

LAHORE HIGH COURT

1992

Mr. Justice Khalil-ur-Rehman Khan

LAHORE HIGH COURT

Mr. Justice Khalil-ur-Rehman Khan

Mirza KHURSHID AHMAD and another—Petitioners

versus

GOVERNMENT OF PUNJAB and others—Respondents

Writ Petition No.2089 of 1989, C.M. No.5577 of 1989
and C.M. No.2049 of 1991.

C.A. Rehman, Mubashar Latif Ahmad and Mujeeb-ur-Rehman for Petitioners.

Maqbool Elahi Malik, Advocate-General assisted by
N.A. Ghazi, A.A.G. with Irshadullah Khan and
Maqsood Ahmad Khan for Respondents.

Muhammad Ismail Qureshi for Respondent (in C.M.
No.5377 of 1989).

Rashid Murtaza Qureshi for Respondent (in C.M.
No.2049 of 1991):

Dates of hearing: 6th, 7th, 11th, 12th, 13th, 14th, 15th,
18th, 19th, 20th, 21st and 22nd May, 1991.

Decided on 17th September, 1991

JUDGMENT

MR. JUSTICE KHALIL-UR-REHMAN KHAN.-- Mirza
Khurshid Ahmad and Hakim Khurshid Ahmad, petitioners,
who claim to be members of the Ahmadiyya community

and respectively office-bearers of the Central and Local Organizations of the said community filed this constitutional petition seeking declaration to the effect that the order dated 20-3-1989 of the Provincial Home Secretary, banning the centenary celebrations by the Qadianis in the Province of the Punjab; order dated 21-3-1989 of the District Magistrate Jhang, under section 144 of the Code of Criminal Procedure prohibiting the Qadianis of Jhang District from the activities detailed in the said order and the order dated 25-3-1989 of the Resident Magistrate, Rabwah, whereby the office bearers of the Ahmadiyya community, Rabwah, were informed and directed to remove ceremonial gates, banners and illuminations and further ensure that no further writings will be written on the walls and that the prohibitions contained in the order dated 21st March, 1989, have been extended till further orders, are illegal, void and of no legal effect. They also sought a direction against the aforesaid respondents not to prevent the petitioners from exercising their assertedly basic and fundamental right granted to them by Article 20 of the Constitution of the Islamic Republic of Pakistan.

2. The aforesaid declaration and direction were sought on the assertion that more than hundred years had passed that the Ahmadiyya community was founded on 23rd March, 1889, and on completion of hundred years Ahmadis of Rabwah like Ahmadis all over the world have decided to celebrate the year 1989 commencing from 23rd March, 1989, as a centenary year of their community and with a view to celebrate the occasion in a befitting manner the petitioners and other Ahmadis of Rabwah had decided to wear new clothes, distribute sweets among children, serve food to poor and assemble for meetings so as to recount the important events of the last hundred years of the Ahmadiyya community. It was added that feelings of some of the fanatics might not be injured if any Ahmadi teaches his own children about the well being of the community, its history and status of the founder of the Ahmadiyya community or their successors, or their preachings in Africa or other foreign countries. It is

asserted that there was no legal justification for prohibiting Qadianis (who pronounce themselves Ahmadis) from celebrating centenary of their community rather it is their fundamental and inherent and innate right to rejoice on an occasion which according to them is a landmark in the history of their community. It was further asserted that the District Magistrate has not expressed anywhere in his order that he is convinced that there is genuine apprehension of breach of tranquillity or possibility of riots in Rabwah on celebration of centenary by Ahmadiyya community according to their programme.

3. The other pleas taken in the petition are that the overwhelming majority of the citizens of Rabwah are Ahmadis and the other citizens live like honoured friends and brothers of Ahmadis and they associate in the occasional celebrations of each other and hence none of the necessary ingredients of section 144, Cr.P.C. was present when the order was passed. On the above premises it was contended that the District Magistrate instead of directing Ahmadis to refrain from celebrating the occasion should have prohibited others from obstructing or disturbing the celebrations of Ahmadis as the Ahmadis could not be prevented from doing that which is not prohibited by law. It is further asserted that the provincial Government instead of advising the District Magistrate that those "fanatics" who cannot even tolerate the existence of Ahmadis in Pakistan and dub them as apostates, have been carrying on false propaganda against them to mislead uninformed citizens and so they should have been warned not to create trouble or interfere in the celebrations of Ahmadis. It is also averred that legal rights of the citizens cannot be violated on the ground that the fanatics or irafuential persons will create trouble. It is further averred that Ahmadis intended to assemble and hold meetings on 23rd March, 1989, and also throughout the year, the purpose whereof is to offer special thanksgiving prayers, to express their gratitude to God Almighty for bounties and favours of which they have been recipients for the last one hundred years and to make aware the next generations regarding

commitments and sacrifices of their elders and the obligations of the younger generation towards the Ahmadiyya community.

4. It was urged that the meetings and other acts intended to be held, done and conducted being the constitutional right of every member of Ahmadiyya community, are to be secured by the Government and such right cannot be abridged because some persons threatened to stage a riot. Learned counsel argued that though the order dated 21st March, 1989, expired on 25th March, 1989, and despite the fact that it was not extended any further still the Resident Magistrate illegally issued the order dated 25-3-1989 making the impugned directions.

The petitioners have in the petition also challenged the vires of section 298-C inserted in the Pakistan Penal Code under the provisions of Anti-Islamic Activities of the Qadiani Group, Lahori Group and Ahmadis (Prohibition and Punishment) Ordinance, 1984 (XX of 1984), on the ground that the same offends against the Fundamental Right No.20 of the Constitution of Pakistan, which confers on every citizen of Pakistan the right to profess and propagate his religion. This ground was not, however, pressed during the arguments by the learned counsel for the petitioners saying that the said question has been raised in another case before the Supreme Court of Pakistan and the petitioners will obtain decision of the said question from the Supreme Court. It may also be noted that all the three learned counsel for the petitioners who argued the petition did not rely on the "right to propagate" the belief of Qadianis as they restricted their arguments and pleas by placing reliance on the "right to profess and practice the religion of one's own choice".

5. Mr. C.A. Rehman, Advocate, who argued legal aspects of the case submitted that the Ahmadis could at best be prohibited to propagate to others their faith but no prohibition can be made to deliver lectures on the life of the Holy Prophet Muhammad (p.b.u.h.) as well as on other religious topics to the public. He, however, added that

references to be made by the Qadianis in these topics will of course be interpreted according to the views expressed in their books. He added that as a matter of fact neither any public celebrations were to be made nor any processions were planned to be taken out with fun fair. He stated that neither any pamphlets were to be distributed nor any banners were to be displayed. On the above premises he argued that the holding of such celebrations in the aforesaid manner cannot be prohibited as Articles 16, 19 and 20 of the Constitution guarantee to every citizen and a community the right to profess and practise religion and to communicate faith and views to the Children or members of the community. Learned counsel contended that the Prohibitory directions contained in the impugned order of the District Magistrate taken one by one or taken as a whole are violative of the Rights as the objective sought to be achieved would also be violative of the Fundamental Rights. The learned counsel submitted that though centenary year of 1989 has expired yet the petition has not been rendered infructuous for the reason that exercise of the claimed right in the manner noted above is a matter of daily occurrence and as such determination of the scope and limits of the right to profess and practise their faith would guide the Ahmadis as well as the other citizens to adopt correct public conduct

6. Learned counsel submitted that there was no programme to do any of the acts complained of in public places though such a right to do these acts in public meetings and in public cannot be denied. He explained that no programme was made and no speech was intended to be made which might have contravened the law of the land and as such the District Magistrate has insulted the Muslims that the Muslims would feel annoyed or that there will be breach of peace. He argued that if on occasion of performance of such acts which are otherwise lawful breach of peace was apprehended then the measure to avert breach of peace should have been taken rather than directing the Qadianis to refrain from performing these acts. In support of this plea reliance was placed on Remnad

Zamin Devasthanam Tehsildar v. Kadarmeera Ambalam (AIR 1932 Mad. 294), In re: R.S. Srikanta Iyer (AIR 1937 Mad. 311), and Smt. Jasoda Lekhraj v. Emperor (AIR 1939 Sindh 167).

7. Before proceeding further notice may be taken of an application (C.M. 5377-89) for impleadment as respondent submitted by Maulana Manzoor Ahmad Chinioti so that the views of the Muslims could be presented to the Court as the Muslims of the world believe in absolute and unqualified finality of the prophethood of Hazrat Muhammad ﷺ and according to them Mirza Ghulam Ahmad, the founder of the Ahmadiyya community was an imposter. He urged that the applicant is a necessary party as the applicant is office-bearer of International Khatm-e-Nabuwat Mission and he taking serious notice of the proposed activities, of the Ahmadis amounting to subversion of the Constitution of the Islamic Republic of Pakistan, which also amount to outraging the religious feelings of the Muslims, approached the ' Government of the Punjab with representative delegates of the Majlis-e-Tahaffuz-e-Khatm-e-Nabuwat and expressed their deep anxiety and concern over the centenary programmes of the Qadianis and urged the Government to stop it immediately otherwise it will result in insurmountable riots throughout the country whereupon the Government of the Punjab decided to ban the centenary celebrations of the Qadianis. This application came up for hearing on 18th December, 1989, when the learned counsel for the petitioners suggested that the applicant may meanwhile file a written statement and the question of impleadment may be taken up along with the main petition. The applicant was therefore, allowed to file a written statement and the application as well as the main petition was ordered to be fixed for disposal.

