

QADYANIAT IN THE EYES OF LAW

*Historical Judgments of High Courts,
Federal Shariat Court and
Supreme Court of Pakistan*



Compiled by:
MUHAMMAD MATEEN KHALID

CONSTITUTION OF PAKISTAN

Act No. XLIX of 1974

An Act further to amend the Constitution of the Islamic Republic of Pakistan

WHEREAS it is expedient further to amend the Constitution of the Islamic Republic of Pakistan for the purposes hereinafter appearing:

It is hereby enacted as follows:

Short title and commencement

1. (1) This Act may be called the Constitution (Second Amendment) Act, 1974.
- (2) It shall come into force at once.

Amendment of Article 106 of the Constitution

2. In the Constitution of the Islamic Republic of Pakistan, hereinafter referred to as the Constitution, in Article 106, in clause (3), after the word "communities", the words and brackets "and persons of the Qadiani group or the Lahori group (who call themselves 'Ahmadis')" shall be inserted.

Amendment of Article 260 of the Constitution

3. In the Constitution, in Article 260, after clause (2), the following new clause shall be added, namely:
 - (3) "A person who does not believe in the absolute and unqualified finality of the Prophethood of Muhammad (peace be upon him) the last of the Prophets or claims to be a prophet, in any sense of the word or of any description whatsoever, after Muhammad (peace be upon him), or recognizes such a claimant as a prophet or a religious reformer, is not a Muslim for the purposes of the Constitution or law."

CONSTITUTION OF PAKISTAN

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 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, Buddhist or Parsi Community, a person of the Qadiani 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.

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PAKISTAN PENAL CODE

295(C) Use of derogatory remark etc. in respect of the Holy Prophet.

Whoever by words, either spoken or written, or by visible representation, or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Muhammad (peace be upon him) shall be punished with death, or imprisonment for life, and shall also be liable to fine.

298(B) Misuse of epithets, descriptions and titles, etc., reserved for certain holy personages or places.

(1) Any person of the Qadiani 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 (peace be upon him), as 'Ameer-ul-Mumineen', 'Khalifat-ul-Mumineen'.

'Khalifat-ul-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-Muninnen;

(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 Qadiani 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 or either description for a term which may extend to three years and shall also be liable to fine.

298(C) Person of Qadiani group, etc., calling himself a Muslim or preaching or propagating his faith.

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

SUPREME COURT OF PAKISTAN

"So, if any 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 guarantees 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."

Mr. Justice Abdul Qadeer Ch.

Mr. Justice Muhammad Afzal Lone

Mr. Justice Wali Muhammad Khan

Mr. Justice Saleem Akhtar

Mr. Justice Shafi-ur -Rehman

(1993 S.C.M.R 1718)

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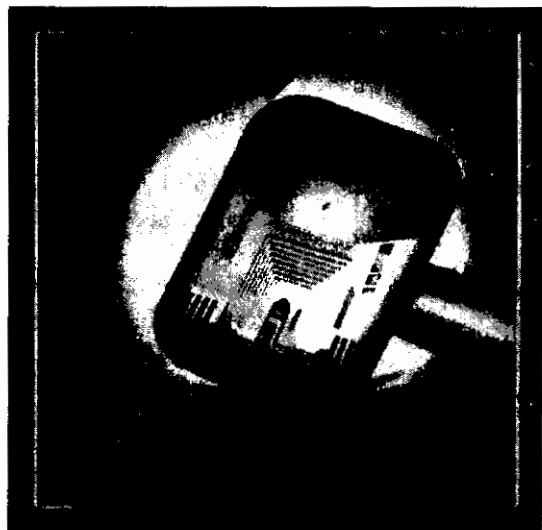


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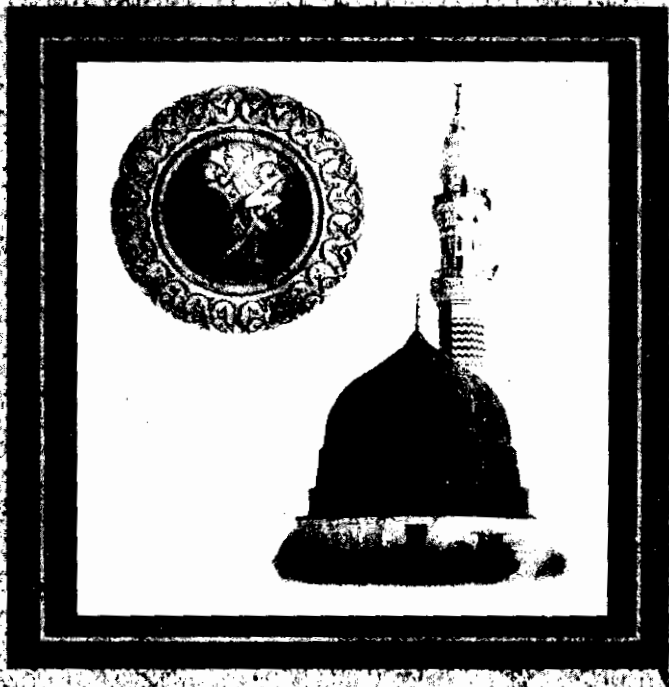
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DEDICATED
TO

Mehar Muhammad Aslam Nasir
Advocate High Court

Who has devoted his life
for Tahaffuz-e-Khatm-e-Nabuwat
May Allah (Almighty) shower His
eternal blessings on him.

PREAMBLE

HOLY PROPHET HAZRAT MUHAMMAD ﷺ is the last of the Prophets of Allah ﷻ and his teachings of Islam will remain in force till the Day of Judgement, a fact that has been endorsed by Allah Almighty in about 100 Verses of Holy Quran besides in 210 Ahadith-e-Mubarika. If anyone dares to claim for himself that "Nabuwwat" has been assigned to him, he is classed not only as a non-believer but also destined to be murdered, as Prophethood has ceased to exist after Hazrat Muhammad ﷺ. This firm belief is called "Khatm-e-Nabuwwat" which is a pre-requisite to be a Muslim. Follower of a so called prophet loses his status of "Believer" (Muslim) by violating this basic principle (Finality of Prophethood) of Eman.

After the Holy Prophet ﷺ passed away from this mortal world, many improvident persons, greedy of fame and honour, viz; Musailma Kazzab, Talha bin Khuwelid, Aswad Ansi, Sajjah bint-e-Haris etc., claimed to be Allah's apostles who were exterminated by the Muslim Ummah in spite of limited sources and unfavourable circumstances, to safe guard the "Khatm-e-Nabuwwat" belief by laying down their lives for the noble cause.

It was in the year 1857 after the Independence War lost by Muslims in undivided India when the British plotted conspiracy against Islam / Muslim community to extinguish the flame of Jihad from minds of Muslims. To achieve their satanic / evil designs, the British selected one astrayed amongst Muslims, a government servant Mr. Ghulam Ahmad from the Indian town of Qadian and motivated him for claiming himself an apostle of God in order to damage the belief of Khatm-e-Nabuwwat and also of Jihad for the purpose. He (Mirza Ghulam Ahmad Qadiani) in lust of material benefits / status, agreed to

claim himself as apostle of God in continuity of Prophethood of Hazrat Muhammad ﷺ under the umbrella of British Imperialistic rule and created a self-styled Muslim community with the title "Jama'at-e-Ahmadiya" to encounter the teachings of True Islam. As such, his followers declare / term themselves as "Ahmadi" (also named as Mirzaie / Qadiyani) who, besides Indo Pak sub continent, have dispersed in Africa and Europe to preach their beliefs based on the teachings of their self-styled Prophet. Their goal is to tarnish the image of True Islam and discourage the Muslims from participation in Jihad for protection of their belief in "Khatm-e-Nabuwwat" and fight in the name of Allah to stop them guarding against the teachings of Islam. Qadiani beliefs are not only against Islam in totality but also detrimental to the noble cause of Islam. They fall under the purview of BLASPHEMY. The teachings aimed at harming Basic Islamic Principles, are being publicized / propagated by Ahmadies through Books, Journals and Electronic media to provoke Muslim sentiments and create unrest amongst the masses at the behest of their Foreign Masters. Our renowned poet and Muslim Scholar Allama Muhammad Iqbal, categorically mentioned in his letter to Hindu leader Mr. Jawaher Lal Nahroo that "I have no doubt in my mind that the Ahmadis are traitors both to Islam and country." (Thoughts and Reflections o. Iqbal Page 306, by Syed Abdul Wahid).

He further said:

"I became suspicious of the Qadiani 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).

Muslims can not even think to recognize Mirza

Qadiani as Apostle of God, the same being not in line with the belief of "Khatm-e-Nabuwat",. Whereas Qadyanis, while condemning the Muslims as non believers, pose themselves to be a sect of Muslims rather true Muslims, all over the world. Qadianis are not only making mockery of Islamic rituals and beliefs through vocal /print media but also openly preach their false / non-divine beliefs through their literature being published in their newspapers, journals and electronic media to accomplish their nefarious designs which causes severe tension among Muslims and create Law and Order situation in the country. A movement for declaration of status of Qadianis as "NON MUSLIMS" began in the year 1953 which resulted in great massacre of agitators leaving above 10,000 Muslims martyred only in Lahore. The movement remained dormant for quite sometime and regained momentum in the year 1974 in the regime of Mr. Zulfiqar Ali Bhutto, the then Prime Minister of Islamic Republic of Pakistan, which embraced success. After a thorough debate in the Elected Parliament for 13 days having listened to the Qadianis' point of view in detail, they were declared as "NON MUSLIMS" through consensus vote on 7th September, 1974. It was a unique historical decision made by the Pakistan Parliament, not on the strength of cruel majority, but by consensus of all parliamentarians. Qadianis did not accept this verdict and continued their anti-Islamic activities aimed at ridiculing Islamic rituals, resulting in promulgation of "Prohibition of Qadiyanat Ordinance" and addition of Sections 298-B and 298-C in Pakistan Penal Code in the year 1984. The aforesaid Penal Provisions expressly prohibit Qadianis from indulging in Anti-Islamic activities, to pose themselves as Muslims or declare their religion as Islam.

Qadianis not only refused to accept the ban but also flouted the said ordinance at behest of their Khalifa Mirza Tahir by daringly violating the provisions of the ordinance. They termed the ordinance as "Violation of Human Rights" and challenged the same in the courts at higher level. The competent courts decided the case on merit and gave the verdict by upholding that the Ordinance directing the

Qadianis to refrain from using Islamic guise in line with the Constitution of Islamic Republic of Pakistan was justified.

Decisions made by the honorable Apex Courts are binding and applicable to all. It is a pity that least number of Police Officers and Elite Bureaucracy of our country are aware of the contents of the Section 298-B and 298-C of PPC which are binding on the Qadianis to shun their anti-Islam activities forthwith. It appears that none of the Elite Bureaucracy has bothered to go through the historical decision of the Apex Court in case titled "Zaheer ud Din Versus State 1993 SCMR 1718" which has clearly directed the Qadianis to refrain from BLASPHEMY, in individual as well as collective capacity. This can provide guarantee for the maintenance of Law and Order in the country. The decision is available in the relevant Law Books but it is regretted to observe that even partial observance of this law is not visible anywhere due to the lethargic and ignorant, rather un-Islamic, attitude of the high ups in Bureaucratic hierarchy. It is a matter of great concern that although a law passed by the parliament with consensus and Section 298-C of PPC which do exist in Law Books, empowering the Apex Administration to curb the anti-Islamic activities of Qadianis, yet their daringly flouting of legal provisions is over looked. Muslim community has repeatedly requested the Govt. of Pakistan to fulfill their innocent/harmless and legitimate demand to direct the Qadianis to abide by the law in letter and spirit to ensure strict compliance of decisions of Apex Courts of the country and to bring an end to the prevailing anxiety among the masses.

Qadianis feel proud to claim that they have distributed translation of Holy Quran (according to their own false beliefs and concepts) in 100 languages of the world to mislead naive Muslims in less developed countries but it remains an astonishing fact that they have not circulated translations of the books of their self styled Apostle (Prophet) Mirza Ghulam Ahmad Qadiani (which he had compiled / consolidated in Books-titled "Roohani Khazain" spread in 23 Volumes) anywhere in the world. I

can challenge without even an iota of doubt that if only the English translations of books written by Mirza Ghulam Ahmad Qadiani are distributed among Europeans and like, the people there will become aware of the factual position, and not only laugh at the Qadianis and their apostle but also doubt their mental health. I must quote one important excerpt from a book written by Mirza Ghulam Ahmad Qadiani wherein he has attempted to prove himself as the Christ: He says:

“God named me Maryam; I remained in the character of Maryamiyat (Female character) and was developed in veil. Spirit of Jesus was induced in me like Maryam and I was impregnated as metaphor; then labour pains compelled Maryam (meaning me) to move towards the stem of Dates tree, and after many months, not beyond 10 months, I was transformed from Maryam to Jesus; and as such I stand for Ibne Maryam (son of Maryam)”.

(c.f Kashti-e-Nooh, Pages 47-48, contained in the book titled Rohani Khazain, Vol 19 pages 50-51 by Mirza Ghulam Ahmad Qadiani).

All the books written by said Mirza Qadiani are quite absurd / stupid and ridiculous which only a maniac can believe, as the same are against logic and established ethics / norms.

Readers are welcome to contact me through surface mail/Email to confirm the references from the Qadyani books, if they find any confusion during study of this book. Scan/photocopies of references will be provided immediately.

May Allah accept this effort and make it a source of inspiration and guidance for all of us. (Ameen)

MUHAMMAD MATEEN KHALID

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10th July, 2008

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ANTI QADYANIAT, PLD

"الحمد لله وحده — والصلوة والسلام على من لا نبي بعده"

بسم الله الرحمن الرحيم

ALL praises are for Allah ﷻ Who Has no partner.
Blessings and Peace be upon the Final Messenger ﷺ.

In the Name of Allah ﷻ The Most Gracious, The Most Merciful.

The concept of 'Finality of Prophet hood', is one of the fundamental beliefs without which nobody can be called a muslim. The rejection of this concept and the belief of a messenger or revelation to come after the 'Seal of the Prophets' is open disbelief (Kufr). From the times of the Holy Prophet ﷺ till today, the Muslim Ummah has unanimously agreed on the fact that this belief of the finality of the prophet hood is fundamental to Islam and the true spirit of belief and the whole structure of Islam is built on this very belief. This is such a sensitive and central issue, that if there is even the slightest doubt deviation in it, then not only does a Muslim lose his faith but he is also excluded from the community of the followers of the Holy Prophet ﷺ. The Holy Quran clearly states:

"ما كان محمد ابا احد من رجالكم ولكن رسول الله وخاتم النبيين

وكان الله بكل شيء عليما" (احزاب : 40)

Muhammad ﷺ is not the father of any of your men, but (he is) the Messenger of Allah ﷻ and the Seal of the Prophets and Allah ﷻ has full Knowledge of all things.

In another verse, it has been stated.

"اليوم اكملت لكم دينكم واتممت عليكم نعمتي ورضيت لكم

(المائدة : ٣)

الاسلام دينا"

"This day have I perfected your religion for you, completed my favour upon you, and have chosen for you Islam as your religion."

In the light of the following Hadith, since religion is already completed to perfection, it is clear that no amendments whatsoever may be done to it and no changes in religion are permissible or acceptable:

"عن ابي هريرة رضى الله عنه ان رسول الله صلى الله عليه وسلم

قال ان مثلى ومثل الانبياء من قبلى كمثل رجل بنى بيتا فاحسنه واجمله

الاموضع لبنة من زاوية فجعل الناس يطوفون به ويعجبون له ويقولون

هلا وضعت هذه اللبنة قال فانا للبنة وانا خاتم النبيين"

(بخارى و مسلم)

Hazrat Abu Huraira رضي الله عنه narrates that the Messenger of Allah صلى الله عليه وسلم on one occasion said, "Certainly my example and the example of the Prophets before me is like the analogy of a beautiful and fabulous building constructed by a person except that he left a gap in one of its corners for a brick. People would come in great numbers to look at it and would be delighted with its construction and ask in amazement why that one brick hadn't been laid down in order to complete the building. Hence I filled the gap and the Palace of Prophethood was completed by me and I am the Seal of Prophets."

It comes in another Hadith:

"عن انس بن مالك رضى الله عنه قال قال رسول الله صلى الله

عليه وسلم ان الرسالة والنبوة قد انقطعت فلا رسول بعدى ولا نبي"

(ترمذى)

Hazrat Anas Bin Malik رضي الله عنه is reported to have said that "Risalat and Nabuwat have been terminated, so there shall neither be a Rasool nor a Nabi that will come after me.

(Note: Every prophet is called a 'Nabi', whether or not he was given a 'Shariat', while a prophet who has been given a 'Shariat' is termed a 'Rasool')

This belief of the Seal of Prophethood has been proven from 100 Quranic verses and 210 Ahadith.. Now the question arises that according to the Holy Quran, Prophet hood has ended, so how did Mirza Ghulam Ahmad Qadiyani become a prophet?

As already mentioned above, Allah ﷻ himself explicitly states in the Quran that Prophet hood has terminated on the Holy Prophet ﷺ and there shall be no Prophet after him.

The Holy Prophet ﷺ is also saying in Ahadith that, "I am the final Prophet. No prophet shall come after me."

While contrary to this, Mirza Ghulam Ahmad Qadiyani claims to be a prophet. It is absolutely obvious and crystal clear that Allah ﷻ and His Messenger are true in their sayings. Therefore, how did Mirza Ghulam Ahmad Qadiyani become a prophet and who gave him that rank? Let's analyze this.

In spite of conquering and ruling the Muslims, the British government was still fearful of the spirit of Jihad flourishing in them. They had learnt the fact from Islamic History that the glory and honour of the Muslims laid in the continuation of Jihad and their dishonour was in their abandoning it. Hence they planned to divide the Muslim Ummah and eradicate Jihad by creating a false prophet. For this purpose, they bribed a meager clerk named Mirza Ghulam Ahmad Qadiyani whose family was loyal to them. In this way, the British Government with the help of Mirza

Ghulam Ahmad Qadiyani planted the filthy weed of Qadiyanism.

Mirza Ghulam Ahmad Qadiyani himself writes:

”میراندہب جس کو میں بار بار ظاہر کرتا ہوں یہی ہے کہ اسلام کے دو حصے ہیں۔ ایک یہ کہ خدا تعالیٰ کی اطاعت کریں دوسرے اس سلطنت (انگریز) کی جس نے امن قائم کیا ہوا ہے جس نے ظالموں کے ہاتھ سے اپنے سایہ میں ہمیں پناہ دی ہو۔ سو وہ سلطنت حکومت برطانیہ ہے۔“ (شہادت القرآن ص 84 روحانی خزائن جلد 6 ص 380 از مرزا قادیانی)

”My religion which I openly declare, is that Islam is divided into two portions. One deals with the submission to Allah (SWT) and the other deals with submission to the government that has maintained peace and granted us asylum from the oppressors, and that is the British government.

(‘Shahadatul Quran’, Page 84, ‘Roohani Khazain’ Vol. 6, Page 380 by Mirza Ghulam Ahmad)

”میں بیس برس تک یہی تعلیم اطاعت گورنمنٹ انگریزی کی دیتا رہا اور اپنے مریدوں میں یہی ہدایتیں جاری کرتا رہا۔“ (تریاق القلوب ص 28 روحانی خزائن جلد 15 ص 156 از مرزا قادیانی)

”For twenty years, I have been preaching submission to the British government and have been advising my disciples accordingly.”

(Taryaql Quloob’, Page 28, ‘Roohani Khazain’, Vol. 15 Page 156, By Mirza Ghulam Ahmad)

Mirza always used to instruct the Ummah to bow their heads in front of the commands of the British government and then passed a legal ruling prohibiting Jihad. In this context, one can himself read what Mirza Ghulam Ahmad Qadiyani wrote as following:

”میری عمر کا اکثر حصہ اس سلطنت انگریزی کی تائید اور حمایت میں گزرا ہے اور میں نے ممانعت جہاد اور انگریزی اطاعت کے بارے میں اس قدر کتابیں لکھی ہیں اور اشتہار شائع کیے ہیں کہ اگر وہ رسائل اور کتابیں اکٹھی کی جائیں تو پچاس الماریاں ان سے بھر سکتی ہیں۔“

(تریاق القلوب ص 27 روحانی خزائن جلد 15 ص 155 از مرزا قادیانی)

“The major portion of my life has passed in supporting and helping the British government and I have written so many books and published so many articles regarding obeying the British government and prohibition of Jihad that if all the journals and books were collected they would fill up to fifty bookshelves.”

(‘Taryaaqul Quloob’, Page 27, ‘Roohani Khazain’ Volume 15, Page 155)

”یاد رہے کہ مسلمانوں کے فرقوں میں سے یہ فرقہ جس کا خدا نے مجھے امام اور پیشوا اور رہبر مقرر فرمایا ہے۔ ایک بڑا امتیازی نشان اپنے ساتھ رکھتا ہے اور وہ یہ کہ اس فرقہ میں تلوار کا جہاد بالکل نہیں اور نہ اس کی انتظار ہے۔ بلکہ یہ مبارک فرقہ نہ ظاہر طور پر اور نہ پوشیدہ طور پر جہاد کی تعلیم کو ہرگز جائز نہیں سمجھتا اور قطعاً اس بات کو حرام جانتا ہے کہ دین کی اشاعت کے لئے لڑائیاں کی جائیں۔“

(مجموعہ اشتہارات جلد 3 ص 357 از مرزا قادیانی)

“Remember that out of the sects of Islam, the sect for which God has made me the leader and guide carries a distinctive symbol with it. It is that this sect does not permit Jihad by way of the sword and neither shall we adopt that path in the future. Infact, this blessed sect neither openly nor secretly deems the teaching of Jihad to be permissible, and strictly considers fighting for the sake of spreading the religion to be impermissible.”

(Majmuah Ishtiharaat’ Vol.3, Page 357 by Mirza Ghulam Ahmad Qadiyani)

For this reason, Hazrat Allama Iqbal stated that, "Ahmadis are traitors both to Islam and to country." He had reached the conclusion that to expect the tree planted by the British government to bear fruit for the Muslims is utter foolishness.

Agha Shorash Kashmiri had also said that, "Qadiyaan is the birthplace of Mirzaism, Rabwa is its capital, Israil is its training centre, London is its shelter, Moscow is its teacher and Washington is its bank.

Qadiyaaniat is a conspiracy and political move taken by the enemies of Islam, while Mirza Qadiyani tried to disguise it in a religious outfit. However, thanks to the efforts of the sincere scholars of Islam, May Allah ﷻ reward them, for breaking the backbone of the movement of Mirzaism. Indeed they proved themselves as the rightful heirs of the Prophet ﷺ.

Side by side to the scholars of Islam, passionate, sincere and religious minded people also kept offering their services and did not stay behind them. Mr. Muhammad Mateen Khalid is amongst some of the foremost of those Mujahideen who fought valiantly to defend the movement of protecting the Seal of Prophethood. It was through his superb endeavours and attacks on the hidden conspiracies of Qadiyanism that he successfully smashed it to pieces.

"فبهِتَ الَّذِي كَفَرَ"

"Thereupon he who was bent on denying the truth remained dumbfounded..."

The book in your hands "Qadyaniat in the eye of Law" is actually part of a judicial war where, in addition to the innumerable disgraces faced by the Qadiyanis in the past, this is yet another shameful defeat for them.

"قُلْ جَاءَ الْحَقُّ وَزَهَقَ الْبَاطِلُ . اِنَّ الْبَاطِلَ كَانَ زَهُوقًا"

"And say truth has [now] arrived and falsehood has perished, for verily, falsehood is bound [by its nature] to perish."

Indeed, it was the dire need of time that these historical judicial rulings which have now reached the level of becoming part and parcel of the law, be compiled at one place for easy future reference. For this noble cause, Allah ﷻ has chosen His slave, Muhammad Mateen Khalid. May Allah ﷻ accept his untiring efforts and be pleased with him.

In the end, I pray that Allah ﷻ accepts us and all our future generations to defend this noble mission of protecting 'Khatam-e-Nabuwat' and accept each and every moment which has been spent for this purpose.

QARI MUHAMMAD IMRAN KHAN

Advocate,

General Secretary Khatm-e-Nabuwat Lawyers Form,

Lahore.

19, June. 2008

WHAT COURTS SAY ABOUT QADYANINAT?

O, bravo, you have really rendered considerable services towards the Muslim Umma by exposing the real face of the un-Islamic Ideas and anti-Islamic activities of the Qadianies during the last about two decades through meaningful surgical Post Mortem of anti-Islamic beliefs of Mirza Ghulam Ahmad Qadiani and his followers.

Yes! I mean, Mujahideen-e-Khatam -e-Nabuwwat, Mr. Muhammad Mateen Khalid and Muhammad Tahir, Abdul Razzaq the true falcons at the border of Tehreek-e-Tahaffuz-e-Khatam-e-Nabuwwat. I am proud of the fact that they two have enlisted me amongst their friend, which is a matter of great honour for me in this world and is a surety bond for success on the day of judgment (Insha Allah). They do have written a lot about the anti-Islamic beliefs of Qadianies who do not believe in the absolute and last prophethood of Hazrat Muhammad ﷺ against the true spirit of Islam, so the Qadianis are declared Non-Muslims by the Apex Courts of the Islamic Republic of Pakistan after hearing and going through the arguments advanced by the Qadiani leaders.

According to Article 260(3) (a) and (b) of the Constitution of Pakistan "Muslim" means a person who believes in the unity owners of almighty Allah and in the absolute and un-dispensable prophethood of Hazrat Muhammad ﷺ, the last of prophets and do not believe in or recognize as a prophet or religious reformer, any person who claims or claims to be a prophet in the sense word or any other description whatsoever, after the last holy prophet "Hazrat Muhammad ﷺ".

AND a Non Muslim means a person who is not a muslim and belongs to the Christian, Hindu, Sikh, Buddhist or Parsi community a person of the Qadiani or Lahori Group, who call themselves AHMADI or by any other name or Bahai and a person belonging to any of scheduled caste but there are persons who do not believe in God are called ATHEST.

The Qadiani Group and Lahori group, for their un-Islamic thought and beliefs had been declared Non-Muslim by the Apex courts of Pakistan. If any "Qadiani or Ahmadi" claims to be or pretends to be or give out publically to be a Muslim then he would be acting in violation of the constitutional provision of Islamic Republic of Pakistan, and may be proceeded against under the law. Moreover the use of Shaair-e-Islam are the exclusive right related to the Muslims only, which the Non-Muslims or Qadianies have no right to use and are restrained / denied to use in any way whatsoever, also they are prohibited from directly or indirectly posing as Muslims or claiming legal right of Muslims by law.

In this context my dear friend Mr. Muhammad Mateen Khalid have written a lot in the past and now he has consolidated all the important judgments of high courts and Apex Courts of Pakistan in his book entitled "Qadyaniat in the eyes of Law" which is undoubtedly a great achievement and will prove to be a model collection in the legal history of Pakistan. For this laborious devoted effort of the author, I shall rightly attribute a tribute to him and consider him as an enthusiastic hidden qualitative good Advocate An Advocate of Tahaffuz-e-Khatam-e-Nabuwwat I do offer him tribute from whole Muslim community and pray for him, may Almighty Allah bless him in every field of life and at the day of judgement as well (AMIN).

Ever yours.

MUHAMMAD TAHIR SULTAN KHOKHAR

Advocate

Chairman Khatam-e-Nabuwwat Lawyers Forum, Lahore.

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I find myself absolutely handicapped and incomplete in my personal efforts to compile this book. With heart felt gratitude I owe my thanks to those who gave me their un-ending help and support in more than one way.

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6. Mr. Muhammad Tahir Sultan Khokhar Advocate High Court
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8. Mr. Muhammad Hashim Tahami Advocate High Court
9. Mr. Muhammad Mansoor Advocate High Court
10. Mr. Muhammad Nawaz Shahid Advocate High Court
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May Allah Almighty reward everyone from His unending and unlimited compassion for forgiveness for the love of His beloved holy prophet Muhammad ﷺ.

MUHAMMAD MATEEN KHALID



QADYANIAT
IN THE EYES OF LAW



FEDERAL SHARIAT COURT 1984

- Mr. Justice Fakhr-e-Alam
(Chief Justice)
- Mr. Justice Ch. Muhammad Siddique
- Mr. Justice Maulana Malik Ghulam Ali
- Mr. Justice Maulana Abdul Quddus Qasmi

FEDERAL SHARIAT COURT

Mr. Justice Fakhre Alam Chief Justice
 Mr. Justice Ch. Muhammad Siddique
 Mr. Justice Maulana Malik Ghulam Ali
 Mr. Justice Maulana Abdul Quddus Qasmi

Shariat Petition No. 17/i of 1984

Mujibur Rehman and three others Petitioners

Versus

Federal Government of Pakistan through .. Respondent
 Attorney General of Pakistan

Shariat Petition No. 2/L of 1984

Capt. (Retd) Abdul Wajid and another .. Petitioners

Versus

Attorney General of Islamic Republic of .. Respondent
 Pakistan.

For the Petitioners.. .. Mr. Mujibur Rehman,
 (in S.P. No. 17/i of 1984) .. Advocate
 (one of the Petitioners)

For the Petitioners.. .. Capt. (Retd) Abdul Wajid

(in S.P. No. 2/L of 1984)
For the Respondent ..

(one of the Petitioners)
.. Haji Shaikh Ghias Muhammad
Advocate.
Mr. M.B. Zaman
Advocate and
Dr. Syed Riazul Hassan.
Gillani, Advocate.

Dates of hearing at Lahore.	15-7-1984, 16-7-1984, 17-7-1984, 18-7-1984, 19-7-1984, 22-7-1984, 23-7-1984, 24-7-1984, 25-7-1984, 26-7-1984 29-7-1984, 30-7-1984, 31-7-1984, 01-8-1984. 02-8-1984, 05-8-1984, 06-8-1984, 07-8-1984, 09-8-1984, 11-8-1984, 12-8-1984.
Date of Decision	12-8-1984

JUDGMENT

FAKHRE ALAM, C.J. Ordinance No. XX of 1984 called the Anti Islamic Activities of Quadiani Group, Lahori Group and Ahmadis (Prohibition and Punishment) Ordinance, 1984, was promulgated in the Gazette of Pakistan (Extraordinary) Issue, dated the 26th April, 1984. The Ordinance amended certain provisions of the Pakistan Penal Code (Act XLV of 1860), the Code of Criminal Procedure, 1898 (Act V of 1898) and the Press and Publications Ordinance, 1963.

2. The Quadianis who are followers of Mirza Ghulam Ahmad of Quadian (hereinafter to be called Mirza Sahib) are divided into two groups, both of whom are, however, called by the name of Ahmadis.

3. One group which is generally known as Qadiani group believes that Mirza Sahib was the promised Medhi, the promised Messiah and a Prophet. The Lahori group says that he was a Mujaddid (revivalist), the Promised Mehdi and the promised Messiah.

4. Two Petitions one by some members of the Qadiani group and another by two members of Lahori group bearing Nos. 17/i, of 1984 and 2/L of 1984 were filed to challenge the Vires of the Ordinance viz-a-viz the Quran and the Sunnah of the Holy Prophet (P.B.H.)

5. The matter was heard in detail for more than four weeks. Mr. Mujibur Rehman one of the Petitioners in Shariat Petition No. 17/i of 1984 and Capt-(Retd) Abdul Wajid, one of the Petitioners in Shariat Petition Mo. 2/L of 1984, argued the case on behalf of the Petitioners. Shaikh. Ghias Muhammad, Advocate and Dr. Riazul Hasan Gillani argued the matter on behalf of the Government.. The following Juris-Consults and Ulema belonging to the different schools of thought were invited by the Court for rendering assistance to it on the issues involved in the matter and argued the matter in detail :—

- (1) Qazi Mujibur Rehman
- (2) Prof. Mahmud Ahmad Ghazi
- (3) Maulana Sadar-ud-Din Al-Rifai
- (4) Allama Tajuddin Haidri
- (5) Prof. Muhammad Ashraf
- (6) Allama Mirza Muhammad Yousuf
- (7) Prof. Maulana Tahir-ul-Qadri.

