. He pointed out that this immunity sets a dangerous precedent, as it allows those in positions of power to act with impunity and without fear of legal repercussions. Jan further argued that the immunity granted to high-ranking officials is unnecessary, as it is already difficult to prosecute politicians and other powerful

individuals because of their influence and resources. His views on this matter were widely covered in the media and added to the public debate on the issue.

4.2 Immunity of Salman Taseer From Criminal Liability Under Article 248 of the Constitution of 1973

The immunity of a governor from criminal liability is a provision of Article 248 of the Constitution of 1973 of Pakistan. This provision grants the governor immunity from any criminal proceedings or legal action while he or she is in office, which means that the governor cannot be arrested or charged with a crime while serving as the head of the province. The purpose of this immunity is to ensure that the governor can carry out his or her duties without fear of reprisal or legal repercussions. However, this immunity is a controversial provision. While its purpose is to allow governors to carry out their duties without harassment, there are valid concerns about the potential for abuse of the protection. Without the possibility of legal consequences, office-holders may feel emboldened to engage in unethical or even criminal behaviour. By limiting or removing this immunity, it becomes possible to hold governors accountable for their actions and to ensure that they are held to the same standards as other citizens.

The failure to file a petition against Salman Taseer because of the immunity granted to him as a governor by Article 248 was a source of significant anger and frustration among the public (Maqbool Jan, n.d., 7:07). Many people saw this immunity as a way for governors to evade justice and accountability. The fact that the perpetrator of the murder was able to be charged and convicted, while Taseer himself had been protected by the immunity granted to him by the Constitution, was seen by many as a gross injustice. This anger and frustration were further compounded by the fact that Taseer was a vocal critic of the blasphemy laws in Pakistan and had spoken out against the use of these laws to persecute minority groups. In the eyes of many, Taseer's statements regarding the blasphemy laws were an affront, and the inability to file a complaint against him on account of his immunity only served to undermine, in their eyes, the principles of justice and equality.

It must be repeated that this reading of public sentiment is offered as an explanation and not as a justification. The Supreme Court has held that the proper response to a person who is believed to have committed blasphemy is a complaint to the authorities and a trial by a court. The fact that, for a time, the first step in that response was unavailable in the case of the Governor does not alter that conclusion. What it shows is a gap in the legal order, and the gap is the subject of the proposal that follows.

4.3 Analysis: What Article 248(2) Does and Does Not Do

The text of Article 248 allows several observations that the public debate at the time did not always make.

First, the immunity belongs to the office and not to the person, and it is not permanent. When a governor leaves office, the bar in clause (2) falls away. Complaints about conduct during the term may then be pursued, subject to the ordinary rules of limitation and evidence. The immunity therefore postpones accountability and does not abolish it. That is why the "inability" to proceed against a governor, on which the aggrieved public insisted, is better described as a deferral of the remedy. The deferral is nonetheless of real practical consequence. A governor may hold office for years, evidence may deteriorate, and a complainant who believes that a serious wrong has been committed is entitled to ask why he must wait.

Second, clause (2) is not confined to conduct in the exercise of official functions. Clause (1) already provides that the holders of the offices named in it are not answerable to any court for the exercise of the powers and performance of the functions of their offices, which is the classic functional immunity. Clause (2) goes beyond this and bars criminal proceedings "whatsoever," whether or not the alleged conduct has any connection with the office. It is difficult to see how the protection of official functions requires this. A criminal complaint about a private speech, a private quarrel or an alleged private offence has no bearing on the capacity of a governor to administer the province, and it is hard to see why it should be incapable of being recorded and investigated.

Third, the immunity applies to the President and the Governors only. Ministers, including the Prime Minister and the Chief Ministers, are protected by clause (1) in respect of their functions but are not protected from criminal proceedings in respect of other conduct. The distinction suggests that the framers regarded the head of state and the representatives of the head of state as requiring a special protection that is connected to their symbolic position. It does not, however, explain why that protection should extend to ordinary criminal complaints.

5. Proposed Solution for Redressal: Repeal of Immunity From Criminal Liability Under Article 248 and the Reasons for the Reform

5.1 The Necessity of Adhering to Islam Under Article 2A

It is important to recognise that the Constitution of Pakistan establishes Islam as the state religion (Constitution of Pakistan, 1973, art. 2) and directs that laws shall be consistent with the injunctions of Islam (art. 227). Article 2A gives substantive constitutional effect to the Objectives Resolution, which provides, among other things, that the principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed. The Supreme Court has treated the Objectives Resolution, as made a substantive part of the Constitution, as a source of binding principle (*Hakim Khan v. Government of Pakistan*, 1992). All laws enacted in Pakistan should accordingly adhere to the values and principles outlined in Islam, as these are considered integral to the functioning of a just and fair society.