8. Another application (C.M. 2049-91) was filed by one Abdul Nasir Gill, a Christian, for impleading him as a party. This application was based on the premises that the literature and the Anti-Christ utterances of Mirza Ghulam Ahmad Qadiani are highly reprehensible and repulsive in

the eyes of all good Christians. Learned counsel for the applicant explained that the avowed object of the celebrations is to recount the history of the community which obviously will include references to the writings and literature of the community which is highly objectionable as it includes filthy language and disparaging remarks against Jesus Christ and Christians. He added that Mirza Ghulam Ahmad Qadiani claims himself to be the Maseeh Ma'ood (i.e., Maseeh whose reappearance has been promised) and so it is necessary to refute such a claim in defence of the beliefs of Christians and honour of Jesus Christ. He submitted that the vituperative attacks of the Qadianis contained in their writings against Jesus Christ, will be recounted to the great annoyance of the Christian community in their meetings and celebrations and these acts would naturally give rise to animosity between the Christians and the Ahmadis which is likely to result in serious incidents of breach of peace.

9. These two applications were opposed by the learned counsel for the petitioners who further pressed that these applications be rejected before hearing the arguments any further. It may be noted that this request was pressed when one of the learned counsel had already concluded his arguments and while the learned Advocate-General had commenced his arguments. This request was disposed of vide order dated 13th May, 1991 which reads as under:-

“Learned counsel C.A. Rehman at this stage states that the application (C.M.5377-89) for impleading as a party be decided before proceeding further in the matter. It is pertinent to note that he has already concluded his arguments in support of the petition. Mr. Mubashir Latif Ahmad, Advocate, another counsel for the petitioners has also addressed arguments on the scope of the petition and questions involved in the matter. Now it is the respondent and the applicant to make the reply. Moreover order dated 18-12-1989 reads as under:--

“The applicant has submitted this application for being impleaded as a respondent. A copy of the petition has been provided to the learned counsel for the writ-petitioner, who suggests that the applicant in the meanwhile may file the written statement, and the question of impleadment may be taken along with the main petition. This is acceptable to the learned counsel for the applicant.

Let the written statement be filed. To come up for arguments on the application as well as the main petition in the week commencing 27-1-1990.’

In these circumstances the request to decide the application for impleading at this stage is intended to prolong the proceedings and resolution of controversy raised in the petition. The question, therefore, will be decided along with the main petition, as suggested by the learned counsel himself. Let arguments on behalf of respondents and others proceed.”

10. As regards the question of impleading the applicants as respondents it will be noted that learned counsel initially, it seems, had no objection to the providing of hearing to the applicant as he himself suggested that the first applicant be allowed to file written statement. The applicant on behalf of general body of Muslims is opposing the Ahmadiyya views and had lodged protest against the centenary celebrations on account of which these celebrations were banned by the Provincial Government and the impugned prohibitory directions were issued by the District Magistrate. The applicant’s plea was that his presence necessary to show that the preaching of the religious topics by the Qadianis in Pakistan in public meetings in the shade and colour of Qadianis is an offence. This very plea was adopted by the learned counsel for the Christian applicant with the emphasis that discussion of so-called religious topics by Qadianis will result in breach of peace as their views and teachings are outrageous to the religious feelings of not only Muslims but also of

Christians. It may be noted that the petition is being pressed despite expiry of the centenary year on the plea that determination of the right to hold meetings to preach their views is necessary as these are matters of daily occurrence involving the members of Qadiani community. If these are matters of daily occurrence then it involves all citizens, inclusive of Muslims and Christians. They are therefore, entitled in opposition to this petition to be heard. The two applications are, therefore, accepted and the applicants are allowed to be impleaded as respondents. These two applications stand disposed of accordingly.

11. Now notice may be taken of another application (C.M2051-91) filed by the petitioners. This application was moved when Mr. C.A. Rehman, Advocate, learned counsel for the petitioners had concluded his arguments in support of the petition and Mr. Muhammad Ismail Qureshi, learned counsel for Maulana Manzoor Ahmad Chinioti, and the learned Advocate General had partly made their submissions in reply to the arguments of the learned counsel for the petitioners. Learned Advocate-General before commencing the arguments filed a list indicating the topics with reference to which he will point out the views of Mirza Ghulam Ahmad, the founder of the Ahmadiyya community, as expressed in his books which are going to be recounted and reiterated in these celebrations and meetings. He explained that these views and writings of Mirza Ghulam Ahmad and his disciples referred to in the list submitted to the Court, are outrageous to the religious feelings of the Muslims of not only Pakistan but of the world who are opposing these views since the time that these were expressed and these one hundred years have seen the sacrifices offered by the Muslims in laying bare the falsehood of the claim to prophethood of Mirza Ghulam Ahmad Qadiani. He argued that any repetition in public of these views would not only amount to commission of offences but would also cause grave annoyance to the Muslims at large and thus lead to breach of peace. He pointed out that the effect of holding the centenary celebrations i.e., to recount the history of the

community, the status of Mirza Ghulam Ahmad, his preachings etc., on the law and order situation is to be seen in the historical perspective which include the constitutional mandate of declaring the Ahmadis as non-Muslims. But before the learned Advocate-General or other counsel could dilate upon the aforementioned topics, this application (C.M.2051-91) was moved by the petitioners asserting that the only question involved in the petition is the legality of the District Magistrate's order and the relief prayed for is that the orders dated 21st and 25th March, 1989, be struck down with a direction to the respondents not to prevent the petitioners from exercising their fundamental rights but on 8-5-1991 during the course of arguments, the learned Advocate-General entered into doctrinal controversies and religious polemics and during submissions he wrongly attributed certain beliefs to the petitioners which they strongly repudiate as misconceived and incorrect. An affidavit in support of the application was also filed. It was added that the question of faith and belief of the petitioners is totally irrelevant and extraneous to the determination of the legal questions involved and that this Court is not the proper forum for religious polemics and that the writ petition does not seek any adjudication or declaration on the question of faith nor has the Court any jurisdiction to adjudicate upon the religious belief of any person. It was added that the misconceived, incorrect and ill-informed assertions made at the Bar by the opposite-party about the faith of the petitioners are likely to create hatred and ill-will against the Ahmadiyya community and that the incorrect allegations repeated at the Bar have been carried into the National Press which has been widely publicized and the petitioners' faith has been wrongly projected in disparaging terms and that this Court is being used by the respondents to malign and vilify the Ahmadiyya community and to create hatred against them. On the above premises it was prayed that the arguments be ordered to be restricted and confined to the legal questions alone and that the direction be given to ensure fair and equal press coverage to both the sides. This application was argued by Mr. Mubashir Latif Ahmad, Advocate. He prayed

that this application be decided before allowing learned Advocate-General and other Advocates to address any further arguments on behalf of the respondents.

Learned Advocate-General in his arguments indicated the books of Qadiani community with reference to which he wanted to show that the views expressed therein if allowed to be propagated publicly would amount to commission of offences under the Pakistan Penal law and would also outrage the religious feelings of the Muslims, the predominant majority of the country and thus ignite riots. He pleaded that prohibition was imposed in the interest of the members of Qadiani community also as their public conduct and acts would have resulted into clashes causing serious threat to their safety. Learned Advocate-General explained that the learned counsel for the petitioners having himself stated that religious topics including the life of Prophet Muhammad ﷺ and the life and teachings of Mirza Ghulam Ahmad, founder of the Qadiani community will be recounted, cannot urge that doctrinal controversies and religious polemics be not allowed to be urged. He added that by laying bare the outrageous nature of the teachings and writings of the founder and his disciples, the purpose is neither to raise doctrinal controversies or religious polemics but to show the devastating effect that the propagation of these views would have on the law and order situation. He further urged that it would be wrong to contend that by this exercise, he is seeking adjudication of questions of faith or religious belief. He explained that members of Qadiani community are entitled to profess and practise faith or religious belief of their choice and whether their faith is good or bad is not his concern but when they come to practise their religious belief in the manner that amounts to propagation or invite others to such manifestations or outrage the religious feelings, then they or any one doing so commits offences under the law of the land. He urged that he has, therefore, the right to explain to the Court the religious topics with reference to books of the petitioners community which will be outraging the religious feelings

and would amount to commission of offences and which formed basis for taking preventive measures in terms of section 144, Cr.P.C.

12. The objection raised in the petition moved by the petitioners was overruled for reasons to be recorded later and the learned counsel for the parties were told that they may refer to the views and preachings of the founder of Ahmadiyya community and his disciples as contained in their original books for the purposes of showing whether or not these are outrageous to the religious feelings of Muslims and Christians and thus could or could not validly form basis for proceedings under section 144, Cr.P.C. and for the Provincial Government to ban the celebrations. The reasons for the aforesaid order may now be recorded hereunder.