6. The Constitution of 1973 was amended by the Constitution (Second Amendment) Act, 1974 (Act-XLIX of 1974) to amend Article 106 and Article 260 thereof. Clause (3) was added to Article 260 to declare those persons as non-Muslims who do not believe in the "absolute and unqualified finality of Prophet or claims to be a Prophet in any sense of the word or of any description whatsoever,

after Muhammad ﷺ or recognises such a claimant as a Prophet or a Religious Reformer". The Quadianis of the two groups are *inter alia* covered by this definition and they were thus declared non-Muslims.

7. Article 106 dealt with the constitution of Provincial Assemblies which specified the number of Members to be elected for the Assemblies, their qualifications and also the additional seats in those Assemblies reserved for non-Muslims, i.e. Christian, Hindu, Sikh, Budhist and Parsi Communities. To these communities were added by the second Constitutional Amendment of 1974 "persons of the Quadiani Group or the Lahori Group (who call themselves Ahmadis)".

8. Thus effect of Article 106 was given by declaration made in Sub-Article 3 of Article 260 and Ahmadis of either persuasion were placed in juxtaposition with other minorities.

9. Despite, these provisions of the Constitution, the Ahmadis persisted in calling themselves Muslims and their faith, as Islam. They remained impetuously apathetic and insensitive to the perturbation of the Muslims of Pakistan/ However, their violation of the above. Constitutional provisions and of continuing to defile the epithets, descriptions and titles like Ummul Momineen (Mother of the Muslims), Ahle-Bait (Members of the family of the Holy Prophet ﷺ) Sahaaba. (Companions) Khulafa-e-Rashideen (the rightful Caliphs) Ameerul Momineen, Khalifat-ul-Momineen. Khalifat-ul-Muslimeen (epithets used generally for the Muslim Rulers and for the rightful Caliphs) which are exclusive for the Muslims and had never been used by the non-Muslims, for the-wife, members of the family, companions, and successors-respectively of Mirza Sahib. For this reason use of derogatory remarks in respect of the Holy personages was made a criminal offence punishable under Section 298-A of the Pakistan Penal Code (Act XLV of 1860) (recently added by Ordinance No. XLIV of 1980). The Section is as follows:—

298-A

“Use of derogatory remarks, etc. in respect of holy personages. Whoever by words, either spoken or written, or by visible representation or by any imputation, innuendo or insinuation, directly or indirectly, defiles the sacred name of any wife (Ummul Mumineen), or members of the family (Ahle-bait), of the Holy Prophet (peace be upon him), or any of the righteous Caliphs (Khulafa-e-Rashideen) or companions (Sahaaba) of the Holy Prophet ﷺ shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

10. This Section was couched in general terms and was not made applicable to Ahmadis only. On account of the agitation of the Muslims over the persistence of the Ahmadis, the impugned Ordinance was promulgated. It added Section 298-B and 298-C to the Pakistan Penal Code (Act XLV of 1860) and made consequential amendments in the Code of Criminal Procedure, 1898 (Act V of 1998) and West Pakistan Press and Publications Ordinance, 1963. Sections 298-B and 298-C are as follows:—

298-B

“Misuse of epithets, descriptions and titles, etc. reserved for certain holy personages or places.

- (1) Any person of the Qadiani 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 ﷺ, as ‘Ameerul Mumineen’, ‘Khalifat-ul-Mumineen’, ‘Khalifat-ul-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 ﷺ, 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 group for 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."

298 - C

"Any 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 as a Muslim, or calls, or refers to, his faith as Islam, or preaches or propagates his faith, or invites others to accept his faith, by words either spoken or written, or by visible representations, 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."

11. These Sections made it a criminal offence for an Ahmadi.—

- (a) to call or pose himself directly or indirectly as a Muslim or refer to his faith as Islam :
- (b) to preach or propagate his faith or to invite others to accept his faith or in any manner whatsoever to outrage the religious feelings of Muslims ;
- (c) to call people to prayer by reciting Azan or to refer to his mode or form to call to prayer as Azan ;
- (d) to refer or call his place of worship as Masjid :
- (e) to refer any person other than a Caliph or companion of the Holy Prophet Muhammad ﷺ as Ammeerul Mumineen, Khalifat-ul-Mumineen, Khalifat-ul-Muslimeen, Sahaabi or Razi-Allah-Anho, any person other than the wife of the Holy Prophet ﷺ as Ummul Mumineen and any person other than a member of the family of the Holy Prophet ﷺ as Ahle-bait."

12. The main ground on which these Petitions have been filed and which was argued from different angles is that the impugned Ordinance violates the Sharia and the Constitutional rights of the Ahmadis to profess, practise and preach or propagate their religion.

13. It is pertinent to note that despite the Constitutional provisions, the Petitioners in their arguments insisted upon calling themselves Muslims and calling their faith as Islam and submitted that the Constitutional Amendment was not a declaration of their being non-Muslims by a religious body but was the Act of the Ruling Party of that time. It was pointed out to the Petitioners that the Constitutional Amendment was unanimously passed by all parties and the Parliament had given this verdict almost in a judicial manner by hearing both sides including the head of the Ahmadi community.

14. Mr. Mujibur Rehman stated that since the Court cannot decide against the Constitutional provisions he

would not like to raise the question whether Qadianis are Muslims or non-Muslims. He, however, persisted in emphasising that the Qadianis as such are not non-Muslims but have been declared so by the Iqtidar-e-Aala.

15. He, then, clarified that if the Counsel for the Government argued that the Qadianis are non-Muslims according to Shariah too he would like to refute that argument in detail.

We enquired from Mr. Riazul Hasan Gillani, counsel for the Federal Government whether he would like to proceed only on the assumption that Qadianis have been Constitutionally declared non-Muslims or would like to argue the point of their status independently in the light of the Shariah. He opted in favour of the later proposition. On this Mr. Mujibur Rehman submitted that he would like to argue and elaborate the question of status of the Qadianis in the light of the Injunctions of the Quran and the Sunnah.

The arguments of Mr. Mujibur Rehman on the assumption of the Ahmadis being Muslims is an invitation to this Court to go into this question. This Court cannot thus avoid giving its finding on this point. The point was fully argued and shall be dealt with in the judgment.

The assertion in the written arguments filed at the end that the petitioners themselves did not wish to raise the question of their belief is thus only partly correct.

Before elaborating the points involved in this petition as well as the effects of different provisions of the impugned Ordinance, it would be pertinent to throw light on the Muslims concept of finality of the prophethood of Muhammad ﷺ, which is the main theme of the difference between the Muslims and Ahmadis and which was the base of Constitution (Second amendment) Act 1974 (Act XLIX of 1974) according to which the Ahmadis were declared non-Muslims.

The Muslims of all schools of thought believe in the absolute finality of the prophethood of Muhammad ﷺ and consider it an article of their faith. This unanimous belief is

based on verse 33 : 40 of the Holy Quran. The said verse and its meaning, interpretations and explanations are reproduced as under: —

"ما كان محمد ابا احد من رجالكم ولكن رسول الله و خاتم

النبيين وكان الله بكل شئ عليما"

Muhammad is not the father of any man among you but he is the Messenger of Allah and the seal of the Prophets and Allah is aware of all things.

(Q : 33 : 40)

The word Khatam-un-Nabiyin has been the subject matter of interpretation from the very beginning. It was interpreted in the traditions of the Holy Prophet ﷺ as well as by the commentators of the Holy Quran, learned scholars and renowned jurists. It is established that this expression can be read as Khatim-un-Nabiyin. The word Khatim means one who finishes or ends. There is no controversy on the point that if the word is Khatim-un-Nabiyin it would mean one on whose Prophethood, the chain of Prophets terminates.

The word Khatam means seal and Khatam-un-Nabiyin means seal to Prophets. The well established meaning on which there has been a consensus is that the expression seal to Prophethood means last of the Prophets who seals Prophethood and after whom no Prophet can come, and the cessation of advent of Prophets is absolute. This meaning was accepted by Mirza Sahib also (Izala-e-Auham, vol. 2 page 511). However, after his claim to Prophethood he altered the meaning of the expression and interpreted it as the seal of Prophet Muhammad ﷺ for continuing the Prophets whose advent is destined later which means that the advent of Prophets is not a matter past and closed but is subject to the condition that after Prophet Muhammad ﷺ whoever arrives as a Prophet must bear the seal of Prophet Muhammad ﷺ which means that he is a Prophet sent to this world under his seal of approval for rejuvenating his Sharia as laid down in the Quran and the Sunnah.

This interpretation, as will be clear from the above is a departure from the interpretation regarding the absolute cessation of Prophethood on which there had been a consensus which is also reflected in the earlier writings of Mirza Sahib.

In the above mentioned verse the word 'Khatam' (خاتم) has been read in two manners i.e., with an 'a' after 't' or 'i' after the same letter. According to Ibn Amir and Assim it is read as 'Khatam' (خاتم) with fatha (زبر) on the letter 't' (ت). In that case it is a noun meaning 'the last'. As such the word 'Khatam-un-Nabiyin' (خاتم النبيين) means the last of the Prophets. According to others it is read as 'Khatim' (خاتم) with 'i' after 't' [kasra (زبر) under the letter 't' (ت)] which makes it a subject (فاعل) meaning 'He who finishes'. As such Khatim-un-Nabiyin (خاتم النبيين) means he who terminates the (chain of) Prophets i.e., the Prophethood ceases with him (Maalimul Tanzil by Imam Baghwi, Vol. 4, page 218).

In Lisanul Arab, it is stated that Khatama (خاتم) means to finish as it said, (ختم الله أمره بالخير) (may Allah resolve (finish) his affairs beneficially). The end of everything is called Khatam (خاتم) and its plural is Khawatim (خواتم) which means the ends.

Farra said that Khatam (خاتم) and Khatim (خاتم) are synonyms with the only difference that gramatically the first is a noun (اسم) and the second is an infinitive verbal noun. Khatam (خاتم) and Khatim (خاتم) are the names of the Holy Prophet ﷺ as Allah says in verse 33 : 40 that he is Khatam-un-Nabiyin (خاتم النبيين) which means the last of the Prophets.

Khatam (ختم) also means to prevent. It usually means the protection of a thing from mixing with other things.

Khatam means seal too which means to prevent another thing from mixing with the sealed thing. Khatam also means the ring. (Lisanul Arab, Vol. 18, pages 53—55).

According to Al-Raghib Khatama (ختم) and Tabaa (طبع) signify the impressing a thing with the engraving of the signet and stamp; and the former is topically used, sometimes, as meaning the securing oneself from a thing, and protecting (oneself) from it, in consideration of protection by means of sealing upon writings and doors; and sometimes as meaning the producing an impression, or effect, upon a thing from another thing; in consideration of the impression produced (by the signet); and sometimes it is used as relating to reaching the end (of a thing) see Lane on Khatama (خاتمته).

(ختم على قلبه) (He sealed his heart) means he made him to be such that he understood not, and such that nothing proceeded from him; or he made his heart, or mind to be such that it understood not [Lane 'Khatama' ختم الله على] (ختم الله على قلوبهم) (Allah sealed their hearts) and (طبع الله على قلوبهم) (Allah engraved their hearts)] point to what God has made to be usually the case when a man has ended in believing what is false and in committing that which is forbidden, so that he turns not his face to the truth; thus occasioning as its result, his becoming insured to the approval of acts of disobedience, so that he is as though his habit were impressed upon his heart, (see Al-Mufradat by Raghib Asphahani, page 143, see Lane on Khatama (ختم)).

(خاتم النبیین) means a Prophet on whose arrival the (chain of) prophethood came to an end. (Al-Mufradat by Raghib Asphahani, pages 142-143).

In Tajul Urus it is stated

"ومن اسمائه صلى الله عليه وسلم الخاتم والخاتم وهو الذى

ختم النبوة بمجيئه"

Among the names of the Holy Prophet ﷺ are Khatam (خاتم) and Khatim (خاتم) which means that Prophethood was put to an end with his advent. (Tajul Urus, Vol. 4, page 186; Also see Majmaul Bihar, Vol. 8, page 194).

Thus the dictionary meaning of the word Khatam (seal خاتم) or Khatim (one who put an end خاتم) is the same.

On this very basis, all the lexicographers and commentators have unanimously taken Khatam-un-Nabiyin to mean Akhir-un-Nabiyin (last of the Prophets). From the view point of Arabic usage and lexicon, Khatam does not imply the postal stamp which is put on the envelope for issue but implies to the seal put on the envelope so that it is secured, so that what is in it cannot come out nor anything can enter it unless the seal is broken.

The Quranic verse 33 : 40 has been similarly interpreted by all the renowned commentators, who also dealt with a moot question. There are some traditions about the second coming of Jesus near about resurrection. These traditions have been held by some to be weak being repugnant to the Holy Quran and the Sunnah but a large majority believes in their authenticity. In the view of the majority there is no repugnance between the Quran and these traditions since Jesus who was a Messenger of Allah and a Prophet had been commissioned as Prophet long before the advent of the Holy Prophet ﷺ while the verse refers to the advent of the new Prophet after Muhammad ﷺ. But Jesus will appear in this world as a member of the Muslim Ummah and a follower of Islamic Sharia. These authoritative interpretations and opinions may now be cited.

(1) Allama Ibn-e-Jarir Tabari (224—310 A.H.) in his well-known commentary of the Quran, explained the meaning of this verse thus : "He brought the Prophethood to a close and sealed it : -Now this door will not open to anyone till Resurrection". (Tafsir Ibn-e-Jarir, Vol. 22, page 12).

(2) Imam Tahavi (239—321 A.H.) writes in his 'Aqidah Salfia' regarding the beliefs of the righteous, especially of Imam Abu Hanifa, Imam Abu Yusuf and Imam Muhammad (may Allah show mercy to all of them) in respect of Prophethood, "And that Muhammad ﷺ is the chosen servant of Allah, His Prophet and favourite Apostle; and he is the last of the Prophets, the leader of the righteous, the chief of the Apostles, and beloved of the Lord of the world. (Sharh-ut-Tahaviah Fil Aqidatis Salfia, Dar-ul-Maarif, Egypt, pages 15, 87, 96, 100, 102).

(3) Allama Ibn-e-Hazm Undlasi (384—456 A.H.) writes : "Most certainly the transmission of the revelation has ceased after the death of the Holy Prophet ﷺ, the reason being that the revelation comes down to none but a Prophet, and Allah Himself has said : Muhammad is not the father of any of your men, but he is the Messenger of Allah and the last of the Prophets. (Al-Muhalla, Vol. I, page 26).

(4) Imam Ghazzali (450—505 A.H.) says: There is complete consensus among the Muslim Ummah that there is no Prophet after the Holy Prophet Muhammad ﷺ The whole Ummah is unanimous that the Holy Prophet ﷺ by his words "لانى بعدى" meant nothing but this that after him there will neither be a Prophet nor an Apostle. Anyone who interprets this tradition in any other way, goes outside the pale of Islam; his interpretation would be nonsensical and his writing heretical. Besides, the Ummah is also unanimous that there is no scope whatever for any other interpretation than this; the one who denies it, denies the consensus of the Ummah. (Al-Iqtisad-nl-I'tiqad, Egypt, page 114).

(5) Muhy-us-Sunnah Baghvi (d. 516 A.H.) writes in his commentary Ma'alim-ut-Tanzil : "Allah closed the Prophethood through the Holy Prophet Muhammad ﷺ; thus he is the last of the Prophets And

Ibn-e-Abbas says that Allah Almighty decreed (in this verse) that after him there would be no Prophet". (Ma'alim-ut-Tanzil, Vol. 3, page 106.

(6) Allama Zamakhshari (467—538 A.H.) writes in his commentary Al-Kashshaf "If you ask : How can the Holy Prophet ﷺ be the last of the Prophets when there is the belief that Prophet Jesus will come down during the last days before Resurrection? I shall say : The Holy Prophet ﷺ is the last of Prophets in the sense that no other person will be used as a Prophet after him. As for Prophet Jesus, he is one of those who had been commissioned as Prophet before the advent of the Holy Prophet ﷺ. And when he comes again, he will come as a follower of the Sharia of Muhammad ﷺ and will offer the prayer with his face towards his Qiblah (the Ka'bah) like any other member of his Ummah". (Al-Kashshaf, Vol. 2, page 215.)

(7) Qazi Ayaz (d. 544 A.H.) writes; "He who lays a claim to Prophethood for himself, or holds that one can acquire it and can attain the rank of Prophethood through the purification of the heart, as some philosophers and so-called suns assert, and likewise he who does not claim to be a Prophet but claims that he receives revelation ... all such people are disbelievers and deniers of the Holy Prophet ﷺ, for he informed us that he was the last of the Prophets and that no Prophet would come after him. And this news was a communication from Allah that he has closed the Prophethood and that he has been sent to all mankind; and the whole Ummah is unanimous that these words have no other but the apparent meaning. There is no room for a different interpretation or special meaning. Therefore, there can be absolutely no doubt about such people's being unbelievers (Kafir) both according to the consensus and the traditions". (Shifa, Vol. 2, pages 270—271)

(8) Imam Razi (543—606 A.H.) explaining the verse of Khatam-un-Nabiyyin says in his Tafsir-e-Kabir: "In this context, the reason for saying Khatam-un-Nabiyyin is that if a Prophet be succeeded by another Prophet he leaves the

mission of admonition and explanation of Injunctions somewhat incomplete and the one coming after him has to complete it. But the Prophet who is never to be succeeded by another Prophet is by far more compassionate to his people (Ummah) and provides for them explicit and complete guidance, for he is like a father who knows that after him his son has no guardian and patron to look after him". (Tafsir-e-Kabir, Vol. 6, page 581).

(9) Allama Shehrastani (d. 548 A.H.) writes in his book *Al-Milal-wan-Nihal*: "And likewise the one who says ... that another Prophet (except for the Prophet Jesus) will be raised after the Holy Prophet Muhammad ﷺ is a Kafir and there is no difference of opinion about this even between two men". (*Al-Milal-wan-Nihal*, Vol. 3, page 249).

(10) Allama Baidawi (d. 685 A.H.) writes in his commentary *Anwar-ul-Tanzil*: "the Holy Prophet ﷺ is the last of the Prophet, who closed their line, or through whom the line of the Prophets was sealed. And the Prophet Jesus's second advent does not contradict the Holy Prophet's ﷺ being the last Prophet, for when he comes, he will be a follower of his Sharia". (*Anwar-ul-Tanzil*, Vol. 4, page 164)

(11) Allama Hafiz-ud-Din Nasafi (d. 710 A.H.) writes in his commentary *Madarik-ul-Tanzil* "that the Holy Prophet ﷺ is Khatam-un-Nabiyin, i.e. the last of the Prophet. After him no other person will be appointed as a Prophet.

As for the Prophet Jesus, he is one of those who had been appointed Prophets before him, and when he comes the second time, he will come as a follower of the Sharia of Muhammad ﷺ, and as a member of his Ummah". (*Madarik-ul-Tanzil*, Vol. 5, page 471).

(12) Allama Ala-ud-Din Baghdadadi (d. 725 A.H.) writes in his commentary *Khazin*: "Wa Khatam-un-Nabiyin, i.e. Allah closed the line of Prophethood on the Holy Prophet Muhammad ﷺ. Now there is neither any Prophethood after him nor any association or partnership with him in

this regards. Allah has the knowledge that there is no Prophet after him." (Lababut Tawil fi Maanit Tanzil, Vol. 5, pages 471-472)

(13) Allama Ibn-e-Kathir (d. 774 A.H.) writes in his well-known commentary : "Thus, this verse is an express injunction in this regard that after the Holy Prophet there is no Prophet (نبي) and when there is no Prophet after him, there can be no Messenger (رسول) either, for Messengership is specific and Prophethood general : every Messenger is a Prophet but every Prophet is not a Messenger.....

Anyone who lays a claim to this office after the Holy Prophet ﷺ is a liar and imposter and deviator and unbeliever, no matter what supernatural and magical spells and charms and sorcery he practises The same is the position of every such person who lays a claim to this office till Resurrection." (Tafsir-Ibne-Kathir, Vol. 3, pages 493-494).

(14) Allama Jalal-ud-Din Suyuti (d. 911 A.H.) writes in Jalalayn: (وكان الله بكل شئ عليمًا) Allah has the knowledge of everything and knows that there is no Prophet after the Holy Prophet ﷺ; and when Prophet Jesus comes down he will be a follower of the Holy Prophet's ﷺ Sharia. (Jalalayn, page 768).

(15) Allama Ibn-e-Nujaim (d. 970 A.H.) writes in his book Al-Ashbah-wan-Nazair, "If a person disbelieves that Muhammad ﷺ is the last of the Prophets, he is not a Muslim, for this is one of the fundamentals of the faith." (Al-Ashbah-wan-Nazair, page 179).

(16) Mulla Ali Qari (d. 1016 A.H.) writes in Sharh Fiqh Akbar : "There is complete consensus of the Ummah on the point that laying claim to Prophethood after the Holy Prophet Muhammad ﷺ is Kufr (heresy)". (Sharh Fiqh Akbar, page 202)

(17) Shaikh Ismail Haqqi (d. 1137 A.H.) explaining the above verse in his commentary Ruh-ul-Bayan, writes : "Asim read the word as Khatam, which is the sealing instrument with which things are sealed. It implies that the Holy Prophet ﷺ came at the end and on him the line of the Prophets was closed and sealed Some people have read it as Khatim, which means the one who puts a seal. Thus, Khatim also is a synonym of Khatam Henceforth the saintly scholars of his Ummah will be his successors in Walayat (spiritual eminence) since the succession to Prophethood has been brought to a close. And the second coming of the Prophet Jesus does not affect the Holy Prophet's ﷺ being the last of the Prophets, for Khatam-un-Nabiyin means that no other Prophet will be raised after him. And Jesus has been raised as a Prophet before him. On his second coming he will come as a follower of the Sharia of Muhammad ﷺ. He will offer the prayer with his face towards his Qiblah, like any other man belonging to his Ummah. He will be a Caliph of the Holy Prophet Muhammad ﷺ.

And the followers of the Sunnah believe that there is no Prophet after our Holy Prophet ﷺ for Allah has said : "But he is the Messenger of Allah and the last of the Prophets", and the Holy Prophet ﷺ has declared : "There is no Prophet after me". Now whoever' says that there is a Prophet after our Holy Prophet ﷺ, will be declared a Kafir for he has denied a fundamental article of the faith; likewise, the one who doubts it, will also be declared a Kafir, for the Truth has been made distinct from falsehood. And the claim of the one who claims to be a Prophet after the Holy Prophet Muhammad ﷺ can be nothing but imposture (Ruh-ul-Bayan, Vol. 22, page 188).

(18) According to Fatawa Alamgiri, a compilation of the 12th century Hijrah, compiled by a board of eminent scholars under the orders of Aurangzeb 'Alamgir' the Emperor of India : "If a person disbelieves that Muhammad ﷺ is the last of the Prophets, he is not a Muslim ; and if he

claims that he is Allah's Messenger or Prophet he will be declared a Kafir. (Fatawa Alamgiri. Vol. 2, page 263).

(19) Allama Shaukani (d. 1255 A.H.) writes in his Tafsir Fateh-ul-Qadir : "The majority of the scholars have read the word as Khatim and Asim as Khatam. According to the first reading, it would mean this : The Holy Prophet ﷺ closed the line of the Prophets, i.e. he came at the end of them, and according to the second reading : He was like a seal for them, with which their line was sealed, and with whose inclusion their group was exalted. (Fateh-ul-Qadir, Vol. 4, page 275).

(20) Allama Alusi (d. 1270 A.H.) writes in his commentary Ruh-ul-Maani : "The word Nabi (Prophet) is general and Rasool (Messenger) specific. Therefore, the Holy Prophet's ﷺ being Khatam-un-Nabiyin by itself requires that he should also be Khatam-ul-Mursalin; and his being the last of the Prophets and Messengers implies that after his being blessed by Allah with the Prophethood in this world, the office of Prophethood for any Jinn or human being has been abolished". (Ruh-ul-Maani, Vol. 22, page 32). "Whoever after him claims to be the recipient of revelation of Prophethood will be declared a Kafir and there is no difference of opinion among the Muslims in this regard". (Ruh-ul-Maani, Vol. 22, page 38). The Holy Prophet's ﷺ being the last of the Prophets has been explicitly stated by the Book of Allah, clearly enunciated by the Sunnah and fully agreed upon by the entire Ummah. Therefore, whoever claims something contrary to it, will be declared a Kafir". (Ruh-ul-Maani, Vol. 22, page 39).

The same view about the finality of Prophethood has also been taken by the following Shia commentators :—

1. Ali bin Ibrahim (329—941 A.H.) Tafseer-al-Kummi, page 532, printed Najaf, (Iraq)
2. Shaikh Abu Jafar Mohammad Ibin-e-Hasan Ibin-e-Ali Tusi (died 460 A.H.) Tafseer-ul-Tibyan, Vol. 8, page 314, printed Najaf (Iraq).

3. Mulla Fatehullah Kashani (died 488 A.H.) Tafseeri Manhaj-us-Sadiqiin, Vol. 7, page 333, printed Najaf (Iraq).
4. Abu Ali Fazal bin-e-Husain Tabrasi (died 548 A.H.) Tafseer Majmaul Bayan, Vol. 2, page 289, printed Najaf (Iraq).
5. Mulla Muhsin Kashi : Tafseer-us-Safi, page 491, printed Najaf (Iraq).
6. Hashim bin-e-Sulaiman bin-e-Ismail Husaini (died 1107 A.H.) Tafseer-ul-Burhan, Vol. 3, page 327, printed Qum (Iran).
7. Allama Husain Bakhsh : Anwarun Najaf, Vol. 11, page 211, printed Lahore.
8. Maulana Syed Ammar Ali: Tafseer Umdatul Bayan, Vol. 12, printed Delhi.
9. Maqbool Ahmad : Translation and Explanation of Holy Quran. page 507, printed Lahore.
10. Hatiz Farman Ali: Translation and Explanation of Holy Quran, page 585.

Zamakhshari (467—538 A.H.) in Tafseer-i-Kashshaf, Razi Baidawi (died 685 A.H.) in Anwarul Tanzil, Imam Razi (543—606 A.H.) in Tafseer-i-Kabir, Vol. 3, page 343, Imam Nawawi (631—676 A.H.) in Sharh-i-Muslim, Vol. 2 page 189, Sharh-i-Muslim, Vol. 18, page 75, Alaudin Baghdadi (d. 725 A.H.) in Tafseer-i-Khazin, page 471-472, Taftazin (722—792) in Sharh Aqaid-i-Nasafi, page 1; Ibn-e-Hajar Asqalaini (d. 449 A.H.) in Fateh-ul-Bari, Vol. 6, pages 315, 117, Badruddin Aini (d. 855 A.H.) in Imdat-ul-Qari, Vol. 16, page 40. Qastalani (851-923 A.H.) in Irshad-ul-Sari, Vol. 6, page 18, Ibn-e-Haisami (909—973 A.H.) in Fatawa Hadisia, pages 128-129, Sh. Abdul Haq Mohaddis Dehlvi (958—1052 A.H.) in Ashat-ul-Lamaat, Vol. 4, page 373, Zarqani (d. 1162 A.H.) in Sharh-Mawatif-ul-Ladunnia, Vol. 3, page 116, favour the view that there is no repugnance between the Quran and the traditions about the second coming of Jesus.

These elucidations have been made by the eminent Scholars, Jurists, Traditionists and Commentators of every Muslim country consistently in every age. A glance at their dates of birth and death will show that they included eminent authorities in every century of the history of Islam from the first to the 13th century Hijra.

The Holy Prophet ﷺ also confirmed these meaning of the 'last of the Prophets in many of his traditions, some of which are reproduced as under:

"قال النبي صلى الله عليه وسلم كانت بنو اسرائيل تسوسهم

الانبياء كلما هلك نبي خلفه نبي وانه لا نبي بعدى وسيكون خلفاء"

- (1) The Holy Prophet ﷺ said, "The children of Israel were guided by the Prophets. When a Prophet died, another succeeded him. However, there will be no Prophet after me; there will be only Caliphs", (Bukhari : Kitab-ul-Anbiya Vol. 2, page 257, printed Darul Maarifah, Beirut, Labanon).

"قال النبي صلى الله عليه وسلم ان مثلى و مثل الانبياء من قبلى

كمثل رجل بنى بيتا فاحسنه واجمله الا موضع لبنة من زاوية فجعل الناس يطوفون به يعجبون له ويقولون هلا وضعت هذه اللبنة فأنا اللبنة وأنا خاتم النبيين"

- (2) The Holy Prophet (P.B.H.) said, "My position in relation to the Prophets who come before me can be understood by a parable : A person constructed a great building and decorated and adorned it well, but in a corner he left niche or an empty space, for just one brick. The people went round the building and wondered at its beauty, but said : Why was not a brick laid here? So, I am that brick and I am the last of the Prophets. (That is, with my advent the edifice of Prophethood has been completed. Now there is no empty niche, which may have to be filled by another Prophet)."

(Bukhari : Kitab-ul-Manaqib, Vol. 2, page 270, printed Darul Maarifah, Beruit).

Four traditions on the same subject have been reported in Muslim (Kitab-ul-Fadail) with the following additional words in the last Hadith: "فجئت فختمت الانبياء" So, I came and I closed the chain of the Prophets". The same tradition in these very words is found in Tirmidhi : Kitab ul-Manaqib, Chapter Fadail-un-Nabi.

In Musnad Abu Daud Tayalisi, this tradition is reported on the authority of Jabir bin Abdullah, and its last words are to the effect "ختم النبيون" Through me the Prophethood was brought to a close.

In Musnad Ahmad Traditions on the subject with a slight difference in wording have been reported on the authority of Ubayy bin Ka'b, Abu Sa'id Khudri and Abu Hurairah.

"ان رسول الله صلى الله عليه وسلم قال فضلت على الانبياء بست

اعطيت جوامع الكلم ونصرت بالرعب واحلت لي الغنائم وجعلت لي

الارض مسجداً وظهوراً وارسلت الى الخلق كافة وختم بي النبيون"

- (3) The Holy Prophet ﷺ said: "I have been distinguished from the other Prophets in six matters (i) I have been endowed with eloquent speech, (ii) I am made awe inspiring, (iii) Booty has been made lawful for me, (iv) The whole earth has been made a Mosque for me as well as a means of obtaining purity, (v) I have been appointed a Messenger for the entire world, and (vi) The office of Prophet ceases with me. (Muslim, Vol. 2, page 249, printed Darul Kutub, Beruit).

"قال رسول الله صلى الله عليه وسلم ان الرسالة والنبوة قد

انقطعت فلا رسول بعدى ولا نبي"

- (4) The Holy Prophet ﷺ said: "The line of Prophethood and Messengership has come to an

end : After me there will neither be a Prophet nor Messenger." (Tirmidhi, Vol. 2, page 53, printed H.M. Saeed Company, Karachi).

"قال النبي صلى الله عليه وسلم انا محمد وانا احمد وانا المساحي
الذي يمحي الله بي الكفر وانا الحاشر الذي يمحش الناس على عقبي وانا
العاقب والعاقب الذي ليس بعده نبي"

- (5) The Holy Prophet ﷺ said : "I am Muhammad, I am Ahmad, I am the eraser ; disbelief will be erased through me, I am the assembler, the people will be assembled in the plain of Resurrection behind me, and I am the last one after whom there is no Prophet." (Muslim, Vol. 2, page 261, printed Dehli).

"قال رسول الله صلى الله عليه وسلم ان الله لم يبعث نبيا الا
حذرامته الدجال وانا آخر الانبياء وانتم آخر الامم وهو الخارج فيكم
لا محالة"

- (6) The Holy Prophet ﷺ said : "Allah has sent no Prophet who did not warn his people of the coming of Dajjal (the antichrist, but he did not come in their times). Now I am the last of the Prophets and you are the last community. Now he shall appear among you." (Ibn-e-Majah, Vol. 2, page 178).

