SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

1993

Mr. Justice Shafiur Rahman,

Mr. Justice Abdul Qadeer Chaudhry,

Mr. Justice Muhammad Afzal Lone,

Mr. Justice Saleem Akhtar,

Mr. Justice Wali Muhammad Khan

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CRIMINAL APPEALS NO. 31-K to 35-K of 1988 (On appeal from the judgement of High Court of Baluchistan, Quetta, dated 22.12.1987 passed in Criminal Revisions No. 38/87 to 42/87)

Cr. A. No. 31-K/88 **... Appellant**
Zaheeruddin.

versus

The State. **… Respondent**

Cr. A. No. 32-K/88
Rafi Ahmed.

versus

The State **... Respondent**

Cr. A. 33-K/88
Abdul Majid. **... Appellant**

versus

The State **... Respondent**

Cr. A. 34-K/88
Abdur Rehman Khan

versus

The State **... Respondent**

Cr. A. 35-K/88
Ch. Muhammad Hayat. **...Appellant**

versus

The State. **... Respondent**

CIVIL APPEALS NO. 149 AND 150 OF 1989.

(On appeal from the judgment of Lahore High Court, Lahore, dated 25.09.1984 passed in Intra Court Appeals NO. 160/1984 and 158 of 1984)

C.A. No. 149/89
Mujib-ur-Rehman Dard **... Appellant**

versus

Pakistan through Secretary,
Ministry of Justice and
Parliamentary Affairs, Islamabad. **... Respondent**

C.A. No. 150/89
1. Sheikh Muhammad Aslam,
2. Sheikh Muhammad Yousaf,
3. Noor Muhammad Hashmi. **... Appellant**

versus

1. Pakistan through Secretary,
   Law and Parliamentary Affairs,
   (Law Division),
   Islamabad.
2. The State … Respondent

CIVIL APPEAL NO. 412 OF 1992

(On appeal from the Judgment of Lahore High Court, Lahore, dated 17.09.1991 passed in Writ Petition No. 2089/1989)

1. Mirza Khurshid Ahmed,
2. Hakeem Khurshid Ahmed. … Appellants

versus

1. Punjab province through Secretary,
   Home Department, Lahore.
2. The District Magistrate, Jhang.
3. The Resident Magistrate Rabwa,
   Tehsil Chiniot, District Jhang.
4. Maulana Manzoor Ahmed Chinioti.
5. Abdul Nasir Gill. … Respondents

For the Appellants in Cr. As. 31-K to 35-K/88	:	Mr. Fakruddin G. Ebrahim, Sr. Advocate. Mr. Mujeebur Rahman, Mirza Abdul Rashid and S. Ali Ahmed Tariq, Advocates.
For the State in Cr. As. 31-K to 35-K/88	:	Mr. Ejaz Yousuf, Addl. Advocate General, Balochistan.
For Complainant in Cr. A. 31-K/88	:	Raja Haq Nawaz, Advocate, Mr. M. A. I. Qarni, Advocate on Record, (Absent)
For Appellants in C. As. 149 and 150/89	:	Mr. Fakhruddin G. Ebrahim, Sr. Advocate Ch. Aziz Ahmad Baiwa

		Ch. Aziz Ahmad Bajwa, Advocate, Sr. Advocate Mr. Mujeebur Rahman, Advocate, Mr. Hamid Aslam Qureshi, Advocate on Record.
For Appellant in C.A. 412 of 1992	:	Ch. Aziz Ahmed Bajwa, Mr. C. A. Rehman, Advocate, Mr. Hamid Aslam Qureshi, Advocate on Record.
For Respondent / Federal Government in Civil Appeals No. 149 and 150/89 and 412/92	:	Dr. Riaz-ul-Hassan Gilani, Senior Advocate Only on 1.2.1993 and 2.2.1993 Syed Inyat Hussain, Advocate on Record. Only on 3.2.1993. Mr. Gulzar Hassan, Advocate on Record (Absent) Ch. Akhtar Ali, Advocate on Record
For Respondents No. 1 to 3 in C.A. 412/92	:	Mr. Maqbool Elahi Malik, Advocate General Punjab. Mr. M. M. Saeed Beg, Advocate, Rao Muhammad Yusuf Khan, Advocate on Record
For Respondent No. 4 in C. A. 412/92	:	Mr. M. Ismail Qureshi, Senior Advocate, Syed Abdul Aasim Jafri Advocate on Record (Absent)
On Court Notice	:	Mr. Aziz A. Munshi, Attorney General for Pakistan. Mr. Mumtaz Ali Mirza, Deputy Attorney General for Pakistan. Mr. Ejaz Yousaf,

		Additional Advocate General Balochistan. Mr. M. Sardar Khan, Advocate General, N. W. F. P. Mr. Maqbool Elahi Malik Advocate General Punjab, Ghafur Mangi, Additional Advocate General Sindh.
From General Punjab	:	Maj. (Retd.) Amir Afzal Khan, Maj. (Retd.) M. Amin Minhas
Dated of hearing	:	30.01.1993, 31.01.1993 01.02.1993, 02.02.1993 and 03.03.1993, (Rawalpindi).
Date of announcement of Judgment	:	03.07.1993.

JUDGMENT

SHAFIUR RAHMAN, J.— The question of law of public importance Common to all these appeals is whether Ordinance No.XX of 1984 [The Anti-Islamic Activities of the Qadiani Group, Lahori Group and Ahmadis (Prohibition and Punishment) Ordinance, 1984] is ultra vires the Constitution. If not, whether the convictions recorded and the sentences imposed in five Criminal appeals are in accordance with section 5 introduced by it.

2. Chronologically considered, Constitution Petition No.2591 of 1984 leading to Civil Appeal No.149 of 1989 was the first to be filed. It was filed on 30-5-1984 within a month and a half of the promulgation of the Ordinance XX of 1984 (which was promulgated on 26-4-1984). The reliefs sought therein were that the Ordinance-

(i)is of no legal effect and is void *ab initio* since the day it was promulgated;

(ii) is ultra vires the Provisional Constitution Order, 1981.

This Constitution petition was dismissed in limine on 12-6-1984 treating Article 203-D of the Constitution to be a bar. An Intra-Court Appeal was also dismissed in limine on 25-9-1984, by considering the various grounds taken therein on merits. Leave to appeal was granted on 28-2-1989 to examine vires of the Ordinance XX of 1984 on the touchstone of Fundamental Rights Article 19-Freedom of Speech, Article 20-Freedom of Religion, Article 25 - Equality of citizens.

3. In 1984 Constitution Petition No.2309 of 1984 was filed in the High Court leading to Civil Appeal No. 150 of 1989 before us. This petition was amended on 6-6-1984 and the following reliefs were claimed in it:--

The petitioner respectfully prays that—

(i)the impugned Ordinance No.XX of 1984 is of no legal effect;

(ii)the petitioner has the fundamental right to profess, practise and propagate his religion;

(iii)it is further prayed that the respondent may be directed not to take any action, under the Ordinance, against the petitioner, till the final disposal of this writ petition."

This petition too was dismissed in limine on 12.6.1984 treating as barred by Article 203-D of the Constitution. The Intra-Court Appeal was also dismissed in limine on 25.9.1984 after discussing all the grounds and without sustaining the bar of Article 203-D of the Constitution. As regards the violation of the Fundamental Rights, the Appeal Bench observed as hereunder:—

"If the Constitution of 1973 had been in force in its entirety the argument of the appellants would have been worth examination but this is not so, for three supra Constitutional documents have since July, 1977 eclipsed the Constitution. The first in this context is

the Proclamation of Martial Law which became effective on the 5th of July, 1977. It placed the Constitution in abeyance. The second is the Chief Martial Law Administrator's Order No.1 of 1977, also known as the Laws (Continuance in Force) Order, 1977. Although clause (i) of Article 2 of this Order *inter alia* did state that Pakistan would be governed as nearly as may be in accordance with the Constitution but then clause (iii) of the same Article placed all Fundamental Rights under suspension. The third document is the Provisional Constitution Order, 1981, promulgated on the 24th of March, 1981. Article 2 of this order has adopted certain provisions of the Constitution of 1973. It is significant to note that the adopted provisions do not include any of the Fundamental Rights including Article 20 upon which the appellants rely. Thus the said Article like all other Fundamental Rights is not enforcible at present. It is, therefore, idle on the part of the appellants to suggest that the said Article continues to remain a rider on the Ordinance making power of the President. We would accordingly reject the contention of the appellants that even under the present Constitutional position the President, while making an Ordinance still suffers from the limitations set out in the Fundamental Rights."

Leave to appeal was granted on 28-2-1989 in terms as in Civil Appeal No.149/1989 as above.

4. Nazir Ahmed Taunsvi an active Muballigh reported at Police Station City Quetta on 17-3-1985 at 6-20 p.m. that on receiving information he went to the Bazar, found Muhammad Hayat appellant in Criminal Appeal No.35-K of 1988, a Quadiani by faith, wearing a badge of Kalma Tayyaba and claiming to be a Muslim. A case under section 298-C of the Pakistan Penal Code was registered. On trial he was convicted under section 298-C, P.P.C. and sentenced to imprisonment till the rising of the Court and a fine of rupees three thousand or in default 3 months' simple imprisonment. His appeal and revision were

dismissed. Leave to appeal was granted on 12-9-1988 to examine the following questions of law:-

"(1)Whether wearing a "Kalma Tayyaba" badges by an Ahmadi amounts to "posing" as a Muslim so as to come within the mischief of section 298-C, Pakistan Penal Code;

(2)Whether the charge framed against the petitioner was in accordance with law, and if not what is its effect? and

(3)Whether section 298-C, Pakistan Penal Code is violative of Fundamental Rights Nos.19, 20 and 25?"

5. Nazir Ahmed Taunsvi, lodged two other such reports on 27-3-1985. One (FIR No. 49/85) made similar complaint against Zaheeruddin (appellant in CrA. 31-K/88) having encountered him at 1-00 p.m. in the Bazar with a badge of Kalma Tayyaba and claiming himself to be a Muslim. On trial he was convicted under section 298-C of Pakistan Penal Code and sentenced to one year's rigorous imprisonment and a fine of rupees one thousand failing which one month's rigorous imprisonment. His appeal and revision against conviction and sentence failed. The other report (FIR No.50/85) was directed on similar facts against Abdur Rehman (appellant in CrA. 34-K/88) who he encountered in the Bazar at 3-30 p.m. He was also convicted and sentenced to one year's R.I. and a fine of rupees one thousand or in default one month's R.I. His appeal and revision failed. In both these appeals the leave to appeal was granted as in Criminal Appeal No.35-K/1988.

6. On 11-4-1985, Haji Baaz Muhammad a shopkeeper lodged a report (FIR No. 59/85 City Quetta) complaining that a customer came on his shop with a badge of Kalma Tayyaba. He disclosed his name as Majid (appellant in Cr.A No. 33-K/88) and claimed to be a Quadiani. On trial he was convicted under section 298-C of Pakistan Penal Code and sentenced to one year's R.I. and a fine of rupees one thousand or in default one month's R.I. His appeal and

revision failed. He was granted leave to appeal in terms as in Criminal Appeal No.35-K/1988.

7. On 8-5-1985, Muhammad Azim another shopkeeper lodged a report FIR No. 74/1985 P.S. City Quetta) complaining that Rafi Ahmed (appellant in Cr.A. 32-K/88) appeared before him with a badge of Kalma Tayyaba though he was a Quadiani. He was tried and convicted under section 298-C of Pakistan Penal Code and sentenced to one year's R.I. and a fine of rupees one thousand or in default one month's R.I. His appeal and revision failed. He was granted leave to appeal as in Criminal Appeal No.35-K/1988.

8. A Constitution Petition (No. 2089/1989) was filed on 12-4-1989 challenging the decision of the Punjab Government dated 20-3-1989, its implementation by District Magistrate Jhang by order dated 21-3-1989 and its extension till further orders by order dated 25-3-1989 by Resident Magistrate. The effect of these decisions/orders was that the Quadianis in District Jhang were prohibited from indulging in 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."

The High Court by an exhaustive judgment dismissed

this petition. Leave to appeal was granted (Civil Appeal No.412 of 1992) by reference to order granting leave in Civil Appeals No.149/89 and 150/89.