13. Learned counsel for the petitioners (Mr. Mubashir Latif Ahmad) referred to section 9 of the Civil Procedure Code in support of the plea that Courts have no jurisdiction to adjudicate upon the questions of faith or the question whether faith of a person is good or bad or determine the doctrinal controversies or religious polemics specially when the right to propagate the faith of Ahmadiyya community is not being claimed or being asked to be adjudicated upon. The argument as canvassed does not depict the true picture of the controversy raised in the petition and the question canvassed at the Bar This application is rather a device to side track the issue. It will be recalled that claim of the petitioners is that in these meetings amongst other things life and teachings of Prophet Muhammad ﷺ and related religious topics will be discussed. He posed the question, 'How could these discussions even in the shade of opinion of Ahamdis could be-banned?' According to the learned counsel all that was to be done and performed in these celebrations was legal and permitted by law. In order to refute both these pleas, according to the respondents, reference to the views and preachings as contained in the original and recognised books of the founder of the Ahmadiyya community was necessary. It is wrong to assert that these were only fanatics

who may have reacted adversely and who may try to create law and order situation. The entire history of Ahmadiyya faith and the opposition to it put by Muslims in the sub-continent, would show that it is not the fanatics who are opposing them but it is the general body of Muslims which considers views of Ahmadis outrageous to their religious feelings and faith. The purpose of making reference to the books was to highlight these aspects and to refute both the above noted pleas. The purpose is not to show that the faith of the petitioners is not good or that they should not profess or practise their faith, or to enter into religious polemics so as to seek resolution of doctrinal controversy. There is no question of entering into religious polemics with Qadianis as the kind of faith which Mirza Ghulam Ahmed preached and the Qadianis hold and entertain is considered by Muslims offensive, outrageous, misconceived and violative of the fundamentals of Islam since the time of Holy Prophet Muhammad ﷺ till date in all Muslim countries. The claim of prophethood of Mirza Ghulam Ahmad is resented and rejected by Muslims who resent all and any encroachment on the nexus between Islam and finality of Prophethood. According to the Qadianis, non-Ahmadis are unbelievers and are outside the pale of Islam. Thus the Qadianis or Ahmadis constitute a separate Ummah. So they are not part of Muslim Ummah. This is evident from their own conduct and beliefs. They thus try to substitute themselves for the Muslim Ummah by turning out the Muslims from that Ummah. The Ahmadis could pose as Muslims under the shelter of the British Government whose interest Mirza Ghulam Ahmad was serving according to general body of Muslims, by causing disintegration of the Muslim Ummah. On the question of integration of Muslim Ummah, the views of the great luminary of Muslim society is that "Muslim Ummah is secured by the idea of the finality of Prophethood alone". He further said "After all, if the integrity of a community is threatened, the only course open to that community is to defend itself against the forces of disintegration. And what are the ways of self-defence? Controversial writings and refutation of the claims of the man who is regarded by the

parent community as a religious adventurer. Is it thus fair to preach toleration to the Parent community whose integrity is threatened and to allow the rebellious group to carry on its propaganda with impunity, even when the propaganda is highly abusive?" (Thoughts and Reflections of Iqbal page 253). There is no Reeling point between the Ahmadis and Muslims as Muslims believe in the finality of Prophethood while the Ahmadis on the contrary believe Mirza Ghulam Ahmad as a new prophet. It will, therefore, be seen that the explanations or justifications by the Ahmadis of the objected to views or the plea that these views should be seen and interpreted in a particular manner so as to bring them in accord with the injunctions of Islam do not require to be gone into as then it can be said that doctrinal controversies are being raised. Secondly these explanations, justifications and versions stand rejected by Muslim Ummah and hence provide no basis for claiming that these views are not likely to outrage the religious feelings of Muslims. The plea that if belief of a person or group of persons is under consideration then their stand and position taken by that person or group must be ascertained with reference to the meaning dominantly prevailing in that group, and that individual idiosyncrasies or opinion cannot be accepted as the view or stand point of that person or group, is good as far as the statement goes but the said general statement has no application to the situation in hand, as the matter is not of entertaining a thought or belief personally but of preaching, propagating it to others publicly or professing it in a manner which involves publicity. Moreover, the justification and the explanations of the writings and views are not to be gone into by the respondent authorities. They have to acknowledge the factual position as obtaining on the ground and act on the basis thereof, if in their opinion, sufficient grounds exist to proceed under the relevant provisions of the law (i.e. section 144, Cr.P.C.). It may be noted at this stage that learned counsel for the petitioners objected to the production of photo copies of the books saying that original books containing these objected to views should have been produced. The respondents then

produced original books on which learned counsel for the petitioners were asked to give in writing, if they so desire, a list pointing out the books produced which are not originally published by their community or pointing out any part of the objected to views contained in the books which is considered to be not containing the version as originally published. This list was neither filed nor any such inaccuracies or version was pointed out orally, rather Mr. Mujeeb-ur-Rehman, Advocate, who addressed the Court on this aspect of the case, stated that the petitioners would not like to stand committed by submitting such a list as has been allowed to be submitted.

14. Reliance of the learned counsel for the petitioners on section 9 of the Civil Procedure Code is misplaced. This section deals with general jurisdiction of the Civil Court to try suits of civil nature and the Explanation added provides that suits which involve questions of religious rites or ceremonies only are not suits of civil nature unless those questions affect a right to property or office. No such question has been raised before me. This is a petition which invokes extraordinary constitutional jurisdiction vesting in this Court under Article 199 of the Constitution and the declarations and directions are being sought by invoking fundamental rights enshrined in the Constitution. The right to profess and practise faith but not the right to propagate the faith and the views was invoked and pressed into service. The arguments on the controversy were limited to this extent purposely by the learned counsel for the petitioners. It is in this context that the respondents sought to meet the pleas raised and to show that though right to propagate is not being canvassed yet the pleas raised, the arguments advanced and the relief prayed for if allowed would essentially result in securing the propagation of the faith and objected to views publicly or even privately. Thus the questions raised are not being urged in the context of section 9, C.P.C. before a 'Civil Court'. It may be pointed out at this stage that the learned counsel for the petitioners submitted that the issue raised, despite passing of the centenary year is a live issue as the

members of the community would hold the celebrations even now if their right to do so is recognised and declared by the Court. This Court, therefore, has examined the questions raised in the aforementioned context and allowed the learned counsel full freedom to canvass the propositions and address the arguments so long as they remained relevant in the aforementioned context. The questions of morality of the views or the explanations for the purposes of showing justification of these objected to views were not allowed to be raised as the District Magistrate and the Government were not required to go into such justifications. The explanation that teachings and beliefs of Mirza Ghulam Ahmad have been misunderstood or misconceived by the Muslims in all these one hundred years is not relevant in the context of the present controversy. It is pertinent to note also that the explanations and justifications along with the objected to views were canvassed before the Federal Shariat Court and the same have been noticed and commented upon by the said Court in its judgment in the case of Mujeeb ur Rehman v. Federation of Pakistan PLD 1985 FSC 8. This decision, it was conceded, is binding on this Court. The finding of the Federal Shariat Court recorded at page 82 reads as under:--

“It is, therefore, established beyond any shadow of doubt that as Sir Zafaruallah Khan put it, either the majority of people living in Pakistan are unbelievers (Kafir) or the Qadianis are unbelievers which means that the twain shall never meet and be members of the same Ummah. There is no meeting point because of the belief of the Muslims in the finality of prophethood and the contrary belief of the Qadianis who believe in Mirza Sahib as a new Prophet..... Clearly the two do not belong to same Ummah. The question who are members of the Muslim Ummah could be left unresolved because of absence of forum in British India but in an Islamic State in which there are institutions to determine the issue this matter does not present any difficulty. The legislature as

well as the Federal Shariat Court are competent to resolve it.”

It is, therefore, apparent that Ahmadis and Muslims are two separate and distinct entities and reference to the books of Ahmadiyya community and its founder would be necessary not only to distinguish the two entities but also to show the validity as well as necessity of the passing of the impugned orders and directions. With these reasons the application (C.M. 2051-89) stands disposed of.

15. The stage is now set to examine the controversy, subject-matter of the Petition, on merits. The petitioners challenged:

(1) Order, dated 20th March, 1989, of the Provincial Government banning the centenary celebrations announced and advertised by the officebearers of Local Organization of Ahmadiyya community;

(2) Order, dated 21st March, 1989, passed under section 144, Cr.P.C. by the District Magistrate, Jhang; and

(3) Order, dated 25th March, 1989, of the Resident Magistrate, Rabwah;

on the grounds, *inter alia*, that the ban imposed is violative of the fundamental right to profess and practise one's religion guaranteed by Article 20 of the Constitution and that the order of the District Magistrate, Jhang, under section 144. Cr.P.C. is illegal, unwarranted and uncalled for. As the main attack was directed towards the orders of the District Magistrate and the Resident Magistrate, the same are being reproduced for ready reference:

Order dated 21-3-1989 of D.M. reads:

“WHEREAS it has been made to appear to me that Qadianis in District Jhang are going to hold Centenary Celebration of Qadianiat on 23rd March, 1989, for which they have arranged illumination, decoration of buildings, erection of decorative gates, holding of processions and meetings, distribution of pamphlets and pasting of posters

on walls, distribution of sweets and service of special food, exhibition of badges, buntings and banners etc. which is highly being objected by the Muslims and is likely to disturb public peace and tranquillity and thereby cause danger to human life and property;

AND WHEREAS the Government of Punjab, Home Department, Lahore, vide its Teleprinter Message No.7-1-H-SPL-III/88, dated 20-3-1989 has decided to ban the said Centenary celebration for Qadianis by the Oadianis in the Province of Punjab;

AND WHEREAS section 298-C of the Pakistan Penal Code, (Act XLV of 1860) provides that any person of the Qadiani Group who directly or indirectly poses himself as a Muslim, or calls, or refers to, his faith as Islam or preaches or propagates his faith or invites others to accept his faith by words either spoken or written or by visible representation or in any manner whatsoever outrages the religious feelings of Muslims is punishable

AND WHEREAS in my opinion as also keeping in view the above-mentioned Government decision and the contents of Pakistan Penal Code, immediate prevention is desirable and there are sufficient grounds to proceed under section 144, Cr.P.C., 1898 and the directions hereinafter appearing are necessary in order to prevent danger to human life and property and disturbance of public peace and tranquillity.