"عن عبدالرحمن بن جبير قال سمعت عبدالله بن عمرو بن العاص
يقول خرج علينا رسول الله صلى الله عليه وسلم يوما كالمودع فقال
انا محمد النبي الامي ثلاثا ولا نبي بعدي"

- (7) Abdur Rehman bin Jubair says : "I heard Abdullah bin Amr bin Aas saying that the Holy Prophet ﷺ one day came to us in a manner as though he was taking his leave. He said thrice : I am Muhammad (P.B.H.), the un-lettered Prophet, then said : and no Prophet will come after me".

(Musnad Ahmad : Traditions from Abdullah bin Amr bin Aas).

"قال رسول الله صلى الله عليه وسلم لا نبوة بعدى الا المبشرات
قيل وما المبشرات يا رسول الله قال الرؤيا الحسنة او قال الرؤيا
الصالحة"

- (8) The Holy Prophet ﷺ said : "There is no Prophethood after me; there will only be harbingers of good news. He was asked, "who are the harbingers of good news, O Messenger of Allah"? He replied : "A true vision", or said "A righteous vision." (That is, there is no possibility of Divine Revelation now. At the most a person may receive an inspiration, which will be in the form of a true vision). (Abu Daud, Vol. 2, page 316).

"قال النبي صلى الله عليه وسلم لو كان بعدى نبي لكان عمر بن الخطاب"

- (9) The Holy Prophet ﷺ said : "If a Prophet had to come after me, it would have been 'Umar bin al-Khattab". (Tirmidhi Vol. 2, page 209, printed H.M. Saeed and Company, Karachi).

"قال رسول الله صلى الله عليه وسلم لعلى انت منى بمنزلة هارون
من موسى الا انه لا نبي بعدى"

- (10) The Holy Prophet ﷺ said to Hadrat Ali : "You are to me as Aaron was to Moses, with the exception that there is no Prophet after me". (Muslim, Vol. 2, page 278, printed Dehli).

Bukhari and Muslim have related this tradition in connection with the Tabuk Expedition. Two traditions on this subject are related in Musnad Ahmad on the authority of Sa'ad bin Abi Waqqas, the last sentence of one of which is to the effect ; "But there is no Prophet-hood after me". The detailed traditions related in this connection by Abu

Daud Tayalisi, Imam Ahmad and Mohammad bin Ishaq show that on the eve of his departure for the Tabuk Expedition the Holy Prophet (P.B.H.) had decided to leave Hadrat Ali behind for the defence and protection of Madina. The hypocrites thereupon had an opportunity to pass discourteous remarks about him. He went to the Holy Prophet ﷺ and asked him : "O Messenger of Allah, are you leaving me behind among the women and children"? On this occasion the Holy Prophet ﷺ consoled him, saying : "You are to me as Haron was to Moses". That is, just as Prophet Moses, on his departure for Mount Tur, had left Prophet Aaron behind to look after the children of Israel, so he was leaving him behind for the defence of Madina". But apprehending that Hadrat Ali's comparison with a Prophet might cause mischief later, the Holy Prophet ﷺ : immediately added the exception "there will be no Prophet after me."

"عن ثوبان قال قال رسول الله صلى الله عليه وسلم انه سيكون في

أمتي كذابون ثلاثون كلهم يزعم انه نبي وانا خاتم النبيين لا نبي بعدى"

- (11) It has been related by Thoban that the Holy Prophet ﷺ said : ".....and that 30 imposters will appear in my community each one of whom will claim to be a Prophet, whereas I am the last Prophet; there is no Prophet after me". (Abu Daud, Vol. 2, page 202).

Abu Daud related another tradition on this subject in Kitab-al-Malahim on the authority of Abu Harairah. Tirmidhi also related these two traditions on the same authority and that of Thaub, The second tradition is to the effect : "So much so that about 30 imposters will arise, each of whom will claim to be a Messenger of Allah."

"قال النبي صلى الله عليه وسلم لقد كان فيمن كان قبلكم من

اسرائيل رجال يكلمون من غير ان يكونوا انبياء فان يكن من امتي احد

لكان عمر"

- (12) The Holy Prophet ﷺ said : "There have been before you among the children of Israel people, who were spoken to (by God) though they were not Prophets. If there be such a one in my Ummah, he would be Umar." (Bukhari, Kitab al-Manaqib, Vol. 2, page 282, printed Darul Maarifah, Beirut).

A tradition on this subject reported in Muslim has the word Muhaddath (محدث) instead of yukallamun (يكلمون) but both "mean the persons who are spoken to by God, or are spoken to by the unseen.

"قال رسول الله صلى الله عليه وسلم لا نبي بعدى ولا امة بعد امتى"

- (13) The Holy Prophet e said : "There is no Prophet after me, and there is no Ummah (of any other Prophet) after my Ummah". (Baihaqi, Vol. 5, page 197).

"قال رسول الله صلى الله عليه وسلم انا آخر الانبياء ومسجدي خاتم

المساجد الانبياء"

- (14) The Holy Prophet ﷺ said : "I am the last Prophet and my Mosque is the last Mosque (of a Prophet) (i.e. the Prophet's Mosque of Madina)." (Muslim : Kitab al-Hajj, page 202).

"عن عرياض بن سارية عن النبي صلى الله عليه وسلم قال انى

عند الله مكتوب خاتم النبيين وان آدم لم يولد فى طينة"

- (15) It is related from Irbas bin-Saria that the Holy Prophet ﷺ said : "I was the last of the Prophets when Adam had not yet been born". (Mustadrak of Hakim, Vol. 2, page 418, printed at Hyderabad, Deccan).

"بابى انت وامى (يا رسول الله) لقد انقطع بموتك مالم ينقطع

بموت غيرك من النبوة والانبياء و اخبار السماء"

- (16) It is related that Hazrat Ali addressing the Holy Prophet ﷺ said : "O Messenger of Allah, your

death stopped the thing which was not stopped by the death of anyone else that is Prophethood, revelation from Allah and other prophetic informations." (Nahjul Balaghah, Vol. 2, page 255, printed at Egypt).

"عن ابي جعفر و ابي عبد الله عليهما السلام لقد ختم الله

بكتابكم الكتاب و ختم ببيكم الانبياء"

- (17) It is related that Abu Jafar and Abu Abdullah said : "Indeed Allah finished the divine books with your book (Holy Quran) and terminated (the line of) Prophets with your Prophet (Muhammad ﷺ). (Usul-e-Kafi, Vol. 1, page 103, printed No. Kishwar).

These traditions have been reported by a large number of the companions and related by many traditionists with many strong chains of authorities. A study of these shows that the Holy Prophet ﷺ had on different occasions in different ways and in different words affirmed that he was the last of the Prophets, that no Prophet would come after him, that Prophethood had been finalised in him, and that the people who claimed to be Messengers and Prophets after him would be imposters. There can be no more authentic, reliable and conclusive explanations of the Quranic word Khatam-un-Nabiyin than this. The Holy Prophet's ﷺ statement by itself is authoritative and decisive but when it explains a text of the Quran, it becomes all the more authenticated and conclusive. The question is ; who can be better qualified to understand and explain the Quran than the Holy Prophet ﷺ himself? Thus, if a person gives a different meaning to Khatam-e-Nubuwwat (Finality of Prophethood) how can he be held worthy of any attention or consideration, much less worthy of being believed in and followed.

This is an established principle but I may cite from Al-Iman by Ibn-e-Taimiya.

"وما ينبغي ان يعلم ان الا لفاظ الموجودة في القرآن والحديث اذ عرف تفسيرها وما اريد بمعناها من جهة النبي صلى الله عليه وسلم لم يحتج في ذلك الى الاستدلال باقوال اهل اللغة ولا غيرهم"

"And it must be understood that when the Holy Prophet ﷺ relates any meaning or explanation of the words of the Quran and the Sunnah, no weight will be given to the dictionary meaning or any other meaning and explanation." (Al-Iman by Ibn-e-Taimiya, page 271).

The finality of Prophethood is a fundamental of Islam. Allama Ibn-e-Nujaim wrote (in Al-Ashbah wa'l Nazair, Kitab-ul-Sier, Babul Riddah, page 179) that a person who does not acknowledge the belief in the finality of Prophethood is not a Muslim since it is a fundamental of faith which must be known and acknowledged.

The opinions of Al-Ghazali (450—505 A.H.) Qadi Ayaz (d. 544 A.H.) Allama Shehrastani (d. 548 A.M.) : Ibn-e-Kathir (d. 774 A.M.), Mulla AH Qari (d. 1016 A.M.), Sheikh Ismail Haqqi (d. 1137 A.M.), Shaukani (d. 1255 A.H.) and the view in Fatawa Alamgiri that one who does not believe in the finality of Prophethood or claims to be a Prophet or follows such a person, is an unbeliever not within the pale of Islam have already been noticed. The verdict of Imam Abu Haneefa is also reproduced below:—

A man in the time of Imam Abu Haneefa (80—150 A.M.) claimed to be a Prophet and said, "Allow me to present proofs of my Prophethood". The Imam ruled : "Anyone who demands a proof of Prophethood from him will also turn an unbeliever, for the Messenger of Allah said : "There is no Prophet after me". (Manaqib-ul-Imam al-Azam Abi Haneefa, Ibn-e-Ahmad al-Makki, Vol. 1, page 161, Hyderabad).

There is no doubt that a person who falsifies a clear and general verse of the Holy Quran by resort to its Taaweel and particularisation is as good as one who denies

the verse itself. The belief in the absolute finality of Prophethood of Muhammad ﷺ is an article of faith of the Muslims and a fundamental of the religion. These verdicts of the renowned scholars give the correct Sharia position about *inter alia* the claimant to prophethood as well as his followers.

In our view the verse about Khatam-un-Nabiyyin clinches the issue that all claimants of prophethood after the Holy Prophet will be false Prophets.

It may also be described here that some people have objected to the finality of the Holy Prophet ﷺ and have stated that the meaning of Khatam is not the last but it is like calling a person Khatam-ush-shu'ara or Khatam-ul-Mufassirin. These terms do not mean that after such a person, no other Poet, of Jurist, or Commentator would be born, but it means that this particular branch of knowledge was exhausted with that person. But this is a fallacious argument. The use of such a title as an exaggeration does not mean Khatam is usable for "perfect and excellent", and not for "last and final". There is no such rule that the use of a word sometimes in a figurative sense shall deprive that word of its real meaning. If somebody were to say (وجاء خاتم القوم) before an Arab, he shall never understand it to mean that the most perfect man of the tribe had come, but shall understand it to mean that the last man of the tribe came.

One should also note that the titles of Khatam-ush-shu'ara, Khatam-ul-Fuqaha, etc.; given to some people, were given by human beings, and no human being can ever know that after the person whom he is calling Khatam for some quality, no other person of the same quality would be born. That is the reason why in human language, these titles are no more than exaggerated recognition of excellence. But when Allah says that such and such a quality has terminated on and finalised in a particular person, there is no reason why we should understand it in any metaphorical sense, particularly when there is no ambiguity in the language. Therefore, Allah's calling

someone Khatam-un-Nabiyyin and the man's exaggeratedly calling someone Khatam-ush-shu'ara or Khatam-ul-fuqaha, etc. cannot be regarded at the same level.

An argument against the absolute finality is based on the tradition that his Mosque is the last Mosque. It is argued that it is not the last Mosque, because countless of other mosques have been built after it in the world. These words last mosque were used in the sense of excellence and perfection. The argument is fallacious. The last masjid means the Prophets' last Masjid or the masjid having some special qualities as compared to other mosques.

The tradition related by Imam Muslim in this connection on the authority of Hadrat Abu Hurairah, Hadrat Abdullah bin Umar and Hadrat Maimunah (wife of the Prophet ﷺ) are explicit that there are three such Mosques in the world, which are superior to all other Mosques in the sense that offering the prayer in them carries a thousand times greater spiritual reward than offering it in other mosques. They are Masjid-ul-Haram in Makkah, Masjid-al-Aqsa in Jerusalem (Bait-ul-Maqdas) and Masjid-i-Nabawi in Madina. For this reason it is permissible to undertake a journey for the purpose of offering the prayer in these three Mosques. This is something which is not advisable for any other mosque. The merits and spiritual reward for all other mosques whether far or near is equal. What the Holy Prophet ﷺ meant was this : Since no other Prophet would come after him, no fourth Mosque would be built in the world offering the prayer in which might carry greater reward than offering the same in other mosques and making of journey to which especially for the purpose of offering the prayer in it might be lawful.

A saying of Hadrat Aishah is cited against the principle of absolute finality of Prophethood. It is to the effect : Do say that the Holy Prophet ﷺ is the Khatam-ul-Nabiyyin (last of the Prophets) but do not say that no Prophet will come after him. In the first place to cite a

saying of Hadrat Aishah as against the authentic statements of the Holy Prophet ﷺ that "there will be no Prophet after me," is highly derogatory. Besides, the tradition ascribed to Hadrat Aishah is itself not authentic. No traditionist worthy of any mention has related it in any reliable collection. It is only "traced to Durrul Mansur, a commentary of the Quran and Takilah Majma ul Bihar, a dictionary of Hadith but without any reference to its chain of transmitters. It is unreliable and no scholar of renown ever relied on it

Another Hadith which requires consideration is reported in Ibn-e-Majah on the authority of Ibn-e-Abbas that the Holy Prophet ﷺ said in connection with his son Ibrahim that if he had lived he would have been truthful Prophet (لو عاش ابراهيم لكان صديقانيا)

This Hadith was held to be false and incorrect by Imam Nawawi as stated in Al-Mauzuat-ul-Khabir page 58. One of the persons in the chain of transmitters is Abu Shaaba who is not reliable, Imam Tirmizi said that he was not reliable in Hadith. Imam Nasai described him as weak in Hadith. Imam Ahmad said about him that no weight can be given to what he said. Imam Abu Hatim called him unreliable in Hadith (Tahzibul Tahzib. vol. 1. paces 144-145).

After the description of the Muslim concept of finality of the Prophet-hood of Muhammad ﷺ, it would be appropriate to refer to the history and evolution of the claim of Mirza Sahib to prophethood.

Mirza Sahib was born in 1839 or 1840 in village Quadian, District Gurdaspur in that part of the Punjab which is now included in India. This is according to the writings of Mirza Sahib but a controversy later raged in regard to his year of birth among the members of his family. According to the first thesis of Mirza Bashir Ahmad, his son, author of Seerat-ul-Mehdi, and his biographer, the year of birth could be 1836 or 1837. Seert-ul-Mehdi, Volume-2, page 150. On reconsideration he fixed the date of birth as 13th February, 1835. (Seert-ul-Mehdi,

Volume-3, page 76). According to one calculation the year of birth could be 1831 (Ibid, page 74). (Meraj Din fixed the date as 7th February, 1832 (Ibid, page 302). Others take the year of birth to 1833 or 1834 (Ibid, page 194).

The reason for these discrepant views of Mirza Bashir Ahmad and others who believed Mirza Sahib to be a Prophet who was imparted divine knowledge by God (and consequently should not have made a mistake about his year of birth) is not far to be seen Mirza Sahib was about sixty nine years old at the time of his death (born 1839 and died 1908). Nemat Ullah Wali, a saint of the sixth century Hijrah who is said to have predicted the future events among the Muslims in a continuous poem is said to have written in that poem some predictions about the coming of someone at the end of the thirteenth century and the beginning of the fourteenth century who would revive Sharia. Mirza Sahib applied that poem to himself. In one couplet it was predicted that that person would remain alive for forty years from the death of his advent i.e. taking over of the mantle of appointment as the chosen of the Lord. Mirza Sahib while commenting upon the meaning of the couplet wrote that he was appointed as such at the age of forty and he will live till the age of eighty years or near about. (Nishan-e-Aasmani. page 15). He then claimed to have a divine revelation

”اطال الله بقاءك، اسی یا اس پر پانچ چار زیادہ، یا پانچ چار کم“

(Allah give you long life-eighty-four or five years more or four or live years less). Thus according to this revelation he had to die any time between the age of seventy-five years or eighty-five years. The attempt to prove him more aged and to bring his life span closer to seventy-five years is directed towards proving the accuracy of the prediction and the revelation.

The anxiety to establish the fulfilment of prophecy is revealed by a letter of Molvi Abdul Rahim Dard M.A. a preacher of Qadianism who wrote a letter to Mirza Bashir Ahmad, compiler of Seert-ul-Mehdi commending his

research in respect of age of Mirza Sahib. He exhorted him to resolve this matter finally so that the year of birth be fixed between 1836 and 1837. After referring to the revelations of eighty or near about reproduced in *Arbain 3*, page 36, *Tohfa-i-Golarwia*, page 29, *Izala-i-Auham* pages 634 to 638 he wrote :

"The meaning of these revelations were stated by Mirza Sahib as follows:—

"The apparant words of the promise in the revelation fix the age between seventy four and eighty six."

If either according to Hijra or the Gregarian Calendar the age is proved within this, the revelation would be fulfilled. There can be no objection if the birth is proved between 1836 and 1837". (*Seerat-ul-Mehadi*, Vol. 3, pages 187. 188, No. 763).

The same reason is disclosed at page 76 of *Seert-ul-Mehdi*, Vol. 3.

After fixing the date of birth as 13th February, 1835 Mirza Bashir Ahmad calculated the age of Mirza Sahib according to the Hijra Calendar as more than seventy five years.

Mirza Sahib was born in a family of landlords which though prosperous and affluent in the past was practically reduced to straitened circumstances at the time of his birth. In 1857 his father Ghulam Murtaza had shown his loyalty to the East India Company and had supplied fifty horses and fifty recruits to the British Army to help them in crushing the renters of the war of Independence who were called traitors by that Government. In exchange he was held in some esteem by the Government. The tendency to eulogize the British Government was, therefore, ingrained in Mirza Sahib from his boy-hood and continued till death. He mentions and repeats his father's loyalty to the British Government and his being honoured with a seat in the Governor's Darbar, with excessive pride, in his various books and pamphlets. He also mentions his own unflinching loyalty to that Government in his writings.

Mirza Sahib had some religious education from some teachers. Because of the financial position of the family he had to join service as a clerk in the courts at Sialkot on a meagre salary of Rs. 15/- per month. This venture lasted from 1864 to 1868 when he resigned from service and became busy in the family litigation for the restoration of the family property and in the study of the religious literature. His father died when he was about thirty-five years old (Kitab-ul-Bariyyah, pages 146 to 149) At the end of the seventies of the last century he began writing some articles against Christianity, Arya Samaj and the Brahma Samaj. He also had disputations and debates with the scholars and followers of those religions. He was thus introduced to the Ulema and the Muslim intelligensia and gained some popularity amongst them.

In 1879 he advertised through a pamphlet his intention to write a book containing three hundred arguments in support of the superiority of Islam over Christianity and Hinduism. He exhorted the Muslims to send their subscriptions and contributions or price of the book in advance since he had no money to publish the same. He wrote in Haqiqat-ul-Wahi, page 337 that when he wrote his first book Baraheen-i-Ahmadiyya he had no money to get it printed. He then prayed to Allah, and alleged to having Ilham (inspiration) on which he wrote letters and received money from different sources.

The book was first priced at Rs.25/- for others and Rs.10/- for Muslims (See Baraheen-i-Ahmadiyya, Vol. 3, 1970 Ed. on the back of the title page). After the publication of the first two volumes it was priced at Rs.100/- for others and Rs.10/- or Rs 15/- for Muslims (See *ibid*, page 67).

Quite a number of persons paid the price in advance but only four volumes of the book could be published in four years upto 1884. The fifth was published in 1905. During the period of more than two decades between the publication of the fourth and the fifth volumes Mirza Sahib wrote about eighty books but he could not complete the fifth volume despite protests from the contributors of the price of complete book and hostile criticism by many (*ibid*, Vol. 5, page 1).

The first volume of the book consisted of 82 pages only (which in the edition of 1970 is condensed in 25 pages only). It was published in 1880 and consisted of preliminaries about the need of the book, list of contributors, some poems and a pamphlet promising award of a prize of Rs 10,000.- to one who refuted even one-fifth of the arguments through the divinely inspired books of their religion. The second volume consisting of fifty-five pages (new edition 40 pages) of preface only was also published in 1880. The third volume of 143 pages (new edition of 100 pages) was published in 1882. The fourth volume was printed in 1884 and consisted of 282 pages (new edition 191 pages) (See Seerat-ul-Mehdi, Vol. 2, page 151 for dates of publication).

It appears from the fifth volume of the book (page 1) that Mirza Sahib had originally intended to publish the book in fifty volumes and advance price of the book had been received from many contributors. But he declared that his promise was fulfilled with the publication of the fifth volume since here was difference of a zero only between the figures 5 and 50.

Despite the favourable reaction of the Muslims to the pamphlets advertising the book long before its publication Mirza Sahib left no opportunity of complaining against the rich among them and blaming them for indifference. Only two instances of contributions may be reproduced. A sum of five thousand rupees, which was equal to an amount of several hundred thousands of the present age was contributed by one person alone and another sum of five hundred rupees was sent in two instalments by another gentleman (See the publisher's note, Baraheen-i-Ahmadiyya, Vol. 1, page to the 1970 edition).

Mirza Sahib claimed that he had more than three hundred thousands revelations out of which fifty thousand related to money matters, i.e. whether and when the money would be received. This claim would indicate that money matters were uppermost in his mind.

The main theme in Baraheen-i-Ahmadiyya in which three hundred arguments were promised, is that of divine

inspirations or revelations which according to Mirza Sahib continue in the followers of the Holy Prophet who qualify for it. The purpose with which the book was promised to be printed may have been served or not but the purpose which may have only been intended but not promised was served abundantly. The predominating theme in volumes three and four are the alleged revelations of Mirza Sahib and the theories which laid the foundation of his future claims of being a promised Massih, promised Mehdi and a prophet. The foundational claim of Mamoor-un-Minallah (an appointee from God) was, however, made in the third volume of the book *Seerat-ul-Mehdi*, Vol. 2, page 151. In the fourth volume he claimed to have received the sign of Mujaddidiyat (revivalism) (See pages 502 and 503 of *Baraheen*; *Hayat-i-Tayyeba* by Abdul Qadir, page 69; Also see *Seert-ul-Mehdi*, Vol. 2, page 151). The real purpose of the publication of the book at public expense proved to be the propagation of self, the advertisement of his alleged revelations and the publication of his theories which would ultimately help him in making a claim to prophethood. In order to establish the last point a few extracts are given from *Baraheen-i-Ahmadiyya*.

(1) Ilham is a measure of information about hidden affairs. God always creates such men in the Muhammadan Community who believe in the Holy Quran, and act upon its Injunctions truthfully and sincerely and consider the Holy Prophet ﷺ as the true and perfect Prophet of God, more venerable and prominent than other Prophets, the last of the Prophets and his guide leader (page 215).

(2) It is different from the prophetic revelation which has ended but the above inspiration shall not terminate. This type of inspiration is a great proof of the prophetic revelation (page 215).

(3) The word Ilham cannot be limited to its dictionary meaning. There is consensus among the Ulema that Ilham is equivalent to Wahi (page 221).

(4) There is a dispute of words amongst us and the Ulema that whatever divine information We call Wahi, is called Ilham by the Ulema (page 222).

(5) If Ulema are not given the share of hidden knowledge how can they be the inheritors of the knowledge of the Prophet.

(6) Did not the Holy Prophet ﷺ say that there will be Mohaddas (one who is in communication with God) in this Ummah (page 231).

(7) The deviation from the right path, the extreme mischief of the age the craftiness, knavery of those who deny the extreme inattention of the indolent and the negligent, the severity in heresy of the opponents demands that the inspired knowledge of such persons should be like that of Messengers (رسول). These are the people who have been named Amsal (امثل) in Hadis and Siddiq in Quran (page 233).

(8) The time of their manifestation or appearance resembles the time of appearance of the Prophets. The advent of both is dependent on the extreme severity of deviation from the path of righteousness and indolence (page 233).

(9)

"يا احمد بارك الله فيك"

"اى اول نائب الى الله بامر الله فى هذا الزمان ... قل جاء الحق
و زهق الباطل ... قل ان افتريته فعلى اجر امى — هو الذى ارسل
رسوله بالهدى يا احمد فاضت الرحمة على شفيتك — انك
باعيننا يرفع الله ذكرك — يا ايها المدثر قم فانذر وربك فكبر — انى رافعك
الى — والقيت عليك محبة منى"

(تذكرة ص 35، 41 طبع چهارم)

Translation

O ! Abroad ! Allah bless you.

You are the first viceregent of Allah with His order in this age.

And tell that the truth has come and falsehood has vanished.

Say thou : If I am liar, on me then be my guilt. He is who has sent his messenger with the guidance and the true religion that he may make it prevail over all religions (page 239).

O! Ahmad! Allah has overflowed his mercy upon your lips. May Allah raise for you your renown.

O! thou enveloped, arise and warn and magnify your Lord (page 242). I shall raise you upto me and I flow on you my love (page 242).

(10) At this juncture there should be no such doubt : How an ordinary person in the Ummah of the Holy Prophet ﷺ can be associated with the names, qualities and excellences. It is undoubtedly correct that even a Prophet cannot be an equal partner in his pure perfections, the angels can also not boast of such equality. How can any other person have any relation with the perfections of the Prophet ﷺ. But O seekers after truth listen to this attentively for this reason that the blessings of the Holy Prophet ﷺ be manifest and till eternity the perfect rays of his light and acceptance may silence the opponents. God has made this arrangement with his perfect wisdom and mercy that some persons from the Ummah of the Prophet ﷺ who follow the Prophet ﷺ most humbly and submissively may manifest the blessings of the Holy Prophet ﷺ through their insignificant existence. Whatever praise is levelled on them from Allah or whatever signs and bounties become manifest from them the subject of all those praises and the person from whom those blessings emanate is the Holy Prophet ﷺ. But on account of his being the follower of the Sunnah of the Prophet ﷺ that resplendent person who is the excellent second of the Prophet

(مختص نورانی جو وجود باوجود حضرت نبوی ہے)

stays like a shadow (ظل). For this reason whatever Allah's light or splendour appears in that Holy personage also manifests itself in his Zil (shadow). Appearance of that condition and behaviour in the shadow as is that of the cognate is something which is well known to all and is not a secret (pages 243, 244 also see page 301).

(11) O Adam you and your wife stay in paradise; O Mary you and your husband stay in paradise; O Ahmad you and your wife live in paradise. I blew up in you from my inspiration (لدى) the spirit of truth (page 496).

This was translated by Mirza Sahib as follows:—

O Adam, O Mary, O Ahmad you and whoever is your follower or comrade enter paradise i.e. enter the cause of true salvation. I have blown up in you the spirit of truthfulness. (He then explained that) the verse describes the cause of the name of the spiritual Adam. As Adam was born without assistance of any cause (father, mother) so the spirit is blown in the spiritual Adam without assistance of external causes. In fact this blowing in of spirit is something special with the Prophets and ultimately it was conferred by way of lineage or inheritance on particular persons in the Ummah of the Holy Prophet (page 497). (12)

"انا انزلناه قريبا من القاديان وبالحق انزلناه وبالحق نزل صدق

(تذکرہ ص 59 طبع چہارم)

الله ورسوله وكان امر الله مفعولا"

Mirza Sahib explained this as follows: —

We made these signs and wonders and this inspiration which is full of meanings and truth descend near Qadian for reason of truth and on account of necessity. Whatever information was given by Allah and His Prophet is fulfilled and what Allah wished had to be accomplished.

These last words are a pointer to this that the Holy Prophet ﷺ had pointed out in his hadith about his appearance and Allah had hinted about the same in his holy Book. That hint has already been mentioned in the

inspiration recorded in the third volume. The divine hint is in the verse: —

"هو الذى ارسل رسوله باهدى و دين الحق ليظهر على الدين

(الفتح : 28)

كله"

(He sent His messenger with guidance and the true religion that he may make it to prevail on each religion).

This verse is a prediction in favour of the Messiah in the physical and political sense and the promise of superiority or victory of Islam will be manifest with the victory of Messiah. With the second coming of the Messiah the religion of Islam will spread through him in all the world. But it is manifested on this humble person that on account of his lowliness, humility, trust in God and selflessness and by virtue of the luminous signs, he is the model of Messiah's first sojourn in the world and his nature very much resembles the nature of Messiah as if they are two pieces of the same jewel or two fruits of the same tree..... just as Jesus, a Prophet of high dignity was the follower of Moses and servant of (his) religion and his Bible was a branch of Torah, this humble person is a lowly servant of that grand Prophet who is the leader of all messengers. If he is Hamid he (Mirza Sahib) is Ahmad. If he is Mahmud he (Mirza Sahib) is Muhammad ﷺ (This may be marked that Mirza Sahib puts the words "صلى الله عليه") (P.B.U.H.) when he refers to himself although these words are exclusively used for Prophets). Since this humble man has complete resemblance with Jesus, God included him from the beginning in the prediction about Messiah. Messiah is the manifest and physical object of that prediction while this humble person is its spiritual and plausible object. The spiritual victory of Islam which is dependent upon irrefutable logic and arguments are destined through this humble self whether it be manifest during his life-time or after his death (pages 498 and 499).

(13) Thus God after creating this humble slave in this age and after conferring upon him hundreds of heavenly

signs and (the quality of) penetrability into the hidden affairs and knowledge and after arming him with knowledge of irrefutable arguments, intended that he may publish and make prevalent the Quranic truthful science in every nation and in every country (page 501)

(14) Whatever sources of spreading the religion, arguments and reasoning for silencing all excuses have been made available to me were never given to anyone in the earlier Umam (plural of Ummah, i.e. communities of followers of Prophets) (page 502).

(15) I had written this much when a person named Shahabuddin said that Molvi Ghulam Ullah, Molvi Ahmad Ullah Amritsari, Molvi Abdul Aziz and some other Molvis deny those Ilham (inspirations) which resemble the prophetic revelations..... their argument is that if such Ilham be true, then the companions of the Holy Prophet ﷺ deserved them more. In authentication of the same the letters of Sh. Abdul Qadir Jilani and Mujaddid Alf Sani may be seen how abundant are their inspirations (الإلهام). Imam-e-Rabbani Mujaddid Alf Sani in the fifty-first letter in the second volume of his letters writes plainly that a person who is not a Prophet has the honour of being in communication with and addressed by God. Such a person is known Mohaddas and his position is nearer the rank of Prophets (page 546).

(16) God did not give you up nor is he angry with you. Did not we open your heart. Did not we make everything easy for you that we granted you Bait-ul-Fikr (house for contemplation) and Bait-ul-Zikr (house for worship). Whoever enters Bait-ul-Zikr sincerely with the intention of following with good faith and sound belief shall towards the end be in peace..... By Bait-ul-Fikr is meant the room in which I have been and am even now busy in the writing of this book. By Bait-ul-Zikr is meant the Mosque built adjacent to that room. The last phrase describes the quality of the Masjid (Mosque) and from the letters of which can be found the date of its construction. The words are (مبارك و مبارك و كل امر مبارك يجعل فيه) meaning that this Mosque

is blessed and confers blessings and every blessed act will be committed in it (pages 558, 559).

The following points are made out by the above mentioned extracts from Baraheen-i-Ahmadia, Vol. 3 and 4 :

- (1) Mirza Sahib claimed to have direct communication with God and was addressed by Him directly.
- (2) He called his Ilham as Wahi and apprehending the possible objection from the Ulema, he wrote that this was only a dispute over language: He called the divine information as Wahi while the Ulema named it Ilham.
- (3) He was the recipient of secret knowledge and knowledge about future events.
- (4) In this age of sin such a reformer should be like a messenger and such people were named Amsal in Hadis and Siddiq in Quran.
- (5) The appearance of such as he, resembles the advent of the Prophets.
- (6) Though no one can equal the Holy Prophet (P.B.H.) but a person on account of his being the staunch follower of the Prophet and his Sunnah becomes his Zil (Shadow).
- (7) The manifestation of the State and behaviour in the Zil (Shadow) is that of the original leader.
- (8) If the leader is Hamid the Zil is Ahmad. If the first named is Mahmood the other is Muhammad ﷺ and Mirza Sahib who is saying this about himself puts (صلى الله عليه وسلم) (peace be upon him or ﷺ in short) against Muhammad which according to him is his name but he does not put such words of prayer, which are reserved for the prophets against the names of the Holy Prophet.
- (9) Mirza Sahib resembled Jesus and the prediction of his coming applied to him in the manifest and

physical sense while it applied to Mirza Sahib in the spiritual sense.