9. Mr. Fakhruddin G. Ebrahim, Senior Advocate, the learned counsel for the appellants in five Criminal Appeals (Cr. Appeals No.31-K to 35-K/1988) has mainly taken up the Constitutional vires of the Ordinance XX of 1984. According to him, Ordiannce XX of 1983 is oppressively unjust, abominably vague, perverse, discriminatory, product of biased mind, so mala fide, and wholly unconstitutional being violative of Articles 19, 20 and 25 of the Constitution. According to the learned counsel the Constitution, having by its second amendment categorized the Quadianis and Ahmadis as non-Muslim, by clause (3) of Article 260 proceeds further to distinguish from among non-Muslims the Quadianis and Ahmadis with a view to impose on them prohibitive restrictions, on their religious practices, utterances and beliefs. According to the learned counsel, 1790 criminal cases have been registered against this specific minority up to 1992 and are pending in Courts; 84 for offering daily prayers, 691 for use of Kalma Tayyaba, 36 for reciting Azaan, 251 for preaching religion, 676 for posing as a Muslim, 52 for using Arabic expressions like (میلاد النبی ، نصر من اللہ ، السلام علیکم) etc. This according to the learned counsel amounts to a serious inroad on the right of speech, on the right to profess and practice one's religion and amounts to serious discrimination. The practices for which this minority is being prosecuted have been declared to be religious practices of the minority and permissible both under the Constitution and the law as held in Abdur Rahman Mobashir and 3 others v. Syed Amir All Shah Bokhari and 4 others (PLD 1978 "Lahore 113), Mujibur Rehman and 3 others v. Federal Government of Pakistan and another (PLD 1985 Federal Shariat Court 8 at pages 89 and 93). In addition, the learned counsel contended that Enforcement of Shari'ah Act, 1991 (Act X of 1991) permits the non-Muslims to practice their religion. He has also drawn our attention to Article 233 of the Constitution to emphasise that Article 20 of the

Constitution is one of those provisions of the Constitution which cannot be suspended even during the emergency. On the question as to what is religion, the learned counsel has referred to The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt (AIR 1954 SC 282), Ratilal Panachad Gandhi and others v. Slate of Bombay and others (AIR 1954 SC 388) and Ramanasramam by its Secretary G. Sambasiva Rao and others v. The Commissioner for Hinud Religious and Charitiable Endowments, Madras (AIR 1961 Madras 265). He has also referred to "Fundamental Rights and Constitutional Remedies in Pakistan by S. Sharifuddin Pirzada", page 319 relating to former Article 10 (Freedom to profess religion and to manage religious institutions), and to Mr. Justice Tanzil-ur-Rehman's view on Article 20 published as "Constitution and the Freedom of Religion" in PLD 1989 Journal 17. He has also referred to "Fundamental Law of Pakistan by A. K. Brohi". page 317 and to Article "Quaid-e-Azam's Contribution to the Cause of Human Rights by Mr. Justice Dr. Nasim Hasan Shah" published in PLD 1977 Journal page 13, paras 6 and 17 wherein rights enshrined in Article 20 of the Constitution have been dealt with.

The learned counsel has also explained the limited meaning which has been given to the expression "subject to law" used in Article 20 of the Constitution in the decisions of the Supreme Corut in Jibendra Kishore Achharyya Chowdhury and 58 others v. The Province of East Pakistan and Secretary, Finance and Revenue (Revenue) Department, Government of East Pakistan (PLD 1957 SC 9 at page 41) Messrs East and West Steamship Company v. Pakistan (PLD 1958 SC 41), and Sarfraz Hussain Bokhari v. District Magistrate, Kasur and others (PLD 1983 SC 172). On the question of Vagueness of the law and the specious meaning that can be given to the Expression "posing as a Muslim", the learned counsel has referred to Crawford's "Statutory Construction-Interpretation of Statutes", page 339, S. 198, Haji Ghulam Zamin and another v. A.B. Khondkar and others (PLD 1965

Dacca 156 at page 180), K.A. Abbas v. The Union of India and another (AIR 1971 SC 481 at page 497) and State of Madhya Pradesh and another v. Baldeo Prasad (AIR 1961 SC 293).

Finally, the learned counsel has referred to the opinion formed with regard to this law by the International community in the form of reports submitted by the International Committee of Jurists in 1987 (pages 103 to 115) and Amnesty International in 1991.

10. Mr. Mujeebur Rahman, Advocate, the learned counsel for the appellants in Criminal Appeals has dealt with the interpretation of the provisions of the Ordinance XX of 1984 with a view to exclude the criminal cases that were registered for wearing badges of Kalma Tayyaba. His argument on the subject is that this law had its background in the decision of the Lahore High Court reported as Abdur Rahman Mobashir's case (PLD 1978 Lahore 113). Recital of Kalma Tayyaba or for that matter wearing of a badge of Kalma Tayyaba was considered to be one of permissible practices of the Quadianis and in the law under consideration it has not been expressly excluded. He has invoked, therefore, the principle that express mention of certain practices for making them an offence would certainly in criminal statute imply necessarily the exclusion of all others not expressly mentioned. In support of this proposition he has referred to Maxwell on the Interpretation of Statutes (Twelfth Edition) by P.St. J. Langan, page 293 and Crawford's Statutory Construction, page 334. Another principle invoked by him is that being a penal statute, a strict construction has to prevail and has to be preferred and for this reliance has been placed on Rehmat Aslam v. The Crown (PLD 1952 Lahore 578), Mazhar Ali Khan, Printer and Publisher of the Daily "Imroze" v. The Governor of the Punjab (PLD 1954 Lahore 14), Khizar Hayat and 5 others v. The Commissioner, Sargodha Division and the Deptuy Commissioner, Sargodha (PLD 1965 Lahore 349), Qasu and 2 others v. The State (PLD 1969 Lahore 48), Messrs Hirjina and Co. (Pakistan) Ltd., Karachi v. Commissioner of Sales Tax

Central, Karachi (1971 SCMR 128) and Muhammad Ali v. State Bank of Pakistan, Karachi and another (1973 SCMR 140).

Mr. Mujeebur Rahman, the learned counsel also contended that the word "oath" has to be read in its context and the principle of "Nosciture a sociis" gets attracted. There cannot be any enlargement of the context, meaning or scope by bringing in what is not mentioned therein. He has interpreted, and applying the principle of "Ejusdem generis" restricted the operation of the statute to what is expressly mentioned. He considers, what is mentioned after the word "or" is enumerative, illustrative, stipulative and exhaustive. On his reasoning the convicts were guilty of no offence in spite of their admitting on the factual plane that they were wearing such badges and were Quadianis.

11. Mr. Aziz Ahmed Bajwa, Advocate, the learned counsel for the appellants in Civil Appeal No.412 of 1992 in arguing his case mainly confined himself to the provisions of Provisional Constitution Order, 1981 to make out a case that on the strength of Miss Benazir Bhutto v. Federation of Pakistan and another (PLD 1988 SC 416) Fundamental Rights could even then be invoked for challenging the vires of the Ordinance XX of 1984 because it could not be in violation of Article 20 of the Constitution which was suspended. The Supreme Court having conceded the limited right to the Martial Law Administrator in Miss Asma Jilani v. The Government of the Punjab and another (PLD 1972 SC 139) could not permit his making of such a statute. It was additionally under clause (3) of Article 227 of the Constitution violative of the personal law of the Quadianis. Ordinance XX of 1984, according to the learned counsel, was malicious and on that account not a good law at all in view of the decision of this Court in Pakistan through Secretary, Cabinet Division, Islamabad and others v. Nawabzada Muhammad Umar Khan (deceased) now represented by Khawaja Muhammad Khan of Hoti and others (1992 SCMR 2450).

12. Syed Riazul Hassan Gilani, Advocate, the learned counsel representing the Federal Government has raised a

preliminary objection based on the decisions of the Federal Shariat Court and of the Shariat Appellate Bench of this Court reported in Mujibur Rehman and 3 others v. Federal Government of Pakistan and another (PLD 1985 Federal Shariat Court 8) and Capt. (Retd.) Abdul Wajid and 4 others v. Federal Government of Pakistan (PLD 1988 SC 167) respectively. According to him, Ordinance XX of 1984 was directly challenged before the Federal Shariat Court on the ground of its being repugnant to the injunctions of Islam and violative of the Fundamental Rights. The Federal Shariat Court had negatived the contention and the Shariat Appellate Bench of the Supreme Court had while allowing the withdrawal of the appeal held that the judgment of the Federal Shariat Court shall remain in the field. In view of the decision of the Supreme Court in Mst. Aziz Begum and others v. Federation of Pakistan and others (PLD 1990 SC 899) the decision of the Shariat Appellate Bench of the Supreme Court will hold the field and is not open to examination or review by the Supreme Court otherwise. The only course open was for the appellants to seek a review of that judgment instead of reopening the question decided in that jurisdiction.

The learned counsel for the Federal Government has on merits taken as to "Thoughts and Reflections of Iqbal" edited with notes by Syed Abdul Wahid from pages 246 to 306 in. order to highlight that unity of God and finality of Prophet (peace be upon him) are the two basic concepts of Islam eroding anyone of them would justify the exclusion of those doing so from the community. This according to the learned counsel justified the Constitutional amendment introduced unanimously by clause (3) in Article 260 of the Constitution. On the same principle, the protective measures adopted by Ordinance XX of 1984 will be treated as a mere logical consequence of the Constitutional amendment and if the Constitutional amendment stands so will all that logically follows from it including the provisions of the Ordinance XX of 1984.

It was further contended by the learned counsel representing the Federal Government that the expression

"subject to law" in Article 20 of the Constitution implies necessarily the injunctions of Islam. The Fundamental Plights, therefore, enshrined in Article 20 of the Constitution have to be further controlled and contained by the Injunctions of Islam. The injunctions on these aspects of the religion being clearly brought out and having been incorporated in Article 260 (3) of the Constitution, no such right as is claimed by the appellants, can be allowed to be exercised publicly to the annoyance, detriment and subversion of the Islamic faith. Additionally it is contended that what the Article 20 of the Constitution guarantees is the propagation and preaching of one's own faith and not the subversion and the mutilation of somebody else's religion. In doing what the appellants have been found to be doing or claiming a right to do, they are only subverting and mutilating the religion of others living in Pakistan and not in fact observing their own religion. It is, according to the learned counsel for the Federal Government, an obligation of the State under Article 31 to preserve, protect and strengthen the Islamic Ideology against every other.

It was also contended that the State power can be exercised to avoid clash of ideologies in the matter of religion and the State can exercise the power of preventing those who are encroaching on it by keeping them within contentment or limits by prohibiting certain parts which are likely to create law and order problem.

Finally the learned counsel for the Federal Government pointed out that what the impugned Ordinance (XX of 1984) accomplishes is all within the ambit of Islamic Injunctions. It establishes and reinforces the Prophethood of Muhammad (peace be upon him). It protects the prayers and the mosques. It prohibits 'Ilhaad' or subversion of the religion and it protects against hurting the religious feelings of others in majority. These are all laudable objects recognized by the Injunctions of Islam and permitted by the Constitutional provisions in Islamic Stale. In this background, both on the Constitutional plane, on the grounds of public order and morality, the provisions made in the impugned Ordinance (XX

of 1984) are not violative of any of the rights of the appellants. He also pointed out to the main features of the Ordinance and Article 20 of the Constitution in order to demonstrate that the observance of the rituals by the individual and the protection of the institutions by the religion both were covered by Article 20 and the Ordinance only made that protection concrete, descriptive and certain by specifications, enumerations and descriptions.

13. Mr. Ismail Qureshi, Advocate, representing the Tahafuz-e-Khatm-e-Nabuwwat Group contended that Article 260 (3) of the Constitution having declared the Quadianis as non-Muslim, any attempt to pose as Muslims by them is violative of the provisions of the Constitution and it is that practising fraud or mis-description which is sought to be controlled by Ordinance XX of 1984. Article 20 confers no absolute right to profess religion but it has to be in conformity with other provisions and public morality. In that context, the impugned Ordinance advances what is provided in clause (3) of Article 260 of the Constitution and recognizes and protects both the religion of the majority as well as of the declared minority. In that context, the proceedings taken under Article 144 of the Criminal Procedure Code were appropriate and justified besides that order under section 144, Cr.P.C. was limited to a period of less than a week and there could be no objection subsisting over it.

14. The chronological history of the Constitution petitions under consideration clearly gives the impression that except for Constitution Petition No.2089 of 1989 (now Civil Appeal No.412 of 1992 before us) all other matters related to events taking place in 1984 and early 1985 when the Fundamental Rights were not available for challenging the proceedings. It is for this reason that in the very first matter (Civil Appeal No.149 of 1989) the challenge to Ordinance No. XX of 1984 was by reference to the Provisional Constitution Order of 1981. However, the convictions in the criminal cases had taken place in July, 1986 and at that time Fundamental Rights were in full force and could be invoked for avoiding the conviction notwithstanding that the events reported related to a period

when the Fundamental Rights were not enforceable. In any case, therefore, these matters are required to be examined and are being examined on the touchstone of the Constitutional provisions as contained in the revived Constitution and the Fundamental Rights contained therein.

15. So far as Civil Appeal No.412 of 1992 arising out of Constitution Petition No.2089 is concerned, it related substantially to a transitory matter namely, the order passed under section 144, Cr.P.C. which was passed on 21-3-1989 and was to remain in force till 25-3-1989. Thereafter an order of the Resident Magistrate was brought under challenge which was passed on 25-3-1989 whereunder on the instructions of Assistant Commissioner, Chiniot this order of 21-3-1989 was given an indefinite extension in time till further orders. Both these orders and the challenge to them find mention in Mirza Khurshid Ahmad and another v. Government of Punjab and others (PLD 1992 Lahore 1 at pages 14 to 16). The justification for the order dated 21-3-1989 was gone into. Its validity was upheld. As regards the order of the Resident Magistrate, it did not receive that attention which it should have on the legal grounds. There is no authority possessed by the Assistant Commissioner, the District Magistrate, the Resident Magistrate or the Home Department of the Government to extend indefinitely till further orders an order passed under section 144, Cr.P.C. This part of the order recorded by the Resident Magistrate referring to an order by the Assistant Commissioner had to be declared as without lawful authority and of no legal effect. None of the counsel appearing at the hearing, not even the Advocate-General, has been able to sustain this order recorded by the Resident Magistrate. Hence, the Appeal (Civil Appeal No.412 of 1992) is allowed to this extent with no order as to costs.

16. Taking up the Constitutional provisions relevant to the subject under examination, clause (3) of Article 260 of the Constitution is of importance. It is reproduced in extenso as hereunder:--

"In the Constitution and all enactments and other

legal instruments, unless there is anything repugnant in the subject or context,--

(a)'Muslim' means a person who believes in the unity and oneness of Almighty Allah, in the absolute and unqualified finality of the Prophethood of Muhammad (peace be upon him), the last of the prophets, and does not believe in, or recognize as a prophet or religious reformer, any person who claimed or claims to be a prophet, in any sense of the word or of any description whatsoever, after Muhammad (peace be upon him); and

(b)'non-Muslim' means a person who is not a Muslim and includes a person belonging to the Christian, Hindu, Sikh, Budhist or Parsi community, a person of the Quadiani group or the Lahori group (who call themselves 'Ahmadis' or by any other name), or a Bahai, and a person belonging to any of the scheduled castes."