NOW, THEREFORE, I, Ch. Muhammad Saleem, District Magistrate, Jhang, in exercise of the powers conferred upon me by section 144, Cr.P.C., 1898, do hereby prohibit the Oadianis in District Jhang from the following activities:—

- (i) Illumination on buildings and premises;
- (ii) Erection of decorative gates;
- (iii) Holding of processions and meetings;
- (iv) Use of loudspeaker or megaphone;

(v) Raising of slogans;

(vi) Exhibition of badges, buntings and banners etc;

(vii) Distribution of pamphlets and pasting of posters on the walls and wall-writings;

(viii) Distribution of sweets and service of food;

(ix) Any other activity directly or indirectly which may incite and injure the religious feelings of Muslims.

THIS ORDER shall come into force with immediate effect and shall remain in force till 25th March, 1989.

NOTWITHSTANDING the expiry of this order, everything done or action taken, obligation, liability, penalty or punishment incurred, investigation, inquiry or proceeding pending, jurisdiction or power conferred and fresh proceedings against offenders in the Courts of Magistrates having 1st Class Powers under the Criminal Procedure Code, 1898, and the punishment in respect of the offences committed during the enforcement of this order shall be continued or launched as if this order had not expired.

THIS ORDER shall be given wide publicity by beat of drum, by publication in the official Gazette affixing copies thereof on the notice boards of the District Courts, Offices of the Superintendent of Police, Jhang, Assistant Commissioners, Tehsildar, Municipal and Town Committees and all Police Stations in the District Jhang.

GIVEN UNDER my hand and seal of the Court this 21st day of March, 1989."

16. The order dated 25-3-1989 of Resident Magistrate reads:—

”ابھی ابھی اسسٹنٹ کمشنر صاحب چنیوٹ نے بذریعہ ٹیلیفون اطلاع دی ہے کہ نوٹیفیکیشن نمبری 1905 مورخہ 21 مارچ 1989ء میں مزید توسیع کر دی گئی ہے اور یہ پابندی تاحکم ثانی جاری رہے گی۔ نیز انہوں نے یہ بھی ہدایت کی ہے کہ ناظر امور عامہ، صدر عمومی صاحب جماعت احمدیہ ربوہ و دیگر اکابرین کو اس ضمن میں مطلع کیا جاوے اور ہدایت کی جاوے کہ وہ ہر قسمی دروازے، بینرز، چراغاں کے متعلق بجلی کی تاروں وغیرہ کو اتار دیں اور اس امر کی تسلی کریں کہ مزید دیواروں پر کوئی مزید تحریر نہ کی جاوے۔“ 25-3-1989

The factual background of the passing of these orders was that holding of the centenary celebrations was announced in the press by the office-bearers of the local organization of the Ahmadiyya community. The legal position obtaining in the year 1989 as regards the Ahmadis is that through constitutional amendment of 1974, they have been declared non-Muslims. Despite this constitutional mandate and despite the fact that Ahmadis verbally concede that Constitution is binding on them as any other citizen, yet they persisted in calling themselves Muslims or their faith Islam and also using the epithets exclusively used for the members of the Family and Companions of Holy Prophet Muhammad ﷺ with the names of members of family etc. of Mirza Ghulam Ahmad. Ordinance XX of 1984 was then promulgated to restrain the Ahmadis from calling themselves what they are not, since they cannot be allowed to deceive any body specially the Muslim Ummah by passing off as Muslims. The provisions banning the use of exclusive epithets and expressions were also incorporated in implementation of the constitutional provisions so that Ahmadis cannot call themselves or pose to be Muslims directly or indirectly. It may be added that the Federal Shariat Court in the case of Mujeebur Rehman (supra) has held that “Article 260(3) declares the Qadianis as non-Muslims for the purpose of the Constitution and the law. Article 20 guarantees to the citizens of Pakistan the

right, inter alia, to profess their religion. This Article is no doubt subject to other provisions of the Constitution. This point was in fact conceded by Mr. Mujeebur Rehman. Read with Article 260(3) of the Constitution, the above provision of Article 20 will mean that the Qadianis can profess that they believe in the unity of Allah and/or the prophethood of Mirza Sahib, but they cannot profess themselves to be Muslims or their faith to be Islam". The reasons for constitutional declaration and imposition of ban through Ordinance XX of 1984 are given in detail in Mujeebur Rehman's case. In short, these are: —

"The claim of being the Promised Messiah and Mehdi in 1891 and of being a Prophet or the manifestation of the Holy Prophet engendered lasting hostility, indignation, condemnation and censure among the Muslim masses, religious scholars and intelligentsia alike (see Seert-ul-Mehdi, Vol. 1, pages 86 to 90, Vol.2, pages 44, 64, 87, Vol. 3, page 94).

This is a picture of the recurring extreme exasperations of the Muslims in his lifetime.

After the creation of Pakistan the imposition of Martial Law of 1953, the setting up of Muneer Committee, the Constitutional Amendment of 1974 all prove the extreme agitation, chagrin, tension and mortification of the Muslims. Section 298-C of the Pakistan Penal Code prohibits the outraging of the feelings of the Muslims which furnishes proof of the restlessness and anger of the Muslims on matters ultimately prohibited by the Ordinance."

Again at page 100 of the report, it is recorded:—

The Qadianis achieved some little success among members of the Muslim Ummah mainly in the Punjab because of their strategy of calling themselves Muslims and assuring them that acceptance of Ahmadism did not mean relinquishment of Islam or conversion from belief to unbelief but gave them an option to become better Muslims. For this purpose they touch the usual chord of the

educated Muslims' distaste for the intense sectarianism and persistent rigidity of the Ulema and tend to draw them towards what they preach to be liberalism in Islam. This strategy which paid some little bonus bears strong resemblance to the passing off by a trader of his inferior goods as the superior well known goods of a reputed firm. Let the Qadianis accept that their preaching is for conversion to a religion other than Islam even the unwary among the Muslims may be loath to change his belief for unbelief. On the other hand Qadianis may have feeling of disenchantment about Ahmadism.

Another important reason was that the Qadianis by posing themselves as Muslims try to propagate their religion to every Muslim they come across. They outrage his feelings by calling Mirza Sahib a prophet because every Muslim believes in the finality of prophethood of Muhammad ﷺ. This creates a feeling of resentment and hostility among the Muslims which gives rise to law and order problem. His claim of being a promised Messiah and Mehdi was also resented. This is not a mere claim. It would be clear from the history of Qadianism—in fact from the books of Mirza Sahib himself—that he had to face considerable hostility at the hands of not only the Ulema but also of the general body of Muslims.”

17. So it is in the aforementioned historical and legal perspective that the challenge made to the impugned order is to be examined. The fundamental right pressed into service is the right to profess and practise religion enshrined in Article 20 of the Constitution, subject admittedly to the other provisions of the Constitution, law, public order and morality. Whether holding of centenary celebrations by the community falls within the connotation of “to profess or Practise religion”. Whether law prohibits such celebrations and whether circumstances existed for banning the celebrations in order to maintain ‘public order’? In order to answer these questions it appears necessary to find out the manner in which the celebrations were to be held and what was the avowed objective of these celebrations.

It is pertinent to note that position taken in the petition is that "it is their legal and constitutional right to celebrate publicly the centenary of the Qadiani Movement and to recount the achievements of the full century while learned counsel during arguments urged that though it is their right to hold public meetings and to discuss the religious topics including the life of Prophet Muhammad ﷺ which will obviously include the claim of Mirza Ghulam Ahmad to prophethood but neither any programme was chalked out nor any speech was intended to be made which may have contravened the law of the land. This assertion was obviously made in the context of the provisions contained in sections 298-A, 298-B and 298-C of the Pakistan Penal Code. The plea that no act which may have contravened the law of the land was even intended to be performed or done was contradicted by producing the pamphlets circulated, the advertisements issued and the news published in the newspaper named 'Al-fazl' of the Ahmadiyya community. Mr. C.A. Rehman, Advocate, had asserted that no public meetings were to be held, no ceremonial gates were to be constructed, no banners were to be displayed and no processions were planned to be taken out but 'Al-fazl' dated 26th March, 1989, carried a different story. It commented as under:-