(10) The coming of Mohaddas was predicted by the Holy Prophet ﷺ and according to Mujaddid Alf Sani Mohaddas is a person who has the honour of being in communication with and addressed by God and his position is nearer the rank of Prophets,

(11) The verse

"هو الذى ارسل رسوله بالهدى و دين الحق ليظهره على الدين

(الفتح : 28)

كله"

was revealed for Mirza Sahib.

(12) Though the above verse is a prediction in favour of the Messiah in the physical and political sense but Mirza Sahib is the model of Messiah's first sojourn in the world and both are pieces of the same Jewel.

(13) God sent a revelation to Mirza Sahib that He granted him Bait-ul-Fikr and Bait-ul-Zikr. Bait-ul-Fikr was the Chaubara in which he wrote Beraheen-e-Ahmadia and Bait-ul-Zikr means the Mosque built adjacent to the Chaubara. According to the Ilham the Mosque is blessed and confers blessings and every blessed act will be committed in it.

From these points it will be clear that while laying the foundation for his claim he lay persistent emphasis on Ilham (inspiration) which for reasons of his own he called Wahi (revelation). Mirza Sahib claimed in 1882 that he was appointed by God (مامور من الله) the purpose of appointment for reform is detailed in the 3rd volume of Baraheen-i-Ahmadia but he took two years to declare himself as Mujaddid (Revivalist). For his claim of Promised Messiah he wrote his resemblance with Jesus and of his being the person who would perform the function for which Jesus was commissioned in his physical appearance. For the claim of Zilli Prophethood he claimed to be recipient of

Wahi (revelation) in the language and verse of the Quran and that he was the object of the verse Q 48 : 28. He was Zil of the Prophet and Zil had all the qualities of the cognate. Thus attempt was made to remove all hurdles in respect of future claim of Promised Messiah and Prophet. The manner in which , according to his claim, he had Ilhams were five and two of them very much resembled the manner in which the Holy Prophet (P.B.H.) received the Wahi (revelation).

In these citations there is one quotation in which it is said that Jesus will be coming physically in this world as Messiah. The subsequent development was only an attempt to prove that Messiah had died a natural death in Kashmir and his second coming in a physical sense was impossible. Consequently the Maseel (likeness of) Messiah that is Mirza Sahib had to fulfill the prophecy about the second coming of Messiah.

There is a clear verse in the Holy Quran about Holy Prophet ﷺ being the last of the Prophets. This hurdle had to be crossed by discovering a new meaning of the word Khatam that the Prophet shall henceforth be (commissioned from the Muslim Ummah and must bear the seal of authentication of the Holy Prophet ﷺ).

There is no reference to Mehdi but in view of the qualifications appropriated by Mirza Sahib for himself this would not be a difficult claim to make.

Mirza Sahib claimed to be the Promised Messiah in 1891. He had thereafter disputations with Christian Missionaries also.

Abdullah Atham was a Christian who was considered an adept at disputation or contest by argument (مناظره). Mirza Sahib had such contest-with him and other Christian Missionaries from 22nd May, 1893 to 5th June, 1893 regarding the truthfulness and superiority of Islam as a religion. On the last day of the contest Mirza Sahib made a prediction to the effect that:—

“last night I prayed to God with much humility and self abasement that He may decide in this matter. We are humble servants and are helpless in the absence of a decree from you. He gave me this sign as a tiding that whoever among the disputants voluntarily and knowingly is opting for falsehood, abandoning true God and making an humble (person) a divinity shall, at the rate of one month per day of contest be thrown in Hawiya (raging fire) and will be much disgraced provided he fails to correct his wrong. And whoever is right and believes in true God will be honoured. And when this prophecy comes true some of the blinds will have their vision restored, some persons who are lame shall start walking (like ordinary people) and some deaf persons shall start hearing.....”

I declare that if this prediction is proved incorrect and the party who is on the wrong path does not fall in Hawiya (raging fire) after death within fifteen months, I will be prepared to bear any punishment. I may be disgraced, my face may be blackened and after putting a rope round my neck I may be hanged. I swear by Great God that He will do so, He will certainly do so, He will certainly do so.....” (Jung-e-Muqaddas, pages 183, 184, Silsila-i-Tasnifat, Vol. 5, page 2562).

On 22nd August, 1894 Mirza Sahib wrote a letter to one Munshi Rustam Ali in which he expressed his anxiety that the ‘known person’ (Atham) was still healthy and plump. He prayed for being saved from the test (Maktubat-i-Ahmadiyya, Vol. 5, letter No. 3, page 128 ; Qadiani Mazhab, page 324).

In Seert-ul-Mehdi, (Vol. 1, pages 157-160) are described the steps taken by Mirza Sahib for the fulfilment of his prophecy. It is said that Mian Abdullah Sinousi informed him that a day before the expiry of period of prediction about Atham, the Promised Messiah asked him and Mian Ahmad Ali to bring grams in weight which he specified and recited on them such and such Chapter of the Quran in such number (The author did not recollect the

number nor the Chapter of the Quran). Mian Abdullah Sinousi continued that he recited the said Chapter of the Quran for the whole night. After finishing the recitation they went to Mirza Sahib as directed. He (Mirza Sahib) took both of them outside Quadian probably toward the north and directed them to throw (the grams) in an unusable well and then to turn their faces and hasten from there without looking back. The two acted as they were directed.

On the last day of the prophecy faces of the Ahmadis were withered and they were extremely dejected. Some persons on account of unaware-ness had betted on the death of Atham. There was dejection and disappointment all round. People wept bitterly during prayers and prayed to God that they might not be dishonoured (Seerat-i-Meseeh-i-Mauood by Sh. Yaqub Ali; Quadiani Mazhab, page 325).

Mirza Sahib explained this by saying that the prediction was subject to the condition that Atham did not withdraw (from his belief). So in the meeting of disputation itself he had withdrawn the word Dajjal (imposter) which he had said about the Holy Prophet ﷺ, in the presence of seventy persons and not only this, he proved the withdrawal (رجوع) by his fifteen months' continuous silence. The basis of prediction was that he had called the Holy Prophet ﷺ Dajjal and having benefited from this penitence he died after fifteen months (Roohani Khazain, Vol. 9, page 6, from Kashti-e-Nuh, printed in 1902, Also see Haqiqatul Wahi, page 8).

Mirza Sahib wrote in Naseem-e-Daawat (printed in 1903, page 91) that sometimes the fulfilment of the prophecy is delayed on account of penitence. Any objection against the completion of the prophecy could be raised only if he himself had died before Atham (Roohani Khazain, Vol. 19, page 451, published 1907, page 185).

It may be noticed that there is nothing in the prophecy that Atham had called names to the Holy Prophet ﷺ. The

basis of the prophecy was that Atham was abandoning true God and making a humble man a divinity which refers to his belief in the gospels. A period of fifteen months fixed for the death of Atham, expired without fulfilment of the prophecy.

Molvi Sanaullah of Amritsar was one of the great opponents of Mirza Sahib, On the 15th April, 1907, Mirza Sahib wrote a letter to him in a state of great exasperation (which is apparent from the letter) in which he referred to his (Molvi Sanaullah's) propaganda against him that he was an imposter, a liar and Dajjal (a deceiver) and then declared:—

“If I am such a liar and imposter as you paint me in your newspaper, I shall die in your lifetime because I know that a mischievous person and a liar do not live long and at length he dies disgracefully and in sorrow during the lifetime of his enemies. In fact it is better that he should perish so that he may not corrupt the creation of God. And if I am not a liar, imposter and I be in communication with and an addressee of God and I be the Promised Messiah, I except from the kindness of God that according to his law you will not be spared the punishment of a falsifier. The punishment shall also be not of human hand but shall be of Divine hand just as plague, cholera or fatal diseases. If such punishment does not befall you, I am not from God

At the end there is a prayer for God's decree in this matter (Hayat-i-Tayyiba, page 423 to 425).

The fact is that Molvi Sanaullah outlived Mirza Sahib by many long years and Mirza Sahib died in 1908 of diarrhoea according to the common version of his followers and of cholera according to the version of his father-in-law. (See Quadiani Mazhab by Ilyas Barni page 137).

The followers of Mirza Sahib began to confuse the issue after his death that the letter was an offer for Mubahala (مباہلہ) (cursing one another and praying that

whoever is not on the right path may die) but Molvi Sanaullah did not accept the offer. But the said letter is not capable of being so interpreted. It is clearly a unilateral matter which did not require the consent of the other.

It is not important as to who dies first. The death of Mirza Sahib before Movli Sanaullah assumed importance because of the high flown and stern language that Mirza Sahib used and often made life or death a test of his being commissioned by God or being an imposter.

The prophecy of death of his opponents was one of the mode adopted by Mirza Sahib to prove his truthfulness. When same opponent died, as he must die some day, this was considered to be proof of truthfulness of the alleged mission of Mirza Sahib. Mirza Sahib was ultimately compelled by order of the District Magistrate (Deputy Commissioner) Gurdaspur, dated 23rd August, 1897 in a case of breach of peace under section 107 Criminal Procedure Code, to refrain from making prophecies about death or disgrace of any person (Al Barriyyah, page 261). Mirza Sahib is said to have given an undertaking in Court that he would not use such language. (See Tableegh-i-Risalat, Vol. 6, page 168. Also see *ibid* page 166). But he denied it. However he gave such an undertaking in 1899 on the 25th February, in the Court of Mr. M. Douie, District Magistrate Gurdaspur (Quadiani Mazhab, pages 456, 458, Tableegh-i-Risalat, Vol. 8 page 44).

The publication of Baraheen-i-Ahmadiyya in which great emphasis was laid by Mirza Sahib on divine revelations received by him evoked much curiosity among the Muslims. They waited for other prophecies and their fulfilment. Mirza Sahib issued pamphlets about certain prophecies which proved incorrect. He, therefore, became the object of criticism and ridicule and in order to clear up his position he resorted to Taaweel (to give a different interpretation of an obvious meaning of a word) of what he said.

Mirza Sahib published a revelation in a pamphlet dated 20th of February, 1886 that a son would be born to him. 'His name is Emanuel and also Bashir. Whoever comes

(is born at that time) will be wealthy and a man of pomp and grandeur. When he comes he will cure many of their illnesses by his miraculous powers. He will be Kalimat Ullah (كلمة الله) (word of God)'. People began to wait for the fulfilment of this revelation.

It so happened that a girl was born to Mirza Sahib in May 1886. On this, as the author of Seerat-ul-Mehdi said, those who believed were disappointed while such a wave of derision, mockery and ridicule arose among those who did not believe or were enemies (of Mirza Sahib) that it created condition like that of an earthquake. Mirza Sahib declared through pamphlet and letters that in that revelation there was no such hint that the son would be born in the same pregnancy (Seert-ul-Mehdi, Vol. 1, page 88).

A son was thereafter born in August, 1887. There were jubilations on his birth and many of those persons who were shaken (in their belief) became firm. People considered that this was the promised son and Mirza Sahib also had the same opinion on account of the birth of Bashir-I. People began to return (towards Mirza Sahib) but after a year that child died. This created a great storm and an earthquake in the country like of which was noticed neither before nor ever after this event. Many of those who believed received such a jolt that they never recovered thereafter (never returned to the fold).

Mirza Sahib again tried to convince people through pamphlets and letters that he was never certain that the son was the object of revelation. Since he had received many revelations in which was expressed his great excellence he also thought that perhaps he might be the promised son but in the revelation itself there was no such indication. Some of the people (followers) were assured by the explanation while others were disappointed. The opponents ridiculed (Seert-ul-Mehdi, Vol. I, page 88).

It may be stated that the above mentioned pamphlet about the revelation was published on 20th February, 1886. Another pamphlet was published on 22nd of March 1886 in which it was said that the son would be born within 9

years. A third pamphlet was issued on 8th April, 1886 in which it was said that a son is to be born soon and the time (of his birth) cannot exceed the period of pregnancy (Tableegh-i-Risalat, Vol. I, pages 86, 87). It was for this reason that people ridiculed Mirza Sahib when a daughter was born in May, 1886. But this was also interpreted by Mirza Sahib in his own favour. It was said that it was never prophesied that the son would be born in the then pregnancy. The words that the time would not exceed the time of pregnancy could mean that he could be born even within 2 1/2 or 3 years and also that he could be born at any time within nine years (ibid). These interpretations obviously did not satisfy people.

The explanation that Mirza Sahib was not certain that Bashir-I was the object of revelation may be judged in the light of pamphlet dated 7th August, 1887 in which he expressed complete satisfaction with intense pleasure that the prophecy was proved correct and that night at about 1.30 A.M. that blessed son was born (Tableegh-i-Risalat, Vol. I, page 99). The pamphlet was headed 'Good News' (خوش خبری). The pamphlet of good news proved that Mirza Sahib was himself certain and he himself spread the news in the public.

The attempts of Mirza Sahib to marry Mohammadi Begum and his failure are well-known.

In the pamphlet dated 20th February, 1887 in which there was the prophecy of the birth of the son, was published another prophecy alleged to be based on divine revelation. He wrote that God gave him good tidings about women some of whom he would get in future. It is clear from the other writings and pamphlets that the good tidings was about his future marriages. However, the fact remains that Mirza Sahib was last married on 17th November, 1884 (Hayat-e-Tayyiba, page 75).

In a letter written to Molvi Nooruddin on 8th June, 1886 Mirza Sahib wrote that about four months ago it was made manifest to him that a son of many excellences would be born to him. Of late he had been having numerous

inspirations that he would have to marry again and it had been decided by God that a virtuous and chaste wife would be given to him and she would bear children. He then wrote about two proposals of marriage which were not approved by him (Maktubat-i-Ahmadiyya, Vol. 5, letter No. 2).

Mirza Sahib claimed that many times God had informed him by way of prophecy that he would be married to the elder daughter of Mirza Ahmad Beg whether in a virginal state or as a widow (Izala-i-Auham, page 396).

On the 10th May, 1888 a letter of request for marriage of Mirza Sahib was published in Newspaper Nur Afshan. His opponents made him the target of their objections. Mirza Sahib responded by publishing a pamphlet dated 19th July, 1888 in justification of this letter and reiterated that he had asked for the hand of Mohammadi Begum elder daughter of Mirza Ahmad Beg in obedience to the order of God. He further gave the details of the methodology used for achievement of this object. Some of his near relatives demanded signs from him and the father of the girl (Mohammadi Begum) had been obedient to them and considered his daughters to be their daughters and they thought likewise. They considered Mirza Sahib to be a liar and imposter. They raised objections against Islam and the Holy Quran and demanded signs from him. For this reason he prayed many a times for them. This prayer was accepted in this manner that the father of the girl beseeched him in an important matter. His sister was married to a paternal cousin of Mirza Sahib named Ghulam Hussain. Ghulam Hussain was missing for the last twenty-five years. His land to which Mirza Sahib was legally entitled as a heir was got recorded in the revenue record in the name of his wife. Ahmad Beg and her brother wished that the land which was worth about four or live thousand rupees might be gifted in favour of his son Mohammad Beg. A gift deed was drawn on behalf of the wife of Ghulam Hussain and was brought to Mirza Sahib for obtaining his consent which was legally essential. Mirza Sahib was inclined to sign it but he received divine order that he should now make a move for demanding his daughter in marriage and

inform him that the show of benevolence or generosity would be subject to that condition and that the marriage would be a source of blessings and a sign of mercy for them. If they did not agree to the marriage the girl would come to grief. The person to whom she might be married would die within 2½ years of the marriage and the father would die within three years from that time (Tableegh-i-Risalat, Vol. 1, page 116).

From the supplement of the above pamphlet which is published dated 15th July, 1888 it appears that the relatives of Mirza Sahib considered him an imposter and a businessman (who made the claims of being in direct communication with God for the purpose of making money). He wrote that these persons were not satisfied even by the signs shown to them. He did not need this rishta (new relationship by marriage). The request for marriage was made only by way of sign so that those who refused to believe in him may be shown by God the nature and wonders. By their acceptance (of proposal for marriage) signs of divine mercy and blessings might be made to descend on them, and the coming misfortunes and calamities might be avoided. But if they rejected (him) awful and terrible signs might be sent to warn them, *ibid*, pages 119, 120).

Mirza Sahib did not confine himself to these threats. He wrote letters to his relatives as well as to Mirza Ahmad Beg. These were letters of entreatment. In his letter dated 20th February, 1888 to Mirza Ahmad Beg he wrote that in case of promise of marriage he was prepared to sign the gift deed and in addition his own property would be of God' and Ahmad Beg. He also promised that his son would, through his efforts be employed in the Police Department and would be married to the daughter of one of his rich disciples. (Nawishta-i-Ghaib by M.S. Khalid, page 100. See Quadiani Mazhab by Ilyas Burney, 5th Edition, pages 375, 376). He wrote another letter to Mirza Ahmad Beg on 17th July, 1892 in which he said that the prophecy regarding his marriage was very well-known. He entreated him to assist in the fulfilment of the prophecy (Kalima-e-Fazle Rahmani by Qazi Fazal Ahmad. page 123; Quadiani Mazhab, pages 377 to 379).

Fazal Ahmad son of Mirza Sahib was married to the daughter of Mirza Sher Ali whose wife was the sister of Mirza Ahmad Beg. Mirza Sahib wrote letters to Mirza Sher Ali and his wife also asking them to help him in getting the hand of Mohammadi Begum and threatened them that if she was married to some other person he would ask his son Fazal Ahmad to divorce his wife. Mirza Sher Ali wrote back to Mirza Sahib that if he substituted himself for Mirza Ahmad Beg, and the latter requested him to give the hand of his daughter in marriage and he had been more than fifty years old and had surpassed Musailma the imposter (a false Prophet of the time of the Holy Prophet ﷺ), could he have given his daughter in marriage to him.

In reply the threat of Mirza Sahib that in case of his refusal to influence Ahmad Beg through his wife (sister of Mirza Ahmad Beg) his son would divorce his daughter, Mirza Sher Ali Beg inquired how could his wife merely for the sake of his daughter, ask his brother to give his daughter in marriage to a sickly person who on account of melancholia had reached the stage of divinity (Qudadiani Mazhab, pages 381, 382).

Ultimately under pressure of Mirza Sahib his son Fazal Ahmad unwillingly divorced his wife daughter of Mirza Sher Ali Beg. Mirza Sahib's first wife and his son Sultan Ahmad sided with Mohammadi Begum's family, Mirza Sahib divorced his wife too and disinherited his son Sultan Ahmad. (Tableegh-i-Risalat, Vol. 2, pages 9 to 11).

Mohammadi Begum was married to Mirza Sultan Mohammad who did not die as predicted and remained alive for quite a long time. Mirza Ahmad Beg died within six months of his daughter's marriage and this was taken as the fulfilment of the prophecy. But what about the marriage or the death of Sultan Mohammad? He outlived Mirza Sahib by many long years, fought in the first world war, was wounded but survived. (Qaudianiyat by Syed Hassan Al Nadvi, page 165).

In Seerat ul Mehdi it is conceded that Mirza Sahib wrote letters to his relatives and made great efforts for this

marriage (Vol. I page 186) but the author tried to explain that there was no Prophet who did not make attempt for the fulfilment of his prophecies-certainly a very broad claim (ibid, page 175). But assuming this to be true, was it lawful to force his son to divorce his wife, to threaten the son's father in law that as a consequence of his refusal to help him he would direct his son to divorce his wife. There is no concept of disinheriting a disobedient son in one's lifetime in the religion which Mirza Sahib purported to follow but he declared this in writing. He divorced his first wife also for the same reason of not being willing to prevail upon her relatives for this marriage. Divorce is the most condemnable thing in Islam but Mirza Sahib was quick to take revenge even from his wife and his son and one daughter in law.

The author of Seert-ul-Mehdi writes that not only Mirza Ahmad Beg died but the family had to bear so many misfortunes. It is said that by the death of Mirza Ahmad Beg the prophecy was fulfilled. But the prophecy was that the husband of Mohammadi Begum would die within 2 1/2 years and her father would die within three years. The reasonable interpretation of the prophecy should be that the father would die after the death of the husband of Muhammadi Begum but within three years of the marriage. But he died soon after the marriage and the person who was to be the first victim remained alive.

The failure or success in betrothal or marriage is hardly material in normal circumstances but this matter assumed importance on account of the insistence of Mirza Sahib about the divine revelation. In Anjam-i- Atham (published in Silsila-e-Tasnifat, Vol. VIII, page 4773, note) Mirza Sahib wrote that "essence of prophecy about the son in law of Ahmad Beg is his inevitable destiny, Wait for it. If I am a liar this prophecy shall not be fulfilled till I die". And it was not fulfilled. This was 1899. Earlier he had said almost the same thing about marriage in a pamphlet dated 6th September, 1894. He wrote "the essence of the prophecy that the marriage of that woman with me is an inevitable destiny which cannot be withdrawn (prove false) because

this phrase is there in the divine revelation 'la tabdeela li kalimat illah' (لا تبدل كلمات الله) (there can be no change in the words of God) which means that what I have said in this respect will not be withdrawn (prove false). If it is withdrawn (is proved untrue) the word of God is futile and of no worth."

But at the time that these words were written the period fixed for the death of Sultan Mohammad had already expired but Mirza Sahib insisted that what is destined must happen though there may be some delay in it.

Mirza Sahib made a prophecy in 1891

سلطنت برطانيه تا هفت سال ، سلطنت برطانيه تا هشت سال

(The British rule for eight years or the British rule for 7 years only). This has been the subject matter of various interpretations because the British rule continued till after World War II (See Seert-ul-Mehdi, Vol. 2, page 7 ; No. 314).

In Baraheen-e-Ahmadia, Vol. 5 (pages 73-74) Mirza Sahib mentioned verse Q 3 : 55 !

Q. 3 : 55

"اذ قال الله يعيسى ابنى متوفيك ورافعك الى و مطهرك من الذين

كفروا وجاعل الذين اتبعوك فوق الذين كفروا الى يوم القيمة"

'(And remember) when Allah said : O Jesus! Lo! I am gathered thee and causing thee to ascend unto Me, and am cleansing thee of those who disbelieve and am setting those who follow thee above those who disbelieve until the Day of Resurrection' and said :

It means O Jesus I shall give you death and lift you towards Me and manifest your exoneration I will make your believers predominant over those who deny you.

In this revelation the word Isa (Jesus) connotes me and the word 'followers' refers to my organization. The prophecy in the Quran is about Jesus and the words

'subdued community' refer to the Jews who are diminishing every day. The fresh revelation of this verse for me and my organization points out this that it is destined that those who were outside the organization will go on diminishing and all the sects of the Muslims which are outside my organization will continue to diminish ; (in the sense that) they will continue entering my organization or they will be annihilated.

The incorrectness of this prediction is so visible that not much is required to be said about it. The number of Qadianis in Pakistan in the last census of 1981 is 103,000 and the number of Muslims has increased several times in Punjab alone where Mirza Sahib had some following. The number of Qadianis has always been exaggerated as will be clear from the Encyclopaedia of Religion and Ethics Vol. X page 530 (Q)

'The movement has grown steadily since its inception in 1889. In 1896 it claimed 313 members. In the 1901 Government census 1113 males were returned for the United Provinces, and 11,087 for the Bombay Presidency (obviously an inaccuracy). In 1904, the Mirza Sahib claimed 'more than 100,000 followers' and before his death he estimated the total number of his followers at 500,000. Against this manifest exaggeration must be placed the returns of the census for the Punjab in 1911, viz. 18,695 Ahmadis. Probably 60,000 would be a liberal estimate of the total strength of the movement throughout India today. There are also a few scattered followers in other countries'.

In the census of 1931 their number was 55,000 only which Mirza Mahmood Ahmad estimated at 75,000 (Address of Mian Bashir-ud-Din Mahmud Ahmad in Al-Fazal Qadian Vol. 21 No. 152 dated 21-6-1934 c.f. Qadiani Mazhab, page 415).

In a Pamphlet dated 27th September, 1899 Mirza Sahib wrote that he had given the number of his followers as three hundred in some book. This number had reached ten thousand and within three years would exceed one

hundred thousand. (Tableegh-i-Risalat Vol. 8 page 54). In a pamphlet dated 4th November, 1900 he assessed this number as thirty thousand (ibid Vol. 9 page 90).

Mirza Sahib took oath and said that "I say on oath that at least one hundred thousand in my organization are such who believe in me sincerely." (Seert-ul-Mehdi Vol. 1, page 146. In Tuhfat-ul-Nadwa (1902) also he fixed the same number and said out of them ten thousand were converted during the period of plague.

In supplement to Haqiat-ul-Wahi (printed 1907), page 117, Mirza Sahib (fixed the number of his followers as four hundred thousands.

Besides Mirza Sahib and his successors, his followers including Mubarak Ahmad, Professor, Jamia Ahmadia Quadian also inflated the number. The latter fixed the number of Ahmadis at 5 millions. Abdur Rahman Dard stated before Mr. Philby that the Quadianis outnumbered Muslims in Punjab. This statement was made when the Muslim population of Punjab was only 15 millions. This means that according to his claim the number of Quadianis in Punjab was 7½ million. Recently Economist London gave this number as 10 millions. The journal must have been fed by the Quadianis. The number of Muslims in the Punjab is more than 45 millions now while the Quadianis in the whole country number 103,000. So his was the prediction of Mirza Sahib.

The unity of Calcutta in an article written on the death of Mirza Sahib fixed the number of his adherents at 20,000 (Seert-ul-Mehdi Vol. 1, page 265; No. 290).

When Mirza Sahib had some little following he called his followers for bay't by a pamphlet dated 1st December, 1888 (Hayat-e-Tayyiba, pages 97, 98). According to the article 'Quadian' in Encyclopaedia of Religion and Ethics (Vol. 10), the number of such followers was 13 in 1896.

After collecting some sizable number of followers Mirza Sahib took the second step of declaring himself the promised Messiah and the promised Mehdi in 1891. The

apprehension of Muslim Ummah that he was on the road to becoming a Prophet was partly proved correct. In fact Mirza Sahib had already laid the foundation of being the promised Messiah in Baraheen-i-Ahmadiyya in which he claimed to be Maseel-i-Maseeh (like Messiah).

Mirza Sahib declared in Fath-e-Islam (published 1891) that he was one who had been sent for the reform of the people so that he may revive the religion and establish it in the hearts of the people. He had been sent in the same manner as the one who was sent after Moses whose spirit after many trials and cribulations was raised. Then another one who communicated with God (like Moses) and who is really the chief of all the Prophets came to defeat the Pharoahs regarding whom it was said (Q. 73 : 15)

Lo! We have sent unto you a messenger as witness against you, even as we sent unto Pharoah a messenger.

Thus he who in his actions was Maseel (double or second) of Moses but was superior to him in rank was also promised a double or second (Maseel) of Messiah (Jesus) and as Jesus son of Mary came in the fourteenth century after the first communicator with God (Moses) so after the same period after the second communicator with God alighted the second of the Messiah (See Fatha-e-Islam printed in Roohan-i-Khazain, Vol. 3; page 8). The language after the words "first communicator with God" is ambiguous but I have given the purport of the theory of Mirza Sahib as has been clarified by him at other places as well as in other books.

Mirza Sahib wrote that "the Messiah who had to come has come" (page 9). This was not a new theory that Mirza Sahib had been sent in the name of Messiah. It was stated in Baraheen-i-Ahmadiyya that he had a particular resemblance with Messiah in nature and for this reason he had been sent in the name of Messiah. The theory was later developed that Jesus had died and he died a natural death in Kashmir and once his spirit went to paradise it could not return to this world.

He further said in *Tauzihul Maram* (published 1891) (see *Roohan-i-Khazain*, Vol. 3, page 60) that the door of revelation was not completely closed nor had revelation been sealed in all manners. The door of partial prophethood and revelation was still open and would always remain open. But this is not a complete prophethood. It is only partial prophethood which is known by the name of *Mohaddasiyyat* which is obtained by following the perfect man. *Mohaddas* was explained at another place as a person who is in communication with God. In *Baraheen-i-Ahmadiyya* he had called *Mohaddas* like a Prophet but now he called him a partial Prophet. The exact words in *Baraheen-i-Ahmadiyya* are that his position is nearer the position of a Prophet (page 46). He gave the illustrations of Mary mother of Jesus, mother of Moses, apostles of Jesus and *Khizr* none of whom was a Prophet. In fact he maintained his position about the absolute finality of prophethood upto 1890 but changed it later as stated above.

He kept the door open for advent of Prophets without *Shariah* by formulating his faith in the words that 'now no such inspiration or revelation from God is possible which may amend or abrogate Injunctions of the *Quran* or may have the effect of changing even one Injunction. Whoever believes to the contrary is beyond the pale of the Muslim *Ummah* and is an unbeliever and infidel (*Izala-i-Auham*, page 138).

Upto 1891 the Muslims of the Indian Sub-continent only ridiculed *Mirza Sahib* whenever his prophecy was falsified. It has already been seen in the episode of *Mohammadi Begum* that his own family members called him an imposter, *Musailma* and by such other epithets; they probably knew him better.

But the claim of *Messiah* and *Mehdi* shook the Muslims. The floodgates of criticism, resentment and anger were opened. *Mirza Sahib* was quick to retrace his steps a little obviously in order to appease the Muslims.

But before taking up this subject it would be advisable to explain the words *Nabi* (Prophet), *Rasool* or *Mursal* (Messenger).

Every Rasool (Messenger) is a Nabi (Prophet) and it is not necessary that each Prophet (Nabi) may also be a Rasool (Messenger). The difference in the two is that Nabi (Prophet) is one to whom come revelations from God and the angels come to him with revelations. Rasool (Messenger) is one who brings new Sharia or abrogates some Injunctions of the previous Sharia. No distinction, however, is recognized generally between Rasool (Messenger) or Mursal except that according to Karamiyyah Rasool (Messenger) is a person sent by God while Mursal is a person sent by any sender (Usul-ul-Din by Abdul Qah: Baghdad!, page 154).

At a later period the distinction between Rasool (Messenger) and Nabi (Prophet) evaporated. However, if any one made a distinction it is as mentioned above (Urdu Dairat-ul-Maaraf-i-Islamia, Vol. 10, page 253 on word 'Rasool'). According to Al-Aqaidul Nasafia by Abu Hafas Umar Nasnfi there is no difference between the two words. But in that book the word Rasool (Messenger) is used in the sense of one bringing Sharia (ibid).

Mirza Sahib used all the three words Nabi (Prophet), Rasool (Messenger) and Mursal in Izala-e-Auham, page 534. He said while refuting the second coming of Jesus as Messiah "how it was possible that any other Nabi (Prophet) who is perfect according to the conditions of the perfect Nubuwwat (Prophethood) could come after Khatimun Nabiyyin. The essentials of the perfect Nubuwwat (Prophethood) of such a Nabi (Prophet) are revelations and the coming of Gabriel which are inevitable. According to the clarification in the Quran Rasool (Messenger) is the same person who has obtained the Injunctions and the belief of the religion through Gabriel but a seal was put about thirteen centuries ago upon the revelation of Nubuwwat (Prophethood), will this seal break at that time" (It means that according to him the seal must not break).

It would be seen that the words Nabi (Prophet) and Rasool (Messenger) have been used interchangeably and not distinctively.

At page 761 it is said "fourthly Quran has not made lawful for any Rasool (Messenger) to come after the Khatimun Nabiyyin (last of the Prophets) whether he be a new Rasool (Messenger) or old because the knowledge, of religion which is imparted to a Rasool (Messenger) by way of revelation through Gabriel cannot be sent now and it is not understandable that a Rasool (Messenger) may come but the revelation of Risaalat (Messengership) be extinct."

At page 614 of Izala-e-Auham referring to verse Q 33:40.

"ما كان محمد ابا احد من رجالكم ولكن رسول الله و خاتم النبيين"

(Muhammad is not the father of any one amongst you. but he is Rasool (Messenger) of Allah and Khatimun Nabiyyin (seal of the Prophets).