Article 20 of the Constitution in the Chapter of Fundamental Rights, which requires pointed attention, is reproduced hereunder:--

"20. <u>Freedom to profess religion and to manage religious institutions.</u>- Subject to law, public order and morality,--

(a)every citizen shall have the right to profess, practise and propagate his religion; and

(b)every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions."

Articles 19 and 25, which have also been referred to for providing strength, meaning and effect to the Fundamental Right contained in Article 20-relate to Freedom of speech, etc. (Article 19) and Equality of citizens before law (Article 25).

17. On the basis of Article 2-A of the Constitution

having been made substantive part of our Constitution, an argument was advanced that the provisions of the Constitution should all be read, interpreted and applied and they are additionally subordinate to and controlled by injunctions of Islam. Even the Fundamental Rights invoked in these appeals and the others not in issue should also be interpreted as if subordinate to Injunctions of Islam. The further argument thereafter is that as held by the Federal Shariat Court in Mujibur Rehman and 3 others v. Federal Government of Pakistan and another (PLD 1985 FSC 8) the Injunctions of Islam clearly prohibit what the appellants are alleged to have done or are doing as a matter of religious ceremony, or practice. On this reasoning it follows, according to the contenders, that the impugned law is neither violative of any of the Constitutional provisions nor of the Fundamental rights invoked in these cases.

18. The effect of introduction of Article 2A of the Constitution and its becoming a substantive provision of the Constitution has been considered at great length by this Court in Hakim Khan and 3 others v. Government of Pakistan through Secretary Interior and others (PLD 1992 SC 595). Its effect on the other constitutional provisions and as a controlling and supervening provision has been considered as per Dr. Nasim Hasan Shah, J. (now the Chief Justice) in the following words:--

"This rule of interpretation does not appear to have been given effect to in the judgment of the High Court on its view that Article 2A is a supra-Constitutional provision. Because, if this be its true status then the above-quoted clause would require the framing of an entirely new Constitution. Any even if Article 2A really meant that after its introduction it is to become in control of the other provisions of the Constitution, then most of the Articles of the existing Constitution will become questionable on the ground of their alleged inconsistency with the provisions of the Objectives Resolution.....Thus, instead of making the 1973-

Constitution more purposeful, such an interpretation of Article 2A, namely that it is in control of all the other provisions of the Constitution would result in undermining it and pave the way for its eventual destruction or at least its continuance in its present form....The role of the Objectives Resolution, accordingly in my humble view, notwithstanding the insertion of Article 2A in the Constitution (whereby the said Objectives Resolution has been made a substantive part thereof) has not been fundamentally transformed from the role envisaged for it at the outset; namely that it should serve as beacon light for the Constitution-makers and guide them to formulate such provisions for the Constitution which reflect in deals and the objectives set forth therein.... In practical terms, this implies in the changed context, that the impugned provision of the Constitution shall be corrected by suitably amending it through the amendment process laid down in the Constitution itself."

As per Shafiur Rahman, J., it was considered as hereunder:--

"The provisions of Article 2A were never intended at any stage to be self-executory or to be adopted as a test of repugnancy or of contrariety. It was beyond the power of the Court to have applied the test of repugnancy by invoking Article 2A of the Constitution for striking down any other provision of the Constitution (Article 45)."

19. Another preliminary legal argument against the case set out by the appellants was that Fundamental Right 20 which was invoked was itself subject to law, and Ordinance No. XX of 1984 qualifies as law for the purposes of Article 20 of the Constitution. Therefore, the impugned provisions thereof will hold good notwithstanding any apparent or substantial conflict with its provisions. This argument or such an argument has been adequately and effectively dealt with by the Supreme Court as early as January, 1956 in Jibendra Kishore Achharyya Chowdhury

and 58 others v. The Province of East Pakistan and Secretary, Finance and Revenue (Revenue) Department, ' Government of East Pakistan (PLD 1957 SC 9 at page 41) in the following words:-

"There can be no doubt that these drastic provisions of the Act strike religious institutions at their very root, and the question is whether, that being the effect of the provisions, they constitute an infringement of the fundamental right guaranteed by Article 18 of the Constitution? In the High Court, Mr. Brohi's bold and categorical assertion that the rights referred to in Article 18 are "Subject to Law" and may therefore be taken away by the law, succeeded. That assertion has been repeated before us, but I have not the slightest hesitation in rejecting it. The very conception of a fundamental right is that it being a right guaranteed by the Constitution cannot be taken away by the law, and it is not only technically inartistic but a fraud on the citizens for the makers of a Constitution to say that a right is fundamental but that it may be taken away by the law. I am unable to attribute any such intent to the makers of the Constitution who in their anxiety to regulate the lives of the Muslims of Pakistan in accordance with the Holy Quran and Sunnah could not possibly have intended to empower the legislature to take away from the Muslims the right to profess, practise and propagate their religion and to establish, maintain and manage their religious institutions, and who in their conception of the ideal of a free, tolerant and democratic society could not have denied a similar right to the non-Muslim citizens of the State. If the argument of Mr. Brohi is sound, it would follow, and he admitted that it would, that the legislature may today interdict the profession of Islam by the citizens because the right to profess, practise and propagate religion is under the Article as much subject to law as the right to establish, maintain and manage religious institutions. I refuse to be a party to any such

pedantic, technical and narrow construction of the Article in question, for consider it to be a fundamental canon of construction that a Constitution should receive a liberal interpretation in favour of the citizen, especially with respect to those provisions which were designed to safeguard the freedom of conscience and worship. Consistently with the language used, Constitutional instructions should receive broader and more liberal construction than statutes, for the power dealt with in the former case is original and unlimited and in the latter case limited, and Constitutional rights should not be permitted to be nullified or evaded by astute verbal criticism, without regard to the fundamental aim and object of the instrument and the principles on which it is based. If the language is not explicit, or admits of doubt, it should be presumed that the provision was intended to be in accordance with the acknowledged principles of justice and liberty. Accordingly, in doubtful cases that particular construction should be preferred which does not violate those principles. In the light of these rules of construction of Constitutional instruments it seems to me that what Article 18 means is that every citizen has the right to profess, practise and propagate his religion and every sect of a religious denomination has the right to establish, maintain and manage its religious institutions, though the law may regulate the manner in which religion is to be professed, practised and propagated and religious institutions are to be established, maintained and managed. The words "the right to establish, subject to law, religious institutions" cannot and do not mean that such institutions may be abolished altogether by the law".

20. Ordinance XX of 1984 which is being examined was promulgated by the President on the 26th of April, 1984 "in pursuance of the Proclamation of the fifth day of July, 1977, and in exercise of all powers enabling him in that behalf. In making the Ordinance and promulgating it

the then President suffered from no Constitutional restraints of Fundamental Rights or other provisions. His will was supreme. The entire Ordinance has not been subjected to scrutiny in these proceedings. The portions which have received pointed attention and challenge relate to section 3 of the Ordinance adding new sections 298-B and 298-C in the Pakistan Penal Code Act (XLV of 1860), and are reproduced hereunder:--

(1)"298-B. <u>Misuse of epithets, descriptions and titles, etc, reserved for certain holy personages or places.</u>-- (1) Any person of the Quadiani group or the Lahori group (who call themselves 'Ahmadis' or by any other name) who by words, either spoken or written, or by visible representation,--

(a).....

(b).....

(c).....

(d)refers to, or names, or calls, his place of worship as 'Masjid'; shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

(2)Any person of the Quadiani group or Lahori group (who call themselves 'Ahmadis' or by any other name) who by words, either spoken or written, or by visible representation, refers to the mode or form of call to prayers followed by his faith as 'Azan', or recites Azan as used by the Muslims, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

(2) 298-C. <u>Person of Quadiani group, etc.. calling himself a Muslim or preaching or propagaling</u>

his faith.--Any person of the Quadiani group or the Lahori group (who call themselves 'Ahmadis' or by any other name), who directly or indircctly—

(a)"poses himself as a Muslim",

(b)"or calls, or refers to, his faith as Islam",

(c)"or preaches or propagates his faith, by words, either spoken or written",

(d)"or invites others to accept his faith, by words, either spoken or written, or by visible representations",

(e)"or in any manner whatsoever outrages the religious feelings of Muslims"

shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine".

Section 298-C has been broken in clauses in order to make its effect, examination and scrutiny easier.

21. This Ordinance XX of 1984 by its section 2 provides that "provisions of this Ordinance shall have effect notwithstanding any order or decision of any Court". This section has its background and reference to the case of Abdur Rahman Mobashir and 3 others v. Syed Amir Ali Shah Bokhari and 4 others (PLD 1978 Lahore 113) where the tenets of Quadiani or Ahmadi faith were examined in great detail with a view to ascertain what rights others could have in challenging them, prohibiting or preventing them or in avoiding them. However, it is not necessary to reproduce the conclusions drawn therein because it stands overridden by this Ordinance XX of 1984 and in any case the test is the Fundamental Right, a Constitutional provision and not a civil right which was in issue in that case. Nevertheless it must be stated that it is a very exhaustive and illuminative judgment on the subject.

22. The learned counsel for the appellants has taken exception to the provision (d) and sub-section (2) of section

298-B of the P.P.C. as introduced by the Ordinance. It concerns the naming of the place of worship by the Quadianis and Ahmadis as 'Masjid' and calling of "Azan". Historically this has been shown in the Lahore High Court case to be a tenet or a practice of Ahmadis or Quadianis not of recent origin or device and adopted not with a view to annoy or outrage the feelings and sentiments of non-Ahmadis and non-Quadianis. Being an essential element of their faith and not being offensive per se prohibition on the use of these by them and making it an offence punishable with imprisonment and fine violates the Fundamental Right of religious freedom of professing, practising and propagating and of Fundamental Right of equality inasmuch as only Quadianis or Ahmadis are prevented from doing so and not other religious minorities. It is not the "Azan" or the naming of the "Masjid" which has been made objectionable by law but doing of these by Ahmadis or Quadianis alone.

23. The learned counsel for the appellants has taken strong exception to section 298-C, clause (a) of the P.P.C. on the ground that the word "posing" is abominably vague and incapable of judicial enforcement. We are not inclined to agree with him because already in the language of law the words like "fraud", "misrepresentation", "deception", "cheating" which have a wide undefined connotation are in use and have meaning similar to that of "posing". With the Constitutional mandate in the background providing that Ahmadis and Quadianis shall be for the purposes of law and Constitution dealt with in this country as non-Muslim prevents them from giving themselves out as Muslims. Such a provision is in advancement of the Constitutional mandate and not in derogation of it. Therefore, if any Ahmadi or Quadiani claims to be or gives out publicly to be a Muslim then he would be acting in violation of the Constitutional provision contained in Article 260(3). Such a provision could certainly be made within the framework of the Constitution and the Fundamental Rights an offence. This argument equally applies to clause (b) as made out above of section 298-C of the P.P.C.

24. As regards clause (e) of section 298-C, the law cannot be said to be violative of Fundamental Right of religion or speech where it punishes acts outraging the religious feelings of a particular group or of the general public as such. Nobody has a Fundamental Right or can have one of outraging the religious feelings of others while propagating his own religion or faith. Therefore, clauses (a), (b) and (e) as found in section 298-C are consistent with the Constitutional provisions contained in Articles 19, 20 and 260(3).

25. On the reasoning that has been adopted in interpreting these relevant articles of the Constitution, clauses (c) and (d) of section 298-C of P.P.C. as reproduced above standing by themselves, individually or the two together would be violative of the Fundamental Right of religion's freedom and of equality and of the speech in so far as they prohibit and penalise only the ahmadis and Quadianis from preaching or propagating their faith by words written or spoken or by visible representation. Invitation to one's own faith when it is not accompanied by any other objectionable feature cannot be condemned. However, if the acts mentioned in clauses (c) and (d) are accompanied with what is provided in clause (e) or has the effect of clauses (a) and (b) then the acts will be penal under these relevant clauses and not under clauses (c) and (d). To this extent clauses (c) and (d) of section 298-C, P.P.C. as reproduced in the judgment and as interpreted would be ultra vires the Constitution.

26. So far as the five appeals arising out of criminal trial (Criminal Appeals 31-K to 35-K/88) are concerned, we find that three of them have originated in the complaint of Nazir Ahmad Taunsvi directly concerned with the Khatm-e-Nabuwwat movement who made a grievance of the fact that certain persons were roaming about in the Bazar with the badges of 'Kalma Tayyaba' exhibited on their chest. They were known to be Quadiani. Some of them on being questioned said that they were Muslim. This act of theirs of wearing a badge of the 'Kalma Tayyaba' was taken to be their posing as Muslim. This conviction is defective

because in view of the discussion and findings already recorded for an Ahmadi to wear a badge having 'Kalma Tayyaba' inscribed on it does not per se amount to outraging the feelings of Muslims nor does it amount to his posing as a Muslim. It was admitted and is common knowledge that those who are Muslim do not in order to prove their religion of Islam wear badges of the 'Kalma Tayyaba'. This is done by those who are Constitutionally classified as non-Muslims. Therefore, there should be no element of posing or representation by non-Muslims by wearing the 'Kalma Tayyaba' as Muslims in the existing situation.

27. As regards the allegation that on being questioned and interrogated they gave the reply that they were Muslims while in fact they were Quadiani or Ahmadis, that too will not be an offence under the law. Posing involves voluntary representation. In giving reply to a question one does not respond voluntarily but as would appear from the circumstances of these cases under threat or duress. One may hide his religion in public to protect himself physically preferring the lesser evil of criminal prosecution or one may avoid and give an evasive reply. This conduct will not be reprehensible, particularly when so the person asking the question has no authority in law to ask these questions or to exact a correct reply, nor the statement is being made on oath.