”حکومتی احکامات کی تعمیل میں کوئی آرائشی گیٹ نہیں بنایا گیا جب کہ اندازاً پچاس سے زائد آرائشی گیٹ بنائے جانے تھے۔ نہ کہیں کوئی بینر آویزاں کیا گیا جبکہ سینکڑوں کی تعداد میں بینر لگانے کا منصوبہ تھا۔ ربوہ میں مزگانی گئی پولیس نے چوبیس احمدی نوجوانوں کو گرفتار کیا۔ ان میں چار کو دفعہ ۱۴۴ ضابطہ فوجداری کی خلاف ورزی کے الزام میں اور ۲۰ کو دفعہ ۲۹۸ سی اور دفعہ ۱۴۴ کی خلاف ورزی کے مشترکہ الزام میں گرفتار کیا گیا۔ ان نوجوانوں پر الزام تھا کہ انہوں نے پٹانے چلائے، نعرے لگائے، بیج لگائے اور محلوں میں پہرہ دیا۔ چار لڑکوں کو اس الزام میں پکڑا گیا کہ انہوں نے ایسی ٹی شرٹس پہنی ہوئی تھیں جن پر لکھا ہوا تھا۔“

”سچائی کے سو سال“ (Hundred years of Truth)

اس جشن کی تیاری کا اس انداز میں انتظام کیا گیا تھا کہ اس کو اگر آزادی سے منانے دیا جاتا تو دنیا کی تاریخ میں یہ ایک منفرد جشن ہوتا۔“

18. The material produced by the Advocate-General shows that the Qadiani community had planned to celebrate publicly the centenary and the programme chalked out would have amounted to publicly propagating the faith and the views of the founder of the community and his disciples. The programme also included the display of banners carrying slogans such as “Hundred years of Truth” which slogan was also displayed on the Tee Shirts apparently got tailored and prepared specially for these celebrations. It is, therefore, apparent that the representation of the learned counsel for the petitioners made during arguments that the centenary celebrations were to be attended by the members of the community and by their friends through special invitations was not factually correct. Learned Advocate-General was, therefore, correct in pointing out that the Government and the District Magistrate examined the question of maintaining law and order and apprehension of breach of peace in correct, factual and legal perspective and this Court should also examine the question of legality of the impugned orders in the perspective of holding the celebrations publicly and not limited to its own members and the friends who would have wished to attend through their own volition.

19. The other plea of the learned counsel for the petitioners was that neither any programme was framed nor any speech was intended to be made which would have violated law of the land. According to them neither the recounting of the events of the last century (March 1889 to March 1989) nor the views and teachings of the founder and his disciples as contained in their books violate the law and hence the celebrations to be held for the said purpose could not be prohibited. The case of the respondents on the other hand was that these programmes planned to achieve the objectives set forth would result not only in creating

serious law and order situation as visualised by the Government and the District Magistrate but would also be violative of the law and amount to commission of offences under section 298-C, P.P.C. as has been pointed out by the District Magistrate in his order, dated 23-3-1989, impugned in this petition.

Learned Advocate-General as well as learned counsel for the respondents submitted that meetings of the kind announced and that too for the avowed objective whether as centenary celebrations or otherwise would endanger public peace. It was added that though right to propagate the Qadiani faith is not being asserted and claimed yet the holding of meetings wherein the history and status of Mirza Ghulam Ahmad and the success achieved in this respect is to be discussed would mean and amount to propagation of the Qadiani faith. This will mean on one hand doing an act not Permitted by law and on the other hand outraging the religious feelings of the Muslims and Christians. In order to highlight this aspect of the celebrations the views of Mirza Ghulam Ahmad and his disciples contained in their books were quoted under the following topics:—

(1) Claim to prophethood of Mirza Ghulam Ahmad and endeavour even to excel the Holy Prophet (p.b.u.h.);

(2) Insolent writings respecting God Almighty;

(3) Abusive and disparaging writings and views concerning Jesus Christ;

(4) Insolent and disparaging remarks about members of Family of the Holy Prophet;

(5) Writings depicting Muslim Ummah as heretics and as an Ummah different from Qadianis with abuses hurled to eminent religious scholars of Muslims.

20. The relevant objected to views or the opinion concerning Muslims contained in the books and read out

during the arguments are not being reproduced as the very reproduction of the same would provoke protest and uproar and further intensify the feelings of hatred. Mr. Mubashir Latif Ahmad, Advocate, counsel for the petitioners was of the view that reporting of the proceedings in the press (of the dates when these topics were being discussed) is likely to create hatred against Ahmadis but Mr. Mujeebur Rehman, Advocate took the stand that material produced i.e., the books referred to under the aforesaid topics, is such that it is not of a recent origin as it is in circulation since one century and if this literature was not provocative for all this period, why it should be treated as provocative at the particular juncture of centenary celebrations. He added that till 1983 annual general meetings of the community were being held, special trains used to carry Qadianis to Rabwah without any untoward incident and on account of Qadiani faith public peace was never disturbed or breached. Such a plea can be raised by ignoring the entire history of opposition offered by the Muslims to the Qadiani faith and to prophethood of Mirza Ghulam Ahmad. Some of the writings are couched in the most uncomplimentary and abusive language for his opponents. Mirza Sahib as had proclaimed himself to be the Masih Maood (Promised Messiah) tried to substitute himself for Jesus as Promised Messiah is to be no other than Jesus son of Mary. He proclaimed:

“God named me Mary in the third volume of Barahin-i-Ahmadiyyah (A book of Mirza Sahib containing his ‘Divine Revelations’) was nurtured for a period of two years in a Mary-like condition and was brought up in a womanly seclusion. Then the spirit of Jesus was breathed into me just as (it was breathed) into Mary. Thus I was considered to be pregnant in a metaphorical manner. After a period of several months, not more than ten, I was made Jesus out of Mary by the revelation embodied in the last parts of the fourth volume of Barahin-i-Ahamdiyyan; and thus I became Jesus, son of Mary. But God did not inform me about this secret during the time of Barahin-i-Ahmadiyyah.

Kashti-i-Nuh:

Ruhani Khaz'in, Vol. 19, p. 50."

21. This did not end here as Mirza Sahib in his writings used disparaging, imprecative and provocative remarks about Jesus Christ. Though no authentic religious source suggests that Jesus (peace be upon him) was foul mouthed or was of lewd character yet Mirza Sahib came out with the atrocious and blasphemous remarks. Some of these read:

"(Jesus) had the habit of uttering obscenities and frequently using foul language."

(Zamimah Anjam-i-Atham)

Ruhani Khazain, Vol. 11, p.289.

"What is your opinion about the character of the Messiah? (It is that Jesus) was an alcoholic and gluttonous person, neither abstinent nor a pious worshipper, nor a reality seeker. He was a proud and a self-conceited claimant of Divinity."

(Nur al-Quran)

Ruhani Khazain, Vol.9, p.387

"The root cause of all the damage that alcohol consumption has had on the Europeans was that Jesus used to drink alcohol, perhaps because of some disease or an old habit."

(Kashti-i Nuh)

Ruhani Khazain, Vol. 19, p.71.

"Jesus could not portray himself as a pious man because people knew that he was a gluttonous alcoholic."

(Satt Bachan)

Ruhani Khazain, Vol.10, p.296."

22. Even the episodes narrated in the Bible were distorted by Mirza Sahib as a way to deride holy Jesus (peace be upon him) and to defile his sacred name as follows:

“Jesus had an inclination for prostitutes perhaps due to his ancestral relationship with them, otherwise no pious man could allow a young prostitute to touch his head with her filthy hands, and massage his head with the unclean perfume purchased with the earnings of adultery, and rub his feet with her hair. Let the intelligent judge what sort of character such a person must possess.”

(Zamimah Anjam-i-Atham)

(Ruhani Khazain, Vol. 11, p. 291).

“A beautiful prostitute is sitting so close to him as though she is embracing him. Sometimes she massages his head with perfume or holds his feet and sometimes she lays her beautiful black hair on his feet and plays in his lap. In this situation Mr. Messiah is sitting in ecstasy. If someone rises to object he is scolded. Besides his young age, the habit of alcoholism and being a bachelor, a beautiful prostitute is lying in front of him touching her body with his. Is this the behaviour of a virtuous person? And what evidence or proof is there that Jesus did not get sexually provoked by the touch of the prostitute. Alas! Jesus could not even have the facility of sexual intercourse with any wife of his own after passing his glance upon that adultress. What sexual excitement would have been provoked by the touching of that adultress. What sexual excitement would have been provoked by the touching of that wretched adultress and her playfulness! The sexual excitement and arousal would have done its work to the full. This is the reason why Jesus could not even open his mouth to say, ‘Oh adultress! keep away from me, it is well established in the Bible that that woman was one of the prostitutes, notorious for adultery in the entire city.”

(Nur al-Quran)

Ruhani Khazain, Vol.9, p.449”.

23. As against the above version of Mirza Sahib, this very episode is narrated in the Bible as under:-

“And one of the pharisees desired him that he would eat with him. He went into the pharisees’s house and sat down to meat. And, behold, a woman in the city, which was a sinner, when she knew that Jesus sat at meat in the pharisees’s house, brought an alabaster box of ointment, and stood at his feet behind him weeping, and began to wash his feet with tears, and then wiped them with the hairs of her head, and kissed his feet, and anointed them with the ointment. Now when the pharisee which had bidden him saw it, he spoke within himself, saying, this man if he were a prophet, would have known who and what manner of woman this is that toucheth him for she is a sinner. And Jesus answering said unto him, Simon, I have somewhat to say unto thee. And he said, Master, say on. There was a certain creditor which had two debtors; the one owed 500 pence, and the other 50. And when they had nothing to pay, he frankly forgave them both. Tell me therefore, which of them will love him most? Simon answered and said, I suppose that he, to whom he forgave most. And he said unto him, Thou hath rightly judged. And he turned to the woman, and said unto Simon, seest thou this woman? I entered into thine house, thou givest me no water for my feet; and she wiped them with the hairs of her head. Thou givest me no kiss; but this woman since the time I came in, has not ceased to kiss my feet. My head with oil thou didst not anoint; but this woman has anointed my head with ointment, Therefore I say unto thee her sins which are many, are forgiven; but she loved much; but to whom little is forgiven, the same loveth little. And he said unto her thy sins are forgiven. And they that sat at meat with him began to say within themselves, who is this that forgiveth sins also? And he said to the woman thy faith hath saved thee; go in peace.”