He explained the latter portion of the verse as meaning 'but he is messenger of Allah and the one who put an end to the Prophets' He then said that "this verse clearly is proof of the fact that after our Nabi (Prophet) no Rasool (Messenger) will come in this world. It is also clear from it that Jesus son of Mary, Messenger of God cannot come in this world because he is a Rasool and this is essential for Rasool (Messenger) that the religious knowledge may have been obtained by him through Gabriel." But he added that the revelation of Risaalat, however, is not determined till the day of judgment."

It would be seen that from the words Khatamun Nabiyyin in which the word Nabi (Prophet) has been used, he has drawn the conclusion that there shall be no Rasool (Messenger) till the day of judgment (page 714). Earlier his position in Baraheen-i-Ahmadiyya was that the prophetic revelation was at an end with the Holy Prophet ﷺ but now he again made an aperture in the finality of Prophethood by saying that the Revelation of Risalat (Prophetic revelation) is not determined.

In a handbill dated 2nd October, 1891 reproduced in Tableegh-i-Risalat (Vol. 2, page 20) he said "I believe in all those things which are included in the Islamic faith and I believe what is believed by Ahl-e-Sunnat-wal-Jamaat

(اهل سنت والجماعت). I believe in all those matters which are definitely proved from the Holy Quran and the Hadith and consider a claimant to Nubuwwat and Risalat (Prophethood and Messengership) after the Holy Prophet ﷺ who was 'Khatam-ul-Mursaleen' (ختم المرسلین) (the last of the Prophets) to be an imposter, false claimant and infidel (کافر اور کاذب). It is my faith that the Wahi (revelation) of Prophethood which started with Adam terminated on Prophet Muhammad ﷺ. This last one again is a position different from what is discussed above.

In an other handbill published on the 23rd October, 1891 and distributed in a meeting held in Jamia Mosque Delhi and reproduced at page 44 of Tableegh-i-Risalat. Vol. 2, he stated

”ان تمام امور میں میرا وہی مذہب ہے جو دیگر اہل سنت والجماعت کا مذہب ہے..... اب میں مفصلہ ذیل امور کا مسلمانوں کے سامنے صاف صاف اقرار اس خانہ خدا (جامع مسجد دہلی) میں کرتا ہوں کہ میں جناب خاتم الانبیاء ﷺ کی ختم نبوت کا قائل ہوں اور جو شخص ختم نبوت کا منکر ہو اس کو بے دین اور وارثہ اسلام سے خارج سمجھتا ہوں۔“

(مجموعہ اشتہارات ج 1 ص 255 از مرزا قادیانی)

”In all these matters my religion is the same as that of Ahle-Sunnat-wal-Jamaat. I now acknowledge about the following matters in this House of Allah (خانہ خدا) that I believe in the finality of the Prophethood of the last of the Prophets (Muhammad ﷺ) and I consider one who denies the finality of the Prophethood to be irreligious (بے دین) and outside the pale of Islam.“

In the first handbill dated the 2nd October, 1891, it was stated that Mirza Sahib treated a claimant of either Prophethood to be an imposter or a false Prophet and heretic. In the second handbill he used the word the finality of the Nubuwwat but obviously in the sense as including a Nabi as well as a Rasool.

In his book Anjum-e-Atham (انجام آٹھم) (printed 1897) (end of Atham page 24 Margin) Mirza Sahib said:

”کیا ایسا بد بخت مفتری جو خود رسالت و نبوت کا دعویٰ کرتا ہے۔ قرآن شریف پر ایمان رکھ سکتا ہے اور کیا ایسا وہ شخص جو قرآن شریف پر ایمان رکھتا ہے اور آیت ولکن رسول اللہ و خاتم النبیین کو خدا کا کلام یقین رکھتا ہے، وہ کہہ سکتا ہے کہ میں بھی آنحضرت ﷺ کے بعد رسول اور نبی ہوں صاحب انصاف طلب کو یاد رکھنا چاہیے کہ اس عاجز نے کبھی اور کسی وقت حقیقی طور پر نبوت یا رسالت کا دعویٰ نہیں کیا اور غیر حقیقی طور پر کسی لفظ کو استعمال کرنا اور لغت کے عام معنوں کے لحاظ سے اس کو بول چال میں لانا مستلزم کفر نہیں۔ مگر میں اس کو بھی پسند نہیں کرتا کہ اس میں عام مسلمانوں کو دھوکا لگ جانے کا احتمال ہے۔ لیکن وہ مکالمات اور مخاطبات جو اللہ جل شانہ کی طرف سے مجھ کو ملے۔ جن میں یہ لفظ نبوت اور رسالت کا بکثرت آیا ہے۔ ان کو میں بوجہ مامور ہونے کے مخفی نہیں رکھ سکتا۔ لیکن بار بار کہتا ہوں کہ ان الہامات میں جو لفظ مرسل یا رسول یا نبی یا میری نسبت آیا ہے (لفظ رسول اور نبی میں مراد مجاز ہے) وہ اپنے حقیقی معنوں پر مستعمل نہیں ہے اور اصل حقیقت جس کی میں علی روس الاشہاد گواہی دیتا ہوں یہی ہے جو ہمارے نبی ﷺ خاتم الانبیاء ہیں۔ اور آپ کے بعد کوئی نبی نہیں آئے گا نہ کوئی پرانا اور نہ کوئی نیا۔“

(انجام آٹھم ص 27 مندرجہ روحانی خزائن ج 11 ص 27 از مرزا قادیانی)

(Is there any unfortunate imposter who believes in the Holy Quran and the verse)

"ولکن رسول اللہ و خاتم النبیین"

(but he is the Messenger of Allah and the seal of the Prophets) and can yet say that I am a Prophet and Messenger (نبی اور رسول) after the Holy Prophet ﷺ.

The just people should remember that this humble (person) never really claimed prophethood (Nubuwwat) or apostleship (Risalat). The use of a word in an unrealistic manner or in its dictionary meaning, in day to day

communication does not amount to disbelief but I do not like that there may be a possibility of the Muslims being deceived. The communications which I have received from God consist of the word Nubuwwat (Prophethood) and Risalat (Messengership) in abundance. I cannot keep them secret since I am an appointee from Allah (مامور من الله). But I repeated again and again that in these revelations wherever the word Mursal or Rasool (Messenger) or Nabi (Prophet) is used about me it is not used in its real sense. The fact of which I give evidence in the open is that our Prophet ﷺ is the last of the Prophets and there shall be no Prophet after him whether new or old).

”ومن قال بعد رسوله وسيدنا انى نبى ورسول على وجه الحقيقته و
الافتراء وترك القرآن واحكام الشريعه الغرافهوه كافر كذاب. غرضہا راندہب
یہی ہے کہ جو شخص حقیقی طور پر نبوت کا دعویٰ کرے اور آنحضرت ﷺ کے دامن فیوض سے اپنے تئیں
الگ کر کے اور اس پاک سرچشمہ سے جدا ہو کر آپ ہی براہ راست نبی اللہ بنا چاہتا ہے تو وہ ملحد،
بے دین ہے اور غالباً ایسا شخص اپنا کوئی نیا کلمہ بنائے گا اور عبادات میں کوئی نئی طرز پیدا کرے گا اور
احکام میں کچھ تغیر و تبدل کر دے گا۔ پس بلاشبہ وہ مسلمہ کذاب کا بھائی ہے اور اس کے کافر
ہونے میں کچھ شک نہیں۔“

(انجامِ تہم ص 27، 28 مندرجہ روحانی خزائن ج 11 ص 27، 28 از مرزا قادیانی)

(Whoever said after our apostle and leader that I am a Prophet or apostle whether he says it in the real sense or by way of inventing lies and abandons the Quran and the Injunctions of the Holy Sharia, he is an infidel and imposter. Our religion, therefore, is that whoever claims Prophethood in the real sense, and keeping himself apart from the blessings of the Holy Prophet ﷺ and separating himself from that holy source wants to become the Prophet of God he is irreligious and a heretic. Probably such a person will introduce a new Kalma (about the unity of Allah and his own Prophethood; and new manners of

worship and will also bring changes in Injunction. Such a man will certainly be a brother of Musailma imposter and there is no doubt of his being an unbeliever).

In 'Hammamatul Bushra' (حمامه البشـرى) page 96 (published 1894) he said

"وما كان لى ان ادعى النبوة و اخرج من الاسلام والحق بقوم
كافرين" (روعاى خزائن ج7 ص297 از مرزا قاديانى)

(It is not lawful (جائز) for me that I may go out of the pale of Islam by claiming Prophethood and mix with the heretics) that his claim was not of Prophethood but only of Wilayat and Mujaddidiyyat (مجدديت). He also gave an analogy between his Ilham and that of Abdul Qadir Jilani (a renowned saint of Islam).

He emphasised in 'Hammamatul Bushra' (حمامه البشـرى).
page 34

"الا تعلم ان الرب الرحيم المتفضل سمى نينا صلى الله
عليه وسلم خاتم الانبياء بغير استثناء وفسره نينا فى قوله لا نبى
بعدى بيان واضح للطالين ؟ ولو جوزنا ظهور نبى بعد نينا
صلى الله عليه وسلم لجوزنا انفتاح باب وحى النبوة بعد
تغليقها وهذا خلف كاملا يخفى على المسلمين — وكيف يجنى
نبى بعد رسولنا صلى الله عليه وسلم وقد انقطع الوحى بعد
وفاته و ختم الله به النبيين؟" (روعاى خزائن ج7 ص200)

(Do you not know that Allah declared our Prophet ﷺ
without any exception as the last of the Prophets and
our Prophet ﷺ clarified its meaning by saying لا نبى
بعدى (there will be no Prophet after me) and thus

elucidated this point. If we open the door of prophetic Wahi (revelation) after its closure, it will not be correct, and it is no secret for the Muslims, how can a Prophet come after our Prophet ﷺ particularly when after his expiry revelation (وحی) as well as Prophethood stand terminated).

The later portion deals with the point whether Jesus will come again and will be the last of the Prophets. He said "our belief is that the Prophet-hood obtained finality by the Advent of our Prophet (Muhammad ﷺ)."

From this last principle it would be clear that according to Mirza Sahib the prediction of descent of Jesus does not mean the return of Prophet Jesus since it would make him the last of the Prophets.

This is also stated in 'Ayyam-e-Sulah' (ایام صلح) published 1899, (page 146). He said :

”قرآن شریف میں مسیح ابن مریم کے دوبارہ آنے کا تو کہیں بھی ذکر نہیں لیکن ختم نبوت کا بکمال تصریح ذکر ہے اور پرانے یا نئے نبی کی تفریق کرنا یہ شرارت ہے۔ نہ حدیث میں نہ قرآن میں یہ تفریق موجود ہے اور حدیث لانی بعدی میں بھی نفی عام ہے۔ پس یہ کس قدر جرات اور دلیری اور گستاخی ہے کہ خیالات رکیکہ کی پیروی کر کے نصوص صریحہ قرآن کو عمداً چھوڑ دیا جائے اور خاتم الانبیاء کے بعد ایک نبی کا آنا مان لیا جائے اور بعد اس کے جو وحی نبوت منقطع ہو چکی تھی پھر سلسلہ وحی نبوت کا جاری کر دیا جائے کیونکہ جس میں شان نبوت باقی ہے، اس کی وحی بلاشبہ نبوت کی وحی ہوگی۔“

(روحانی خزائن ج 14 ص 392 از مرزا قادیانی)

(There is no mention in the Quran about the 2nd coming of Jesus son of Mary. Dictum of finality of Prophethood is mentioned there very clearly. It will be a mischief to distinguish between an old and a new Prophet. There is no such distinction either in Hadis or Quran. On the other hand the Hadis (لا نبی

(بعدي (there is no Prophet after me) negates it in general terms (which admits of no exception). 'How daring an insolence is it that the clear verses of the Holy Quran be abandoned voluntarily under the influence of disgraceful ideas and the coming of a Prophet after the last of the Prophets be believed in with the consequence of reviving the prophetic relation after the same was determined because whosoever is conferred prophethood, his revelation must be a prophetic revelation).

In a handbill dated the 20th of Sha'aban 1314 (1897 A.D.) published in Tableegh-e-Risalat, Vol. 6, page 2, he wrote

”ہم بھی نبوت کے مدعی پر لعنت بھیجتے ہیں اور لا الہ الا اللہ محمد رسول اللہ کے قائل ہیں اور آنحضرت ﷺ کے ختم نبوت پر ایمان رکھتے ہیں اور وحی نبوت نہیں بلکہ وحی ولایت جو زیر سایہ نبوت محمدیہ اور با اتباع آنجناب ﷺ اولیاء کو ملتی ہے، اس کے ہم قائل ہیں۔“

(مجموعہ اشتہارات ج 2 ص 297 از مرزا قادیانی)

(We condemn the claim of prophethood). We believe in the unity of Allah. and that there is no God except Allah and that Muhammad ﷺ is his Prophet. We also believe in the finality of his prophethood. We do not believe in the prophetic revelation (وحی نبوت) but we believe in the saintly revelation (وحی ولایت) which is achieved by the saints under the shadow of the Holy Prophet Muhammad ﷺ and by obedience to him).

The word seal (خاتم) which was given a different meaning after his claim to prophethood was used in Izala-i-Auham, page 577 in the same sense as stated above. Mirza Sahib negated the prophetic revelation after the Holy Prophet ﷺ.

In 'Jang-e-Muqaddas' جنگ مقدس published 1893) page 67, Mirza Sahib refuted the allegation that he was claiming to be a Prophet and explained Muajiza (miracle). He said

”میرا نبوت کا کوئی دعویٰ نہیں، یہ آپ کی غلطی ہے یا آپ کسی خیال سے کہہ رہے ہیں۔ کیا یہ ضروری ہے کہ جو الہام کا دعویٰ کرتا ہے، وہ نبی بھی ہو جائے۔ میں تو محمدی اور کامل طور پر اللہ ورسول کا قبیح ہوں۔ اور ان نشانوں کا نام معجزہ رکھنا نہیں چاہتا بلکہ ہمارے مذہب کے رو سے ان نشانوں کا نام کرامات ہے جو اللہ ورسول کی پیروی سے دیے جاتے ہیں۔“

(روحانی خزائن ج 6 ص 156 از مرزا قادیانی)

(I have no claim to prophethood. This is your mistake or you are saying this for some motive. Is it necessary that whoever says claim to Ilham (inspiration) may also becomes Prophet? I am completely a Muhammad! and a follower of Allah and his Prophet ﷺ. I do not want to call these signs as Muajiza (معجزہ) (miracles). According to our religion the name of these signs is Karamaat (کرامات) (supernatural acts performed by a saint) which are conferred upon me by my following the Prophet ﷺ of Allah).

Sometime before his claim to Prophethood Mirza Sahib started using about himself the word Nabi (Prophet) more frequently, He was quick to explain this also in his own way in order to resolve the excitement, hostility and un-easiness of the Muslims. He said in Siraj-e-Munir (سراج)

page 3 that —

”یہ سچ ہے کہ وہ الہام جو خدا نے اپنے اس بندہ پر نازل فرمایا۔ اس میں اس بندہ کی نسبت نبی اور رسول اور مرسل کے لفظ بکثرت موجود ہیں۔ سو یہ حقیقی معنوں پر محمول نہیں ہیں۔“ ولسکل ان بصطلع“ سو خدا کی اصطلاح ہے جو اس نے ایسے لفظ استعمال کئے۔ ہم اس بات کے قائل اور معترف ہیں کہ نبوت کے حقیقی معنوں کی رو سے بعد آنحضرت ﷺ نہ کوئی نبی آسکتا ہے اور نہ پرانا۔ قرآن ایسے نبیوں کے ظہور سے مانع ہے مگر مجازی معنوں کی رو سے خدا کا اختیار ہے کہ کسی ملہم کو نبی کے لفظ سے یا مرسل کے لفظ سے یاد کرے۔“

(روحانی خزائن ج 12 ص 5 از مرزا قادیانی)

(It is correct that in the revelations revealed by Allah on this servant (me) the words Nabi, Rasool and Mursal (Prophet or Messenger of Allah) had been used for him. But these words had not been used in their literal sense (لكل ان يصفح) (every one has his own terminology). This is the terminology of Allah who used such words. We believe and acknowledge that neither a new nor old Prophet can come after the Holy Prophet ﷺ in the true sense of the word Prophethood (the word old Prophet refers to the second coming of Jesus). Quran is opposed to the coming of such Prophet but in its allegorical sense it is for Allah to call any Mulhim (ملهم) (who receives inspiration which Mirza Sahib called revelation) by the name of Prophet or Messenger).

In a letter published in 'Lecture-e-Quadrian (لیکچر قادیان) No. 29, Vol.3, dated the 17th August, 1899, Mirza Sahib said

”حال یہ ہے کہ اگرچہ عرصہ بیس سال سے متواتر اس عاجز کو الہام ہوا ہے اکثر دفعہ ان میں رسول یا نبی کا لفظ آ گیا ہے لیکن وہ شخص غلطی کرتا ہے جو ایسا سمجھتا ہے کہ اس نبوت اور رسالت سے مراد حقیقی نبوت و رسالت ہے..... سو چونکہ ایسے لفظوں سے جو محض استعارے کے رنگ میں ہیں۔ اس لام میں قلم پڑتا ہے اور اس میں یہ لفظ نہیں آنے چاہئیں۔“

(The correct position is that although for the last 20 years this humble (person) has been receiving Ilham (inspiration) in which the word Rasool or Nabi (Messenger or Prophet of Allah) has been used but he commits a mistake to understand it in the sense of true Prophethood or Messengership it is likely that the allegorical use of such words may be a source of mischief in Islam and its result may be untoward. These words should not be used in the ordinary daily talk of the members of his organization).

It has been already stated that Mirza Sahib said in Tazih-ul-Maram that the door of partial Prophethood and

of revelation was not closed and that Mohaddas (one who communicates with and is addressed by God) is partial Prophet.

In Izala-e-Auham (page 138) he called those persons unbelievers who considered it possible that any revelation amending or abrogating an Injunction of the Quran may be received after the Holy Prophet ﷺ. Thus leaving the door of non Sharia prophethood open. But in the same book at pages 534 he held the revelation of Nubuwwat impossible and at page 761 he held the door of revelation of Risalat (رسالت) (Messengership) to be closed. This only proves that if Mirza Sahib went a step forward to say something contrary to the faith of the Muslims he took on sensing opposition two steps back to convince them that his faith was the same as their faith. Something contrary was said to serve as a stepping stone for improving and developing his claims in future and then the Muslims faith was reiterated repeatedly as a face saving device. First Mohadassiyat was nearer prophet-hood, then it became partial prophethood and then again the seal of prophet-hood was held to be unbreakable. The door of prophethood was earlier closed. The same theme is then gradually developed till his followers are ready for the next claim.

The evolution of the theory and scope of Mohadassiyat may now be examined in the words of Mirza Sahib. In an agreement dated 3rd February, 1892 between Molvi Abdul Hakim and Mirza Sahib which is published in Tableegh-e-Risalat, Vol. 2, page 95, Mirza Sahib wrote addressing all the Muslims that it was recorded in his pamphlets Fath-ul-Islam (فتح الاسلام) Tauzih-ul-Maram (توضیح المرام) Izala-i-Auham (ازالہ اورہام) that Mohaddas in a sense is a Prophet and that Mohaddasiyat (محدثیت) is partial prophethood or imperfect prophethood (نبوت ناقصہ). "It may be made clear that all these words have not been used in their true sense; they have been used in their simple dictionary meaning, otherwise by God I do not have a claim

to the real prophethood. I have already described in *Izala-i-Auham* (ازالہ اورہام) (page 137) that I believe in the finality of prophethood of Muhammad ﷺ. I will like to make it clear to the Muslim brethren that if they resent such words and dislike their use they may consider them changed on my behalf and substitute the word *Mohaddas* for them Wherever the word *Nabi* (Prophet) has been used it should be treated as deleted and substituted by the word *Mohaddas*.

In *'Hammamatul Bushra* (حمامہ البشیری) page 96, while refuting the claim of prophethood he asserted :

”میں نے لوگوں سے سوائے اس کے جو میں نے اپنی کتابوں میں لکھا ہے اور کچھ نہیں کہا

کہ میں محدث ہوں اور اللہ تعالیٰ مجھ سے اسی طرح کلام کرتا ہے جس طرح محدثین سے۔“

(I never said to any person except what. I stated in my books that I am a *Mohaddas* (محدث) and Allah talks to me in the same manner as he talks to other *Mohaddaseen* (محدثین). [Also see *Aina-i-Kamalat-i-Islam* (published 1893) page 316 ; *Silsila-e-Tasaneef*, Vol. 5, page 2082].

At page 99 of *Hammamatul Bushra* he said “it is correct that I have said that part of *Nubuwwat* will be found in *Tahdeses* (act of being a *Mohaddas*) but this is not a part in fact (بالفعل) but is so virtually (بالقوة) and if the door of prophethood had not been closed he would have been a Prophet in fact (بالفعل). It is, therefore, permissible to call him *Al Nabiyyul Mohaddas* or the *Mohaddas Prophet*.” And after opening the door of prophethood he attained for himself full prophethood.

The claim of *Messiah* similarly underwent an evolutionary process.

Mirza Sahib wrote in *Baraheen-i-Ahmadiyya* that he was a model of *Messiah's* earlier life and the nature of the two resembled one another. Since *Mirza Sahib* completely

resembled Messiah, God had included him also in the prophecy about Messiah. It was said that Messiah will come to the world and spread Islam every where. This would be a physical appearance but Mirza Sahib was the object of the prophecy in the spiritual sense (page 499). According to this theory Jesus son of Mary must appear but Mirza Sahib would spiritually be his second or double which be called Maseel (مسیل) (see Fath-e-Islam page 11).

In Fath-e-Islam (page 11) it was stated that Mirza Sahib descended in the age which resembled the age of advent of Jesus. He declared that Allah sent the Maseel of Messiah to impart the knowledge of faith to the people. Then he said a different thing in unambiguous terms, that "He is the Messiah who had to come. If you like accept him" (page 15).

This claim shook the Muslims badly. There was considerable opposition and he was declared an unbeliever (see Aasmani Faisala). Mirza Sahib, as was his wont immediately retraced his steps and confined his claim to being a Maseel. (Tauzih-ul-Maram, pages 16 to 21).

He said that he had no claim to be Jesus son of Mary nor did he believe in the transmigration of soul. He only claimed to be Maseel (second) of Messiah. Just as Mohaddasiyat resembles Nubuwwat, in the same manner his spiritual state resembled the spiritual condition of Messiah. (Tableegh-e-Risalat, Vol. 2, page 21). Contrary to his claim that he is the Messiah who had to come he said that may be no other Messiah may come in future. May be 10,000 other Messiah may come and may be one of them may descend in Damascus (Izale-i-Auham, page 295, Rohani Khazain Vol., 3, Page 251 by Mirza Ghulam Ahmad Qadyani) or ten thousand Maseel (second) may come. But he added that he was the Maseel of this age and it was futile to wait for the other (ibid, page 199). Later he tore the mask and said that no Mehdi will come after me till the day of Judgment nor will come any Messiah I am he who had to come (Pamphlet dated 5th April 1905. Tableegh-i-Risalat Vol. 10 page 78).

This is the same strategy which frequents the books of Mirza Sahib. He says several contradictory things at one time so as to take shelter behind what suits him at a particular time. Thus he wrote an inspiration in Izala-i-Auham [page 634 (انا جعلناك المسيح ابن مريم)] (We made you Messiah son of Mary) and referred to this inspiration in Arbaeen in support of his assertion that he was the Promised Messiah (see No. 3, page 44).

In "Nishan-e-Asmani" (page 35) which was published in 1892. Mirza Sahib published the so called evidence of one of his followers that he was informed by some Gulab Shah that he (Mirza Sahib) was Maseeh-i-Maud whose advent was promised and whose name was written in the books as Er'sa (Jesus) and (at page 36) name of Eisa who had to come was Ghulam Ahmad.

Mirza Sahib had said this as far back as 1884 in Baraheen-i-Ahmadiyya that the spirit of Jesus was blown in him like Mary and he was declared pregnant for about 10 months then was made Jesus from Mary and became son of Mary. It is possible that at that time he might have thought it premature to tell his theory about the death of Jesus or possibly the theory had not been developed by that time. However, his intention to be Jesus, the Promised Messiah is very clear and it was articulated as a fact later for example in Arbaeen, Aik Ghalati Ka Izala and Kashti-e-Nuh. In Arbaeen (published 1900) Mirza Sahib wrote (No. 1, page 4) that he had been informed by God that he was the Promised Messiah and Mehdi on his behalf. This point has been repeated at various places in the book. In Aik Ghalati Ka Izala. Page 3, he said categorically that he was the Promised Messiah. It is not understandable how could he be one of ten thousand Maseel or one of the same number of Messiahs. The point about Maseel was taken only to appease public opinion. At page 47 of Kashti-e-Nuh he wrote that he did not realise the significance of this inspiration (about Jesus and Mary) but then the time came and the secrets were disclosed to him and then he found that there was nothing new in this claim of being the

Promised Messiah. This was the same claim which was written several times clearly in Baraheen-i-Ahmadiyya.

It is further stated that God said about him that He would make him a sign and in the revealed writings the names of Mary and Jesus were used for him. It was said about him that God shall make him a sign. It was also said that he was the same Jesus son of Mary who had to come. He is the truth and he is the Promised one (ibid page 48).

Mirza Sahib laid claim to Prophethood after some further build up of his following in the year 1901. As stated above he had already been preparing the Muslim public for his claim of Prophethood since the publication of Baraheen-i-Ahmadiyya, Vol. 3 and 4. The Muslim community of Punjab and then of the Indian Sub-continent had long anticipated this claim. The members of the family of Mirza Sahib had started calling him an imposter several years before his claim of being the Promised Messiah and the Promised Mehdi. The claim to prophethood was first made in the pamphlet 'Aik Ghalati Ka Izala' (published with the opening of the 20th century in 1901).

Before the actual claim, as already seen Mirza Sahib tried to refer to the alleged revelations about Prophethood but tried to mask those references by the assertion that the word Rasool (Messenger) or Nabi (Prophet) for him had been used in a metaphorical sense and not in the real sense. In Arbaeen (published in 1900 No. 2, page 18) he referred to what had already been said in Baraheen-i-Ahmadiyya "This is Rasool (Messenger) of God in the vestments of the Prophets". In the margin he said that this word had been used only metaphorically. At page 44 of Arbaeen (No. 3) he wrote: "God is He who sent his Rasool (Messenger) meaning this humble self with guidance in religion and reform of morals. He was asked to inform (his opponents) that if he was an inventor of lies he would perish as it was a crime.

In support of this theory of destruction of liar he relied upon Q 40 : 28 (No. 3, page 5)

"وان يك كاذباً فعليه كذبه"

(If he is lying, then his lie is upon him). Mirza Sahib translated first portion of the verse as meaning

اگر یہ نبی جھوٹا ہے تو اپنے جھوٹ سے ہلاک ہو جائے گا۔

(If this Prophet is false he would perish by his falsehood).

This translation is not correct. On the other hand the established principle is that such a person is given a long rope and this principle was referred to by Molvi Sanaullah Amritsari when Mirza Sahib predicted the death of whoever was false or wrong among them, ruling that such a person must perish.

At page 7 of Arbaeen No. 4, Mirza Sahib advanced a step further and claimed to be a Prophet with Sharia. This he did by introducing some changes in the definition of Prophet with Sharia. The earlier definition of such a Prophet was that he brings new Sharia or amends the earlier Sharia. He now defined Sharia as something "which described some Injunctions (امر) and prohibitions (نہی) through the revelation and prescribed a law for his Ummah. Such a person is a man with Sharia (صاحب شریعہ). From the point of view of this definition also our opponents are accused persons (subject to blame) because in my revelation there are Injunctions (امر) as well as prohibitions (نہی). The revelation written in Baraheen-i-Ahmadiyya, i.e. Q. 24:30

"قل للمؤمنین یفضوا من ابصارهم و یحفظوا فروجهم ، ذالک

ازکی لهم"

Tell the believing men to lower their gaze and be modest. That is purer for them. Lo ! Allah is Aware of what they do.

consists of Injunctions as well as prohibitions and this was received by me twenty-three years ago. In my revelations there are Injunctions and prohibitions till to-day. *Now if you say that Sharia means only that Sharia in which there are new Injunctions then this is absolutely incorrect*". This was a new theory and a new definition of Sharia introduced to buttress his claim to Prophethood with Sharia.

In Al-Malfuzat, Vol. 10 (pertaining to the period November 1907 to 6th July, 1908, at page 267) he said in reply to a question that whatever communication from God was received by him should not be taken to mean that was a new Sharia or that it was a new Nubuwwa (Propbethod) or a Nubuwwat (Prophethood) with Shari. But he had been called a Nabi (Prophet) on account of frequency of communication from God and according to the dictionary the meaning of Nabi (Prophet) is 'a person who gives news'.

Here again distinction was made between Nubuwwat (Prophethood) with Sharia and one without Sharia. This assertion is again contradictory to the definition stated in Arbaeen (No. 4 page 7).

In the pamphlet 'Aik Ghalati Ka Izala' he said that wherever he had denied about Nubuwwat (Prophethood) or Risalat (apostleship). it was in the sense that he had not brought with him a permanent Sharia nor he was a permanent Nabi (Prophet). This assertion is, however, contradicted by the abrogation of Jihad about which there are specific Injunctions in the Holy Quran and the Sunnah of the Holy Prophet ﷺ.

In Dafi-ul-Bala published in 1901, Mirza Sahib wrote that true God is He who sent His Rasool (Messenger) in Quadian (page 11). In 'Haqiqat-ul-Wahi' page 391, he wrote that he was exclusively chosen from the ummah to receive the divine revelation and secret knowledge in abundance and this blessing was not conferred upon different degrees of saints, Aulia (اولياء),

Abdal (ابدال) and Autar (اوتار) before him. For this reason he had been specified for being named as Nabi (Prophet). All other people were not entitled to this name because in them was not found primary conditions of their being recipients of the revelation and the secret knowledge in abundance.

The order of Jihad was abrogated in 1900. It is stated in Arbaeen (No. 4), page 15, that "the Promised Messiah is the manifestation of the Holy Prophet ﷺ in amiability. For this reason it was said (يضع الحرب) (he will eliminate war or will not go to war). In Majmua-e-Ishteharaat (Vol. 3 from 1898 'to 1908), page 19, Mirza Sahib wrote that "as my followers increase those who believe in the principle of Jihad shall go on decreasing because to accept me as Messiah and Mehdi amounts to denying the principle of Jihad". This amounted to the abolition of Jihad. In 'Jihad and Government-e-Angrezi', page 14, he wrote "look! I have come to you with an-Injunction which is to the effect that from now onwards there is an end to the Jihad by sword. The only Jihad which remains is that of purification of oneself" (also see Khutba-e-Ilhamia, page 29; Tuhfa-e-Gularwia (supplement), page 41; Tajalliat-e-Ilahia, page 4; Taryaql Qulub, page 332).

Mirza Sahib's definition of a Nabi (Prophet) has already been quoted from Arbaeen (No. 4), page 7. That book was written in 1900. It also includes the orders about the prohibition of Jihad as already stated. It would clearly follow that the right to abrogate Jihad which is based on Quranic Injunctions was exercised by Mirza Sahib as an alleged Nabi (Prophet). In this way he undertook the task of completely abrogating the alleged Sharia and achieving what he called Nubuwwat-e-Tammah (perfect Prophethood). This point about perfect Prophethood was discussed by Mirza Bashir Ahmad in Kalimat-ul-Fasal, pages 112-113. He discussed the three categories of Prophethood : (1) the real Prophethood in which the Prophet brought Sharia; (2) the Prophethood in which no Sharia was brought by the Prophet; and (3) the shadowy (Zilli) Nubuwwat which according to the Quadiani view is

achieved by strict obedience to the Holy Prophet ﷺ. Referring to the objection that the Zilli Prophethood is an inferior type of Prophethood, Mirza Bashir Ahmad called it a self deception which had no reality because it was an essential ingredient of Zilli Prophethood that a man should sink himself to such an extent in the obedience of the Holy Prophet ﷺ that he may reach the stage "I have become you and you have become I". In such circumstances he will find descending in himself in the form of a reflected image, all the perfections of the Holy Prophet ﷺ, and the two will come so near to each other that cover sheet of the Prophethood of the Holy Prophet ﷺ will be spread on him, he may then be called a Zilli Prophet. So when this is the demand or requirement of the Zil (shadow or reflected image) that he should be a complete picture of the original and there is consensus of all the Prophets on this point that fool who considers the Zilli Prophethood of the Promised Messiah as inferior and imperfect should come to his senses and be worried about his Islam because he attacks the glory of that Prophethood which is the best of all Prophethoods. I cannot understand why people stumble on the Prophethood of the Promised Messiah and why some people think it to be imperfect because as I see he was a Zilli Prophet on account of re-appearance (Buruz) of the Holy Prophet and the status and position of such Prophethood is very high. It is clear that in old ages it was not required of the Prophets to have all those perfections which were the peculiarity of the Holy Prophet ﷺ. On the other hand each Prophet received the share of perfection according to his talent and worth, some got much and some little, but the Promised Messiah was conferred prophethood only when he had attained all the perfections of the Holy Prophet ﷺ."