28. The other two Criminal Appeals (Criminal Appeals Nos. 32-K and 33-K of 1988) relate to reports lodged by individuals not so connected with any religious movement as such. They felt offended and insulted only because the 'Kalma Tayyaba' badge was worn by the persons known to be Ahmadi or Quadiani. There was no representation by words of mouth or otherwise by those wearing the 'Kalma Tayyaba' badges that they were Muslims and not Quadianis or Ahmadis.

The exhibition or use of 'Kalma Tayyaba' correctly reproduced, properly and respectfully exhibited cannot be made a ground per se for action against those who use

'Kalma Tayyaba' in such a manner. If for ascertaining its peculiar meaning and effect one has to reach the inner recesses of the mind of the man wearing or using it and to his belief for making it an offence then the exercise with regard to belief and the meaning of it for that person and the purpose of using and exhibiting the 'Kalma Tayyaba' would be beyond the scope of the law and in any case it will infringe directly the religious freedom guaranteed and enjoyed by the citizens under the Constitution, where mere belief unattended by objectionable conduct cannot be objected to.

29. Our difficulty in handling these appeals has been that the respondents have by and large argued the matter as if the vires of the impugned portions of the Ordinance are being tested for their inconsistency more with injunctions of Islam than for their inconsistency with the Fundamental Rights. This has brought in religious scholars volunteering to assist the Court generating lot of avoidable heat and controversy at the argument and post argument stage.

30. The result of the above discussion is that the Criminal Appeals Nos. 31-K/1988 to 35-K/1988 are allowed, the conviction and sentence of the appellants is set aside. Further, the provisions of clause (d) and subsection (2) of section 298-B and portions (c) and (d) of section 298-C of the Pakistan Penal Code, reproduced in paragraph 20 of the judgment, are declared to be ultra vires the Fundamental Rights 20 and 25.

31. Civil Appeals Nos. 149 of 1989 and 150 of 1989 are also partly allowed to the extent the portions of the Ordinance XX of 1984 have been held to be ultra vires the Fundamental Rights 19, 20 and 25. No order is made as to costs.

ABDUL QADEER CHAUDHRY, J. I have had the benefit of going through the draft judgment proposed to be delivered by my learned brother Shafiur Rahman, J, but with respect, I do not agree with the opinion of my learned brother.

The facts of the connected appeals have been fully enumerated in the proposed judgment and I need not repeat the same. So far as the present appeal is concerned, the facts giving rise to the proceedings are that the appellants belong to Ahmadia community, (Quadianis), a non-Muslim religious sect. The Ahmadis throughout the world had decided to celebrate the centenary of their religion, which was founded on 23rd March, 1889, in a befitting manner, commencing from 23rd March, 1989.

On 20th March, 1989, the Home Secretary, Government of Punjab, promulgated an order, under Section 144, Cr.P.C. banning the centenary celebrations, by the Quadianis in the Province of Punjab. The District Magistrate, Jhang, also passed another order dated 21st March, prohibiting the Quadianis of Jhang District from undertaking the following activities:-

(i)Illuminations on buildings and premises;

(ii)Erection of decorative gates;

(iii)Holding of processions and meetings;

(iv)Use of loudspeakers and megaphones;

(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 feelings of Muslims.

It appears from the above, that what had been banned are the activities in public or in the view of the public, to save breach of peace and maintain the law and order.

The Resident Magistrate, Rabwah, informed the Ahmadia community to remove ceremonial gates, banners and illuminations and also ensure that no more writings

will be done on the walls. He further informed that the prohibitions contained in the order dated 21st March had been extended till further orders.

The appellants challenged the above orders by way of Writ Petition No. 2089 of 1989. seeking declaration that their right to recount the important events of the last hundred years of their community and to celebrate the same in a befitting manner could not be denied to them. It was stated that they had planned to do that by wearing new clothes, offering thanks-giving prayers, distributing sweets among children, serving food to the poor and to assemble for meetings, to express their gratitude to God Almighty for favours and bounties bestowed by Him in the last hundred years. They contended that all the activities noted above, being protected and guaranteed by Fundamental Right, as embodied in Article 20 of the Constitution of 1973, the impugned orders were unlawful. It was further stated that none of the ingredients of Section 144 was present to attract the impugned orders. One of the appellants who was also convicted under Section 298-B of PPC, for using a badge of ''Kalma" and for saying Azan" had filed another petition. This section 298-B and another 298-C had been inducted in the PPC, by the Ordinance XX of 1984.

The case came up before a learned Judge of the Lahore High Court, who in his judgment considered very concisely the legal and constitutional questions raised in the case and has rendered a very balanced judgment. We highly appreciate that the learned Judge relied, in this respect, on precedents from the jurisdiction, which are either secular or claim to be the champions of human rights. The controversy raised before the court is, undoubtedly, of very sensitive nature, concerning one's faith and belief and need a very dispassionate and careful approach, in order to inspire confidence and lend its judgment the necessary independence.

The main question involved is whether the impugned orders passed under Section 144 Cr.P.C and the Ordinance XX of 1984 are violative of the Fundamental Right (Art. 20)

as given in the Constitution of Pakistan, 1973?

The appellants raised the following propositions for consideration :-

(a)The finding of the Federal Shariat Court that the Ordinance is not contrary to Quran and Sunnah, is of no consequence, so far as this Court is concerned.

(b)The Ordinance expressly and in no uncertain terms, is total denial of religious freedom guaranteed under Article 20 of the Constitution to the Ahmadi citizens of Pakistan.

(c)The Ordinance is vague and uncertain and also oppressive.

(d)That the word "law" used in phrase "subject to law" in Article 20 means positive law and not Islamic Law.

(e)The phrase "glory of Islam" as used in Article 19 of the Constitution cannot be availed in respect of the rights conferred in Article 20.

(f)Use of a badge of 'Kalma" and saying "Azan" are not covered by the Ordinance.

(g)The impugned orders issued under Section 144, Cr.P.C., violate the appellants' fundamental rights about religion and are, therefore, violative of Article 20 of the Constitution.

Before proceeding with the contentions as raised, it appears necessary to say, if the general law applied so far, gives everyone a right to the use of any word, name and epithet etc., or, do there exist any recognised restrictions already? It will be appreciated that some of the epithets, descriptions and titles etc., as given in Section 298-B have been used by Quran for specific personages (See 33 : 32, 33 : 54 and 9 : 100) while others undoubtedly and rather admittedly being used by the Muslims, for those mentioned there, exclusively, for the last about 1400 years.

These epithets carry special meaning, are part of the Muslim belief and used for reverence. Any person using them for others, in the same manner, may be conveying impression to others that they are concerned with Islam when the fact may be otherwise.

It is to be noted that it is not only in Pakistan but throughout the World, that laws protect the use of words and phrases which have special connotations or meaning and which if used for other may amount to deceiving or misleading the people. The English Company Law lays down that a name must not be misleading or suggest a connection with the Crown, a Government Department, or a municipality, and only in exceptional circumstances will names be allowed which include "Imperial", "Commonwealth" "National", or "International". The use of words "Cooperative" and "Building Society" is also forbidden. The most important is the rule that the name will be refused registration if it is too like the name of an existing company. These provisions have been strictly applied and were never challenged in a court of law or the Parliament.

Section 20 of the Indian Company Law also lays down that no company shall be registered by a name which, in the opinion of the Central Government, is undesirable and that a name which is identical with, or too nearly resembles, the name by which a company in existence has been previously registered, will be deemed to be undesirable by the Central Government. The Indian Constitution has similar Fundamental Rights as ours but we have not seen a single decision of any court there, declaring the restriction violative of these rights.

A law for protection of trade and merchandise marks exists, practically, in every legal system of the world to protect the trade names and marks etc.; with the result that no registered trade name or mark of one firm or company can be used by any other concern and a violation thereof, not only entitles the owner of the trade name or mark to receive damages from the violator but it is a criminal offence also.

Here we may refer to English Law. It was held in J. Bollinger V. Costa Brava Wine Company Ltd; (1959) 3. W.L.R. 966 that "An injunction could be obtained to restrain the defendant from continuing a practice that was calculated to deceive, although there was no proof of an intent to deceive".

The Chapter X of the Trade and Merchandise Marks Act, 1958, of India provides penalties for falsifying and falsely applying trade marks or for applying false trade marks, trade descriptions, etc., or for selling goods to which a false trade mark or false description is applied.

The Chapter XVIII of the Indian and Pakistan Penal Codes, contains offences relating to documents and to trade and property marks. Section 481 says "Whoever, marks any moveable property or goods or any, package or other receptacle containing movable property or goods, or uses any case, package or other receptacle having any trade mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so marked or any property or goods contained in any receptacle so marked, belong to a person to whom they do not belong is said to use a false property mark. The offence is a fraud and is punishable with imprisonment of either description for a term which may extend to one year, or with fine or with both.

Laws similar to above have been in force in Pakistan, and no one challenged them on any ground. We may here refer to section 69 of the Trade Marks Act; 1940, which was applicable to the sub-continent of India. The amended section as now applicable in Pakistan is as under :-

"69. Restraint of use of Royal Arms and State emblems: If a person, without due authority, uses in connection with any trade, business, calling or profession-

(a)the Royal Arms or Government Arms (or arms to closely resembling the same as to be calculated to deceive) in such manner as to be calculated to

lead to the belief that he is duly authorised so to use the Royal Arms or Government Arms, or

(b)name, title and semblance of Quaid-i-Azam Muhammad Ali Jinnah and any variations thereof or any device, emblem or title in such manner as to be calculated to lead to the belief that he is employed by, or supplies goods to, or is connected with, His Maesty's Government or the Federal Government or any Provincial Government or any department of any such Government, or

(c)the emblem, the official seal and the name or any abbreviation of the name of the United Nations or any subsidiary body set up by the United Nations or of the World Health Organization in such manner as is to be calculated to lead to the belief that he is duly authorized by the Secretary-General in the case of the United Nations or by the Director General of the World Health Organization in the case of that Organization to use that emblem, seal or name, he may, at the suit of any person who is authorised to use such Arms or such device, emblem or title or of the Registrar, be restrained by injunction from continuing so to use the same:

Provided that nothing in this section shall be construed as affecting the right, if any, of the proprietor of a trade mark containing any such Arms, device, emblem or title to "continue to use such trade mark."

It is thus clear that intentionally using trade names, trade marks, property marks or descriptions of others in order to make believe others that they belong to the user thereof amounts to an offence and not only the perpetrator can be imprisoned and fined but damages can be recovered and injunction to restrain him issued. This is true of goods of even very small value. For example, the Coca Cola Company will not permit anyone to sell, even a few ounces of his own product in his own bottles or other receptacles,

marked Coca Cola, even though its price may be a few cents. Further, it is a criminal offence carrying sentences of imprisonment and also fine. The principles involved are; do not deceive and do not violate the property rights of others.

Generally speaking, the people who are deceiving others with falsified names are being discouraged, even though the loss may be in terms of pennies. In our case, a law has been made to protect even the title and semblance of Quaid-i-Azam, without any challenge from any quarter. However, in this Ideological State, the appellants, who are non-Muslims want to pass off their faith as Islam? It must be appreciated that in this part of the world, faith is still the most precious thing to a Muslim believer, and he will not tolerate a government which is not prepared to save him of such deceptions or forgeries..

The appellants, on the other hand, insist not only for a licence to pass off their faith as Islam but they also want to attach the exclusive epithets and descriptions etc., of the very reverred Muslim personages to those heretic non-Muslims, who are considered not even a patch on them. In fact the Muslim treat it as defiling and desecration of those personages. Thus the insistence on the part of the appellants and their community, to use the prohibited epithets and the "Shaa'ir-e-Islam" leave no manner of doubt even to a common man, that the appellants want to do so intentionally and it may, in that case amount to not only defiling those pious personages but deceiving others. And, if a religious community insists on deception as its fundamental right and wants assistance of courts in doing the same, then God help it. It has been held by the United States Supreme Court in Cantwell Vs. Connecticut (310 U.S. 296 at 306) that "the cloak of religion or religious belief does not protect anybody in committing fraud upon the public".

Again, if the appellants or their community have no designs to deceive, why do not they coin their own epithets etc.? Do not they realise that relying on the "Shaairs" and other exclusive signs, marks and practices of other religions

will betray the hollowness of their own religion. It may mean in that event that their new religion cannot progress or expand on its own strength, worth and merit but has to rely on deception? After all there are many other religions in the world and none of them ever usurped the epithets etc., of Muslims or others. Rather, they profess and present their own beliefs proudly and eulogise their heroes their own way. It must, however, be mentioned here that there is no law in Pakistan which forbids Ahmadis to coin their own epithets etc. and use them exclusively and there is no other restriction of any sort, whatever, against their religion.

It was argued that the finding of the Federal Shariat Court that the Ordinance is not contrary to Quran and Sunnah, is of no consequence, so far as this Court is concerned.

The contention, however, has no merit. The Ahmadis have been declared non-Muslims by Article 260 (3) (b) of the Constitution. This fact has further been affirmed by the Federal Shariat Court of Pakistan, in Mujibur Rehman Vs. Federal Government of Pakistan and another (PLD 1985 FSC 8), for the reason that the Ahmadis do not believe in the finality of prophethood of Muhammad (Peace be upon him);

They falsify a clear and general verse of Holy Quran by resort to its "Taweel" and import into Islam, heretic concepts like shadowism, incarnation and transmigration.

They were, therefore, asked to restrain themselves from directly or indirectly posing as Muslims or claiming legal rights of Muslims.