The New Testament
St. Luke. Ch. 7:36-50."

The above is confirmed in the Gospel according to John as follows:—

"Then took Mary a pound of ointment of Spikenard, very costly, and anointed the feet of Jesus, and wiped his feet with her hair; and the house was filled with odour of the ointment. Then said one of his disciples, Judas Iscariot, Simon's son, which should betray him, why was not this ointment sold for 300 pence, and given to the poor? This he said, not that he cared for the poor; but because he was a thief, and had the bag, and bare what was put therein. Then said Jesus, let her alone; against the day of my burying had she kept this. For the poor always Ye have with you; but me Ye have not always."

The New Testament
St. John, Ch. 12:3-8"

And according to Matthew the story is narrated in the following manner:—

"Now that Jesus was in Bethany, in the house of Simon the leper, there came unto him a woman having an alabaster box of very precious ointment and poured it on his head as he sat at meat. But when his disciples saw it, they had indignation, saying, to what purpose is this waste? For this ointment might have been sold for much, and given to the poor. Then Jesus understood it, he said unto them why trouble ye the woman? For she hath wrought a good work upon me. For Ye have the poor always with you: but me Ye have not always. For in that she had poured this ointment on my body, she did it for my burial. Verily I say unto you, wheresoever this Gospel shall be preached in the whole world, there shall also this, that this woman hath done, be told for a memorial of her."

**The New Testament
St. Matthew, Ch. 26:6-13."**

24. A close reading of the distorted version would show that the insinuation such as "as though she embracing him;... .. she is playing in his lap;... .. Mr. Jesus is sitting in ecstasy;.. .. a beautiful prostitute is laying in front.... ..her body is touching his body;... .. Jesus sexual provocations;... .. have been added with a view to defile Jesus Christ though the Bible does not contain such base episodes nor it depicts Jesus in this shade. The actual episode was that immoral woman had come to holy Jesus (peace be upon him) crying and weeping in order to seek forgiveness for her sins and Jesus and said:

"Your sins are forgiven".

25. Not only this but the teachings of Jesus were also belittled by Mirza Sahib. The aforementioned stance and views of Mirza Ghulam Ahmad Qadiani are quite contrary to the position and status of Jesus described in Quran as the entire Quran (the Holy Book of Muslims) is free from any statement that may be construed in any way to reflect negatively on Jesus Christ (peace be upon him). The Quran is full of praises for Jesus and describes him as one of the greatest five Prophets of God. Quran says in Sura 3, Verse 84:

"Say: We believe in God and what is revealed to us and what was revealed to Abraham and Ismael and Isaac and Jacob and the tribes, and what was entrusted to Moses and Jesus and the prophets from their Lord. We make no distinction between any of them, and to him we have surrendered".

Holy Quran praises Jesus, his mother and his family in these terms:

"God selected Adam and Noah, Abraham's House and Imran's House over (everyone in) the Universe. They are descendants one of another. God is Alert, Aware. (Remember) when the wife of Imran said 'My Lord! I have vowed for you whatever is within my

womb. Accept it from me. See! You, only you are the Hearer, the Knower. When she gave birth she said: My God! I have given birth to a daughter. God was quite aware of what she had given birth to, for a male is not like a female – I have named her Mary, and ask you to protect her and her offspring from Satan the Outcast.

Her Lord accepted her in a handsome manner and caused her to grow like a lovely plant and appointed Zachariah to take care to her. Every time Zachariah entered the sanctuary to see her, he found she had already been supplied with food. He said: 'Mary, Whence cometh unto you this (food)? She said: It comes from God, for God provides for anyone he wishes without any reckoning.'

(Quran, 3:33-37)

"And when the angels said: O Mary! See! God has chosen you and made you pure, and has preferred you above (all) the women of creation. O Mary! Be Obedient to your Lord, prostrate yourself and bow with those who bow (in worship)."

(Quran, 3:42,43)

Even virgin birth of Jesus is stated in exalted manner in Sura 3 Verses 45-47:

"(And remember) when the angels said: O Mary! God gives you glad tidings of a word from Him, whose name is the Messiah, Jesus, son of Mary, Illustrious in the world and the Hereafter and one of those brought near (unto God). He will speak to mankind in his cradle and in his manhood, and he is of the righteous. She said: My Lord, how can I have a child while no human being has ever touched me? He said so (it will be). God creates anything He wishes. Whenever He decides upon some matter, He merely tells it: Be! and it is."

(Quran, 3:45-47)

Again in Sura 19, verses 16-32 story of birth has been told as under:-

“And make mention of Marzy in the Book, when she had withdrawn from her people to a chamber looking East and had chosen seclusion from them. Then We sent to her Our spirit and it is assumed for her the likeness of a perfect man. She said: I seek refuge in the Compassionate One from you, if you are God-fearing. He said: I am only a messenger of your Lord, that I may bestow on you a faultless son. She said: How can I have a son when no mortal has touched me, neither have I been unchaste? He said: So (it will be) your Lord says: it is easy for Me. And (it will be) that we may make of him a revelation for mankind and a mercy from Us, and it is a thing ordained. And she conceived him, and she withdrew with him to a far place. And the pangs of childbirth drove her to the trunk of a palm tree. She said: Oh, would that I had become a thing of naught, forgotten! Then (one) cried to her from below her saying: Grieve not! Your Lord has placed a rivulet beneath you. And shake the trunk of the palm tree toward you. You will cause ripe dates to fall on you. So eat and drink and be consoled. And if you meet any mortal say: I have vowed a fast to the Compassionate, and may not speak this day to any person. She carried him back to her family. They said Mary you have brought something hard to believe! O Sister of Aaron! Your father was no evil man, nor was your mother a loose woman. She pointed to him. They said: How can we talk to someone who is a child in the cradle? He said: I am God’s servant. He has given me a book and made me a prophet. He has made me blessed wherever I may be, and has enjoined on me prayer and almsgiving so long as I remain alive. And (has made me) dutiful towards her who bore me, and has not made me arrogant, unblest. Peace on me the day I was born, and the day I die, and the day I shall be raised alive!”.

(Ouran, 19:16-32).”

26. Moreover the Muslims are forbidden to degrade or defile the men or leaders of others religions so that the others do not find occasion to hurl slander on their leaders. It is true that on certain aspects there exist honest differences amongst Muslim and Christian Theologists but that cannot provide base or justification to defile each others religion or prophet. The prophet of Islam ﷺ is reported to have said:

“I am closest (in love) to Jesus, the son of Mary, in this life and the hereafter.”

27. These were the writings’ and views of Mirza Sahib on account of which Muslims as well as Christians opposed the claim of Mirza Sahib to prophethood and of being Masih Maood (Promised Messiah). There were events in the life-time of Mirza Ghulam Ahmad as well as after his death and even after creation of Pakistan when there were mass protests leading to imposition of Martial Law in Lahore in 1953 and riots involving attacks on train in 1974. Mirza Ghulam Ahmad noted the hostility of the Muslims generally to him in the following words in Izala Auham, page 11:—

“It is this claim on which my people (non-Ahmadi Muslims) quarrel with me and consider me an apostate (مرتد). They talked loudly and did not pay reverence to one who receives inspiration from Allah (عليهم). They said that he is a renegade, liar and an impostor (مرتد). But for their fear of the sword of the rulers they would have murdered me.”

The provocative nature of these writings does not end merely because some other writings contain views of Mirza Ghulam Ahmad which are in accord with the views of Muslim Ummah. The reliance of Mr. Mujeebur Rehman on such writings is inapt. In order to demonstrate this, one particular instance may be quoted and analysed as it would also repel the plea of the learned counsel for the petitioners that recounting of history or repetition of particular views

would not amount to commission of offence under section 298-C, P.P.C.

28. Take the slogan "Hundred years of Truth" printed on the Tee Shirts or displayed on the banners or ceremonial gates. What does it convey? This slogan seen in the background of centenary celebrations of the community, conveys the message that claim to prophethood made by Mirza Ghulam Ahmad is true; the belief of Ahmadis that it is they who constitute Muslim Ummah is true; the others who do not accept Mirza Ghulam Ahmad as prophet or Maseeh Ma'ood are heretics; you the predominant majority despite constitutional mandate are heretics. The Advocate-General rightly remarked that had the prohibition order not been passed, such a provocative act would have created serious law and order situation. He was also right in urging that the prohibited acts, taken individually do not appear obnoxious, injurious and harmful as putting of the ceremonial gates, hoisting of banners, illuminating a building or serving food to poor, or wearing by a person new clothes should not be a cause of annoyance to others. These acts are to be seen in the background of the declaration made, the objective sought to be achieved, the message sought to be conveyed and the reaction that such acts are likely to produce. These acts, seen in historical perspective cannot be taken as innocent and harmless manifestations of a minority community which would like to commemorate its past events and eulogize its founder or leaders. In any case how do these public manifestations fall within the domain of 'professing or practising a particular religion'. The pleas that the performance of these acts is lawful and as such doing of lawful acts cannot be prohibited under section 144, Cr.P.C. merely because the doing of acts lawfully might lead another to act unlawfully and that preventive measures are to be taken against the person or the group of persons who are likely to act unlawfully may be examined.

