

PAKISTAN POLITICAL CANDIDATE ACCUSED OF BLASPHEMY

Public comment by Thiago Alves Pinto

Facts of the case

1. The case concerns a post on Instagram during the election period in Pakistan, in which the author of the post accused a candidate of blasphemy.
2. Blasphemy is a criminal offence in Pakistan.
3. “Within a few days of the content being posted, 15 users reported it as violating Instagram’s Community Guidelines. Meta decided the content did not violate any policy, and subsequent reports were auto-closed due to prior decisions finding no violation.”
4. “The post has been viewed approximately 48,000 times and shared more than 14,000 times.”
5. Meta took into consideration the national context and the number of views and shares to decide that the content could lead to harm to the candidate in question.
6. A day after a close analysis of the post by experts, Meta decided to remove the post under the Coordinating Harm and Promoting Crime policy, which prohibits “outing” individuals at risk.
7. “Meta referred the case to the Board, noting its significance and difficulty. On the one hand, Meta informed the Board that it sees public interest value in allowing criticism of politicians during an election on the platform. On the other hand, accusations of blasphemy in Pakistan can contribute to the risk of significant offline harm if left up on the platform.”

Applicable norms and standards

- *International legal norms*
8. **International Covenant on Civil and Political Rights**, Articles 19, 20.
 9. **European Convention on Human Rights**, Article 10.
 10. **American Convention on Human Rights**, Article 13.
 11. **African Charter on Human and Peoples' Rights**, Article 9.
- *Meta's policies*
12. Violence and Incitement Policy Rationale

“We aim to prevent potential offline harm that may be related to content on Facebook. While we understand that people commonly express disdain or disagreement by threatening or calling for violence in non-serious ways, we remove language that incites or facilitates serious violence. We remove content, disable accounts and work with law enforcement when we believe there is a genuine risk of physical harm or direct threats to public safety. We also try to consider the language and context in order to distinguish casual statements from content that constitutes a credible threat to public or personal safety. In determining whether a threat is credible, we may also consider additional information such as a person's public visibility and the risks to their physical safety.”
 13. Coordinating harm and promoting crime

“In an effort to prevent and disrupt offline harm and copycat behaviour, we prohibit people from facilitating, organizing, promoting or admitting to certain criminal or harmful activities targeted at people, businesses, property or animals. We allow people to debate and advocate for the legality of criminal and

harmful activities, as well as draw attention to harmful or criminal activity that they may witness or experience as long as they do not advocate for or coordinate harm.”

- *International standards and relevant reports*

14. **Human Rights Committee General Comment No 34.**

15. **The Rabat Plan of Action** on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

16. **UN Guiding Principles on Business and Human Rights**

17. **A/HRC/56/39** (14 May 2024) UN Panel discussion on countering religious hatred constituting incitement to discrimination, hostility or violence.

18. **Study no. 406 / 2006** (23 October 2008) Venice Commission Report on the relationship between freedom of expression and freedom of religion: the issue of regulation and prosecution of blasphemy, religious insult and incitement to religious hatred.

Questions and Commentary

19. This case is particularly challenging, as mentioned in paragraph 6 above. Meta does not want to interfere with freedom of expression during elections, given the obvious importance of rights during these periods. However, some expressions can lead to false accusations of crime, which can—in the particular context in question—lead to harmful attacks on individuals offline.

- *The political situation in Pakistan around the February 2024 elections and the role of social media in electoral campaigning and discourse.*

20. The Human Rights Committee has affirmed in *Bodrožić v. Serbia and Montenegro* that “in circumstances of public debate in a democratic society, especially in the media, concerning figures in the political domain, the value placed by the Covenant upon uninhibited expression is particularly high”.¹ In its General Comment no. 34, the Committee also affirms that “the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties, albeit public figures may also benefit from the provisions of the Covenant.”

21. The case in question highlights the two aspects of freedom of expression mentioned above. First, freedom of expression is fundamental during election periods, a concern that was taken into account by Instagram (as described in paragraph 3). Second, politicians also have human rights, and to safeguard the politician's rights not to be harmed, thus based on the likelihood that this could happen, Instagram later decided to remove the content of the post.

22. Given the infamous track of people being harmed and killed in Pakistan due to mere accusations of blasphemy, it does not seem that the removal of the content was precipitated in that particular context.

- *The environment for freedom of expression in Pakistan, in particular relating to the enforcement of blasphemy laws against political opposition, journalists and civil society."*

23. Blasphemy laws, as enshrined in Art 295 of the Pakistan Penal Code, are subjective and vague. They certainly do not comply with the legal principle of *nulla poena sine lege certa*, posing challenges even to the judiciary in the country. This can be illustrated by the case of Asia Bibi. In this case, Asia Bibi—a poor woman mother of five—was unfairly accused of blasphemy after a quarrel with neighbours. Even though she was acquitted, she spent nearly ten years in jail based on false accusations.