There are several reasons why it is important for the laws of Pakistan to be subject to Islam. First, Islam is a comprehensive religion that addresses all aspects of human life, including politics, economics, and social relations. By aligning the laws of the country with Islamic teachings and principles, the state helps to ensure that they are just and fair and that they promote the well-being and prosperity of the people. Second, the principles of Islam, such as justice, equality, and fairness, are values that are recognised and respected around the world. By aligning the laws of Pakistan with these principles, the country helps to ensure that they are in line with international standards and norms and can be more easily accepted and implemented by the people of the country. Finally, the Constitution of Pakistan specifically directs that laws be subject to Islam, and it is therefore important for the government and lawmakers to uphold this directive. By ensuring that laws are consistent with Islamic teachings and principles, they strengthen the rule of law and maintain the integrity of the legal system.

A note of caution is necessary on the machinery by which this directive is enforced. The jurisdiction of the Federal Shariat Court to examine laws for repugnance to the injunctions of Islam does not extend to the Constitution itself, because the definition of "law" in Article 203B excludes it. Article 248 therefore cannot be challenged before that court on the ground that it is un-Islamic. The remedy lies in constitutional amendment, which under Article 239 requires a two-thirds majority in each House of Parliament. This is a further reason why the argument must be made in the open, in the form of a case for reform.

5.2 The Immunities of Governors and the President Under Article 248 Are Un-Islamic and Should Be Repealed

The Holy Prophet (peace be upon him) migrated to Yathrib and signed a treaty with the Jews and the non-believers there, known as the Treaty of Madina. In this treaty, the Holy Prophet (peace be upon him) was recognised as the leader of the city-state of Madinah (Qadri, n.d.), and it was agreed that, if there was a disagreement or dispute among Muslims, it should be resolved by referring to the teachings of Allah and the guidance of Muhammad (peace be upon him) (Abdur Rahim, n.d.).

The Holy Prophet (peace be upon him) served as the supreme leader of the Islamic state in Madinah until his death. During this time, he demonstrated the rights, privileges, duties, and responsibilities of a ruler in an Islamic state. Both as a leader and as a messenger of God, he taught his followers to treat everyone

equally under the law and not to grant privileges to the ruling class. He conveyed these lessons through his words and actions.

The Qur'an itself places the basis of human distinction in piety and not in rank or lineage (Qur'an 49:13), and the Prophet's farewell teaching is commonly reported as declaring that an Arab has no superiority over a non-Arab except through *taqwa*. Through this message, he provided Muslims and the world with a universal and enduring principle of equality.

The Holy Prophet (peace be upon him) required obedience to the ruler, but only as long as the ruler followed the teachings of Islam and the principles of Shari'ah (Abdur Rahim, n.d.). He is reported to have said that there is no obedience in disobedience to Allah and that obedience is only in what is good (Muslim, 2005). This means that obedience to authority is acceptable only if it is in line with the commands of God and Islamic law. The ruler holds the rights of governance for the purpose of carrying out the duties of office and has no special rights such as immunity from judicial proceedings and punishment. These rights are conditional upon the ruler's adherence to the law. As stated in the Hadith, a Muslim is required to listen to and obey the ruler, even in what he dislikes, but is not required to follow orders that go against Islamic teachings. Abdullah ibn Umar (may Allah be pleased with him) narrated that the Holy Prophet (peace be upon him) said that listening and obeying is binding on a Muslim in what he likes and dislikes, as long as he is not commanded to commit a sin, and that if he is commanded to commit a sin there is no listening and no obedience (Al-Bukhari, n.d.-a, Hadith 7144). If an order goes against these principles, it is considered un-Islamic and should not be followed. The ultimate authority in an Islamic state lies with Allah.

The same principle is illustrated by a narration from Ali (may Allah be pleased with him). The Prophet (peace be upon him) sent a detachment on a campaign and appointed a man from the Ansar as commander, ordering the others to obey him. The commander, in anger, ordered them to collect wood, light a fire and enter it. The Companions refused and reported the matter to the Prophet (peace be upon him), who said that had they entered the fire they would never have come out of it, for obedience is required only in what is good (Al-Bukhari, n.d.-b, Hadith 7145).