The Federal Shariat Court further held that the word "Sahabi" and "Ahle-bait" are used by Muslims for companions and member of the family of Holy Prophet respectively, all of whom were the best Muslims. The Court observed that use of such epithets, which are exclusive for companions of Prophet, his wives and members of his family, by Quadianis in respect of the wives, members of the family, companions and successors of Mirza Ghulam Ahmad, amounts to defiling them and may deceive people

that the bearers of such epithets are good Muslims. It was further stated that calling of "Azan" and naming place of worship as "Masjid", is considered a sure sign of the person calling "Azan" or of persons congregating or praying in the mosque as being Muslims. It was thus held that the provisions of the Ordinance banning use of these epithets, expressions and preaching of religion, by the Ahmadis and the reiteration in the Ordinance that the Ahmadis cannot call themselves or pose to be Muslims in any manner directly or indirectly, is in implementation of the constitutional objective.

As regards "Shaa'ir of Islam" (distinctive characteristics), the Court held that Islamic Sharia does not allow a non-Muslim to adopt them and if an Islamic State in spite of its being in power, allows a non-Muslim to adopt them (without embracing Islam), it will be its failure to discharge its duties. An Islamic state, like a secular state, thus has the power to legislate, to prevent non-Muslims from adopting Shaa'ir-e-Islam, to propagate their own beliefs. As said above, such restriction will be meant to prevent unscrupulous and fraudulent non-Muslim from using the effective and attractive features of Islam in order to attract other non-Muslims not to Islam but to their own heretic fold. It was further held that claim could not be allowed to be pressed on the basis of the Fundamental Rights.

It is to be noted that Mujibur Rehman and others had challenged the above order of the Federal Shariat Court in the Shariat Appellate Bench of the Supreme Court (See: PLD 1988 S.C. (Shariat Appellate Bench - 167), under Article 203-F of the Constitution but withdrew it later for the reasons best known to the appellants. This Court in that appeal held as under :-

"Judgment of the Federal Shariat Court shall rule the field".

The present appeal has been filed and is being heared on the general side, under Art. 185 of the Constitution.

The Chapter 3-A of the Constitution was inducted in

the Constitution on 26th May, 1980. It contains Articles 203-A to Articles 203-J. The Article 203-D of the Constitution lays down that the provisions of Chapter 3-A shall have effect notwithstanding anything contained in the Constitution. Further Article 203-G provides that "Save as provided in Article 203-F, no court or tribunal, including the Supreme Court and a High Court, shall entertain any proceedings or exercise any power or jurisdiction in respect of any matter within the power or jurisdiction of the Court."

These Provisions when read together, would mean that a finding of the Federal Shariat Court, if the same is either not challenged in the Shariat Appellate Bench of the Supreme Court or challenged but maintained, would be binding even on the Supreme Court.

Consequently, the above given findings of the Federal Shariat Court cannot be ignored by this Court.

The next point needing consideration is whether Ordinance XX of 1984, expressly and in no uncertain terms, is total denial of religious freedom guaranteed under Article 20 of the Constitution to the Ahmadi citizens of Pakistan? In order to appreciate further the contention it is necessary to know the relevant law and the facts which mean to have denied the guaranteed religious freedom to the appellants' sect.

Section 298-B which is relevant to this case, reads as under :-

"298-B, - Misuse of epithets, descriptions and titles etc., reserved for certain personages or places.- (i) Any person of Quadiani group or the Lahori group (who call themselves "Ahmadis or by any other name) who by words, either spoken or written, or by visible representation,

(a)refers to or addresses, any person, other than a Caliph or companion of the Holy Prophet Muhammad (peace be upon him), as "Amirul Mumineen", "Khalifa-tul-Muslimeen", Sahaabi", or "Razi Allah Anho";

(b)refers to, or addresses, any person other than a wife of the Holy Prophet Muhammad (peace be upon him), as Ummul Mumineen';

(c)refers to, or addresses, any person other than a member of the family (Ahle-bait) of the Holy Prophet Muhammad (peace be upon him), as Ahle-bait; or

(d)refers to or names, or calls his place of worship as "Masjid"; shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

2. Any person of the Quadiani or Lahori Group (who call themselves "Ahmadis or by any other name) who by words either spoken or written, or by visible representation refers to the mode or form of call to the prayers followed by his faith as "Azan", or recites "Azan" as used by Muslims, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine".

Section 298-C reads as under:-

"Person of Quadiani group, etc., calling himself a Muslim or preaching or propagating his faith. Any person of Quadiani group or the Lahori group (who call themselves "Ahmadis" or by any other name), who, directly or indirectly , poses himself 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, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine".

The contents of the Ordinance XX of 1984 have been reproduced above. They prohibit the community of the appellants to use certain epithets, descriptions and titles

etc., mentioned therein. It may be mentioned that Mr. Fakhruddin G. Ebrahim, the learned counsel, did not challenge the validity of subsection (a) of Section 298. The orders of the Home Secretary, the District Magistrate and the Resident Magistrate mentioned in the beginning of the petition banned their centenary celebrations, in the Province of Punjab, prohibiting them from the activities reproduced in para 3 above and asked them to remove ceremonial gates, banners and illuminations and further ensure that no further writings will be done on the walls. The purpose of the order has also been spelt out in the last direction to say, that no other activity which may directly or indirectly incite and injure the feelings of Muslims, shall be undertaken. The above restrictions, clearly mean such activities which might have been performed in the public or in public view and not those to be performed in private. The actions had been challenged in the High Court through Writ petitions, pleading violation of fundamental rights. The facts which were given by the appellants themselves and on which the orders were passed, will therefore, be considered as undisputed.

Article 20 provides as hereunder:-

"Freedom to profess religion and to manage religious institutions. Subject to law, public order and morality.

(a)every citizen shall have the right to profess, practise and propagate his religion; and

(b)every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions."

The fundamental right, relevant hence, is the "freedom to profess religion" but it has been made "subject to law, public order and morality". The courts of other countries, which have similar fundamental rights, have held that this right embraces two concepts; freedom to believe and freedom to act. Some of them held the former to be absolute but others said that, that too was subject to

law etc. However, all are agreed that the latter, in the nature of things, cannot be absolute. According to them, conduct remains subject to regulation for the protection of the society. So the freedom to act must have appropriate definition to preserve the enforcement of that protection. The phrase "subject to law", on the other hand, does neither invest the legislature with unlimited power to unduly restrict or take away the Fundamental Rights guaranteed in the Constitution, nor can they be completely ignored or by-passed as non-existent. A balance has thus to be struck between the two, by resorting to a reasonable interpretation, keeping in view the peculiar circumstances of each case, (See Jesses Cantwell etc Vs. State of Connecticut, 310 US 296) and Tikamdas anothers Vs. Divisional Evacuee Trust Committee, Karachi, PLD 1968 Kar 703 (F.B.)

The Supreme Court of America in the case of Reynolds Vs. United States, (98 Us 145) held that "Congress was deprived of all legislatible power over mere opinion, but was left free to reach actions which were in violation of social duties or subversive of good order ..... Laws are made for the government of actions, and while they cannot interfere with mere religious beliefs and opinions, they may with practices."

After taking the above view, the Supreme Court felt justified to ban polygamy, as it was being practised by Mormons sect on the ground that it was a duty imposed on them by their religion and was not a religious belief or opinion. It must be noted here that the observations in the last part of the above paragraph are peculiar to America where the people and not Allah are the sovereign.

The Supreme Court of India, in the Commissioner Hindu Religious Endowments, Madras V. Sri Lakshmindra etc. (A.I.R. 1954 S.C. 282 at P. 291) approved the view similar to the above, and as taken by Latham CJ in the case from Australia, to say that:

"The provision for protection of religion was not an absolute protection to be interpreted and applied

independently of other provisions of the constitution. These privileges must be reconciled with the right of the State to employ the sovereign power to ensure peace, security and orderly living without which constitutional guarantee of civil liberty would be a mockery".

It has been observed at page 127 as under:-

"In the United States the problems created by this provision have been solved in large measure by holding that the provision for the protection of religion is not an absolute, to be interpreted and applied independently of other provisions of the Constitution. The Supreme Court said in Jones Vs. Opelika (1942) 316 U.S. 584 at p. 593, with reference to the constitutional guarantees of freedom of speech, freedom of press and freedom of religion: "They are not absolutes to be exercised independently of other cherished privileges, protected by the same organic instrument." It was held that these privileges must be reconciled with the right of a State to employ the sovereign power to ensure orderly living "without which constitutional guarantees of civil liberties would be a mockery."

It has been further observed at page 130 as follows:-

"The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever hereafter be allowed, within this State, to all mankind:

Provided, that the liberty of conscience, hereby granted, shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.:

Again at page 131, it has been observed as hereunder:-

"John Stuart Mill in his Essay on Liberty critically examines the idea of liberty, and his discussion of the subject is widely accepted as a weighty exposition of

principle. The author had to make the distinction which is often made in words between liberty and licence, but which it is sometimes very difficult to apply in practice. He recognized that liberty did not mean the licence of individuals to do just what they pleased, because such liberty would mean the absence of law and of order, and ultimately the destruction of liberty. He expressed his opinion as to the limits of liberty when he said: "The sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their member, is self-protection."

At the same page it has beer further observed that:-

"It is consistent with the maintenance of religious liberty for the State to restrain actions and courses of conduct which are inconsistent with the maintenance of civil government or prejudicial to the continued existence of the community."

The above observations were made while interpreting Section 116 of the Constitution which reads as follows:

"The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth."

At page 155 of the aforesaid case, the following observations are relevant:-

"The constitutional provision does not protect unsocial actions or actions subversive of the community itself. Consequently the liberty and freedom of religion guaranteed and protected by the Constitution is subject to limitations which it is the function and the duty of the courts of law to expound. And those limitations are such as are reasonably necessary for the protection of the community and in the interests of social order".

It may, therefore, be necessary to know, what is religion, the freedom of which restricts the right of the Governments to legislate and take action. Scholars give different origins of the word. Religion is a complex of doctrines and practices and institutions, it is a statement of belief in God, in a world of spirits and a world or worlds that lie beyond the one in which we live. In its more colloquial sense, a religion is spoken of as a religion, e.g., Christianity or Islam, the religion of Jews or Catholics etc. In Davies Vs. Beason [1890 (133) US 333], the American Supreme Court defined it as under:-

"The term "religion" has reference to one's views of his relation to his creator and the obligations they impose of reverence for His Being and character and of obedience to His will. It is often confounded with cults or form of worship of a particular sect, but is distinguishable from the latter."

The term is not expressly, defined in the Constitution of Pakistan as such but its meaning may be gathered from the definitions of "Muslim" and "non-Muslim", in its Article 260(3) (a) and (b), which are as under :-

"260(3)- In the Constitution and all enactments and other legal instruments, unless there is anything repugnant in the subject or context-

(a)"Muslim" means a person who believes in the unity and oneness of Almighty Allah, in the absolute and unqualified Prophethood of Muhammad (peace be upon him), the last of prophets and does not believe in, or recognise as a prophet or religious reformer, any person who claimed or claims to be a prophet, in the sense of the word or any description whatsoever, after Muhammad (peace be upon him); and

(b)"non-Muslim" means a person who is not a Muslim and includes a person belonging to the Christian, Hindu, Sikh, Budhist or Parsi community, a person of the Quadiani Group or

Lahori Group (who call themselves "Ahmadis' or by any other name) or a Bahai, and a person belonging to any of the Scheduled Castes)".

There is no definition of the term "religion", in the Constitutions of India or America or Australia either. However, the Indian Supreme Court, in the case of Commissioner H.R.E. Vs. Lakshmindra Swamiar (A.I.R. 1954 S.C. 282), interpreted the term in the following manner:-

"Religion is a matter of faith with individuals or communities and is not necessarily theistic. There are well known religions in India like Buddhism and Jainism which do not believe in God. A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being, but it will not be correct to say that religion is nothing else but a doctrine of belief.

A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and mode of worship which are regarded as integral parts of the religion, and these forms and observance might even extend to matters of food and dress."

The Supreme Court went on to say, in para 19 of the Judgment that:

"In the first place, what constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself. If the tenets of any religious sect of Hindu prescribe that offering of food be given to the idol at particular hours of the day, that periodical ceremonies should be performed in a certain way at certain period of the year or that there should be daily recital of the sacred texts or oblations to the sacred fire, all these would be regarded as parts of the religion and mere fact that

they are expenditure of money...should not make them secular..."

The Court, after noting that the American and Australian Courts have declared in unrestricted terms, without any limitation whatsoever, the freedom of religion, observed that :-

"the language of Articles 25 and 26 is sufficiently clear to enable us to determine without the aid of foreign authorities as to what matters come within the purview of religion and what not. As we have already indicated, freedom of religion in our Constitution is not confined to religious beliefs only; it extends to religious practices as well subject to restrictions which the Constitution itself has laid down".

The Court then did go into the question whether certain matters appertained to religion and concluded by saying that:

"these are certainly not matters of religion and the objection raised with regard to validity of these provisions seem to be altogether baseless."

The same Court in Durghah Committee V. Hussain Ali (A.I.R. 1961 S.C. 1402) in para 33, Gajendragadkar, J. struck a note of caution and observed as under:-

"Whilst we are dealing with this point it may not be out of place to strike a note of caution and observe that in order that the practice in question should be treated as a part of religion they must be regarded by the said religion as its essential and integral part; otherwise even secular practices which are not an essential and integral part of religion are apt to be clothed with a religious form and make a claim for being treated as religious practices. Similarly, oven practices though religious may have sprung from merely superstitious beliefs and may in that sense be extraneous and unessential accretion to religion itself. Unless such practices are found to constitute an

essential and integral part of a religion their claim for the protection may have to be carefully scrutinized: in other words, the protection must be confined to such religious practices as are an essential and integral part of it and no other".