¹ *Zeljko Bodrožić v. Serbia and Montenegro*, CCPR/C/85/D/1180/2003 (Human Rights Committee 2006), para 7.2.

24. During Asia Bibi’s appeal at the Lahore High Court, her defendant attempted to show that the witnesses were not reliable; yet, given the low threshold for witnesses in cases related to offence to the Prophet, this argument was dismissed by the High Court. Furthermore, the High Court judge explained that the only appropriate sentence provided for blasphemy is death.²
25. Asia Bibi appealed her death sentence, and the case was overturned by the Supreme Court of Pakistan. The Court did not position against blasphemy laws but cautioned against the misuse of these laws, stating:

“Since 1990, 62 people have been murdered as a result of blasphemy allegations, even before their trial could be conducted in accordance with the law. Even prominent figures who stressed the fact that the blasphemy laws have been misused by some individuals met with serious repercussions. A latest example of misuse of this law was the murder of Mashal Khan, a student of Abdul Wali Khan University, Mardan, who in April 2017 was killed by a mob in the premises of the university merely due to an allegation that he posted blasphemous content online.”³
26. Given that the Supreme Court of Pakistan has admitted that several people have been killed extrajudicially due to accusations of blasphemy and that politicians have been killed for merely voicing disagreement with the application of blasphemy laws in Pakistan (such as the Governor of Punjab, Salman Taseer, and the Minister for Minorities Affairs, Shahbaz Bhatti), the measure taken by Instagram seems appropriate.
 - *The role that blasphemy accusations against public figures play in political discourse in Pakistan and other regions, the risks such allegations can pose to individuals’ safety, and Meta’s responsibilities to prevent or mitigate potential harms from such accusations while respecting freedom of expression.*
27. It is important to emphasize that the context in which the expression was uttered is unique and can pose risks to individuals, so unfortunately, this commentary cannot serve as a reference for other jurisdictions, as seen in the examples below.
28. In Finland, for instance, a right-wing politician, Jussi Halla-Aho, posted insults to Islamic beliefs in his blog and was accused of blasphemy. The case went to the Finnish Supreme Court, which found Halla-aho guilty of blasphemy in conjunction with ethnic agitation.⁴ This did not affect the politician’s career, who went on to become a prominent politician in the country.
29. In Indonesia, the opposite took place in the case of Ahok. Ahok, a member of an ethnic and religious minority in Indonesia, was the Governor of Jakarta in 2016 and decided to run for re-election. During the campaign, he was accused of blasphemy for citing a verse of the Quran, and due to such accusations, he lost the popular vote and was later arrested.⁵ Consequently, while the freedom of expression of his opponents was protected, his manifestation of the same right was not. In this case, the accusation of blasphemy being unchecked is what led to interference with the election process, not the other way around.
30. Meta has a responsibility to respect human rights, which, according to the UN Guiding Principles on Business and Human Rights, means that it “should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.”⁶ In the case presented, it appears that the adverse impacts of inaction on the politician would outweigh the protection of the individual’s freedom of expression in that particular circumstance.
31. Also, other criticisms could be made of the same politician. By restricting this very specific post, Instagram does not prohibit the ability of the individual to make other negative comments about the candidate. Thus, the interference seems to be proportionate and justified.

² *Asia Bibi v. the State and Another* (Lahore High Court) para 17-19.

³ *Asia Bibi v. the State and Another* (Supreme Court), para 12 (Mian Saqib Nisar, CJ).

⁴ KKO:2012:58 App no R2010/1101 (Supreme Court of Finland, 24 January 2012) para 41.

⁵ Joe Cochrane, *Christian Governor in Indonesia Found Guilty of Blasphemy Against Islam* (NYTimes, 9 May 2017).

⁶ Principle 11.

- *The implications of Meta’s Coordinating Harm and Promoting Crime policy protecting the identities of people in “outing-risk groups” (i.e., to remove content accusing people of blasphemy) in certain regions while ensuring respect for freedom of expression.*
32. As mentioned above in paragraph 30, the situation is quite unique. In states where blasphemy is not a crime and blasphemy is a religious matter, there is no reason for Meta to interfere with such statements. In other contexts, where such accusations or outings pose a risk to the individual, the company should be much more careful when dealing with such expressions.
 33. People accused of blasphemy could be considered within the risk groups in certain states, but this should not be a general rule. This is considerably different than members of ethnic minorities, women, LGBT+ persons, etc., who suffer widespread discrimination online. It is imperative that context is taken into consideration and intersectional discrimination is taken seriously when addressing similar cases.
- *The human rights responsibilities of companies regarding government requests for the removal of posts containing blasphemy or allegations of blasphemy on their platforms.*
34. This question seems to point out two distinct categories, one related to posts containing blasphemy (or whatever can be understood as such) and those that accuse someone of being blasphemous.