It has been noticed that one of the grounds for denying the second advent of Jesus son of Mary was that he was a Prophet while prophethood had come to an end thirteen hundred years age. Mirza Sahib could not let this principle be free of equivocation. In Izala-e-Auham (pages

409-410) he said that it was true that the coming Messiah had been described as Prophet within the Ummah of the Holy Prophet but this prophethood would be imperfect prophethood. This was later developed by Mirza Sahib into perfect prophethood. Tashreeh prophethood and Prophethood superior to that of other Prophets.

Mirza Sahib in no uncertain terms said that the door of coming of Gabriel in connection with revelation was closed (Izala-e-Auham, page 761). But this did not thwart his design, or programme. He frustrated the need of Gabriel by claiming to be in direct communion and communication with God and to be His addressee. But even this was not a satisfactory arrangement and did not bring him to the level of perfect Prophets. He therefore claimed that Gabriel came to him. In Haqiqat ul Wahi (page 103) Mirza Sahib said :

”وقالوا انى لك هذا ، قل هو الله عجب — جاء نى ايل واختار ،
 وداراصبعه ، و اشار — ان وعد الله اتى — فطوبى لمن وجد ورأى —
 الامراض تشاع والنفوس تضاع“

(روحانى خزائن ج 22 ص 106 از مرزا قادیانی)

The English translation of its urdu rendering by Mirza Sahib is as follows:—

“And they will say from where did you acquire this position. Say that God has so many wonders. Aeel came to me and he selected me and he moved his finger and pointed out the Promise of God has arrived. Blessed is he who receives it and looks at it. Various diseases will be spread and many calamities will cause loss of life.”

Aeel was explained by Mirza Sahib in the margin as meaning Gabriel.

The coming of Gabriel is a sign of the perfection in prophet hood and this makes Mirza Sahib, a perfect prophet.

These paragraphs clearly established that Mirza Sahib was not considered as an imperfect Prophet, on the other

hand he was considered a perfect Prophet like the Holy Prophet ﷺ. This is also proved by the fact that Mirza Sahib was considered to be higher in status than all other Prophets.

The equality or even superiority of Mirza Sahib can be traced to what he said about himself in Baraheen-i-Ahmadiyya, Vol. 4. He referred to different alleged revelations in which the names of Abraham, David, Joseph, Jesus, etc. had come and after reproducing each of them he wrote that he was meant wherever the reference was to these Prophets (see pages 555, 557).

In Malfuzat-e-Ahmadiyya, Vol. 4, page 142, it is said that Mirza Sahib said in respect of the perfection of the Prophets "different categories of perfection were found in other Prophets, but our Prophet ﷺ excelled all of them in this respect. The Holy Prophet ﷺ has now conferred all those perfections in a Zilli manner (manner of reflection) upon us (it may-mean that all those perfections are reflected in Mirza Sahib) for this reason our name is Adam, Abraham, Moses, Noah, David, Joseph, Soloman, John the Baptist (Yahya) and Jesus."

At an other place he said "previously all the Prophets were shadows of the main qualities of the Holy Prophet ﷺ now we are the Zil (reflection) of all the qualities of the Holy Prophet ﷺ."

There is no difference between Zil (reflection) and the originalself. Practically one is the second or the double of the other. This is also established from the claim of Mirza Sahib that he was the Zil of the Holy Prophet ﷺ in all his perfections while each of the other Prophets was the recipient of lesser number of perfections. It is clear that according to Mirza Sahib in matters of perfection or superiority he was equal to the Holy Prophet ﷺ and much superior to the other Prophets.

In Baraheen-i-Ahmadiyya there are a number of revelations in the form of verses of the Holy Quran which

were revealed in respect of the Holy Prophet ﷺ, Mirza Sahib claimed that all these verses had been revealed in his respect also and he was the object of those verses. An eminent example of it is verse 48 : 28 (هو الذى ارسل رسوله بالهدى ودين الحق) "Some other examples are Q 8 : 17 ; Q 68 : 2 Q 3 : 31; Q 26 : 52 etc. He had, therefore, laid the foundation of his being equal to the Holy Prophet ﷺ in Baraheen-i-Ahmadiyya.

He claimed to have received revelations numbering three hundred thousands out of which fifty thousands were about receipt of money from different sources. At various other places Mirza Sahib tried to demonstrate that the signs received by him were much in excess than the signs given to other Prophets like Noah, Joseph and Jesus.

In Kalima-tul-Fasal (Review of religions No. 3, Vol. 14, page 147) Mirza Bashir Ahmad said that it is not possible that one who denies the Holy Prophet ﷺ may be an un-believer but a person denying the Promised Messiah may not be an infidel. If the denial of the first Advent be disbelieved the denial of the second Advent in which according to the Promised Messiah his spirituality was stronger, more perfect and more complete must not be treated as infidelity.

The second Advent is the Prophethood of Mirza Sahib. While comparing the spirituality of the Holy Prophet ﷺ and that of Mirza Sahib it is said that it is stronger, more perfect and more complete which is a measure of his superiority over the Holy Prophet ﷺ too. This is proved by an episode which happened during the life time of Mirza Sahib. One Qazi Akmal a Poet who was the follower of Mirza Sahib wrote panegyrcal poetry for Mirza Sahib which was published in Newspaper 'Al-Badar' of Quadian, dated the 25th October, 1902. One of the couplets of the poetry was

محمد پھر آئے ہیں ہم میں اور آگے سے ہیں بڑھ کر اپنی شان میں

(Muhammad has descended again amongst us and excells more in his eminence and glory) (see pagham-e-Suleh, Lahore No. 47, Vol. 32, dated the 30th November, 1944 ; Daily Badar Qadian, 17 July, 1922).

The reference to the second Advent of Muhammad in this couplet means that Muhammad has re-appeared in the form of Mirza Sahib and his pomp and glory exceeds the eminence of the Holy Prophet ﷺ (Khutba-e-Ilhamia).

The next step is that of claiming finality of Prophethood for himself this will be evident from the following:

"The real worth of the finality of Prophethood of Muhammad ﷺ (محمدی ختم نبوت) cannot be appreciated by any one except one who like the last of the Prophets (خاتم الانبياء), because the appreciation of reality in any thing depends upon one to whom it belongs. This is a proved fact that finality belongs either to the Holy Prophet ﷺ or the Promised Messiah. (Tashheez-ul-Azhan Qadian, No. 8, Vol. 12, 1st and 2nd August, 1917 ; Quadiani Mazhab, page 167)."

In short I am the only person in this Ummah who on account of abundance of revelations and knowledge of hidden matters has been specified (for Prophethood). None of the Saints whether Qutab or Abdal (mendicant of the highest religious order) of this Ummah was given such a high share of (divine) grace, only I have been particularised to bear the name of 'Prophet', others are not entitled to this name because of the pre-condition of copious revelations and abundant knowledge of hidden matters which none of them fill? And it was necessary that it should have so happened. This was the only way for fulfilment of the prophecy of the Holy Prophet ﷺ. If other righteous persons who have been before me had shared in such abundance divine communication address and (knowledge of) hidden matters, they would have been qualified to be called Prophets. In that situation the prophecy of the Holy Prophet ﷺ would have received a crack. For this reason

the divine had prevented those righteous and virtuous persons from being the absolute recipient of this graciousness so that as is mentioned in the authenticated traditions, there would be only one such person (ایسا شخص ایک ہی ہوگا) (Haqiqat-ul-Wahi, page 391).

This passage reflects the view of Mirza Sahib about his being the only Prophet after Muhammad ﷺ who being the manifestation of Muhammad ﷺ is entitled to that name. It would, therefore, follow that he and not the Holy Prophet ﷺ is the last of the Prophet. This would be more evident from the following citations :

“I have stated many a times that by virtue of the verse Q 62 : 3 (وآخرین منهم لما یلحقوا بهم) (along with others of them who have not yet joined them), I am the same Khatam-ul-Ambiya (last of the Prophets) by way of buruz (manifestation) “(Aik Ghalati Ka Izala, page 5).

“I am the final means of access out of the passage (leading) to God. I am the last light out of His lights” (Kashti-e-Nuh, page 56). (ولکن رسول الله وخاتم النبیین) (But he is the messenger of Allah and the last of the Prophets). There is a secret prediction in this verse that Prophet-hood has been sealed till the day of judgment except the Buruzy person which is the personality of the Holy Prophet ﷺ himself; no one is capable of receiving openly from God knowledge of the hidden things (امور غیبیہ) like the Prophets. Since I am that manifestation of Muhammad (Buruz-e-Muhammadi (بروز محمدی) the Prophethood in the Buruzy way (by way of incarnation) was conferred upon me. Now the whole world is powerless before this Prophethood because there is a seal on it. One incarnation of Muhammad ﷺ with all the perfections of Muhammad ﷺ was destined to appear ultimately and he has now appeared”. (Aik Ghalati Ka Izala).

"Let it be known that finality was given from eternity to Muhammad ﷺ. It was then conferred upon one to whom his spirit imparted knowledge and made his shadow" (Mal Farqu fi Adama wal Maseeh-il-Mauood, Zameema Khutba-i-Ilhamia page B (ب)).

It was destined by God for the ultimate period that it will be a period of return (رجعت) so that this Ummah may not in any manner, be inferior to other Ummahs. So after creating me He made me the likeness of all past Prophets and gave me their names. I was thus named in Baraheen-e-Ahmadiyya as Adam, Abraham, Moses, Noah, David, Soloman, Joseph, John the Baptist, Jesus etc. as if in this manner all the old Prophets were reborn in this Ummah till *finally* was born the Messiah. All my opponents were named Jesus Christians and polytheists (Nuzul ul Maseeh page 4 Kalima-tul-Fasal page 133).

These writings were explained by the successors of Mirza Sahib, Mirza Bashir Ahmad said in Kalima-tul-Fasal (page 116) that "the appearance of a number of Prophets after him (the holy Prophet) means that the status of the Holy Prophet, God forbid is so ordinary that many a persons can be Muhammad the messenger of Allah because whoever is a holder of shadowy prophethood will be known as Muhammad messenger of Allah on account of all attainment of the perfections of the Holy Prophet. For this reason only one person attained the position of Prophet."

This clinches the matter, all the theories for opening the door of Prophethood were only for the sake of Mirza Sahib alone. The argument which was good against opening the entrance of prophethood was ultimately adopted but after merely and exception in favour of Mirza Sahib.

"In Ejazul Massiah it is clarified that there will be two advents of the Holy Prophet. The first advent was the manifestation of the name of Muhammad while the second advent (advent of Mirza Sahib as buruz) is for the manifestation of the name, Ahmad" (Kalima-tul-Fasal page 140). A third advent was thus negated.

In Tashheez ul Azhan of Qadian (No. 8 Vol. 12 page 11 dated August 1917), it was stated that only one Prophet was named after the Holy Prophet and the advent of many Prophets amounts to making holes in God's government and Prudence (Qaudiani Mazhab page 196).

It was further stated in the same journal of March 1914 (No. 3, Vol. 9 pages 30—32).

"It is therefore proved that no more than one Prophet can come from the Ummah of the Holy Prophet. For this reason he gave the news of the advent of one Prophet of God only from his Ummah. He is the Promised Messiah. Except for him no one was named the Prophet or messenger of God" nor information was given of the advent of any other Prophet. On the other hand the advent of others was negatived by saying (لا نبي بعدى) (there will be no Prophet after me) and by describing openly that no Prophet or messenger can come after me." (Qaudiani Mazhab, page 197).

Now compare these assertions of Mirza Sahib and his successors with some contradictory dicta.

In Aik Ghalati Ka Izala (page 7) Mirza Sahib said that though the seal of prophethood shall not be broken but it is possible that the Holy Prophet may come in this world in the buruzy manner (as incarnate) not only once but a thousand times and may manifest his prophethood and perfections as incarnate.

In lecture Sialkot page 22 Mirza Sahib said that it is necessary that to take you to the stage of love and certainty the Prophets of God may continue coming."

Mian Bashir ud Din Mahmud said that thousands of Prophets could come (Anwar-e-Khalafat page 62, c.f. Qaudiani Mazhab page 180).

They will continue coming till the day of judgment (Alfazal Qadian dated 27th February, 1927 No. 68 Vol. 14 Mirza Bashir ud Din Mahmud c.f. Qaudiani Mazhab, page 181).

In *Haqiqat ul Nabuwwat* page 138 he said something different. He said, "for this reason we believe in one Prophet only in this Ummah. The future is (concealed) behind the curtain of mysteries (*Quadiani Mazhab*, page 179).

Answering some questions he wrote that the fourth question was whether any other Prophet shall come after Mirza Sahib and whether the Ahmadis shall believe in him when he comes. The answer to this question is that "a Prophet can come after Mirza Sahib but I cannot say with certainty whether such a Prophet will come. It appears from the books of the Promised Messiah that such a Prophet will come. When he comes it will be necessary for the Ahmadis to believe in him (*Maktub Mian Bashir ud Din Mahmud Ahmad* printed in *Alfazal Qaudian* dated 29th April, 1927, No. 85 Vol. 14 c.f. *Quadiani Mazhab* page 179).

A further alteration in the theory of advent of Prophets is visible from his answer to the question whether there was a possibility of the advent of a Prophet after the Promised Messiah? and if so what was meant by calling Mirza Sahib as the Prophet of the last age. He said that the expression "Prophet of the last age" is a technical phrase which meant that no one could attain prophethood except through him (Mirza Sahib) (*Friday address of Mian Bashir ud Din Mahmood Ahmad* printed in *Alfazal* No. 120, Vol. 2 dated 2nd May, 1931 c.f. *Quadiani Mazhab* page 180).

All these different statements of Mirza Sahib or his successor are in line with the policy of Mirza Sahib to say simultaneously in the same book, or pamphlet or successively in successive books or pamphlets different and even contradictory things. However the quotations from the books of Mirza Sahib and from *Kalima-tul-Fasal* and *Tashheez ul Azhan* established that Mirza Sahib virtually claimed to be the last of the Prophets.

Allama Iqbal's discussions of this subject throw more light on these theories. He said (see *Thoughts and Reflections of Iqbal* by Abdul Waheed pages 266—268).

"The founder's own argument, quite worthy of a mediaeval theologian, is that the spirituality of the Holy Prophet of Islam must be regarded as imperfect if it is not creative of another Prophet. He claims his own prophethood to be an evidence of the Prophet-rearing power of the spirituality of the Holy Prophet of Islam. But if you further ask him whether the spirituality of Muhammad is capable of rearing more Prophets than one, his answer is "No". This virtually amounts to saying : Muhammad is not the last Prophet; I am the last." Far from understanding the cultural value of the Islamic idea of Finality in the history of mankind generally and of Asia especially, he thinks that Finality in the sense that no follower of Muhammad can ever reach the status of prophethood is a mark of imperfection in Muhammad's prophethood. As I read the psychology of his mind he, in the interest of his own claim to prophethood, avails himself of what he describes as the creative spirituality of the Holy Prophet of Islam and at the same time deprives the Holy Prophet of his Finality by limiting the creative capacity of his spirituality to the rearing of only one Prophet, i.e. the founder of the Ahmadiyya movement. In this way does the new prophet quietly steal away the Finality of one whom he claims to be his spiritual progenitor.

He claims to be buruz of the Holy Prophet of Islam, insinuating thereby that being a buruz of his, does not violate the Finality of the Holy Prophet. In identifying the two finalities, his own and that of the Holy Prophet, he conveniently loses sight of the temporal meaning of the idea of finality. It is, however, obvious that the word buruz in the sense even of complete likeness, cannot help him at all; for the buruz becomes identical with the original. This if we take the argument remains ineffective : if, on the other hand, we take it to mean reincarnation of the original in the Aryan sense of the word, the argument becomes plausible ; but its author turns out to be only a Magian in disguise.

It will be noticed that there is no sharia principle allowing the advent of a Prophet after the Holy Prophet. There is No concept in Sharia of buruz, hueul, Zil etc. The traditions regarding the second coming of Messiah and advent of Mehdi can by no stretch of imagination apply to Mirza Sahib. He therefore raised the whole superstructure of his claims on taaweel not only of Quranic text but of traditions too. Quadian became Damascus. Masjid-e-Aqsa is the mosque in Quadian. His main hurdle was to get rid of Jesus. It was necessary to remove Jesus from the field and this was secured by the theory of his natural death in Kashmir. He was asked to show the miracles shown by Jesus and in answer he ridiculed the Jesus and his miraculous proofs. The claim of prophethood had to result in anamolies. These effects of his claims have been partly noticed. Some more anamolies may be seen. He prepared a dictum that he was only competent to interpret Quran correctly and to verify the correctness of Hadith.

Let us understand the Muslim view about Jesus and Mirza Sahib's treatment of him.

To believe in all the Prophets and messengers of Allah is a part of the faith of a Muslim.

Q 2 : 4

"والذين يؤمنون بما انزل اليك وما انزل من قبلك ، وبالآخرة هم

يوقنون"

And who believe in that which is revealed unto thee (Muhammad and that which was revealed before thee, and are certain of the Here after.

Also see Q.2 : : 177

من آمن بالله واليوم والنبيين

(Believe in Allah and the messengers)

Q. 3 : 179 ; Q. 7 : 158; Q. 4 : 136

فأمنوا بالله ورسله

(Believe in Allah and His messengers)

Another principle which is established is that Muslims cannot distinguish between one Prophet and another.

Q. 2 : 285

لا نفرق بين احد من رسله .

It is not for the Muslims to distinguish between one Prophet and another.

It has been related on the authority of Abu Saeed Khudri that the Holy Prophet said (لا تَحْبِرُوا بَيْنَ الْاَنْبِيَاءِ) (Do not prefer in excellence one Prophet over the other).

It has been related by Abdullah bin-e-Jaafar that the Holy Prophet said :

ما ينبغي لنبى ان يقول انا خير من يونس بن متى .

(It is not lawful for any Prophet to say I am better than Jonah (Bin-e-Mata) (ibid).

It is reported on the authority of Abu Saeed Khudri that a Jew who had received beating from a companion of the Holy Prophet came to him ﷺ and complained that one of his companions had beaten him. The Holy Prophet asked why he was beaten. He (the companion) said he (the Jew) had excelled Moses over you. The Holy Prophet said "Do not give excellence or superiority to one Prophet over the other" (Musnad Ahmad Vol. 3. pages 40 and 41).

In Bokhari the stern reaction of the Holy Prophet to the complaint is proved by the words

"فغضب النبي صلى الله عليه وسلم حتى روى في وجهه"

(the Holy Prophet was so enraged that his anger was visible on his face).

The Holy Quran describes the birth of Mary her upbringing, the birth of John the Baptist as a herald of Jesus and the birth of Jesus in some detail. (See. Q. 3 : 45 to 49). The verses relating to the birth of Jesus are reproduced below: —

Q. 19 : 16

"واذكر في الكتاب مريم اذا انتبذت من اهلها مكانا شرقياً"

And make mention of Mary in the Scripture, when she had withdrawn from her people to a chamber looking; East,

Q. 19 : 17

"فاتخذت من دونهم حجاباً ، فارسلنا اليها روحنا فتمثل لها بشراً

سويّاً"

And had chosen seclusion from them. Then We sent unto her Our spirit and it assumed for her the likeness of a perfect man.

Q. 19 : 18

"قالت انى اعوذ بالرحمن منك ان كنت تقياً"

She said : Lo! I seek refuge in the Beneficent One from thee if then art God-fearing.

Q. 19 : 19

"قال انما انا رسول ربك لا هب لك غلماً زكياً"

He said : I am only a messenger of the Lord, that I may bestow on thee a faultless son.

Q. 19 : 20

"قالت انى يكون لى غلم ولم يمسنى بشر ولم اك بغياً"

She said : How can I have a son when no mortal hath touched me, neither have I been unchaste ?

Q. 19 : 21

"قال كذلك ، قال ربك هو على هين ولنجعله آية للناس ورحمة

منا ، وكان امراً مقضياً"

He said : So (it will be). The Lord said: It is easy for Me. And (it will be) that We may make of him a revelation for mankind and a mercy from Us, and it is a thing ordained.

Q. 19 : 22

"فحملته فانتبذت به مكاناً قصياً"

And she conceived him, and she withdrew with him to a far place.

Q. 19 : 23

"فاجاءها المخاض الى جذع النخلة قالت يلىتى مت قبل هذا

وكنت نسياً منسياً"

And the pangs of Childbirth drove her unto the trunk of the palm tree. She said : Oh would that I had died ere this and had become a thing of naught, forgotten!

Q. 19 : 24

"فنادها من تحتها الا تحزنى قد جعل ربك تحتك سرياً"

Then (one) cried unto her from below her, saying : Grieve not! Thy Lord hath placed a rivulet beneath thee.

Q. 19 : 25

"وهزى اليك بجذع النخلة تسقط عليك رطباً جنياً"

And shake the trunk of the palm-tree toward thee, thou wilt cause ripe dates to fall upon thee.

Q. 19 : 26

"فكلى واشربى وقرى عينا فاما ترين من البشر احداً فقولى اى

نذرت للرحمن صوماً فلن اكلم اليوم انساناً"

So eat and drink and be consoled. And if thou meetest any mortal, say : Lo! I have vowed a fast unto the Beneficent, and may not speak this day to any mortal.

Q. 19 : 27

"فاتت به قومها تحمله ، قالوا يرمم لقد جنت شيئاً فرياً"

then she brought him to her own folk, carrying him. They said : O Mary! Thou hast come with an amazing thing.

Q. 19 : 28

"يا اخت هارون ما كان ابوك امراً سوء وما كانت امك بغياً"

Oh sister of Aaron ! Thy father was not a wicked man nor was thy mother a harlot.

Q. 19 : 29

"فاشارت اليه ، قالوا كيف نكلم من كان في المهد صبياً"

Then she pointed to him. They said : How can we talk to one who is in the cradle, a young boy ?

Q. 19 : 30

"قال انى عبد الله ، اتنى الكتب و جعلنى نبياً"

He spoke : Lo! I am the slave of Allah. He hath given me the Scripture and hath appointed me a Prophet,

Q. 19 : 31

"وجعلنى ميركاً اين ما كنت واوصنى بالصلوة ولزكواة ما دمت حياً"

And hath made me blessed wheresoever I may be, and hath enjoined upon me prayer and almsgiving so long as I remain alive.

Q.19 : 32

"وبراً بوالدتى ولم يجعلنى جباراً شقياً"

And (hath made me) dutiful toward her who bore me, and hath not made me arrogant, unblest.

Q. 19 : 33

"والسلم على يوم ولدت ويوم اموت ويوم ابعث حياً"

Peace on me the day I was born, and the day I die, and the day I shall be raised alive!

Q. 19 : 34

﴿ ذلك عيسى ابن مريم — قول الحق الذى فيه يمترون ﴾

Such was Jesus, son of Mary : (this is) a statement of the truth concerning which they doubt.

Q. 3 : 45

"اذ قالت الملكة يعريم ان الله يبشرك — بكلمة منه ، اسمه المسيح

عيسى ابن مريم و جيهها — في الدنيا والآخرة ومن المقربين"

(And remember) when the angels said : O Mary ! Lo! Allah giveth thee glad tidings of a word from Him, whose name is the Messiah. Jesus, son of Mary, illustrious in the world and the hereafter, and one of those brought near (unto Allah).

Q. 3 : 46

"ويكلم الناس في المهد و كهلا ومن الصالحين"

He will speak unto mankind in his cradle and in his manhood and he is of the righteous.

Q. 3 : 47

"قالت رب انى يكون لى ولد ولم يمسنى بشر ، قال كذلك الله

يخلق مايشاء ، اذاقضى امرأ فانما يقول له كن فيكون"

She said : My Lord ! How can I have a child when no mortal hath touched me? He said : So (it will be). Allah createth what He will. If He decreeth a thing, He said unto it only : Be ! and it is

Q. 3 : 48

"ويعلمه الكتاب والحكمة والتوراة والانجيل"

And He will teach him the Scripture and wisdom, and the Torah and the Gospel

Q. 3 : 49

"ورسولا الى بنى اسرائيل ، انى قد جتكم بآية من ربكم انى اخلق

لكم من الطين كههيئة الطير فانفخ فيه فيكون طيراً باذن الله ، وأبرى

الاكمه والابرص واحى الموتى باذن الله وانبتكم بما تاكلون وما

تدخرون فى بيوتكم — ان فى ذلك لآية لكم ان كنتم مومنين"

And will make him a messenger unto the children to Isreel, (saying) : Lo! I come unto you with a sign from your Lord. Lo! I fashion for you out of clay the likeness of a bird, and I breathe into it and it is a bird, by Allah's leave. I heal him who was born blind, and the leper, and I raise the dead, by Allah's leave. And I announce upto you what ye eat and what ye store up in your houses. Lo! herein verily is a portent for you, ye are to be believers.

Verse Q. 3 : 49 deals with some miracles of Jesus which were given to him as a sign. However several verses refute the concept of divinity of Jesus e.g. Q. 3 : 59 ; Q. 4 : 171, 172.

Mirza Sahib on the one hand claimed superiority over all the Prophets and messengers of God and on the other hand used derogatory language against Prophets particularly Jesus. He claimed superiority over Jesus and said :

"God sent the promised Messiah in this Ummah, who is much superior to Jesus in all his glory. I swear by Him in whose Hand is my life that if Jesus had been in this age he could not have done what I can do and could not show signs which I can show." (Haqeeqat ul Wahi, page 148).

In Q. 3 : 49 are described the miracles of Jesus. He fashioned out of clay the likeness of a bird and breathed into it and it became a bird. He could heal the born blind, and the leper and raise the dead. These were signs for him. Mirza Sahib who claimed to be the Promised Messiah, the likeness (maseel مثل) of Jesus was asked to show any such miracle. He denied the miracles of Jesus and said that description in the Holy Quran about the miracles was only allegorical.

The belief in such miracles of Jesus was condemned by him as Polytheistic and worse than heresy (Izala-i-Auham page 296). He denied that Jesus could perform miracles and wrote that he filthily abused those who demanded miracles from him called them bastards. From that day onwards the gentlemen avoided him. (Zamima

Anjam-i-Atham page 6, margin). He then took a different stand and wrote it was possible that God might have imparted knowledge to Jesus of the mechanism for making the lifeless and the toy birds to fly. (Izala-i-Auham page 302) or may be he indulged in mesmerism which he improved by his spirituality (ibid), page 322). There was a pond in those days from which many signs were manifested. It is possible that Jesus used the clay of that pond he had nothing in him but deceit and deception (Zameema Anjam-i-Atham page margin 6 Izala-i-Auham page 322).

Mirza Sahib wrote that this was now established with certitude that Jesus was an expert in mesmerism. He had acquired his perfection by the permission and the order of God (Izala-i-Auham, page 309). If Mirza Shaib did not have low opinion about or hatred for mesmerism he would have equalled Jesus in the performance of that art (ibid).

Regarding the birth of Jesus Mirza Sahib said that it did not prove his greatness. Adam was born without any father or mother. Thousands of insects are born by themselves during rainy season. In fact the birth without father proves that he was devoid of some muscles (قوى) (chashma-i-Maseehi page 18). The reference clearly appears to what Mirza Sahib remarked about the disqualifications of eunuch in connection with Jesus who did not marry (see Maktubat-i-Ahmaaiyya, Vol. III, page 28).

Mirza Sahib said that his (Jesus) pedigree was extremely poor. Three of his paternal and maternal grandmothers were adulteresses.....(Zameema Anjanvi-Atham, page 7, margin).

He accused him of having a talent for using abusive language, of losing temper and even of telling lies, (ibid page 5 margin).

Once Mirza Sahib was advised to use opium. He immediately observed that people will then say that the first Messiah was a drunkard and the second an opium eater.

I have given only a few quotations consisting of vilifying, disdainful and contemptuous remarks of Mirza

Sahib about a great Prophet of God. I have generally avoided to cite those remarks about which his excuse is that they were in the nature of response in disputations with Christian missionaries who used much more abusive language for the Holy Prophet. This may be considered lawful by a disputationist but Islam does not allow the use of language which is not respectful for any Prophet or messenger since to believe in their prophetic mission is an article of faith with a Muslim. There may be many disparaging things about Prophets like Noah and Lot in the old Testament but according to the Islamic concept a Prophet is incapable of sinfulness. A leader of his people whose mission is to inculcate virtue in his community cannot be but virtuous himself.

The description of pregnancy of Mary and the birth of Jesus in the Quran is simply ennobling but Mirza Sahib compared it with the birth of countless insects in the rainy season. Mirza Sahib is prepared to concede miraculous properties to the clay in a pond but not miracles to a Prophet of God.

It may be recalled that the Mosque adjacent to the room of Mirza Sahib was named by him as Bait ul Zikr.

In Baraheen-e-Ahmadiyya Mirza Sahib had appropriated for it the qualification of Kaaba or Bait ul Haram Makkah by saying that any one who enters, it is in safety (peace). He thus implies that it was like Bait ul Haram.

The next step was to alluviate the status of Qadian and make it equal to Makkah. He wrote in Durre Sameen page 52.

زمین قادیان اب محترم ہے ہجوم خلق سے ارض حرم ہے

(The land of Qadian is now sacred. It is the land of Haram-e-Kabba on account of its drawing huge crowds).

By itself this couplet might not have meant much but it is extremely relevant on account of other circumstances.

In Aina-i-Kamalat-i-Islam (Page 352) Mirza Sahib ruled that the-heavenly reward (ثواب) of attending the annual meeting held in Qadian exceeded the reward of supererogatory Haj.

Mirza Sahib prevented Sahibzada Abdul Latif from going to perform Haj. He stayed in Qadian to learn Ahmadiyyat (Quadiani Mazhab page 363).

Mirza Bashiruddin Mahmud Ahmad made the visit to Qadian as equivalent to Haj (ibid page 362).

Mirza Sahib named his mosque as Masjid ul Aqsa (see Q. 17:1) Tableegh-i-Risalat vol. 9, page 37. Its eastern minaret was being constructed because there is a tradition of the Holy Prophet that the Messiah will descend at the eastern minaret of Damascus. There is another tradition that the descent will be from Masjid ul Aqsa (in Bait ul Maqdas). By what can be called only a travesty of reasoning, Mirza Sahib tried to prove that the minaret referred to above was of Masjid-e-Aqsa and should therefore be constructed in his mosque at Qadian for the fulfilment of the prophecy of the Holy Prophet (ibid, page 38).

Mirza Sahib referred to verse Q : 17 : 1.

Q. 17 : 1

"سبحان الذى اسرى بعبدہ ليلاً من المسجد الحرام الى المسجد

الاقصى الذى بركنا جوله لنريه من ايتنا ، انه هو السميع البصير"

Glorified be He who carried His servant by night from the invariable place of Worship to the Far Distant Place of Worship the neighbourhood whereof We have blessed, that we might show him of Our tokens ! Lo! He, only He, is the Hearer, the Seer.

Which is about ascension (Meraj) of the Holy Prophet. He held by the same method of reasoning that during the night of Meraj the Holy Prophet had made a journey from Kaaba in Makkah to Masjid-e-Aqsa in Qadian (ibid pages 40-41).