The same Court in Jagdishwaranand Vs. Police Commissioner, Calcutta (A.I.R. 1984 S.C. 51) in para 10, held as follows:-

"Courts have the power to determine whether a particular rite or observance is regarded as essential by the tenets of a particular religion".

It has been seen above, in the judgments of foreign secular courts that though religious practices are protected by the term "freedom of religion" yet only such practices are so covered as are integral and essential part of the religion. It is further held that it is for the courts to determine whether a particular practice, constitutes essential and integral part of the religion or not? In that view of the matter, these practices have to be stated and proved so, from the authentic sources, of the religion, to the satisfaction of the court.

The appellants, therefore, had to first enumerate the practices they intended to perform at the centenary celebrations and then show that they were essential and integral part of their religion, before the court could declare that they, as essential and integral part, were unlawfully denied by the impugned law or the executive orders? The appellants, however, have not explained how the epithets etc., and the various planned ceremonies are essential part of their religion and that they have to be performed only in public or in the public view, on the roads and streets or at the public places?

It will also be noted that if the impugned law is a valid piece of legislation, and the respondents, had taken the impugned actions, in the interest of law and order, then unless it can be shown that the same were taken malafide or without factual justification, the question of denial of

fundamental rights may not arise. The law on the point has been well settled in various jurisdictions and it may be useful to cite them.

Latham C. J. in Jehovah's Witnesses case, Adelaide Vs. Commonwealth, referred to above, while dealing with the provisions of Section 116 of the Australian constitution which *inter alia* forbids the Commonwealth to prohibit "the free exercise of any religion' made the following observations:-

(1)Section 116 protects the religion (or absence of religion) of minorities, and, in particular, or unpopular minorities (p. 124) although it is true that in determining what is religious and what is not religious the current application of word religion must necessarily be taken into account.

(2)Section 116 protects practices as well as beliefs. (P. 124)

(3)As to free exercise of religion: the word "free" does not mean license. The concept of freedom can only be evaluated in a particular context. For example free speech does not mean the right to create a panic by calling out "fire" in a crowded theatre. Likewise as various American cases show, the free exercise of religion does not empower individuals because of their religious beliefs to break the law of the country,

(4)The High Court is arbiter of the occasion when a legislative provision unduly infringes religious freedom. This makes it possible to accord a real measure of practical protection to religion without involving the community in anarchy.

Consequently, the court held that the doctrine expressed by Jehovah's Witnesses as to the non cooperation with the Commonwealth in terms of military obligation was prejudicial to the defence of the community and Section 116 did not give immunity to it. So the rule laid down there is that a law imposing civic duties could not be

characterised as a law infringing religious freedom.

Justice Hughes in Willis Coxv. New Hampshire (1941 (31.2) US 569) also enlightened the same subject to say:

"A statute requiring persons using the public street for a parade or procession to procure a special license therefor from the local authorities, does not constitute an unconstitutional interference with religious worship or the practice of religion, as applied to a group marching along a sidewalk in single file carrying signs and playcards advertising their religious beliefs."

We have referred to the above view from such countries, which claim to be the secular and liberal, and not religious or fundamentalists. The same principles were applied by the Indian Supreme Court in Muhammad Hanif Qurehsi and others Vs. State of Bihar (AIR 1958 S.C. 731) to hold that certain laws banning slaughter of certain animals, did not violate the fundamental rights of Muslims under Article 25(i), as there was no material to substantiate the claim that the sacrifice of a cow on Bakr-Id-Day, was enjoined or sanctioned by Islam, to exhibit a Musslman's belief and idea.

The same Court in Acharya Jagdishwaranand Avadhutta etc. Vs. Commissioner of Police, Calcutta, (AIR 1984 S.C. 51) held as follows :-

"Even conceding that tandava dance has been prescribed as a religious right for every follower of Ananda Marg it does not follow as a necessary corollary that tandava dance to be performed in the public is a matter of religious rite. Consequently, the claim that the petitioner has a fundamental right within the meaning of Article 25 or 26 to perform tandava dance in public streets and public places is liable to be rejected."

The American Court held in the following cases that there was no violation of constitutional guarantee of freedom of exercise of religion. Mr. S. Sharifuddin Pirzada

in his book "Fundamental Rights and Constitutional Remedies in Pakistan" (1966 Edition) at pp. 313-314 and 317 has observed as follows:-

(i)in Hamilton Vs. Board of Regents of University of California, (1934) 293 US 245, where students appealed to the Supreme Court that the act of the university to make a regulation for compulsory military training, was contrary to their religious belief, the court rejected the contention, holding that the "Government owes a duty to the people within its jurisdiction to preserve itself in adequate strength to maintain peace and order and assure the enforcement of law. And every citizen owes the reciprocal duty, according to his capacity, to support and defend the Government against all enemies."

(ii)The plea of fundamental right was rejected in Commonwealth Vs. Plaisted [(1889) 148 Mass 375], by the Massachusettes Supreme Court in a case where Law prohibits the use of streets for religious meetings, or the beating of drums though it is a part of religious ceremony of such organisation as the salvation army.

(iii)Where the statute requires a parent to provide medical treatment for a child suffering from disease even if not in accordance with religious belief of the parents.

(iv)Freedom of religions does not necessarily imply absolute equality of treatment, and in fact regard must be had to the special position of Church of England. ("The United Kingdom" by G. W. Keeton and D. Lioyed, pp. 67-68)

The above views, as they are prevalent, in the above Jurisdiction, do go to show that freedom of religion would not be allowed to interfere with the law and order or public peace and tranquility. It is based on the principle that the state will not permit anyone to violate or take away the

fundamental rights of others, in the enjoyment of his own rights and that no one can be allowed to insult, damage or defile the religion of any other class or outrage their religious feelings, so as to give rise to law and order situation. So whenever or wherever the state has reasons to believe, that the peace and order will be disturbed or the religious feelings of others may be injured, so as to create law and order situation, it may take such minimum preventive measures as will ensure law and order.

The Muslims think that the birth of this Ahmadia community during the English rule, in the subcontinent, among the Muslims society, was a serious and organised attack on its ideological frontiers. They consider it a permanent threat to their integrity and solidarity, because the social-political organisation of the Muslim society is based on its religion. In that situation their using the above given epithets etc., in a manner which to the Muslim mind looks like a deliberate and calculated act of defiling and desecration of their holy personages, is a threat to the integrity of "Ummah" and tranquility of the nation, and it is also bound to give rise to a serious law and order situation, like it happened many a time in the past.

Allama Iqbal says, "I became suspicious of the Quadiani movement when the claim of new prophethood, superior even to the prophethood of the Founder of Islam, was definitely put forward, and Muslim world was declared "Kafir" (infidel). Later, my suspicion developed into a positive revolt when I heard with my own ears an adherent of the movement mentioning the Holy Prophet of Islam in a disparaging language". (See "Thoughts and Reflection of Iqbal, page 297 - 1973 Edition).

As a matter of fact, the Ahmadis, internally, had declared themselves the real Muslim community, by alienating and excommunicating the main body of Muslims, on the ground that as they did not accept Mirza Ghulam Ahmad as the prophet and the promised Messiah, they were infidels. This beliefs is held under the instructions of Mirza Ghulam Ahmad himself, who had

declared:-

(a)"Every Muslim loves my books, benefits from the contents thereof and accepts them except those who are offsprings of whores and prostitutes and whose hearts have been sealed. "(Aainae Kamalaat Islam, page 547 and 548.) One may note the language of a "prophet" and the effect it can have on the addressees.

b)There are many more examples of the language like the above but just one more may suffice for the present: "My enemies are swines and their women are worse than bitches. "(Najmul Huda by Ghulam Ahmad. page 10).

(c)Quoting Mirza Ghuiam Ahmad, his second caliph, Mirza Bashiruddin Ahmad (also his son), in his address to the students, as reported in Alfazal, 30th July, 1931, advised them as to their relationship with the main body of Muslims, as under: -

"This discussion has been going on since the days of Mirza Ghulam Ahmad whether the Ahmadis should have their permanent places of theological learning or not. One view was against it. Their argument was that the few differences between the Ahmadis and Muslims had been resolved by Hazrat Sahib and he has taught the reasons also. As regards the others they can be learnt in the other schools. The other view was for it. Then Mirza Sahib came to clarify that it was incorrect to say that the differences of Ahmadis with the Muslims were only about the death of Jesus Christ and some other issues. According to him the differences encompassed the entity of Almighty Allah, the person of the Holy Prophet, Quran, Prayers, Fasting, Pilgrimage and Zakat. He then explained every item in detail."

(d)"It has been revealed to me by Allah that any one who does not follow you, does not covenant his allegiance to you and rather opposes you, he is a rebel of Allah and his prophet and shall be entrusted to the fire of Hell." (Advertisement in Meyarul Akhyar from Mirza Ghulam Ahmad Quadiani, page 8).

(e)Addressing his followers Mirza Sahib stated:

"Remember, that Allah has informed me that it is prohibited for you, to offer prayers in the leadership of the ones who deny me, belie me or reject me. Rather, your leader in prayers should be one from amongst you. "(Arbaeen No. 3 page 28 footnote).

(f)"Now it is clear and it has been repeatedly said in revelations about me that I have been sent by Allah, ordained by Allah, am a delegatee of Allah, have come from Allah and you have to believe whatever I say otherwise you will go to Hell." (Anjame-e-Atham by Mirza Ghulam Ahmad Quadiani, page 62).

(g)"Those who are my opponents have been included in the list of Christians, Jews and infidels. "(Nazool-ul-Masih, Quadian, 1990).

(h)"One who does not believe in me does not believe in Allah and Holy Prophet, as their prophesy about me is there. "(Haqiqat-ul-Wahi. 1906, page 163-164).

(i)When somebody is said to have asked Mirza Ghulam Ahmad as to what is the harm to offer prayers in the leadership of those who did not consider him infidel, he in a long reply concluded that " a long advertisement be published by such leaders of prayers, about those declaring me an infidel and then 1 shall consider them a Muslim so that you follow them in prayers....." (Badar, 24th May, 1908, as recorded in Majmua Fataava Ahmadia, Vol. I page 307).

(j)"Almighty Allah has revealed to me that any one who received my message and has not believed in me is an infidel." (See the letter of Mirza Ghulam Ahmad to Dr. Abdul Rahim Khan Patialvi, Haqiqatui Wahi page 163).

(k)"One who mischievously repeats that Mirza Sahib's prophesies about the death of Atham were incorrect and that the Christians won the debate and instead of acting justly and fairly, and accepting my victory, raises allegations, he shall be considered to be fond of being known as the illegitimate and not a legitimate issue. "(Anwarul Islam, by Mirza Ghulam Ahmad, page 30).

There are scores of other similar writings, not only by Mirza Sahib himself but his so called 'caliphs' and followers proving, without any shadow of doubt, that they are religiously and socially, a community separate and different from the Muslims.

Sir Muhammad Zafarullah Khan, who was the Foreign Minister of Pakistan, had refused to join the congregation, offering prayers, to pay last homage to the departed soul of Quaid-e-Azam, the father of the Nation, by saying that he may be considered as a Muslim Foreign Minister of a non-Muslim state, or a non-Muslim foreign Minister of a Muslim state, (Daily Zamindar, Lahore, Feb 8, 1950).

Mirza Ghulam Ahmad had forbidden his followers from marrying their daughters with non-Ahmadis and from praying along with them. According to him the main body of the Muslims could, at the most, be treated like Christians.

In fact Mirza Bashiruddin Ahmad, the second Caliph and son of Mirza Sahib, is reported to have said:

"that through an emissary, I requested an English officer that our separate rights be determined like those of the Parsees and Christians. The officer replied that they are minorities while you are a religious sect. On that I said that even Parsees and Christians are religious communities and if they can

be given separate rights why not we."(Al Fazal Nov 13, 1946).

It is thus clear that according to Ahmadis themselves, both the sections i.e., Ahmadis and the main body cannot be Muslims at the same time. If one is Muslim, the other is not. Further, the Ahmadis always wanted to be a separate entity and claim a status, distinct and separate from the others. The main body of Muslims also never wanted to stand with Ahmadis on the same pedestal. Way back, as reported above, the Ahmadis were prepared even to be treated as a minority with separate and distinct rights. They, as a religious community are, rather opposed to Muslims and have always endeavoured not to mix with them. In fact they declared the whole Muslim 'Ummah' as infidels, as said above. However, they being an insignificant minority could not impose their will. On the other hand, the main body of Muslims, who had been waging a campaign against their (Ahmadis') religion, since its inception, made a decision in 1974, and declared them instead, a non-Muslims minority, under the Constitution itself. As seen above, it was not something sudden, new and undesirable but one of their own choice; only the sides were changed. The Ahmadis are, therefore, non-Muslims; legally and constitutionally and are, of their own choice, a minority opposed to Muslims. Consequently, they have no right to use the epithets etc., and the 'Shaa' ire Islam, which are exclusive to Muslims and they have been rightly denied their use by law.

As given above, the constitution of Pakistan declares Ahmadis non-Muslims. Undoubtedly, they are an insignificant minority, and have, because of their belief, been considered heretic and so non-Muslims, by the main body of Muslims. Apart from what has been said above, the right to oust dissidents has been recognised, in favour of the main body of a religion or a denomination, by the courts, and a law prohibiting such an action was declared ultra vires of the fundamental rights, by the Indian Supreme court. Reference be made to the case of Sardar Syedna Taher Saifudin Sahib Vs. state of Bombay etc (Air

1962 S.C. 853), where it was also held In para 40 as under:-

".....What appears, however, to be clear is that where an excommunication is itself based on religious grounds such as lapse from the orthodox religious creed or doctrine (similar to what is considered heresy, apostasy or schism under the canon Law) or breach of some practice considered as essential part of the religion by the Dawoode Bohras in general excommunication cannot but held to be essential part of the religion for the purpose of maintaining the strength of the religion. It necessarily follows that the exercise of this power of excommunication on religious grounds forms part of the management by the community through its religious head, 'of its own affairs in the matter of religion. The impugned Act makes even such excommunication and takes away the power of the 'Dai' as head of the community to excommunicate even on religious grounds. It therefore clearly interferes with the right of Dawoode Bohras community under cl. (b) of Art. 26 of the Constitution."