Allegations/accusations of blasphemy

35. Allegations of someone being blasphemous, insulting religious feelings, or being an apostate should not be a matter of concern for Meta. The exception in this case, and restrictions should always be exceptional,⁷ is when such expressions interfere with the rights of others.⁸
36. By the rights of others, I mean recognized human rights. This is also the rationale of the UN Guiding Principles, which prescribes that: “The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights (...).”⁹
37. Protection of religious feelings is not a recognized human right. The European Court of Human Rights has an inconclusive record in this regard. The Court defended this idea in *Otto-Preminger v Austria* (1996) and *ES v Austria* (2018), but it decided against the same proposal in several other cases, including *Vereinigung Bildender Künstler v Austria* (2007), *Bayev and Others v Russia* (2017), and most recently in June 2024 *Sokolovskiy v Russia* (2024).
38. The decisions in favour of protecting religious feelings have also been largely condemned by scholars¹⁰ and are not endorsed in other human rights jurisdictions.¹¹ Hence, it is clear that protection against religious feelings is not a recognized human right, and neither has it been developed by judicial interpretation to be regarded as such.
39. Some rights that can be considered at risk in allegations or accusations of blasphemy are the rights to private life, fair trial, and even the right to life, as illustrated in the cases of extrajudicial killings of people accused of blasphemy in certain jurisdictions.
40. Still, any restriction to freedom of expression should observe the criteria (“three-part test”) set out in international human rights treaties (as described in paragraphs 8-11). This means analysing the legality,

⁷ General Comment 34, para 21.

⁸ ICCPR, art 19(3)(a), ECHR, art 10(2), ACHR, Art 13(2)(a), and in more exceptional cases, ICCPR, art 20(2).

⁹ Principle 12.

¹⁰ See e.g. Jeroen Temperman, *Blasphemy and the European Court of Human Rights: A Small Step Forward, a Giant Leap Back* in *European Yearbook on Human Rights* (Intersentia 2019) 221-236.

¹¹ See e.g. *'The Last Temptation of Christ' (Olmedo-Bustos et al) v Chile* (Inter-American Court of Human Rights, 5 February 2001) Series C No 73.

legitimacy, and necessity of the restrictions. An analysis of the proportionality of the measures is also required to define whether the restriction is truly required.

41. The three-part test should suffice in most cases related to blasphemy. However, in more serious cases related to incitement to hatred or where criminal law is involved, the most appropriate test would be the six-part threshold test developed by the expert drafters of the Rabat Plan of Action. This test includes a closer analysis of: content, speaker, intent, content and form, extent of the speech act, and likelihood or imminence of the harm.¹²

The removal of posts containing blasphemy

42. Meta's removal of posts containing blasphemy would likely be an unjustified interference with the right to freedom of expression.
43. The UN Human Rights Committee is clear that “prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant.”¹³
44. The UN Rabat Plan of Action, which provides a guide to interpret art 20(2) of the Covenant, is even more compelling in this regard, explaining that:

“At the national level, blasphemy laws are counterproductive, since they may result in de facto censure of all inter-religious or belief and intra-religious or belief dialogue, debate and criticism, most of which could be constructive, healthy and needed. In addition, many blasphemy laws afford different levels of protection to different religions and have often proved to be applied in a discriminatory manner. There are numerous examples of persecution of religious minorities or dissenters, but also of atheists and non-theists, as a result of legislation on what constitutes religious offences or overzealous application of laws containing neutral language. Moreover, the right to freedom of religion or belief, as enshrined in relevant international legal standards, does not include the right to have a religion or a belief that is free from criticism or ridicule.”¹⁴
45. The experts who drafted the Rabat Plan of Action further recommended that “States that have blasphemy laws should repeal them, as such laws have a stifling impact on the enjoyment of freedom of religion or belief and healthy dialogue and debate about religion.”¹⁵
46. Thus, if Meta were to remove posts considered blasphemous, *proprio motu*, these would likely be seen as censorship and an undesirable interference with human rights. Such removals would likely go against the policies mentioned in paras 12 and 13.
47. Even in situations where States might require the enforcement of such policies, this could be interpreted as Meta being complicit with the violation of individuals' freedom of expression by the State.

Conclusion

48. In conclusion, Meta is correct in preparing to deal with content deemed blasphemous. The problem posed is challenging and involves several rights. Still, I would recommend that the company stay as close as possible to the human rights law standards mentioned above, as they were developed to deal with these issues. Such procedural actions will demonstrate that Meta is committed to protecting the human rights of its users.¹⁶

¹² Rabat Plan of Action, para 29.

¹³ General Comment 34, para 48.

¹⁴ Rabat Plan of Action, para 19.

¹⁵ Ibid, para 25.

¹⁶ See further Thiago Alves Pinto 'Offence to Religious Belief in International Human Rights Law' (DPhil thesis, University of Oxford, 2020).