The arguments of Capt. Abdul Wajid, petitioner in Shariat Petition No. 2/L of 1984, who is a member of the Lahori Group of the Ahmadis were generally a repetition of the arguments of Mr. Mujibur Rehman, petitioner in the other Shariat Petition. However, he raised a point about the difference between the beliefs of the members of the Lahori Group of the Ahmadis and that of Quadiani Group. He said that the Lahori Group does not believe in the prophethood of Mirza Sahib, nor did Mirza Sahib ever claim that he was a Prophet. The members of the Lahori Group believe in the unconditional and absolute finality of the prophethood of Muhammad ﷺ and treat Mirza Sahib as the Promised Mehdi, the Promised Messiah a Mujaddid, a Muhaddas — anything short of being a Prophet. In this connection he placed reliance upon several books including Izala-e-Auham-Nishan-e-Asmani, Aina-e-Kamalat-e-Islam, Hamamat-ul-Bushra, Ayyam ul-Sulh, etc. to establish that even Mirza Sahib did not lay a claim to prophethood. It was pointed out to him that the relevant writings of Mirza Sahib in this connection would be the writings from 1901 to 1908, and Aik Ghalati Ka Izala is the basic writing. He read some portions of this pamphlet but not those which were relevant to the issue.

Captain Abdul Wajid denied that Mirza Sahib or the Lahori Group of the Quadianis ever pronounced the Muslim Ummah or those who recite 'Kalma' (کلمہ) (there is no God except Allah and Muhammad ﷺ is his Prophet) as heretics or Kafirs because of their unbelief in Mirza Sahib. Although he admitted that those Muslims who call Mirza Sahib Kafir become after this allegation Kafirs.

Both these assertions are without substance. It will be found in the writings of Mirza Sahib that he not only claimed prophethood but the founder of the Lahori Group (M. Muhammad Ali; also believed him to be a Prophet till 1914, when he seceded from the main body of Ahmadis and formed his own Group. Reference may be made in support of this proposition to Hayat-e-Tayyiba, a biography of Mirza Sahib by Abdul Qadir. Only two citation will suffice.

It is stated at page 299 that in 1904 Muhammad Ali appeared on behalf of the complainant in the case of Molvi Karmuddin and deposed that:

”مکذب مدعی نبوت کذاب ہوتا ہے، مرزا صاحب ملزم مدعی نبوت ہے۔“

‘One who falsifies a claimant to Prophethood is a liar.
The accused Mirza Sahib is a claimant to Prophethood’.

At page 300 is reproduced the following extract of M. Muhammad Ali’s writing published in his newspaper Paigham-i-Sulh, dated 16th October, 1913 :

”ہم حضرت مسیح موعود و مہدی موعود کو اس زمانے کا نبی، رسول اور نجات دہندہ مانتے ہیں۔“

‘. . . We believe his eminence the Promised Messiah and the Promised Mehdi to be a Prophet and a liberator from the consequence of sin . . .’

It is clear from these extracts that M. Muhammad Ali as well as his companions considered Mirza Sahib as a Prophet during the lifetime of Mirza Sahib and his successor, M. Nuruddin. It was only later after his secession from the general body of the Ahmadis that M. Muhammad Ali took a different stand that to claim to be a Prophet, while he is a member of the Ummah is the act of a liar. (Al-Nabuwwa-fil-Islam, page 115) and ‘I consider it as an act of uprooting Islam to treat Mirza Sahib as a Prophet’. (Paigham-i-Sulh, Vol. 2, page 119, dated 16th April, 1915.)

Mirza Sahib had to face the verdict of heresy when his claim was limited to his being a Promised Mehdi and Messiah. The same verdict was applicable to his followers. Maulana Muhammad Hussain Batalvi who had once extolled Mirza Sahib for writing some portions of Baraheen-i-Ahmadiyya soon became disenchanted on account of these claims and became his deadly opponent. He not only himself gave a verdict of his being a Kafir (non-Muslim) but secured the signatures of a large number of the learned (Ulema) on it from all parts of India. (Hayat-e-Tayyiba by Abdual Qadir, page 132).

This point may, however, be considered objectively without being influenced by these verdicts. It is established from the citations from the writings of Mirza Sahib and his successors that Mirza Sahib had made an unequivocal claim of being a Prophet and had condemned all those who did not accept his claim, as Kafirs (heretics).

Now what is the view in Islam regarding those people who ignore or close their eyes to the patent heresies of a heretic and believe in him as Mamoorn-Minallah (appointed by Allah), Mujaddid (revivalist of the true Islam), the Promised Messiah or Mehdi which he cannot be on account of his being, beyond the pale of Islam ?

Is not the support of heresy an act of heresy ?

The established principle in Islam is that one who considers heresy as something good or acquiesces in or is pleased with it is not a Muslim. (Ifkar-ul-Mulhedeen by Maulana Anwar Shah Kashmiri, page 59). It is said in Bahrur Raiq, Vol. 5, page 24, that he who holds a good opinion for the discourse of Jewish priests or is pleased with (their) Taaweel (to give a different interpretation to an obvious meaning of a word) is an unbeliever. Mirza Sahib put this principle rather bluntly when he said "that a person calling an unbeliever to be a believer, himself becomes an unbeliever" (Haqiqat-ul-Wahi, page 164).

Q. 2 : 256 is apt on this point. It is as follows: —

"لا اكراه في الدين قد تبين الرشد من الغي فمن يكفر بالطاغوت

ويؤمن بالله فقد استمسك بالعروة الوثقى لا انفصام لها ، والله سميع عليم"

"There is no compulsion in religion. The right direction is henceforth distinct from error. And he who rejecteth false deities and believeth in Allah hath grasped a firm handhold which will never break. Allah is Hearer, Knower."

The word Taghut (طاغوت) is used at several places in the Quran as an antonym of Allah. See the above verse and

Q. 16 : 36 [Shun God and shun Taghut (طاغوت)]; Q. 4 : 76 (Those who believe fight in the way of God and those who disbelieve fight in the way of Taghut).

It is used to connote the devil, a wizard or soothsayer [Kahin (كاهن)] and one who leads astray, Jauhari said :

"والطاغوت الكاهن والشيطان وكل راس في الضلال"

Taghut is a soothsayer, the devil and anybody who leads astray (Qurtabi). The words (كل راس في الضلال) anybody who leads astray) include the founder of a religion to lead people astray, or of an ideology which is a deviation from the right course (See Ziaul Quran by Pir Muhammad Karam Shah now Judge of the Supreme Court Shariat Bench, Vol. I, pages 179, 180).

The word Taghut as used in verse 2 : 256 has, therefore, been differently interpreted by different translators. Pickthall interprets it as false deity. Arbury translates it as idol. The translation of the word by Maulana Mahmood ul Hassan is One who leads astray (مگراؤ کرنے والا). This is much more appropriate and all embracing. It would include a person who founds a religion of unbelief.

The quality of a Momin or Muslim is that he should believe in Allah and disbelieve in or deny Taghut which would include a false Prophet. It would follow that a person who does not deny a false Prophet, a person who leads astray, a person who founds a religion which is a deviation from Islam, cannot be a Muslim despite his belief in Allah. The case of a person who believes in Taghut as well as in Allah is much worse. By no stretch of imagination he can be placed on the same level as Muslims. To save the Ummah from disintegration, on the principle of Sadde Dharia' (سد ذرائع) also such misguided person should be held to be beyond the pale of Islam, since it is to keep the mischief of belief in taghut away from the Muslim Ummah (community).

In his pamphlet 'AiK Ghalati Ka Izaia' (meaning removal or correction of a mistake) Mirza Sahib for the first time laid claim to Prophethood. The reason for writing it was that a few days before its writing some 'opponents' raised an objection before a follower of Mirza Sahib that he at whose hands he had taken the oath of fealty (bait) claims to be a Prophet, but the follower denied the charge. Mirza Sahib wrote that this denial was not correct because the holy revelations which he received from Allah included such words as Rasool, Mursal and Nabi not once but hundreds of times and consequently this denial cannot be correct. He had already published these words in Baraheen-i-Ahmadiyya (براهين احمديه) about 22 years ago. It was said there that

"هو الذى ارسل رسوله بالهدى و دين الحق ليظهره على الدين كله"

(He it is who has sent His Messenger with the guidance and the Religion of Truth, that He may cause it to prevail over all religions) (Baraheen-i-Ahmadiyya, page 498)

In it, it was clearly stated that he (Mirza Sahib) is a Prophet. It was further revealed in that book about him' (جرى الله في حلال الانبياء) (the apostle of God in the vestment of Prophets) (page 504). In the same book there is another revelation from Allah (see Q. 48 : 29):

"محمد رسول الله ، والذين معه اشداء على الكفار رحماء بينهم"

(Muhammad ﷺ is the Messenger of Allah and those who are with Him are hard against the disbelievers and merciful among themselves).

In this revelation according to Mirza Sahib he was named as Muhammad and also Prophet. Similarly in many other places in Baraheen-i-Ahmadiyya he was mentioned as a Messenger.

Mirza Sahib then dealt with the objection that since Prophet Muhammad ﷺ was the last of the Prophets, no Prophet could come after him. He refuted the belief of the

Muslims about the second advent of Jesus in this world as a Prophet. He stated that the meaning of the verse about Muhammad ﷺ being the last of the Prophets was that the doors of Prophethood had been closed after the Holy Prophet ﷺ till the day of judgement and it was not possible for any Hindu, Jew, Christian or any person formerly known as Mussalman to prove the application of the appellation Nabi (Prophet) to himself. All windows of Prophethood were closed except one which was of Seerat-e-Siddiqi and which could be claimed by one who was fanafil-Rasul (فنا في الرسول) (merged himself in the Prophet).

Mirza Sahib continued that who ever goes to God through this window is honoured with the mantle of Prophethood in a Zilli (ظلي) manner (like a shadow). This is the mantle of Prophethood of Muhammad. It is not a matter of shame for him to be a Prophet because he acquire? The qualifications not from himself but from the spring (source) (چشمه) of his Prophet ﷺ. Similarly he does not acquire it for himself but acquires it for his great glory and majesty. For this reason his names in the Heavens (جنت) are Muhammad and Ahmad which means that the prophethood of Muhammad ﷺ was ultimately received by Muhammad though in a buruzy manner (by incarnation).

At page 7, he wrote that despite this Muhammad ﷺ remained the Khatam-un-Nabiyyin (last of the Prophets) because the second Muhammad was the picture of that Muhammad ﷺ and bore his name. He also wrote that having been named as Muhammad and Ahmad he was a Rasool (Messenger) and Nabi (Prophet) (page 9). The verse 62 : 3

"وآخرين منهم لما يلحقوا بهم"

(Alongwith others of them as have not joined them) was similarly twisted and misinterpreted by Mirza Sahib to suit his theory and was held to be applicable to the future Prophets including himself. He said that he was the same

Prophet in a buruzy manner and 20 years earlier was named in the Baraheen-i-Ahmadiyya as Muhammad and Ahmad and was declared as Zil (ظل) (shadow) of the Holy Prophet ﷺ. This according to him did not adversely affect the finality of the Prophethood of the Holy Prophet ﷺ because shadow is not separated from the original self (page 10).

The verse Q. 62 : 3 is to be read in continuation of the earlier verse (Q. 62 : 2) which refers to the function of the Holy Prophet ﷺ to recite unto the unlettered ones, his revelations and to make them grow, and to teach them the scriptures and wisdom, though herebefore they were indeed in error manifest alongwith others of those who have not yet joined them (The underlined is the translation of the words which were misinterpreted by Mirza Sahib.

The two verses (Q. 62 : 2, 3) make a mention of one Prophet only i.e. Muhammad ﷺ. Its obvious meaning is that his message which was based upon Divine Revelations, i.e. the scriptures and wisdom shall continue after his death to teach the future generations. The verses do not refer to future Prophets since the Prophethood was sealed.

Again after repeating his Prophethood in a buruzy manner he wrote that for this reason his name was Muhammad and Ahmad and the Prophet-hood did not go to anyone else; it belonged to Muhammad and remained with Muhammad ﷺ (page 16).

It would be seen that the consequence of the dictum that Mirza Sahib himself was Muhammad and Ahmad (they were the names of the Holy (Prophet ﷺ were anamolous enough. The companions of Mirza Sahib became the companions of the Holy Prophet. In the formula recited by Muslims there is no God but God and that Muhammad ﷺ is his Prophet, Muhammad is Mirza Sahib. Wherever the word Muhammad is recited or read, it means Mirza Sahib.

Now the concept itself may be analysed. It has been explained in Al-Falsafatul Sufiatu fil Islam by Dr. Abdul

Qadir Mahmood. pages 5—11 that the meaning of expressions zilli (ظلی) and buruzy (بروزی) resemble very much the concept of incarnation (حلول) or transmigration (تاسخ) among the Hindus.

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

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

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

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

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

In strict Shariah of Islam there is no concept of incarnation or transmigration. These are terms emanating from those who believed in transmigration like Mazdak and Laman. Similarly there is no such notion as shadowism

(ظليست) in Islam (Khatimun Nabiiyin by Anwar Shah Kashmir! page 210).

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

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

Another argument of the petitioners is that Quadianis are a part of the Muslim Ummah and a member of the Ummah cannot be excluded from it on account of differences in matters of belief. According to them the definition of Ummah is that any person who believes in the unity of Allah and in the prophethood of Muhammad ﷺ is a Muslim and a member of the Muslim Ummah. He referred to Q. 4 : 49 that "one who salutes like a Muslim (Assalam-o-alaikum i.e., peace be upon you) should not be called non-Muslim", to the opinions of Jurists that one who recites that there is no god but God, cannot be killed (in Jihād) and to certain traditions on which these opinions were based. The question then is what is Ummah or Muslim Ummah.

The word Ummah [plural Umam (أمم)] is used in different meanings e.g. people or individuals (Q. 43 : 211) course or principle (Q. 43 : 23), period (Q. 11 : 7), guide or leader (Q. 16 : 12), nation (Q. 16 : 36; 35 : 24) and followers of the same Prophet or of the same religion (Q. 2 : 213; Q. 21 : 92) (See Gharib-ul-Quran-fi-Lughat-il-Quran by Allama Shirazi, pages 18, 19; See Umdat-ul-Qari, vol. 5, page 198 for the different meanings).

Imam Raghīb said that the general meaning of Ummah is 'nation' or "community" particularly that community which is identified by commonness of affairs (which must include commonness of ideology, out look and aspirations, social, cultural, economic, political and religious) (Al-Mufradai-fe-Gharib-il-Quran, page 23).

Its illustration is Quranic Verse Q. 6 : 38

"وما من دابة في الارض ولا طائر يطير بجناحيه الا امم امثالكم ما فرطنا في الكتاب من شئ ثم الى ربهم يحشرون"

"There is not an animal in the earth, nor a flying creature flying on two wings, but have communities like you."

In this Verse are included each specie of animals which lead life in a similar way for example spider which weaves its web or the white peacock which builds the house of straw.

According to the Quran all mankind was a single Ummah (Q. 2 : 213) but then they split up in groups. Then the community bond or group bound or bond of faith became the determining act for Ummah.

In Verse 5 : 48 it is said-

"ولو شاء الله لجمعكم امة واحدة"

'Had Allah willed He could have made you one community By the oneness of the community is meant unity in faith, (ibid, page 23).

Sometimes the word Ummah is used for those people to whom a Prophet was sent (Q. 10 : 47, Q. 23 : 44, Q. 35 : 24, Q. 40 : 5) and sometimes it applies to those persons who believe in any one Prophet (Q. 5 : 48, Q. 16 : 93, Q. 22 : 67, Q. 42 : 2). The former is known as Ummatul Daawa (امة الدعوة) while the later is called Ummatul Ajaba (الاجابه) (see Kashshaf-e-Istalahaatil Funoon Thanvi, Vol. I, page 91).

In the Holy Quran the Ummah of Prophet Muhammad ﷺ is called the best Ummah vide Q. 3 : 10 :

Q. 3 : 110

"كنتم خير امة اخرجت للناس"

'You are the best community that has been raised for mankind'. and then the qualities of that Ummah are described :

"تأمرون بالمعروف و تنهون عن المنكر و تؤمنون بالله"

'Ye enjoin right conduct and forbid indecency, And you believe in Allah'.

The same Verse then distinguishes between the best of Ummah and the people of the Scriptures :

"ولو آمن اهل الكتاب لكان خير الهم منهم المؤمنون واكثرهم

الفاسقون"

'And if the people of the Scripture had believed it had been better for them. Some of them are believers ; but most of them are evil livers'. (Q. 3 : 110)

The word Ummah was scientifically used by the Holy Prophet ﷺ both for a community consisting of his followers as well as followers of other religions, as well as for a community exclusively of his followers. The word Ummah was used in both these senses in the Covenant of Madina (ميثاق مدينه) by the Holy Prophet ﷺ. The preamble of the Covenant is :

"هذا كتاب من محمد النبي بين المؤمنين والمسلمين من قريش

يثراب ومن تبعهم فلحق بهم و جاهد معهم فانهم امة من دون الناس

'This is the writing of Prophet Muhammad ﷺ between Muslims and Monjins of Quresh, of Yathrab and those who join them and participate in Jihad with them. They are an Ummah as against all others'.

In Article 26 of the same Covenant are the words :

"ان يهود بني عوف امة مع المسلمين"

'The Jews of Bani Auf form an Ummah with the Muslims. (Seerat Ibn-e-Hasham, Vol. I, page 554 onwards Urdu translation).

Those who are parties to the agreement* are groups which means each of them form Ummah.

Those Jews who were or later became parties to this Covenant were held to be an Ummah with the Muslims on account of the common functions and aspiration of the covenantors described in the Covenants. The Muslims were a single Ummah because of their adherence to the same religion. The Covenant thus lays the foundation in the political sense for a nation consisting of a Muslim majority and non-Muslim minorities. But all the same it also insists upon the exclusive character of the Muslims as a separate Ummah.

While raising the foundations of Ka'aba in Makkah Abraham and Ismail prayed.

Q 2 : 128

"ربنا واجعلنا مسلمين لك ومن ذريتنا امة مسلمة لك"

'Our Lord ! And make us submissive unto Thee', and of our progeny a community submissive unto Thee'

One of the meanings of Islam is submission and obedience ; Muslim means one who is submissive. The verse points out that those who submit would form one Ummah or that the Muslims by virtue of their Islam (submission) shall integrate into one nation. Thus the common bond of Islam will constitute them an Ummah because the principle is that persons with common aspirations and ideologies form the nation. This is clear from Q 3 : 104, Q 7 : 181 :

Q. 3 : 104

"ولتكن منكم امة يدعون الى الخير و يأمرون بالمعروف وينهون

عن المنكر ، واولئك هم المفلحون"

'Let there arise out of you a band of people inviting to all that is good, enjoining what is right, and

forbidding what is wrong ; They are the ones to attain felicity'.

Q. 7:181

"وَمَنْ خَلَقْنَا امة يهدون بالحق و به يعدلون"

'Of those We have created Are people who direct (others) with truth, And dispense justice therewith'.

Islam (submission) is not the religion or way of life of the Ummah of Prophet Muhammad ﷺ only. All the Prophets preached Islam because all of them received game revelations and were similarly inspired (Q. 4:163). Abraham was neither a Jew nor a Christian. He was a Muslim. (Q. 3 : 66) Islam to which the Holy Prophet ﷺ was guided is a right religion which was followed by Abraham (Q. 6 : 162). All the Prophets preached the people to serve Allah and to obey the law of God (Q. 7 : 59, Q. 7 : 65, Q, 7 : 73, Q. 7 : 85). In Verses 21 : 42 and 23 : 52 after referring to the earlier Prophets it was specifically stated that

"ان هذه امتكم امة واحدة"

'Lo this religion of all of you is one religion'.

It may be clarified that Qurtabi said that (الامة هنا الدين) the word Ummah (امة) here means religion}. But it is also taken in the meaning of community or body.

One of the primary conditions for faith in Islam is that the faithful must believe in God and in all the Prophets upto Muhammad ﷺ who should be believed as the last Prophet and Messenger and no Prophet or Messenger can follow him in any age till the day of judgment. They must believe in all Books revealed or sent by God, the Angles and the Hereafter.

The next condition is the establishment of prayers, and fasting, the performance of Haj and payment of Zakat. The Articles of faith must have been common in each religion but the manner of prayers and fasting, the

particulars of Zakat and the Haj are features which are distinctive of the Muslims. Similarly the places of worship [Mosque (مسجد)] or the manner of calling the faithful to prayers is not compatible with the rituals of other religions. The Muslims have been declared the best community that hath been raised up for mankind (Q. 3 : 110). They enjoin right conduct and forbid indecency (تامرون بالمعروف و تنهون عن المنكر) (Q. 3 : 110, Q. 3: 104).

After the Holy Prophet ﷺ passed away it became the duty of the entire Ummah to advance the objects of the religion (Q. 3 : 144). They are enjoined to be steadfast and remain united because they have to endure and outdo all others in endurance (Q. 3 : 200). It is not the custom and manner of Muslims to oppose the Holy Prophet ﷺ after the guidance of God hath been manifested to a person (Q. 4 : 115). This means that he must obey the Holy Prophet ﷺ. Verse 4 : 59 orders the Muslim Ummah to obey the persons in authority (which means a Central authority and officers subordinate to it. It is not difficult to conclude from these Injunctions that it is the duty of the Muslim Ummah to keep the banner of Islam flying and for this purpose it must be well knit.

The Muslims are brothers among themselves without distinction of race, colour or country. (انما المؤمنون اخوة) (Q. 49 : 10). The murder of one is the murder of all and saving one from death is the saving of all. The Muslim Ummah is enjoined to establish and to be staunch in the maintenance of justice and fairplay amongst mankind. (Q. 4 : 135). For the benefit of mankind they are a moderate or middle nation (Q. 3 : 143).

The entire Muslim Ummah is thus the worshipper of one God. It is the Ummah of one and the last Prophet and Messenger of Allah and offers its prayer by facing in every nook and corner of the world towards a common Centre, the Ka'aba. The Muslims look towards each other in the Ummah as brothers and are pained to hear or know about

any trial or tribulation befalling other Muslims. Their ideology and aspirations are uniform. These are the real tests of an Ummah.

The Muslims are extremely tolerant of all other religions but they never tolerate any attack on their faith or subversion or undermining of the Ummah. Both are so dear to them.

Mr. Rizaul Hasan Gilani discussed the basis, the factors and the mechanism of group solidarity and integration and submitted that solidarity is organic and mechanical. The concept organic solidarity refers to integration resulting for division of labour while mechanical solidarity is used to describe the community or society in which all members share the same basic characteristics and consequently feel sympathy for one another.

He argued that the description of mechanical solidarity is apt for the Muslim Ummah and quoted from 'A Text Book of Sociology by O.G. Burn and Nimkoof, page 87'.

"Tusik, mechanically integrated, show the basic characteristics of the ideal 'folk' society : isolation, cultural homogeneity, organisation of the conventional understandings into a 'single web of inter-related meanings', the predominantly personal character of social relationship, the relative importance of familial institutions and the relative importance of sacred as compared with secular sanctions. Merida, organically integrated, tends to show the opposite characteristics".

The passage deals partly with the social structure and its grouping on culture — pattern basis.

Ibn-e-Khaldun discussed at great length group feelings among the tribes for persons of the same descent and bound by the ties of blood relationship and for their clients and allies. The strong feeling is the result of the Desert life which breed, extreme courage, valour and bravery (Muqaddimah English Translation, Vol. I, page

264). He discussed the importance of royal authority as a result of the group feeling.' The most important and relevant point is the effect of religious uniformity. He said :

"The reason for this is that because of their savagery, the Arabs are the least willing of nations to subordinate themselves to each other as they are rude, proud, ambitious, and eager to be the leader. Their individual aspirations rarely coincide. But when there is religion (among them) through prophecy or sainthood, then they have some restraining influence in themselves. The qualities of haughtiness and jealousy leave them. It is then easy for them to subordinate themselves and to unite (as a social organization). This is achieved by the common religion they now have. It causes rudeness and pride to disappear and exercises a restraining influence on their mutual envy and jealousy. When there is a Prophet or Saint among them, who calls upon them to fulfill the commands of God and rids them of blameworthy qualities and causes them to adopt praiseworthy ones, and who has them concentrate all their strength in order to make the truth prevail, they become fully united (as a social organization) and obtain superiority and royal authority. Besides, no people are as quick (as the Arabs) to accept (religious) truth and right guidance, because their natures have been preserved free from distorted habits and uncontaminated by base character qualities. The only (difficulty) lies in the quality of savagery, which, however, is easily taken care of and which is ready to admit good (qualities), as it has remained in its first natural state and remote from the ugly customs and bad habits that leave their impress upon the soul. "Every infant is born in the natural state", as is stated in the tradition that was quoted above".

It cannot be denied that faith is a stronger stimulant towards the achievement of co-operation, fellow feeling, comradeship and ideological cohesion irrespective of colour, ethereal, racial, linguistic and cultural barriers. The

emotional fervour and the instinct of attachment to and affinity with the ideological base generates fraternal feeling which it is not difficult to demonstrate from Islamic History. The offensive against Raja Dahir of Sind by the Muslims was the result of appeal for help by some Muslims. Muslim armies despite heavy odds travelled such a long distance to respond to the appeal of a few fellow Muslims.

There is, however, a big difference between a nation of the modern era and a religious Ummah. A nation is combination of a group of persons but in that combination the main motive and the driving force is self interest. There are a complex of factors and qualities for the combination but self interest of the individuals and the groups is one of them, rather it is the main criterion. But a religious Ummah is oblivious of such a factor.

The factors which helped the formation and cohesion of the Muslim Ummah are the humanitarian character of Islam, its emphasis on equality of all rich and poor, master and slave, men and women irrespective of distinction of country, colour, race, language or culture, its stress on fraternity and the individual freedoms guaranteed by it.

The armies of Islam were the torch bearers of these qualities and spread the spirit of tolerance and forbearance, love for education and research, though unfortunately in the .eras of their political weakness. They were the victims of savagery and religious intolerance.

The love of their heritage and the pride for their history are some other factors for their fusion in an Ummah.

All these are factors related to the teachings of religion and the excellence of Islam as a vital force. But the most important factor is the love and respect of the Muslims for the Holy Prophet ﷺ through whom all these blessings were conferred upon the Ummah. Intensity of this love and respect is demonstrated by the fact that all details of the life of the Prophet ﷺ are preserved and thousands of books have been written by Muslims on his Seerat (life). The Muslims are bound to obey the Quran as

well as the Sunnah of the Holy Prophet ﷺ and they collected and preserved all incidents of his prophetic life - even the most minor ones. To obey him is to love him but the love which transcends obedience to him is the emotional and sentimental attachment to the Holy Prophet ﷺ.

The finality of Prophethood is an article of faith with each Muslim on account of the intense love for the Holy Prophet ﷺ and the belief in the finality of Prophethood is the most important element in the integration of the Ummah as Allama Iqbal puts it.

The consciousness of affinity in the Ummah and its integrity help in the growth of tenacity which along with emotional fervour in the Ummah creates resistance against all impulses of disintegration. The claims of Prophethood have, therefore, been resisted by the Ummah vigorously to keep the mainstream of the faith pure. As such they have resented all encroachment on the nexus between Islam and finality of Prophethood.

The Qadianis are not a part of the Muslim Ummah. This is amply proved by their own conduct. In their opinion all the Muslims are unbelievers. They constitute a separate Ummah. The paradox is that they have substituted themselves for the Muslim Ummah and turned the Muslims out of that Ummah. The Muslims consider them beyond the pale of Muslim Ummah and curiously enough they consider the Muslims out of the pale of that Ummah. Clearly the two do not belong to the same Ummah. The question who are members of the Muslim Ummah could be left unresolved because of the absence of forum in British India but in an Islamic State in which there are institutions to determine the issue, this matter does not present any difficulty. The Legislature as well as the Federal Shariat Court are competent to resolve it.

This friction and absolute separation between the Qadianis and the Muslims is borne out by the writings of Mirza Sahib as well as his successors. Mirza Bashiruddin Mahmood in his book Anwar-e-Khilafat discussed this

point in detail and elaborated the reasoning why Quadianis cannot offer prayer behind a non-Ahmadi Imam, cannot offer the funeral prayer of non-Ahmadis and cannot marry their women with non-Ahmadis. The basic reason is that according to the Quadianis non-Ahmadis are unbelievers. Mirza Bashiruddin Mahmood wrote an anecdote that he met a renowned religious scholar (علم) in Lucknow who told Shaikh Yaqoob Ali who accompanied him that in his opinion the Quadianis were broad minded people but their enemies propagated that they considered the non-Ahmadis as disbelievers. He then advised the Quadianis that there was a difference between Deen (religion) and Dunya (world). Whenever a matter of religion is involved they (Quadianis) should single themselves out. (Anwar-e-Khilafat, page 90-93).

In Kalima-tul-Fasal it is said that "the Promised Messiah meted out the same treatment to non-Ahmadis which was meted out by the Holy Prophet ﷺ to the Christians. Our prayers were separated from those of non-Ahmadis. To give our girls in marriage to them was declared prohibited. We were prevented from offering their funeral prayers. Nothing remained there in which we may associate with them. There are two types of relationship - religious and worldly. The religious relationship is achieved through the assembly for prayer while the main source of worldly relationship is intermarriage. Both these things are absolutely prohibited for us" (page 169).

In 'Aeenai Sadaqat Mirza Bashiruddin Mahmood referred to the alleged revelation of Mirza Sahib that whoever treated even one word of the promised Messiah as false he is an out caste (mardood) from the Court of God. He then exhorted Ahmadis that they should not abandon their distinctive signs. They believed in a true Prophet while their opponents did not believe in him. During the period of Mirza Sahib, a proposal was made that Ahmadis and non-Ahmadis should propagate (Islam) together but Mirza Sahib asked "which Islam you will propagate? Will you conceal the signs and rewards given to you by God?

There is nothing strange in this approach of Qadianis since it has been a worldwide phenomenon that members of each religion consider the members of any other religion to be infidels, heretics or beyond the pale of their religion. It is the same with Jews, Christians, Magians, Hindus, and others. This is not only true about the religious communities but also the secular ideological groups like communists and Socialists.

The principle generally acknowledged by followers or members of umam (plural of Ummah) of different Prophets is that whoever does not believe in the Prophet of one 'Ummah is outside that Ummah or an outcast to that community. It followed necessarily from the claim of prophethood of Mirza Sabib that whoever did not believe in him or considered him a false prophet or imposter, could not be within the ummah or community of Mirza Sahib known by the name of Ahmadis.

The orders about prayers and marriage are those of Mirza Sahib and not of any successor. Even before his specific claim of prophethood he wrote : "whoever does not follow me and is not within our bay't (does not take oath of fealty) or opposes me, commits disobedience to God and his abode is hell (Tazkirah pages 342-343, Extract from the letter of Mirza Sahib dated 16th June, 1899 to Babu Elahi Bukhsh).

Mirza Sahib stated this inspite of the fact that he had earlier stated that the belief in the promised Messiah was not an article of faith. In Haqeeqat-ul-Wahi page 179 and 180 he described two categories of disbelief; "Firstly, in which a person denies the truthfulness of Islam and does not acknowledge the Holy Prophet as Messenger of God; Secondly that in which he does not believe in the promised Messiah and inspite of conclusive arguments treats him to be false although there is Injunction of God and His Messenger for believing the contrary which is also repeated in the Books of the earlier Prophets. For this reason (by his disobedience in Mirza Sahib) he is an unbeliever because of his denial of the Injunctions of God and His Messenger. If one ponders over this matter it will be clear that both

types of unbelief are the same (riddled with equal consequences) because a person who despite knowledge of Injunctions thereof fails to believe in God and His Messenger cannot be said to have faith in God and His Messenger. According to the specific Verses in the Holy Quran even that person who disbelieves for lack of knowledge is called Kafir (unbeliever) and we also call him so for his disobedience to the dictates of Sharia.”:

In answer to a question Mirza Sahib said (at page 163 of Haqeeqatul Wahi) that “if in the opinion of a falsifier I have invented lies against God, I am in that case, not only an unbeliever but a great unbeliever and if I do not invent lies this unbelief will undoubtedly fall on him (falsifier of Mirza Sahib) Besides this whoever does not believe in me also does not believe in God and His Messenger.”