"(41) That excommunication of a member of a community will affect many of his civil rights is undoubtedly true. This particular religious denomination is possessed of properties and the necessary consequence of excommunication will be that the excommunicated member will loses his right of enjoyment of such property. It loses his right of enjoyment of such property. It might be thought undesirable that the head of the religious community would have the power to take away in this manner the civil rights of any person. The right given under Art. 26 (b) has not, however, been made subject to preservation of civil rights. The express limitation in Art 26 itself is that this right under the several clauses of the article will exist, subject to public order, morality and health. It has been held by this Court in 1958 SCMR 895: (A.I.R. 1958 SC 255) that the right

under Art 26 (b) is subject further to CI.2 of Art 25 of the Constitution."

Even the Privy Council approved similar power of the main body of a religion in Hassan Ali and others V. Mansoor Ali and others (AIR 1948 PC 66) at para 53. The following observations of their Lordships may be reproduced with advantage:-

"The next question is whether the Dai-ul-Mutlaq has the power of excommunication. It was undoubtedly exercised by Muhammad and the Imams. The grounds and effects of its exercise will later be considered. At the moment it is only necessary to say that there are instances of its exercise in the community from time to time by the Dais."

As said above, the Ahmadis, also always wanted to be a separate entity, of their own choice, religiously and socially. Normally, they should have been pleased on achieving their objective, particularly, when it was secured for them by the Constitution itself. Their disappointment is that they wanted to oust the rest of the Muslims as infidels and retain the tag of Muslims. Their grievance thus is that they have been excommunicated and branded as non-Muslims, unjustly. The reason of their frustration and dismay may be that now, probably, they cannot operate successfully, their scheme of conversion, of the unwary and non-Muslims, to their faith. May be, it is for this reason that they want to usurp the Muslims epithets, descriptions etc, and display 'Kalma' and say 'Azan' so as to pose as Muslims and preach and propagate in the garb of Muslims with attractive tenets of Islam. The label of non-Muslims seems to have become counter productive.

The urge by the Ahmadis to somehow retain, all the perceivable signs of Muslims seems necessitated to pass off their religion with the dubious stance and the message, as Islam and for that matter their defiance of the Ordinance is quite understandable. The Constitution, however, is in their way, as the Ordinance only fulfills its intent and

object. In that event, claiming, propounding, pretending or holding out for Quadiani that he is Muslim, without first denouncing his faith, is not only a clear violation of the Ordinance but also the Constitution. Events like that have been and may also be occurring in future, and be responsible for grave law and order situation, like the past.

The contention that the impugned Ordinance is vague and oppressive has not even been supported by the appellants. It may be useful to reproduce section 298-C again for ready reference : Section 298-C reads as under :-

Person of Quadiani group, etc., calling himself a Muslim or preaching or propagating his faith

"Any person of the Quadiani group or the Lahori group (who call themselves 'Ahmadis' or by any other name), who, directly or indirectly, poses himself 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 representations, or in any manner whatsoever outrages the religions feelings of Muslims, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine."

The objection is taken specifically to the phrase ".....poses himself a Muslim ..... his faith as Islam...." According to Black's Law Dictionary, 'vague' means indefinite; uncertain; not susceptible of being understood. Under this principle, a law which does not fairly inform a

person of what is commanded or prohibited, is unconstitutional, being violative of the 'due process'. The judgments from Indian jurisdiction and Ghulam Zamir Vs.A.B. Khondkar (P.L.D. 1956 S.C 156), cited by the appellants, also have no bearing on the case. It is argued that the phrase "who, directly or indirectly, poses himself as a Muslim or calls, or refers to, his faith as Islam....." is too broad and wide, and too undetermined and volatile and too indefinite and uncertain, for anybody to understand and anticipate what acts are being prohibited by the Legislature. Consequently, it is urged that it cannot be called a law and must be struck down as such.

There may be no dispute about the proposition that if a law goes beyond the frontiers that are fixed for a legislature or where a law infringes a fundamental right, or a law, particularly, criminal, is vague, uncertain or broad, it must be struck down as a void law, to the extent of the objection. The appellants, however, have not shown or demonstrated as to where is that vagueness. In order to succeed, the appellants ought to have shown that the constituents of the offence, as given in the law are so indefinite that line between innocent and condemned conduct cannot be drawn or there are attendant dangers of arbitrary and discriminatory enforcement or that it is so vague on the face of it that common man must necessarily guess at its meaning and differ as to its application.

According to the dictionary, "pose" means to claim or propound. In this case the law is addressing the members of Quadiani or Lahori group. They have a historical back ground of serious conflict with the main body of Muslims, for the beliefs the relevant of which may be discussed later. These have already been discussed in some details in the judgment of Mujibur Rehman (PLD 1985 FSC 8) and also in the judgment of the High Court. The Ahmadis claim Mirza Sahib is himself a prophet and those who do not believe in and follow him are infidels. The right to the use of the above mentioned epithets etc., by the Ahmadis, for those connected with Mirza Sahib, is on account of that

connection alone and is to be seen in that light. So it will only be a question of fact, to be proved by evidence, that the accused did use the epithets etc., or if his attitude or conduct amounted to that what is provided in the law. The appellants are, undoubtedly Ahmadis, and are non-Muslims according to the Constitution. Their use of the "Shaa"ir-e-Islam"" etc., thus amounts to either posing as Muslims or to deceive others or to ridicule. In any case, the fact whether they were posing as such can be clearly proved. They, therefore, have not made out a case and are raising only a controversy without a sound basis. Undoubtedly there is no vagueness is the law at all.

The Pakistan penal Code which is mostly the same as Indian Penal Code, contains offence of personation, in sections 140, 170, 171, 171-D, 205, 229 and 416. This offence is somewhat similar to the one under discussion and its wording may also be considered to test the plea raised.

Section 140 says whoever, not being a soldier, sailor, or airman in the Military, Navel or Air Service of the Government of Pakistan, wears any garb or carries any token resembling any garb or token used by such a soldier, sailor or airman... shall be punished.....

Section 171 similarly makes offence wearing garb etc. used by a class of public servants. These two section rely on visible indicators.

Section 171D, makes offence even applying for a voting paper or votes in the name of another person whether living or dead. The evidence in that case will be only of that conduct.

Section 205 is a different breed altogether. It provides; whoever, falsely personates another, and in such assumed character makes any admission or statement... shall be punished....

Section 229 creates an offence to become a juror by personation or otherwise. Last is section 416, 'to cheat by personation by pretending to be some other person.

No objection of the nature, as raised by the appellants, has ever been taken by any one against any of the above sections; since 1860, when this Code was promulgated and enforced, though these sections deal with a similar subject but may not claim the precision demanded by the appellants. Even no court ever suggested any vagueness or other deficiency, so as to hinder their administration. The phrase mentioned above thus does not suffer from any such defect.

The impugned Ordinance, on the other hand, gives the actual epithets, the descriptions and also titles and other requirements sought to be protected or imposed. It is also stated that they cannot be used for entities or situations other than those for whom they have been prescribed. The Ahmadis have been desecrating them and using them for their own leaders and practices etc., to deceive the people that they are also of the same type status and the calibre. This practice not only deceived innocent, simple and not-well-informed people but also created law and order situation throughout the period. The legislation was, therefore, necessary, which in any way does not interfere with the religious freedom of the Ahmadis; for it only prohibits them from using those epithets etc., on which they have no claim of any nature. It does not prohibit them from coining their own.

We may test the plea further in the light of some foreign jurisdiction. The United States Supreme Court observed in Lanzetta Vs. New Jersey, (306 U.S. 451, 1939) that vagueness is a constitutional vice conceptually distinct from overbreadth in that an overboard law need lack neither clarity nor precision, and a vague law need not reach activity protected by the first amendment. As a matter of due process, a law is void on the face of it, if it is so vague that persons:

"of common intelligence must necessarily guess at its meaning and differ as to its application". (See Connally Vs. General Constitution Co. (1926) 269 U.S. 385, 391)

Such vagueness occurres when a legislature states its prescriptions in terms so indefinite that line between innocent and condemned conduct becomes a matter of guess work and that the discretion of law enforcement officials, with the attendant dangers of arbitrary and discriminatory enforcement, be limited by explicit legislative standards. The plea gathers no help from the above either, as the contents of the law, in the light of the Constitution and the "Shaaire Islam" seem to be precise and dear. The law is not vague in any juristic sense.

It has also been discussed in detail above that legislation just to preserve law and order has never been considered oppressive in any country of the world. Again, no legal system in the world will allow a community, howsoever vocal, organised, affluent or influential it may be, to cheat others of their faith or rights, usurp their heritage and to deliberately and knowingly do such acts or take such measures as may create law and order situation.

The other submission raised on behalf of the appellant that the word 'law' used in the phrase ' subject to law', in Article 20, means 'positive law' and not Islamic law. Reliance was placed on the following cases decided by this Court:-

Asma Jilani case, PLD 1972 SC 139 Brig. (Rtd.) F.B.AH. Vs. The State, PLD 1975 SC 506

Federation of Pakistan V. United Sugar Mills, Ltd, Karachi, PLD 1977 SC 397

Fauji foundation Vs. Shamimur Rehman, PLD 1983 SC-457. The contention, however , has not impressed us at all.

The term 'positive law' according to Black's Law Dictionary, is the law actually; enacted or adopted by proper authority for the government of an organised jural society. So this term comprises not only enacted law but also adopted law. It is to be noted that all the above-noted cases were decided prior to the induction of Article 2A in the constitution, which reads as under:-

2-A Objectives Resolution to form part of substantive provisions

"The principles and provisions set out in the Objectives Resolution reproduced in the Annex are hereby made substantive part of the Constitution and shall have effect accordingly."

It was for the first time in the constitutional history of Pakistan, that the Objective Resolution, which henceforth formed part of every Constitution, as a preamble, was adopted and incorporated in the Constitution in 1985 , and made its effective part. This was an act of the adoption of a body of law by reference, which is not unknown to the lawyers. It is generally done whenever as new legal order is enforced. Here in this country, it had been done after every martial law was imposed or the constitutional order restored after the lifting of martial law. The legislature in the British days had also adopted the Muslim and other religious and customary laws, in the same manner, and they were considered as the positive laws.

This was the stage, when the chosen representatives of people, for the first time accepted the sovereignty of Allah, as the operative part of the Constitution , to be binding on them and vowed that they will exercise only the delegated powers, within the limits fixed by Allah . The power of judicial review of the superior courts also got enhanced.

The above mentioned constitutional change has been acknowledged and accepted as effective by the Supreme Court. Mr. Justice Nasim Hasan Shah, considering the changed authority of the representatives of the people in the case, Pakistan Vs. Public at Large, (PLD 1987 SC 304 at p. 356 ,) stated as follows:-

"Accordingly unless it can be shown definitely that the body of Muslims sitting in the legislature have enacted something which is forbidden by Almighty Allah in the Holy Quran or by the Sunnah of the Holy

Prophet or of some principle emanating by necessary intendment therefrom no Court can declare such an enactment to be un-Islamic".

Mr. Justice Shafiur Rahman, in his judgment in the same case, also relied on the Article 2A (Objectives resolution,) in forming, his view at pages 361 and 362 , of the above judgment as follows:-

"The concept of delegated authority held in trust enshrined in verse 58 has invariably and consistently been given an extended meaning. Additionally all authority being delegated authority and being trust, and a sacred one for that matter, must have well defined limits on its enjoyment or exercise. In the Holy Quran more so, but also both in the Western and Eastern jurisprudence delegated authority held in trust has the following attributes:-

(i)The authority so delegated to , and held in trust by, various functionaries of the State including its head must be exercised so as to protect, preserve, effectuate and advance the object and purposes of the trust,

(ii)All authority so enjoyed must be accountable at every stage, and at all times, like that of trustee, both in hierarchical order going back to the ultimate delegator, and at the other end to the beneficiary of the trust.

(iii)In discharging the trust and in exercising this delegated authority, there should not only be substantative compliance but also procedural fairness."

This aspect was made absolutely clear by the Supreme Court in Federation of Pakistan Vs. N.W.F.P. Government (PLD 1990 S.C. 1172 at page 1175) in the following words:-

"It is held and ordered that even if the required law is not enacted and/or enforced by 12th of Rabi-ul-Awwal 1411 A.H. the said provision would

nevertheless cease to have effect on 12th Rabi-ul-Awwal. In such state of vacuum, vis-à-vis, the statute law on the subject, the common Islamic law/the Injunctions of Islam as contained in Quran and Sunnah relating to offences of Qatl and Jurh (hurt) shall be deemed to be the law on the subject. The Pakistan Penal Code and the Criminal Procedure Code shall then be applied mutatis mutandis, only as aforesaid."

It is thus clear that the Constitution has adopted the Injunctions of Islam as contained in Quran and Sunnah of the Holy Prophet as the real and the effective law . In that view of the matter, the Injunctions of Islam as contained in Quran and Sunnah of the Holy Prophet are now the positive law. The Article 2A made effective and operative the sovereignty of Almighty Allah and it is because of that Article that the legal provisions and principles of Law as embodied in the Objectives Resolution, have become effective and operative. Therefore, every man-made law must now conform to the Injunctions of Islam as contained in Quran and Sunnah of the Holy Prophet ﷺ. Therefore, even the fundamental Rights as given in the Constitution must not violate the norms of Islam.