In this case, the leader holds rights and privileges, but he is not above the law. The principles of Islamic justice require that everyone is equal under the law, and the Holy Prophet (peace be upon him) upheld this principle while serving as the ruler of the state. Although he was the leader, he did not consider himself above the law and willingly presented himself to the people so that their claims could be made against him if necessary (Al-Bahi, n.d.). The following is the account of the claim for *qisas* (retaliation) made against the Holy Prophet (peace be upon him), as reported in the work of al-Tabarani (n.d., translation adapted by the author):

> The Holy Prophet (peace be upon him) asked Bilal (may Allah be pleased with him) to call the *adhan*, and the Muslims came to the mosque. After the prayer the Prophet delivered a speech in which he praised Allah and then said that anyone who had any right or claim of *qisas* against him should come forward and take it. No one came. He asked a second and a third time. An old man among the Muslims, Ukkasha (may Allah be pleased with him), stood up and claimed *qisas* for a time when the Prophet had struck him with a stick during a battle. The Prophet asked Bilal to bring the stick from his house and it was handed to the old man. Ukkasha said that he had been struck when his shirt was not on his body, and so the Prophet raised his shirt. Ukkasha went forward and kissed the abdomen of the Prophet, saying that he did not wish to take revenge. The Prophet asked him to take revenge or to forgive, and Ukkasha forgave him in the hope of keeping the Prophet's company in paradise. (al-Tabarani, n.d., pp. 58–64)

This incident demonstrates that the ruler of an Islamic state is not above the law, even if the ruler is a prophet. If the ruler breaks the law, he may be subject to judicial proceedings and punishment if found guilty. The Holy Prophet (peace be upon him) viewed the role of government as a sacred trust and not just an office, and he warned Muslims to be cautious about seeking it because the ruler will be held accountable for his actions in the afterlife.

5.3 Practices and Teachings of the Companions on the Immunity of the Head of State and Governors

The Holy Prophet (peace be upon him) taught his companions how to continue his practices after his death. The Rightly Guided Caliphs believed that rulers are not exempt from the laws of the land, and they encouraged the public to speak out against illegal actions taken by their rulers (Abdur Rahim, n.d.).

5.3.1 Abu Bakr (May Allah Be Pleased With Him)

In his first speech after being elected caliph, Abu Bakr is reported to have said: "Obey me as long as I obey Allah, and if I ever disobey Him, you are not required to continue following me. Remember that I am just like you; if you see that I am on the right path, follow me, but if I stray, guide me back to the correct path. Remember that I have a *shaytan* with me as well, who sometimes leads me astray" (Rehman, n.d., p. 353).

5.3.2 Umar Farooq (May Allah Be Pleased With Him)

When Umar became caliph, he said in his speech that anyone who saw him straying from the right path should correct him. A person replied that if they saw him leaving the right path, they would straighten him with their swords. This was a practice developed by Islamic rulers, who did not consider themselves above the law or immune from it but rather viewed themselves as ordinary people and servants of the nation. The ruler had no special privileges (Al-Mubarak, n.d.) and could be a plaintiff or defendant in a court case and be held accountable for his actions.

Umar recognised the significance of this principle and regularly wrote to his judges and governors in various parts of the empire, urging them to uphold justice and treat all individuals equally under the law. He once stated that he had seen the Holy Prophet (peace be upon him) submit himself to *qisas* (Abu Yusuf, n.d., p. 116). In a letter to his governor Abu Musa al-Ash'ari, he is reported to have written that the governor was no different from any other person among them, and that Allah had entrusted him with greater responsibilities (Al-Mubarak, n.d.). The incident involving Amr ibn al-As and his son, in which the son slapped someone without cause, is well known in Islamic history. When the aggrieved individual approached Caliph Umar to seek redress, Umar summoned both the governor and his son to the capital and offered the victim the opportunity to take his revenge (Nadwi, n.d., p. 131). Umar then made the historic statement: "Since when have you enslaved people, when their mothers gave birth to them as free individuals?" (Rehman, n.d., p. 437).

5.3.3 Uthman (May Allah Be Pleased With Him)

Uthman was subjected to abuse, but he remained silent. Despite facing public criticism, he did not resort to force in defending himself. He placed a high value on justice during his time in government and held himself to this standard (Mawdudi, 2005, p. 191). On one occasion, he lightly punished a slave, but later felt remorse and offered the slave the opportunity to take revenge by presenting his ears (Solat, 2006, p. 105).

5.3.4 Ali (May Allah Be Pleased With Him)

Ali and a non-Muslim appeared in the court of Qazi Shuraih. The judge stood up in respect for the caliph, but Ali pointed out that this was the first injustice (Ibn Khallikan, n.d., p. 96). During the case, Ali was unable to provide sufficient evidence, and the judge ruled in favour of the Jewish litigant against the caliph.

These examples demonstrate that the caliphs and governors in Muslim societies did not consider themselves above the law or superior to others. In fact, Umar even held his governors accountable for any illegal or un-Islamic actions (Abu Zahra, 1998, p. 290). Muslim jurists have generally maintained that rulers are subject to the same laws as their subjects. The maxim "the king can do no wrong" has no place in the Islamic legal framework.