29. Learned counsel for the petitioners while advancing the aforementioned pleas, assumed that these acts, the carrying out of which was prohibited or the centenary

celebrations as were being planned to be held were innoxious, innocent, harmless, rather lawful. This assumption is incorrect. Even assuming that it was intended not to cause annoyance or not to trigger friction and disturbances, still reaction that these celebrations were genuinely apprehended to have aroused, provided sufficient justification for making the impugned orders in the public interest. The principle relied upon by the learned counsel was enunciated in the case of *Beatty v. Citibanks* (1882) 2 Q.B.D. 308. The facts were that members of Salvation Army insisted on marching through the streets despite violent opposition from the 'skeleton Army' and despite an order from the Magistrate that they should not march. The Divisional Court held that a man cannot be punished for acting lawfully if he knew that his so doing might lead another man to act unlawfully. This decision seems to be correct in allocation of criminal liability but it is not followed or in any case its operation has been modified in cases of exercise of police power of the State relating to the maintenance of public peace. So in *Humphries v. Connor* (1864) 17 Ir. CLR 1) where an action or assault was brought against a policeman, the Irish Court held that the policeman was entitled to remove an orange lily from the plaintiffs clothes since this was necessary to prevent a breach of peace amongst a crowd in whom the emblem aroused animosity (see G.P. Wilson — Cases and Materials in Constitutional and Administration Law, page 693). Again in *O'Kelly v. Harvey*, a magistrate was held entitled to disperse a lawful meeting since he had reasonable grounds for supposing that Orangemen opposed to the meeting would use violence and that there was no other way in which peace could be preserved (see Wilson cases—page 695). It may be alluded here that the cases of pasting badges with KALMA TAYYABA described or the banners with KALMA TAYYABA displayed by the Qadiani are in point. Even in cases where the words or conduct is provocative or insulting the Police power may be exercised for maintaining law and order. The case of *Wise v. Dunning* (1902) 1 K.B. 167) may also be referred. In this case, Protestant crusader was bound over to keep the peace

after he had repeatedly insulted the man Catholic faith in Catholic area of Liverpool and breach of peace had occurred. It was held that on facts the magistrate was entitled to regard the hostile response by the Catholics as the natural consequence of Wise's insulting conduct.

30. Now the question whether display of badges or banners with KALMA TAYYABA is offensive may be examined. According to the Advocate-General and Advocates for the respondents from the words "Muhammad-ur-Rasool Ullah" the Qadianis mean and refer to Mirza Ghulam Ahmad as he (Mirza Sahib) proclaimed himself as "Muhammad-ur-Rasool Ullah" and his followers believe him as such. They submitted that when Qadianis display banners or wear badges on their person, they defile the sacred name of the Holy Prophet ﷺ. In support of this contention books including Kalimat-ul-fasal by Mirza Bashir Ahmad which reads as under were cited:—

”پس مسیح موعود خود محمد رسول اللہ ﷺ ہے جو اشاعت اسلام کے لئے دوبارہ دنیا میں تشریف لائے۔ اس لئے ہم کو کسی نئے کلمہ کی ضرورت نہیں۔ ہاں اگر محمد رسول اللہ ﷺ کی جگہ کوئی اور آتا تو ضرورت پیش آتی۔“ (ص 158)

Reference was also made to pages 4, 5, 7 and 11 of Ek Ghalti Ka Izala wherein it is recorded:

صفحہ ۴: ”اس وحی الہی میں میرا نام محمد رکھا گیا اور رسول بھی“۔

صفحہ ۵: ”اس کے یہ معنی ہیں کہ محمد کی نبوت آخر محمد کو ہی ملی“

..... غرض میری نبوت اور رسالت باعتبار محمد اور احمد ہونے کے ہے“

صفحہ ۷: ”کیونکہ یہ محمد ثانی اسی محمد ﷺ کی تصویر اور اسی کا نام ہے۔“

صفحہ ۱۱: ”چونکہ میں ظلی طور پر محمد ﷺ ہوں۔“

..... یعنی جب کہ میں بروزی طور پر آنحضرت ﷺ ہوں۔“

صفحہ ۱۶: ”اور اسی بنا پر خدا نے بار بار میرا نام نبی اللہ اور رسول اللہ رکھا:۔..... اسی لحاظ سے میرا نام محمد اور احمد ہوا۔ پس نبوت اور رسالت کسی دوسرے کے پاس نہیں گئی۔ محمد کی چیز محمد کے پاس ہی رہی علیہ الصلوٰۃ والسلام۔“

Learned counsel for the respondents argued that the display of banners or wearing of badges with KALMA TAYYABA with the aforementioned sense and belief amount to offence under section 295-C, P.P.C. which is punishable with death.

31. At this stage reference may be made to the contents of the affidavit filed by Mirza Khurshid Ahmad, petitioner, in this respect. Paras. 4 and 5 of the affidavit read:—

“4. That the deponent solemnly declares that while reciting KALMA TAYYABA by the words (مُحَمَّدَ الرَّسُولِ) (اللّٰهُ) the petitioner unreservedly means the Holy Prophet Muhammad (peace be upon him).

5. That the deponent solemnly repudiates any allegation to the effect that by the words “Muhammad (peace be upon him) the deponent means Mirza Ghulam Ahmad. Any such allegation is false, incorrect or ill-informed. The deponent most solemnly repudiates any such insinuation, which is contrary to the beliefs of the deponent and all Ahmadis at large”.

In view of the above-noted stand taken in the affidavit, Mr. Mujeeb ur Rahman was asked, as to the belief of Mirza Khurshid Ahmad and other members of Ahmadiyya community regarding status of Mirza Ghulam Ahmad Qadiani and as to his writings wherein he claimed prophethood and whether KALMA TAYYABA alone is to be recited by a person entering Qadiani faith or something else is also to be accepted, recited or believed. The answer given was that Qadianis do not believe in absolute and unqualified finality of the Prophethood of Muhammad ﷺ

and they believe that Mirza Ghulam Ahmad was a Mehdi, Maseeh Ma'ood. He added that what has been relied upon by the opposite side has been clarified by the founder of the community in Izala-auham pages 169-170, Kashti-e Nooh, Roohani Khazain, Vol. 7, page 67; Vol. 14, page 323; Vol. 8, page 252 and in Paigham-e-Sulch contained in Roohani Khazain, Vol. 23, page 459. This message according to him was written by Mirza Ghulam Ahmad one day before his death i.e., on 25th May, 1908. He explained that what has been stated in Ek Ghalti Ka Izala, Aaiena-i-Kamalat or Tabligh-i-Risalat is to be understood in the concept of Zil (ظل) and buruz (بروز) which is concept of spiritual resemblance and identity and means complete subservience of one person into the other. According to him this concept does not in any manner involve physical reappearance or reincarnation.

32. The most important thing which Mr. Mujeebur Rehman conveniently missed and which was not refuted was that anyone entering the Qadiani faith has to believe that Mirza Ghulam Ahmad's prophethood is inherent in the Prophethood of Muhammad ﷺ as Mirza Ghulam Ahmad is the true shadow (ظل) or exact resemblance (بروز) buruz, of Muhammad, the Prophet of Islam. It could also not be denied that in the form to be signed while entering the Qadiani faith, one has to agree and accept Mirza Ghulam Ahmad as prophet, Mehdi and Maseeh Ma'ood. The words used, *inter alia*, in this form are:—

”آنحضرت ﷺ کو خاتم النبیین یقین کروں گا / کرونگی اور حضرت مسیح موعود کے سب دعاوی پر ایمان رکھوں گا / رکھوں گی۔“

The Muslims since after the Holy Prophet, in all ages have rejected the claim of prophethood made by imposters from lime to time. The claim made by Mirza Sahib was also rejected by all sections of Muslims. As regards the claim to prophethood made by Mirza Ghulam Ahmad a detailed discussion has been made in the case of Mujeebur Rehman (supra). It was further observed as under:

“It would be seen that the consequences of the dictum that Mirza Sahib himself was Muhammad and Ahmad (they were the names of the Holy Prophet ﷺ) were anomalous enough. The companions of Mirza Sahib became the companions of the Holy Prophet. In the formula recited by Muslims there is no God but God and that Muhammad ﷺ is His Prophet, Muhammad is Mirza Sahib. Whenever the word Muhammad is recited or read, it means Mirza Sahib”.

33. The plea of learned counsel for the petitioners that concept of Zil (ظل) and buruz (بروز) does not in any manner involve physical reappearance or reincarnation, appears to be contrary to the views expressed by Mirza Ghulam Ahmad himself and his known disciple Dr. Abdul Qadir Mahmood. This aspect is discussed at page 74 of the report as under:-

“Now the concept itself may be analysed. It has been explained in Al-Falsafatul Sufiatu fil Islam by Dr. Abdul Qadir Mahmood, pages 5-H that the meaning of expressions Zilli (ظلى) and Buruzy (بروزى) resemble very much the concept of incarnation (حلول) or transmigration (تناسخ) among the Hindus.