It was also argued that the phrase glory of law as used in Article 19 of the Constitution cannot be availed with regard to the rights conferred in Article 20

Article 19 which guarantees freedom of speech, expression and press makes it subject to reasonable restrictions imposed by law in the interest of glory of Islam etc., and decency or morality. The restrictions given therein cannot, undoubtedly, be imported into any other fundamental right. Anything, in any fundamental right, which violates the Injunctions of Islam thus must be repugnant. It must be noted here that the Injunctions of Islam, as contained in Quran and the Sunnah, guarantee the rights of the minorities also in such a satisfactory way that no other legal order can offer anything equal. It may further be added that no law can violate them.

It is not correct to say that ' Azan' is not mentioned in the Ordinance. In fact sub-section (2_ of Section 298-B is exclusively devoted to it . As about the use of 'Kalma' by the Ahmadies, in the light of the Ordinance, reference be made to Section 298-C. The 'Kalma' is a covenant, on reciting which a non-believer enters the fold of Islam. It is in Arabic form, is exclusive to Muslims who recite it, not only as proof of their faith but very often, for spiritual well being. The "Kalma" means there is no God but Allah and Muhammad is His Prophet. The belief of Quadianis is that Mriza Ghulam Ahmad is (God forbid) Muhammad incarnate. Mirza Ghulam Ahmad wrote in his book, *Aik Ghaiti Ka Izala*, page 4, 3rd Edition, published Rabwah, that :

"in the revelation of verse 48:29, (Muhammad is Allah's Apostle...) Allah named me Muhammad"

In the Akhbar Badar', Qadian, dated October 25, 1906, there is a poem written by Qazi Zahooruddin Akmal, former editor of Review of Religions', a couplet of which states:

"Muhammad has come back to us with higher glory and one who wants to see Muhammad accomplished, should go to Qadian."

This poem was read to Mriza Sahib and he appreciated it. Again in Arbaeen, vol. 4 page 17', he wrote:

"The rays of sun cannot be endured now and we need soothing light, which I am, in the form of Ahmad".

In Khutba Ilhamia, page 171, he declared:

"One who distinguishes between me and Muhammad, he has neither seen me nor known me."

Mirza Ghulam Ahmad further announced:

"I am the accomplishment of the name of Muhammad, i.e. I am shadow of Muhammad". (See Ha'shia Haqiqatui Wahi, page 72):

"I am in view of the verse 62:3 (It is He who has sent forth among the unlettered an apostle of their own to recite to them His revelations to purify them and instruct them in scriptures and wisdom...); I am the same last Prophet incarnate and God named me in Braheene Ahmadia' Muhammad and Ahmad, and declared me as personified Muhammad...". (See *Aik Ghaiti Ka Izala*, pages 10-11, published Rabwah).

"I am that mirror which reflects exactly the person and the prophethood of Muhammad". (Nazulul Masih, page 48, published Qadian, 1909.)

In the light of what has been said above, there is general consensus among Muslims that whenever, an Ahmadi recites or displays 'Kalma', he proclaims that Mirza Ghulam Ahmad is the Prophet who should be obeyed and the one who does not do that is an infidel. In the alternative, they pose as Muslims and deceive others, Lastly, they either ridicule Muslims or deny that the teachings of the Holy Prophet ﷺ do not govern the situation, So whatever the situation, the commission of the offence, one way or the other, may be proved.

Not only that Mirza Sahib, in his writings, tried to belittle the glory and grace of the Holy Prophet ﷺ, he even ridiculed him occasionally. In Ha'shia Tuhfa Golria' page 165, Mirza Sahib wrote that:

"the Holy Prophet could not conclude the propagation of Islam and I complete the same".

Again said:

"the Holy Prophet could not understand some of the revelations and he made many mistakes. (See Izalatul Auham, Lahori Press)".

He further said:

"the Holy Prophet had 3 thousands miracles' (See Tuhfa Golria page 67, published Rabwah) "While I have one million signs". (See Braheen Ahmadia, page 56).

"The Holy Prophet used to eat cheese made by Christians to which they added the pig's fat". (An old letter of Mirza Ghulam Ahmad Quadiani, published in daily Al-Fazal Quadian 22-Feb, 1924)

Mirza Bashir Ahmad wrote in his book 'Kalima-tul-Fasal' page 113, that:

"when Mirza Sahib was bestowed with prophethood, he had attained all the spiritual heights of the Muhammad's Prophethood and was qualified to be called Prophet incarnate and he went so ahead that he stood side by side with Muhammad ﷺ."

There are many more writings like that but this record may not be burdened further.

It is the cardinal faith of every Muslim to believe in every Prophet and praise him. Therefore, if anything is said against the Prophet, it will injure the feelings of a Muslim and may even incite him to the breach of peace, depending on the intensity of the attack. The learned Judge in the High Court has quoted extensively from the Ahmadi literature to show how Mirza Ghulam Ahmad belittled also the other Prophets, particularly, Jesus Christ, whose place he wanted to occupy. We may not, however, repeat that material but two examples may suffice. Mirza Ghulam Ahmad wrote:

"The miracles that the other Prophets possessed individually were all granted to Muhammad ﷺ, They all were then given to me as I am his shadow. It is for this reason that my names are Adam, Abraham, Moses, Noha, David, Joseph, Soloman, John, and Jesus Christ...." (Malfoozaat Vol. 3, page 270, Printed Rabwah.)

About Jesus Christ he stated:

"The ancestors of Jesus Christ were pious and innocent? His three paternal grand mothers and maternal grand mothers were prostitutes and whores

and that is the blood he represents." (Appendix Anjaame Atham, note 7).

Quran, on the other hand, praises Jesus Christ, his mother and his family. (See 3 : 33-37, 3 : 45-47, 19 : 16-32). Can any Muslim utter anything against Quran and can anyone who does so claim to be a Muslim? How can then Mirza Ghulam Ahmed or his followers claim to be Muslims? It may also be noted here that, for his above writings, Mirza Sahib could have been convicted and punished, by an English Court, for the offence of Blasphemy, under the Blasphemy Act, 1679, with a term of imprisonment.

Again, as for the Holy Prophet Muhammad ﷺ is concerned:

"every Muslim who is firm in his faith, must love him more than his children, family, parents and much more than any one else in the world."

(See Al-Bukhari, Kitabul Eeman, Bab Hubbul Rasool Min-al Eeman).

Can then anyone blame a Muslim if he loses control of himself on hearing, reading or seeing such blasphemous material as has been produced by Mirza Sahib?

It is in this background that one should visualise the public conduct of Ahmadis, at the centenary celebrations and imagine the reaction that it might have attracted from the Muslims. So, if an Ahmadi is allowed by the administration or the law to display or chant in public, the 'Shaa'ire Islam, it is like creating a Rushdi' out of him. Can the administration in that case guarantee his life, liberty and property and if so at what cost? Again, if this permission is given to a procession or assembly, on the streets or a public place, it is like permitting civil war. It is not a mere guesswork. It has happened, in fact many a time, in the past, and had been checked at cost

of colossal loss of life and property (For details, Munir's report may be seen). The reason is that when an Ahmadi or Ahmadis display in public, on a playcard, a badge or a poster or write on walls or ceremonial gates or buntings, the "Kalma", or chant other 'Shaa'ire Islam' it would amount to publically defiling the name of Holy Prophet ﷺ and also other Prophets, and exalting the name of Mirza Sahib, thus infuriating and instigating the Muslims so that there may be a serious cause for disturbance of the public peace, order and tranquility and it may result in loss of life and property. The preventive actions in such situations are imperative in order to maintain law and order and save loss or damage to life and property particularly of Ahmadis. In that situation, the decisions of the concerned local authorities cannot be overruled by this Court, in this jurisdiction. They are the best Judges unless contrary is proved in law or fact.

The actions which gave rise to the present proceedings arose out of the order of the District Magistrate, passed under section 144 Cr.P.C. The Ahmadia community who are the predominant residents of Rabwah were informed of the order of the District Magistrate through their office bearers, by the Resident Magistrate and directed to remove ceremonial gates, banners and illuminations and further ensure that no further writing will be done on the walls. The appellants could not show that the above practices are essential and integral part of their religion. Even the holding of centenary celebrations on the roads and streets was not shown to be the essential and integral part of their religion.

The question whether such a requirement is a part of freedom of religion and if they are subject to public safety, law and order etc has already been discussed in detail, in the light of the judgments from countries like Australia, and the United States, where the fundamental rights are given top priority. We have also quoted judgments even from India. Now where the practices which are neither essential nor integral part of the religion are given priority over the public safety and the law and order. Rather, even the essential religious practices have been sacrificed at the

alter of public safety and tranquility.

It is stated by the appellants that they wanted to celebrate the 100 years of Ahmadia movement in a harmless and innocent manner, *inter alia*, by offering special thanks-giving prayers, distribution of sweets amongst children, and serving of food to the poor. We do not find any order stopping these activities, in private. The Ahmadis like other minorities are free to profess their religion in this country and no one can take away that right of theirs, either by legislation or by executive orders. They must, however, honour the Constitution and the law and should neither desecrate or defile the pious personage of any other religion including Islam, nor should they use their exclusive epithets, descriptions and titles and also avoid using the exclusive names like mosque and practice like 'Azan', so that the feelings of the Muslim community are not injured and the people are not misled or deceived as regards the faith.

We also do not think that the Ahmadis will face any difficulty in coining new names, epithets, titles and descriptions for their personages, places and practices. After all Hindus, Christians, Sikhs and other communities have their own epithets etc., and are celebrating their festivals peacefully and without any law and order problem and trouble. However the executive, being always under a duty to preserve law and order and safeguard the life, liberty, property and honour of the citizens, shall intervene if there is a threat to any of the above values.

It may be mentioned here that the learned single Judge has passed a detailed and well-reasoned order and has sagaciously and candidly taken into consideration judgments from such foreign jurisdictions which would infuse confidence in this hyper-sensitive, non-Muslim minority, i.e., Ahmadis. Therefore, we instead of further burdening the record, would adopt his reasoning also. The Ordinance is thus held to be not ultravires of the Constitution. The result is that we find that neither is Article 20 of the Constitution attracted

to the facts of the case nor is there any merit in this Appeal. The appeal is dismissed.

As a result of the above discussion, the connected appeals are also dismissed.

Sd/- Abdul Qadeer Ch., J.

Sd/- Muhammad Afzal Lone, J.

Sd/- Waii Muhammad Khan, J.

SALEEM AKHTAR, J. The appellants have claimed protection of their right under Articles 19,20 and 25 on the basis of being a minority as declared by the Constitution. They admit to be u minority in terms of the Constitution as distinguished from the Muslims. Their claims being that they should be treated equally under law like other minorities enjoying freedom of speech and expression and they should be allowed to profess, practise and propagate? their religion. The first claim is covered by Articles 19 and 25 while the second one is based on Article 20.

2. Law permits reasonable classification and distinction in the same class of persons, but it should be founded on reasonable distinctions and reasonable basis. Reference can be made to Government of Baluchistan Vs. Azizullah Memon (PLD 1993 S.C. 341). The Quadianis / Ahmadis on the basis of their faith and religion as elucidated by my learned brother Abdul Qadeer Chaudhry J. vis-à-vis Muslims stand at a different pedestal as compared to other minorities. Therefore, considering these facts and in order to maintain public order it was felt necessary to classify them differently and promulgate the Impugned law to meet the situation. The classification being proper and reasonable, the impugned law does not offend Article 19 and 25.

3. As regards applicability of Article 2A, 1 reiterate the view expressed in Hakim Khan's case (PLD 1992 S.C. 595)

4. The freedom or religion is guaranteed by Article 20 which includes the rights to profess practise and

propagate. The over-riding limitation as provided by Article 20 is the saw, public order and morality. The law cannot over-ride Article 20 but has to protect the freedom of religion without transgressing bounds of morality and public order. Propagation of religion by the appellants who as distinguished from other minorities, having different background and history, may be restricted to maintain public order and morality. Therefore, their right to profess, practise and propagate their religion cannot be restricted provided they profess, propagate and practise without adopting Sharia-e-Islam in a manner which does not offend the feelings of the Muslims.

5. I agree with my learned brother Shafiur Rahman J that clauses (a), (b) and (e) of section 298-C PPC do not offend Articles 19, 20 and 260(3).

6. As regards Section 298-C clause (c) (d), in my view they will not be violative of Article 20 provided they are acted upon by the Quadian's/Ahmadis without adopting any of the Sharia-e-Islam.

7. Consequently I would dismiss C.A. No. 149/1989 and C.A.No. 150/1989 and remand C.A. No. 31-K/1988, 32-K/1988, 33-K/1988, 34-K./1988 and 35-K/1988 for retrial.

In C.A.No. 412/1992 in view of section 144(T)) the District/Resident Magistrate had no jurisdiction to enforce the order under section 144 Cr.P.C. for an unlimited period. It is therefore partly allowed to that extent.

Sd/- Saleem Akhtar, J.

ORDER OF THE COURT

The Court by majority holds that all appeals preferred are liable to be dismissed and are hereby dismissed.

The convicts in Criminal Appeals 31-K to 35-K of 1989 who are on bail shall be taken into custody forthwith and they are required to undergo the remainder of the punishment awarded by the Court.

Sd/- Abdul Qadeer Ch., J.

Sd/- Muhammad Afzal Lone, J.

Sd/- Saleem Akhtar, J.

Sd/- Wali Muhammad Khan, J.

Sd/- Shafiur Rehman, J.

Announced in Chamber Islamabad

Dated :- 03-07-1993

(1993 S.C.M.R 1718)