6. Discussion

6.1 The Case for Repeal Considered

Based on the information presented, it is evident that the Prophet and his companions, as well as the governors of the early caliphate, were not immune from criminal or civil liability according to the teachings of Islamic law, which advocates equality. It follows that the governor or the president of Pakistan should not enjoy a protection that places him beyond the reach of any criminal complaint, and the argument of this article is that clause (2) of Article 248 should be repealed so as to establish the rule of law and uphold the teachings of Islam. The Prophet taught that all people should be treated equally under the law, regardless of their religion or social status, and that obedience to authority is acceptable only if it is in line with the commands of God and Islamic law. It is important for the rule of law to be upheld so that fairness and justice are secured for all people, and this can be achieved by holding all individuals, including those in positions of power, accountable to the law.

The argument has force, but a fair assessment must also consider the strongest objections to it.

6.2 Objections and Replies

The first objection is functional. It holds that a governor who is exposed to criminal complaints from any citizen would be at the mercy of political opponents and unable to govern. The reply is that the objection is an argument for procedural safeguards and not for blanket immunity. A system may require, for example, that a complaint against a sitting governor be recorded but not investigated without the leave of the High Court, or that investigation of a sitting governor proceed only on the authority of a judge. These procedures filter out frivolous complaints while ensuring that serious ones are not lost.

The second objection is historical. It holds that the classical jurists, in their concern for stability, discouraged the removal of an unjust ruler by force and in this sense accepted that the ruler would not be called to account by his subjects during his reign. Abou El Fadl (2001) shows that the classical position was far more nuanced than this suggests, and that the jurists distinguished carefully between the unlawful use of force against a ruler and the lawful process of holding him to account through the courts. The practice of the Rightly Guided Caliphs, discussed above, involved the latter and not the former. The Islamic tradition therefore supplies the strongest arguments against the private use of violence and in favour of access to the courts.

The third objection is comparative. It holds that many constitutions provide a degree of immunity and that Pakistan is not exceptional. The reply is the one given earlier: the comparative practice is varied, and the best-reasoned examples limit immunity to official acts or to civil proceedings. A rule that bars the recording of any criminal complaint, whatever its subject, is wider than the functional rationale requires.

6.3 Proposed Reform

In the light of the analysis, the following reform is proposed. Clause (2) of Article 248 should be repealed. In its place, the Constitution should provide that no court shall issue process for the arrest of a sitting governor or the President, which retains the dignity of the office, and that any criminal complaint against a sitting governor or the President shall be recorded and referred to the High Court (or, in the case of the President, the Supreme Court), which shall decide whether the matter may proceed during the term of office or should be deferred until its end. The functional protection in clause (1) would remain. This model preserves the legitimate purpose of immunity, which is to protect the performance of public duties, and removes its most damaging effect, which is that of denying the citizen a forum.

6.4 Limits of the Argument

This research does not regard Article 248 or immunity from criminal liability as the sole cause of the murder. It explains instead that Article 248 and the immunity from criminal liability were a source of

frustration that proved to be a contributing factor in the sense of grievance that preceded the killing of Salman Taseer. As a law student, the researcher has been trained to identify the flaws and loopholes in arguments and systems, and has therefore analysed this legal aspect of the events. It is important to consider all factors that may have contributed to the incident, rather than focusing solely on a single aspect such as Article 248, and the conclusions drawn here should be read with that in mind. The matter of the blasphemy laws themselves is separate and has been left to the specialist literature (Siddique & Hayat, 2008).

7. Conclusion

In conclusion, this research has explored the troubling phenomenon of legal grievances in Pakistan that go without a forum and that, in an atmosphere of public anger, can lead to undesirable consequences. The lack of any means of registering a complaint against Governor Salman Taseer for the words that some of the public believed to be blasphemous illustrates the need for effective channels for the redress of grievances. The immunity granted under Article 248(2) of the Constitution hindered the provision of those channels.

To address this problem, the research has proposed the repeal of Article 248(2), which has no foundation in the Islamic tradition of equality before the law and which sits uneasily with Article 2A and the Objectives Resolution. In its place, a narrower and procedurally safeguarded protection should be adopted, which keeps the dignity of the office but does not shut the courts to the citizen. The proposal does not suggest that the conduct of any governor, or of any other person, can justify private violence. The Supreme Court has made it clear that it cannot, and this article has proceeded on that basis.

Overall, the research has highlighted the need for reform in the legal system of Pakistan to ensure that grievances are properly addressed and justice is served. By repealing Article 248(2) and replacing it with a procedurally safeguarded protection, it is hoped that the problem of legal grievances without redressal can be effectively addressed. Further research could usefully compare the immunity of governors across the constitutions of South Asia and examine the statistical frequency with which complaints against high office-holders are refused registration.

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