Mirza Sahib himself admitted that buruz means avatars. In his lecture at Sialkot, dated 2nd November, 1904 (page 23) he said:

This may be made clear that my advent on behalf of God is not only for the reform of the Muslims. The reform of all the three communities Muslims, Hindus and Christians is required.

As God sent me as promised Messiah for the Muslims and the Christians, so I am as an avatars for the Hindus... ..Raja Krishna as has been made evident to me was in fact a perfect man. ...He was the avatars of his time or prophet... ..It was the promise of God that during the final age, he would create his buruz meaning avatars.

In Zamima Risala-i-Jihad (printed 1900) he wrote:

God... ..sent me as an avatara of Jesus. Similarly He.named me as Ahmad and Muhammad and made me an avatara of Prophet Muhammad ﷺ after making my habits, manners, style (as of the Holy Prophet) and after clothing me in the mantle of Prophet Muhammad ﷺ so that I may (propagate and) spread unity (concept of oneness of God)... ..so that I am a Jesus as well as Muhammad Mehdi in this sense and it is that manner of manifestation which technically is called buruz in Islam (pages 6 and 7).

It is clear that Mirza Sahib treated avatara and buruz as equivalents of one another.

In strict Shariah of Islam there is no concept of incarnation or transmigration. These are terms emanating from those who believed in transmigration like Mazdak and Laman. Similarly there is no such notion as shadowism (ظليت) in Islam (Khatimun Nabiiyin by Anwar Shah Kashmiri. page 210).

In Maugiful Jamatil Islamiyya, Maulana Muhammad Yousaf Bannori wrote that from the comparative study of religions it appears that the entire concept of shadowism (ظليت) and incarnation (بروز) is a Hindu concept and no such concept is there in Islam. Abdul Qadir Baghdad! (d.429 A.H.) also said that the view in favour of Hulul is false and absurd (Usul Ul Din, page 72).

Mujaddid Alf Sani, whose writings were relied upon by Mirza Sahib refutes the concept of Zil (shadow) in prophethood. He said in his letter No.301 that prophethood connotes nearness to Allah which it has not even the hint or doubt of Zilliat (shadowyness)".

34. The third aspect pointed out by the respondents was that device adopted in the form of allegiance (بيعت) to be signed by a person entering Qadiani faith is yet another deception being played and a trap being laid to mislead Muslims as well as others by presenting their faith as Islam

and by representing Mirza Sahib as a new prophet of Islam. It may be pointed out that by use of the words (خاتم النبيين) (خاتم النبيين) after the words (آنحضرت صلى الله عليه وسلم) in the form of allegiance (بيعت), it does not admittedly mean and imply that there would be no prophet after Unarnrnad ﷺ as contrarily such a person has to have faith in all claims made by Mirza Ghulam Ahmad, which includes his claim of being Prophet. According to Muslims, there will and cannot be any Prophet till the Day of Judgment as Prophet of Islam has reportedly said, there will be no prophet after him (لايعدى) and that the word (خاتم النبيين) means that the seal having been affixed, there is no question of the arriving of a new prophet. As against this, Mirza Ghulam Ahmad in "Ek Ghalti Ka Izala" said, that though the seal of prophethood shall not be broken but it is possible that a prophet may come in this world in buruzy manner (as incarnate) not only once but a thousand times and may manifest his prophethood and perfection as incarnate.

35. It may be pointed out that what is stated in "Izala Auham" of the year 1891, Karamat-e-Sadeqain of 1893, contained in Roohani Khazain, Vol. 7; Ayyam-e-Suleh of 1899, contained in Roohani Khazain, Vol. 14, does not paint the final picture of the claim to prophethood of Mirza Ghulam Ahmad as the relevant writings of Mirza Sahib in this connection would be the writings from 1901 to 1908 and "Ek Ghalti Ka Izala" is the basic writing. In this context it may further be pointed out that Paigham-e-Suleh of 25th May, 1908 printed in Roohani Khazain, Vol. 23 is also not relevant as this message was addressed to Hindus and not to Muslims and the question of acceptance of Mirza Sahib as prophet would have arisen only when the Hindus had accepted Muhammad ﷺ as Prophet and true Messenger of God. In view of the specific claim of Mirza Ghulam Ahmad, it is apparent that belief of Ahmadis is that Mirza Sahib is Prophet Muhammad and so use of the words (مُحَمَّدَ الرَّسُولِ اللَّهِ) in the banners or the badges worn by any Ahmadi would be at his own peril as it amounts to

defiling the sacred name of Holy Prophet ﷺ and such acts certainly fall within the purview of section 295-C, P.P.C.

36. Moreover such banners and badges also tend to cause annoyance by outraging religious feelings of the predominant majority of citizens. This will provide another justification for banning celebrations as these would have caused breach of peace. It will be recalled that right to profess and practise religion was only claimed but the learned counsel for the petitioners failed to show how the holding of the celebrations in public and in the manner contemplated and planned infringe or abridge the right to profess Qadiani faith. The Qadianis continue to profess and practise their faith and enjoy all the freedom like Hindus, Sikhs, Parsies and other religious minorities but a difficult situation is created by their own conduct of passing off as Muslims and use of Shaa'ir Islam or KALMA TAYYABA which are one of the fundamentals of Islam. No untoward situation or incident will arise in case the constitutional mandate is adhered to by Qadianis and they treat themselves as a community different and distinct from Muslims which is their own case. The role of substituting themselves for Muslims and of excluding general body of Muslims from the fold of Islam is not to be accepted by the Muslim Ummah. Their loyalty to the country, Constitution and their separate entity would ensure their safety and well being. Why should they be allowed to highjack Islam. They are welcomed to have any faith but why should they insist to impurity the faith of Muslims. Any act of Muslims taken for safeguarding the purity of their faith should not disturb the Qadianis or should give them no cause of grievance.

37. The power of the kind vesting under section 144, Cr.P.C. as well as police power of the state can legitimately be exercised for a purpose which is considered to be for public good or to be in the interest of the people of the country. The two cases of the members of scientology cult may be referred to. In the case of (Schmidt and another v. Secretary of State for Home Affairs (1969) 2 Ch. 149), it was noted that scientology as per its proponents is a religion. It originated in America, its faith and belief, its teachings and

practices are taught to students at a College in Sussex England. This College is owned by an American Corporation called the church of Scientology of California. The petitioners Schmidt and Joseph Murranti, citizens of United States had permits of entry for limited time. The term expired and the Home Secretary refused extension as the view of the government was:

“Scientology is a pseudo-philosophical cult introduced into this country some years ago from the United States and has its world headquarters in East Grinstead. It has been described by its founder Mr. L. Ron Hubbard. as ‘the world’s largest mental health organisation’

The Government are satisfied having reviewed all the available evidence, that scientology is socially harmful. It alienates members of families from each other and attributes squalid and disgraceful motives to all who oppose it; its authoritarian principles and practices are a potential menace to the personality and well-being of those who deluded as to become its followers; above all, its methods can be a serious danger to the health of those who submit to them. There is evidence that children are now being indoctrinated.”

Lord Denning, Master of the Rolls in his judgment dealing with the argument that Home Secretary had used his power for the purpose of disapproval of, and to bring into disrespect a religious sect which was not prohibited by law, observed:—

“I think the Minister can exercise his power for any purpose which he considers to be for the public good or to be in the interests of the people of this country. There is not the slightest ground for thinking that the Minister exercised his power here for any unauthorised purpose or with any ulterior motive. The Minister’s purpose was clearly disclosed in the statement which was made to the House of Commons. He thought that the practices of these people, these

scientologists, were most harmful to our society, and that it was Undesirable in the interests of the people of this country that alien students of scientology should be allowed to stay any longer or that any new ones should be allowed to come in. That purpose was entirely justifiable. It was exercised by the Home Secretary in the interests of the ordinary people of this country: and I do not think we should admit any doubt to be thrown on its validity."

38. The refusal to extend the permit was upheld. The petition for leave to appeal against the aforementioned judgment was dismissed by the House of Lords (see Note at page 174 of the same report). The right of freedom of movement was thus subjected to the considerations of the public good. This very principle was also applied by the European Court of Justice in the case of Van Duyn Home Office (1975) 1 Ch. 358). In this case a clause in the Treaty of Rome which guarantees freedom of movement to workers within the nine countries of the community was subjected to the reasons of public policy. Miss Van Duyn arriving at Airport declared that she is to take up employment as Secretary at the College of Scientology. The entry was refused saying that it was undesirable to give any one leave to enter United Kingdom to be in employment of the Church of Scientology. The refusal was challenged and the matter was referred to the European Court of Justice at Luxemburg and the refusal made was upheld.

39. The reasons of public policy, public good and interests of the ordinary people of the country thus provide justifiable basis for banning the celebrations, making of the directions by the District Magistrate as well as Resident Magistrate. It has already been pointed out that activities of Ahmadis and propagation of their faith is resisted by people in general i.e., Muslim Ummah to keep the mainstream of faith pure and unpolluted and also to maintain integrity of the Ummah. While doing so that right to profess and practise faith by Qadianis in no manner stands infringed or violated.

40. For the reasons given above this petition is without merit and is hereby dismissed. The parties are left to bear their own costs.

Petition dismissed

(PLD 1992 Lahore 1)