Mr. Mujeebur Rehman took exception to these arguments of Mr. Riaz-ul-Hassan Gilani and submitted that the above concept of heresy of non-Ahmadis continued only upto 1923 and all the references to this effect pertained to that period. He submitted that Mirza Bashir Ahmad was not an Imam or Khalifa for the Ahmadis; he was only their spokesman. But Mirza Bashiruddin Mahmood had explained before the Munir Enquiry Report that he had not called the non-Ahmadis as infidels in the sense that they were outside the Muslim ummah meaning that their heresy was not a major kufr (heresy). The explanation of Mirza Bashiruddin Mahmood in times of distress when the agitation of the Muslim ummah in Pakistan had reached its peak was no more than retracing of steps as was done by Mirza Sahib himself several times as already explained. Mirza Sahib himself said that such a person is a Kafir because he will be taken not to believe in God and His Messenger. There can be no better proof of such a person being outside the Muslim ummah.

Mirza Sahib called his Muslim opponents as leaders of Kufr (Tazkirah, pages 111, 373).

In his letter to Dr. Abdul Hakeem dated March, 1906 he wrote that “God has revealed to me that every one to

whom my message has reached and who does not accept me is not a Muslim (Tazkirah page 600). Mirza Bashiruddin Mahmood equated the non-Ahmadis with Christians. Shaikh Nur Muhammad asked Mirza Sahib to accept his resignation from the Jamaat (Jammaate Ahmadiya) on which he replied "tell Shaikh Noor Muhammad that not only is he dissociated from the Jamaat but he is also severed from Islam (Seerate Mahdi, Vol. III page 49).

It is well known that Sir Zafarullah Khan Ex-Foreign Minister of Pakistan did not offer the funeral prayer of Quaid-e-Azam. According to 'Zamindar' dated 8th of February, 1950 Maulana Mohammad Ishaq, Khateeb of Jamia Mosque Abbottabad asked Sir Zafarullah for the reason for non-participation in the prayer. He replied that he considered Quaid-e-Azam to be only a political leader. He was asked whether he also held the Muslims to be unbelievers on account of their disbelief in Mirza Sahib, "although you are a Minister in the Government". Sir Zafarullah said you may treat me as a Muslim servant of a Kafir (heretic) Government or a heretic servant of the Government of Mussalmans.

Mr. Mujebur Rehman could not contradict the position taken by Sir Zafarullah. It is, therefore, established beyond any shadow of doubt that as Sir Zafarullah Khan put it, either the majority of people living in Pakistan are unbelievers (Kafir) or the Qadianis are unbelievers which means that the twain shall never meet and be the members of the same ummah. There is no meeting point because of the belief of the Muslims in the finality of prophethood and the contrary belief of the Qadianis who believe in Mirza Sahib as a new Prophet. The Qadianis have been held to be a threat to the integration of the Muslim ummah and the torch bearers of the forces of disintegration by the great luminary of the Muslim society who said that "it (the Muslim Ummah) is secured by the idea of the finality of prophethood alone" (Thoughts and Reflections of Iqbal page 249).

He further said:—

“After all, if the integrity of a community is threatened, the only course open to that community is to defend itself against the forces of disintegration. And what are the ways of self-defence? Controversial writing” and refutation of the claims of the man who is regarded by the parent community as a religious adventurer. Is it then fair to preach toleration to the parent community whose integrity is threatened and to allow the rebellious group to carry on its propaganda with impunity, even when the propaganda is highly abusive?” (Ibid. p. 253).

The loyalty and love of Mirza Sahib for the Imperialist and Colonialist British Government is axiomatic. Almost in each of his books he had devoted at least some pages for extolling the British Government and so was done by his successors. A few examples of such writings are given below :—

- (a) Some foolish persons asked whether it will be correct to light with this Government in Jihad or not. They should remember that this question of theirs is one of extreme stupidity because how can one enter into Jihad against one gratefulness for whose Ehsan (احسان) (beneficence) is a bounden duty. I speak the truth that to wish ill of one who has been benevolent is the act of a bastard and a scoundrel. So my belief which I have been manifesting again and again is that there are two parts of Islam, one is that they should obey God and the other is that they should obey this Government which assured (us) peace and has given us shelter from the tyrants (Shahadatul Quran published in 1893, page 3).
- (b) The wise who on the one hand finds in my writings support for the religion and on the other hand listens to my advice that fulfilled loyalty should be given to this Government and their good and welfare should be wished, cannot mistrust me and why should they do so. It is a

truth that the Muslims are subject to the divine and prophetic order that they should be loyal to the Government to whom they are subject. I have elaborated these religious orders in detail in my books. The Government can now consider the extent to which my father had been a well-wisher of the Government, My brother walked into his loot-steps (in its respect) and I am also rendering service (to the Government) through my pen for the last 19 years (Kashful Ghata published in 1898, page 10).

- (c) And I have made it clear in the conditions of oath of fidelity (بیعت) clause 4 that they should wish well to the British Government, show true compassion for the humanity, refrain from adopting methods of enraging others and show themselves as models of piety, virtuous and free from depravity and evil doing (Kitabul Bariyyah published in 1898, page 12).
- (d) The Deputy Commissioner ordered that if any trouble is caused to the Ahmadis then all the leaders of the Musalmans shall be expelled from the country under the new law. Such an order cannot emanate except from a person whose sympathies extend to the entire humanity. This fresh treatment was meted out by this Government to your Malabari brothers and whoever shows kindness to one's brother, shows it to that one. Thus we should be grateful to our Government because the Malabari Ahmadis are our brothers. One of our preachers had gone to Mauritius. The non-Ahmadis decided that he must not (be allowed to) deliver his lecture wherever he might wish. He petitioned to the Government for (allotment of) the Government-hall. The Governor allowed him to deliver his lecture in that hall for 3 days in a week, thus giving half of the week to our preacher and keeping the

other half for himself. (Anwar-e-Khilafat by Bashiruddin Mahmood Abroad, page 96),

- (e) In Kitabul Bariyyah at pages 7 and 8 are given the names of the books, their dates of publication and the number of pages in which the British Government is extolled by Mirza Sahib. He made reference to 24 books and pamphlets in which he had praised and spoken highly about the British Government. The number of pages amounted to several dozens at least 11 years before his death.

Mr. Riaz-ul-Hasan Gilani argued on the basis of these few illustrations that the unflinching loyalty of Mirza Sahib to the British Government was not without reason and purpose. He made it an article of faith for his followers and a part of their oath of fidelity for him. He also banned Jihad for which there are specific Quranic orders. Mirza Sahib was more loyal than the king himself because the Ahmadia Movement had the blessings of the Government and was started on their instructions and under their blessed protection. The interest of the Government after the war of independence of 1857 was to cause disintegration and disharmony in the Muslim Ummah and carving out a new religion out of Islam served that purpose.

The learned counsel criticised the abolition of Jihad by Mirza Sahib as opposed to the Quran. In order to establish his point he referred to the writings of Mirza Sahib and gave the following few illustrations :—

1. "O Friends give up the idea of Jihad now. It is now prohibited in religion to engage in war and assassination. The Messiah has come now and he is the guide in religion. Now is the end of all religious warfare. Descends from the heavens (جنت) the light of God; the verdict of war and Jihad is now preposterous. He is an enemy of God who indulges in Jihad and a denier of the Prophet who entertains his belief in it. (Tuhfa-e-Golarwiya published in 1902, page 41 poem of Mirza Sahib).

2. It (the breaking of cross) cannot mean that the wooden cross which is hung by the Christians will be broken by the promised Messiah It points out to another truth which is the same as brought by us. We have declared with full clarity that Jihad is now prohibited. As that (to establish peace) is the function of the promised Messiah so it is his concern to do away with war. For this purpose it was essential for us to give a verdict about the prohibition of Jihad. We, therefore, say that it is prohibited and is an act of worst sin to draw sword or lift weapons now in the name of religion (Malfuzat Vol. 4, published in 1902, page 18).
3. The Injunction about Jihad is abolished during the time of the promised Messiah (Abrbain 4, published in 1900, page 15)
4. My principal beliefs and instructions for guidance do not contain anything concerning warfare and violence and I believe that with the increase in my followers the number of those who believe in Jihad will decrease because belief in me as Messiah and Mehdi is repudiation of Jihad (Majmua-e-Ishtiharat Vol. 3, from 1898 to 1908, page 19).

It is unnecessary to add such citations which are numerous.

Mr. Mujeebur Rehman argued that Mirza Sahib was not the only person in the 19th century or the early 20th century to show loyalty to the British Government but a number of Ulema and Intellectuals in the country had written something or the other in the praise of the Imperialist Power.

From the citations given by Mr. Mujeebur Rehman it appears that the Ulema had taken various factors into consideration while opposing Jihad.

The main factor was that the Muslims had been subjugated but they enjoyed religious freedom and were

governed by their personal law. An-other factor taken into consideration by some Ulema was that Jihad was not permissible as there was no Imam to lead and no weapons to fight. It means that the impossibility of winning in Jihad was one of the reasons for most of such verdicts.

The matter is not so simple as was put by Mr. Mujeebur Rehman. Before elaborating the point it may be stated that the principle of (يضع الحرب) i.e., putting an end to war in relation to the promised Messiah only means that on account of the preponderance of Islam which will be the result of murder of the anti-Christ, of the breaking of Cross and of the killing of pigs, there shall be no unbelievers in the world. It does not mean that the rule of the; unbelievers shall not be resisted. The principle of (يضع الحرب) (putting an end to war) did not apply at all to the conditions prevailing during the period when Mirza Sahib abrogated the Quranic order of Jihad and abolished it.

It is also not correct that he suspended Jihad only for a short period. The citations given above refute this assertion. The Hadith of (Putting an end to Jihad) on the advent of Messiah means the absolute elimination of Jihad. Reliance on it for abolition of Jihad negatives the possibility of the order of abolition being of a transitory nature.

The matter has to be looked at in the context of the political situation in the Province of Punjab. It was a time when the entire feudal or Landlord class was known as a class of Toadies who would go to any length to please the Ruling Power. They considered it a matter of pride to wait upon an Englishman.

It is clear from the writings of Mirza Sahib that his family including his brother and himself continued their unflinching loyalty for the Britishers.

The writings in which he extolled the Britishers are not without any purpose. One of the purposes is clear from the above citation that the Ahmadis were under the shelter

of the British Government. The other citation about Mauritions proves that they were the favourites of that Government as notwithstanding opposition by Muslims to the delivery of lectures about Ahmadism by the Ahmadi Preacher, the Government of Mauritius allowed the Government Hall for 3 days in each week to enable the Preacher to preach Ahmadism. The praise of the British Government by Mirza Sahib crossed the limits of even flattery and sycophancy. It is certain to raise doubts in the minds of the public that either he was playing the role assigned to him by that Government to cause disintegration among the Muslim Ummah and to condemn them to perpetual slavery or he was after acquiring benefits from it.

The argument that other Ulema had given similar verdict does not fit in because it is not a stray opinion or stray verdict in favour of the Government but a continuous process of freeing the bait.

It is difficult to treat it as an accident that Mirza Sahib, a claimant of being a Mujaddid, the promised Messiah and Mehdi and a Prophet extolled the British Government and in Iran near about the close of the 13th century and after, Mirza Ali Muhammad Bab, founder of the Babi religion and Hussain Ali (Bahauallah founder of the Bahai religion) had eulogized the Russians. In addition Bahauallah had extolled the English Government also and both of them had abrogated Jihad. Bahauallah in fact decreed abolition of Jihad in the same manner as Mirza Sahib.

At the end of the discussion on this point it would be pertinent to cite the views and reasoning of Allama Muhammad Iqbal.—

“Does the idea of Caliphate in Islam embody a religious institution? How are the Indian Muslims, and for the matter of that all Muslims outside the Turkish Empire, related to the Turkish Caliphate? Is India Dar-ul-Harb or Dar-ul-Islam? What is the real meaning of the doctrine of Jihad in Islam? What is the meaning of the expression “From amongst you” in

the Quranic verse : Obey God, obey the Prophet and the masters of the affair, i.e. rulers, from amongst you? What is the character of the Traditions of the Prophet foretelling the advent of Imam Mehdi: These questions and some others which arose subsequently were, for obvious reasons, questions for Indian Muslims only. European imperialism, however, which was then rapidly penetrating the world of Islam, was also intimately interested in them. The controversies which these questions created form a most interesting chapter in the history of Islam in India. The story is a long one and is still waiting for a powerful pen. Muslim politicians whose eyes were mainly fixed on the realities of the situation succeeded in winning over a section of the Ulama to adopt a line of theological argument which as they thought suited the situation; but it was not easy to conquer by mere logic the beliefs which had ruled for centuries the conscience of the masses of Islam in India. In such a situation logic can either proceed on the ground of political expediency or on the lines of a fresh orientation of texts and traditions. In either case the argument will fail to appeal to the masses. To the intensely religious masses of Islam only one thing can make a conclusive appeal, and that is Divine Authority. For an effective eradication of orthodox beliefs it was found necessary to find a revelational basis for a politically suitable orientation of theological doctrines involved in the questions mentioned above. This revelational basis is provided by Ahmadism. And the Ahmadis themselves claim this to be the great service rendered by them to British imperialism."

He summed up at page 31 :

"As I have explained above, the function of Ahmadism in the history of Muslim religious thought is to furnish a revelational basis for India's present political subjugation."

One of the petitioners. Mr. Mujeebur Rehman, who argued the case gave the following formulations for his arguments :

- (1) Scope and extent of Article 203-D.
- (2) The principles of understanding the Quran.
- (3) The spirit of the Quran.
- (4) The scope of the right to profess and practise the religion.
- (5) The right to propagate one's religion.
- (6) The effect of the various covenants between the Quadianis and Muslims before and at the time of creation of Pakistan which ensures for them complete freedom of religion including the right to propagate it.

Mr. Mujeebur Rehman argued upon the scope of Article 203- D in relation to the limitations on the power of the State and the authority conferred upon the Federal Shariat Court. He submitted that according to Quran and the Sunnah there is no obedience to any order involving commission of sin or disobedience of Allah and His Prophet. This is based on the famous tradition (لا طاعة في معصية الله) (There is no obedience in sin) (Bokhari Kitab - ul-Ehkam, vol. 2, pages 1057, 1058 and 1078) and similar other traditions. Relying upon Q. 4 : 59

"يا ايها الذين آمنوا اطيعوا الله واطيعوا الرسول واولى الامر منكم ، فان تنازعتم في شئ فردوه الى الله والرسول ان كنتم تؤمنون بالله واليوم الآخر ، ذلك خير و احسن تاويلا"

Q. : 4 : 59 O ye who believe! Obey Allah, and obey the messenger and those of you who are in authority ; and if ye have a dispute concerning any matter, refer it to Allah and the messenger if ye are (in truth) believers in Allah and the Last Day. That is better and more seemly in the end,

he argued that the verse refers to the dispute between the ruler and the ruled. He submitted that by the expression Ulul Amr in the verse are meant only the persons in authority and not the Ulema or any other religious scholar as held by some of the scholars. He further submitted that the wisdom in Article 203-D is that it has been enforced for the avoidance and resolution of conflict in loyalties to Allah and to others including the State. For the first proposition he cited from several books.

For the second point he particularly drew the attention of the Court to the view in Tarjmaeul Quran Vol. I, page 98, that there should be an institution for deciding the dispute referred to in the order (Q. 4 : 59)

"فان تنازعتهم في شئى فردوه الى الله والرسول"

(and if you have a dispute concerning any matter; refer it to Allah and the Messenger), and argued that this Court is such an Institution.

It is not necessary to cite from any book on the interpretation of Ulul Amr or to discuss this point since the point raised is unexceptionable and has been held so by this court in case No. S.P. -K-2 of 1982. It was held that by Ulul Amar are meant the persons in authority including the Legislature, Executive and the Judiciary in the State.

It is laid down in Article 203-D of the Constitution that the function of this Court is to eliminate the discrepancy and repugnance with the Quran and the Sunnah of the Holy Prophet ﷺ from any law over which the Court's jurisdiction extends. It, therefore, appears to be correct that to the extent of its constitutional jurisdiction the Court is an Institution as contemplated in Tarjamanul Quran, Vol. I, page 98, which can decide a dispute in respect of vires of a law viz-a-viz the Injunctions in the Quran and the Sunnah of the Holy Prophet ﷺ. There is hardly any cavil wish this argument of Mr. Mujibur Rehman.

The argument that there is no obedience in sin is also unexceptional-tie. This Court has already dealt in detail

with this point as well as the scope of legislative power of a Muslim State in the recent judgments on the Press and Publications Ordinance, 1963 (Ordinance XXX of 1963) and the Civil Servants Acts of the Punjab, Sind, NWFP and Baluchistan.

On the second point he argued that what has been declared by the Quran and the Sunnah as lawful cannot be made unlawful by the State Authorities and for this one must look at the specific nass (verse). He laid stress on the necessity of ignoring Taqleed.

This in effect is an indirect challenge to the right of the Parliament to declare the Qadianis non-Muslims. The short answer to this point is that as stated by Allama Muhammad Iqbal, this is a legal question. The Parliament, the Law making authority, there fore, acted within its authority in making the declaration in Article 260 of the Constitution. Allama Muhammad Iqbal said:

“..... the question whether a person or community has ceased to be a member of Islam is, from the point of view, purely legal question and must be decided in view of the structural principle of Islam.”

A similar argument as mentioned above was also addressed by Sh. Ghias Muhammad, Counsel for the Federal Government. This Court has already decided this point and the scope of its jurisdiction while examining the Provincial Civil Servants Acts. It was held that the Courts jurisdiction is not limited to specific nass of the Quran and the Sunnah. The Court can while examining the vires of any law go into the principles laid down by the Quran and the Sunnah. The Court also held in the case of Muhammad Riaz etc. Versus Federal Government etc. PLD 1980 FSC I, that in public law it was not bound by the doctrine of Taqleed. This is sufficient to assuage the apprehensions of Mr. Mujibur Rehman.

Mr. Mujibur Rehman then dealt with the principles of understanding the Quran. He submitted that the first principle is that the Quran be interpreted in the light of

Quran itself since it deals with each subject matter in different ways. The object of repetition is to engrave the subject matter on human memory. Sometimes the subject matter has been treated shortly at one place and elaborated at another.

He referred to Quranic verses:

Q. 6 : 105

"وكذلك نصرف الآيات و ليقولوا درست ولنينه لقوم يعلمون"

'Thus do We display Our revelations that they may say (unto thee Muhammad) : "Thou has studied", and that We may make (it) clear for people who have knowledge'.

Q. 17 : 89

"ولقد صرفنا للناس في هذا القرآن من كل مثل فابي اكثر الناس

الا كفوراً"

'And verily We have displayed for mankind in this Quran all kinds of similitudes, but most of mankind refuse aught save disbelief.

Q. 17 :41

"ولقد صرفنا في هذا القرآن ليدكروا ، وما يزيدهم الا نفوراً"

'We verily have displayed (our warnings) in this Quran that they may take heed, but it increaseth them in naught save aversion'.

Q. 18 :54

"ولقد صرفنا هذا القرآن للناس من كل مثل ، وكان الانسان

اكتر شئى جدلاً"

'And verily We have displayed for mankind in this Quran all manner of similitudes, but man more than anything contention.'

There is no dispute with these principles. During the course of argument Mr. Mujibur Rehman had been drawing

our attention to various verses of the Holy Quran which according to him are not controlled by the reason for revelation and have to be treated as general in scope.

The second principle which he submitted, is that in order to understand a verse it is necessary to find out the reason for its revelation. This is helpful in the understanding of a verse though its meanings are not limited or particularised by the reason of revelation. The generality in the scope of its applicability is not cut down. It includes guiding principles applicable till the day of judgment. He sought support from Al-liqan (Vol. I, about the ninth classification of reasons of revelation, pages 70 to 87).

The third principle is to consult the Sunnah of the Holy Prophet ﷺ if there is no guidance in the Quran. The last principle is that in case no light is thrown by Sunnah the next source to seek guidance for interpretation is the Asa'ar (what the Companions of the Holy Prophet ﷺ said). He urged the spirit of the Quran shall be properly understood and kept in view.

On the fourth point which includes freedom of belief and right to practise one's religion, Mr. Mujibur Rehman submitted that a few questions arise in this connection: —

- (1) Does Islam entitle or allow a non-Muslim to declare the unity of Allah?
- (2) Does Islam entitle and allow a non-Muslim to acknowledge the Holy Prophet ﷺ as truthful in his claim?
- (3) Does Islam entitle non-Muslim to acknowledge the Quran as, furnishing a good Nizam-e-Hayat (نظام حیات) i.e., way of life and to treat it as worthy of obedience?
- (4) Is this permissible or not for a non-Muslim to act upon the Injunctions of the Holy Quran if he so likes?
- (5) If the answer be in the negative where is the Injunction in the Quran and the Sunnah in support of the negation?

- (6) What course of action does the Quran propose or provide for a person who is not considered Muslim nor has any right to be so considered by believers, in the truthfulness of Quran in the Prophethood of Muhammad Rasoolullah ﷺ and the oneness of Allah ?

Relying upon verses Q. 2 : 256, Q. 8 : 29, Q. 10 : 99, Q. 10 : 108, Q. 26:3, Q. 90 : 10, Q. 91 : 8, Q. 91 : 9, Q. 91 : 10 and commentaries of renowned commentators he summed up that according to the Injunctions of Islam,

- (a) there should be no compulsion for accepting religion ;
- (b) there should be no restraint against voluntary conversion to it;
- (c) no one may be turned out of his religion by use of force ; and
- (d) no one who does not want to stick to his religion should be stopped from forsaking it.

He also referred to verses, —

Q. 16 : 106

"من كفر بالله من بعد ايمانه الا من اكره و قلبه مطمئن بالايمان
ولكن من شرح بالكفر صدراً فعليهم غضب من الله ، ولهم عذاب
عظيم"

'Whoso disbelieveth in Allah after his belief - save him who is forced thereto and whose heart is still content with Faith - but whoso findeth case in disbelief : on them is wrath from Allah. Theirs will be an awful doom'.

Q. 4 : 19

"ياايها الذين آمنوا لا يحل لكم ان ترثوا النساء كرها ، ولا
تعزلوهن لتذهبوا ببعض ما آتيتموهن الا ان يأتين بفاحشة مبينة ،

وعاشروهن بالمعروف ، فان كرهتموهن فعسى ان تكرهوا شيئا ويجعل الله فيه خيراً كثيراً"

'O ye who believe! It is not lawful for you forcibly to inherit the women (of your deceased kinsmen), nor (that) ye should put constraint upon them that ye may take away a part of that which ye have given them, unless they be guilty of flagrant lewdness. But consort with them in kindness, for if ye hate them it may happen that ye hate a thing wherein Allah hath placed much good'.

Q. 2 : 256

"لا اكراه في الدين ، قد تبين الرشد من الغي ، فمن يكفر بالطاغوت و يؤمن بالله فقد استمسك بالعروة الوثقى ، لا انفصام لها ، والله سميع عليم"

'There is no compulsion in religion. The right direction is henceforth distinct from error. And he who rejecteth false deities and believeth in Allah hath grasped a firm handhold which will never break. Allah is Hearer. Knower'.

Q. 6 : 107

"ولو شاء الله ما اشركوا ، وما جعلناك عليهم حفيظاً ، وما انت عليهم بوكيل"

'Had Allah willed, they had not been idolatrous. We have not set thee as a keeper over them, nor art thou responsible for them.'

Q. 10 : 99

"ولو شاء ربك لآ من من في الارض كلهم جميعاً ، افانت تكره الناس حتى يكونوا مومنين"

'And if thy Lord willed, all who are in the earth would have believed together. Wouldst thou (Muhammad) compel men until they are believers?'

Q. 10 : 108

"قل يا ايها الناس قد جاءكم الحق من ربكم ، فمن اهتدى فانما

يهتدى لنفسه ، ومن ضل فانما يضل عليها وما انا عليكم بوكيل"

'Say : O mankind! Now hath the Truth from your Lord come unto you. So whosoever is guided, is guided only for (the good of) his soul, and whosoever erreth, erreth only against it. And I am not a warder over you'.

Q. 26 : 3

"لعلك باخع نفسك الا يكونوا مومنين"

'It may be that thou tormentest thyself (O Muhammad) because they believe not'.

Q. 26 : 4

"ان نشا ننزل عليهم من السماء آية فظلت اعناقهم لها خاضعين"

'If we will, We can send down on them from the sky a portent so that their necks would remain bowed before it'.

Q. 90 : 10

"وهديناه النجدين"

'And guide him to the parting of the mountain ways'.

Q. 91 : 9

"قد افلح من زكها"

'He is indeed successful who causeth it to grow'.

O. 91 : 10

"وقد خاب من دسها"

'And he is indeed a failure who stunteth it'.

Q. 18 : 29

"و قل الحق من ربكم فمن شاء فليؤمن ومن شاء فليكفر انا

اعتدنا للظلمين نارا احاط بهم سرادقها ، وان يستغيثوا يغاثوا بماء

كالمهل يشوى الوجوه ، بنس الشراب ، وساءت مرتفقاً"

'Say : (it is) the truth from the Lord of your (all). Then whosoever will, let him believe, and whosoever will, let him disbelieve. Lo 'We have prepared for disbelievers Fire. Its tent encloseth them. If they ask for showers, they will be showered with water like the molten lead which burneth the faces. Calamitous the drink and ill the resting place.'

Verses Q. 109 : 4, Q. 109 : 5 and Q. 109 : 6 clinch this matter and leave everyone to his religion. It is as follows :--

Q. 109 : 4

"ولا انا عابد ما عبدتم"

'And I shall not worship that which ye worship'.

Q. 109 : 5

"ولا انتم عابدون ما اعبد"

'Nor will ye worship that which I worship.

Q. 109 : 6

"لكم دينكم ولى دين"

'Unto you your religion, and unto me my religion'.

Commenting on the verse Q. 10 : 100 Syed Qutab wrote : "It is said that if Allah wished to compel all mankind He would have done so and have left no one with a discretion to the contrary. But the divine wisdom some of which we know invests mankind with the capacity to do good or commit mischief; to be guided or remain misguided. Belief is a matter based on discretion. Even the Holy Prophet ﷺ cannot compel anyone to accept it because there is no scope for compulsion in matters concerning heart (قلب) or conscience (Fi-Zilal-il-Quran, part 11 , page 188).

The commentary known as Tafseer-e-Ruhul Beyan by Ismail Haqqi (Vol. 4, page 84) is to the same effect. It is stated that it is not within the wisdom of Allah to base the

creation of mankind on the principle that everyone should be a believer. The divine principle is that a person may believe or may not believe according to his own liking. It is stated further that when Allah found that His Prophet ﷺ wished that all persons should believe, He revealed this verse and suspended the belief of his (Prophets') people on His will or pleasure and said to him your creator does not wish this but do you want to compel on what Allah does not will (that all persons may become believers).

The commentary refers to the view of Al-Kashfi that this verse was abrogated by the verse about Jihad, but added that the correct position is that it is not abrogated because the compulsion in matter of faith is not correct as this is a matter pertaining to heart. Also see Madarik-ul-Tanzeel, Vol. 2, page 38. Al-Man'ar part 11. pages 483-484, Ma'ariful Quran, Vol. 4. page 577, Tafseerul Maraghi, part 11, page 158.

The words (وما جعلناك عليهم حفيظاً وما انت عليهم بوكيل) (we have not set thee as a keeper over them, nor art thou responsible for them) in Q. 6 : 107 have been similarly interpreted (See Tafseerul Maraghi, part 7, page 211, Ruhul Bayan, Vol. 3, part 4, page 48. Al-Man'ar, Vol. 7. pages 501-502, Fi-Zilal-il-Quran, part 7, pages 305 - 306, Ma'ariful Quran. Vol. 3, page 413. Tafseerul Kabir by Razi, part 12, page 103).

In Al-Man'ar the functions of a Vakeel or keeper are stated and it is said that the Holy Prophet ﷺ was sent by Allah to acquaint the people or teach them the religion or give good news to them or inform them about adverse consequences if they do not believe and thus establish the religion of Allah. These are the functions of the Prophet but he is not a keeper over them from the Creator. He was not empowered to interfere with his people to the extent of using compulsion in respect of belief. According to Fi-Zilal-il-Quran (commentary by Syed Qutab Shaheed) the verse involves the formulation of the Ummah.

All commentators have dealt with the principle of Ikrah or compulsion in religion. See Al-Mughni, part, 8,

page 243, Tafseer-e- Baizawai, Vol. 1, page 362, Madarik-ul-Tanzeel, part I, page 170, Fi-Zilal-il-Quran, part 3, pages 26—28, Al-Maraghi, part 3, page 16, Al-Man'ar, page 3, page 36, Al-Maraghi, part 13, page 53, Al-Man'ar, part 9, page 665, Tarjmanul Quran, Vol. 1, page 267, Tafheemul Quran, Vol. 1, page 196, Ruhul Ma'ani, Vol. 3, pages 12-13.

According to Al-Mughani one view is that mere threat may amount to Ikrah. According to Al-Man'ar, Vol. 3, page 16, belief is the real religion. It is obtainable by satisfaction of mind. It is not possible that satisfaction of mind may be obtained by compulsion. The only course for achieving is that of arguments and reasons.

The important point (see Al-Man'ar, Vol. 9, page 665) is that it is not permissible to compel a person to give up his belief. The right not to be compelled is treated a fundamental right. (Fi-Zilal-il-Quran, Vol. 3, pages 26-28).

Reliance was placed for interpretation of Q. 18 : 29 on Al-Maraghi, part 15, page 143. Fi-Zilal-il-Quran, part 15, page 95, Tafscerul Mazahiri, Vol. 6, page 10, Tafheemul Quran, Vol. 3, page 23. It is clear from this verse that it gives an option to each man to accept a belief or not.

The sum and substance of all the arguments based on these verses is that there is no compulsion in matter of religion and this is not the scheme of Allah that all persons should believe. The Holy Prophet ﷺ was sent only for the purpose of making His message known ; it was never intended that he should compel people to accept Islam. There is nothing in the Quran and the Sunnah which may permit placing of restrictions upon non-believers against believing in the unity of God, the truthfulness of the message and reason of the Holy Prophet ﷺ the message of the Quran or making the Quran their grund norm. Similarly it is not lawful to turn a person by force out of the religion he wishes to stick to. He added that the Ordinance amounts to turning the Quadianis by force out of the religion of Islam to which they would like to stick. In this connection the meaning of the word Ikrah was also commented upon

that it is not restricted to use of force only but extends to creating conditions under which it may not be conducive to profess or practise one's religion.

The first four questions posed by Mr. Mujibur Rehman have to be answered in the affirmative. There is no bar-Constitutional, legal or Sharii against the right of a non-Muslim to declare the unity of Allah, to acknowledge the Holy Prophet ﷺ as truthful in his claim, to acknowledge the Quran as furnishing a good way of life and to act upon its Injunctions. The 5th question does not arise in view of the affirmative answer of the 4th question. A clear answer to the 6th question is that such a non-Muslim is to be dealt with like other minorities, subject to the conditions imposed by the Quran and the Sunnah which shall be considered at the appropriate place.

The four principles formulated by Mr. Mujibur Rehman in regard to 'Ikrah' (اكراه) (compulsion) are also unexceptionable but the application of the third principle as done by Mr. Mujibur Rehman is not correct. The third principle is that no one may be turned out of his religion by use of force. He adds to this in the written arguments "as we have been turned out". There is nothing in the impugned Ordinance that they have been turned out from their religion.

It was argued that to restrain the Ahmadis from calling themselves Muslims or posing as such amounts to turning them out of their religion which according to them is Islam. We have already considered this question and have reached the conclusion that the Qadianis of either persuasion are not Muslims but are non-Muslims. The Ordinance, therefore, restrains them from calling themselves what they are not; since they cannot be allowed to deceive anybody specially the Muslim Ummah by passing off as Muslims. It has already been noticed that Mirza Sahib and the Qadianis other than belonging to the Lahori Group have turned the table upon the Muslims by calling them non-Muslims and beyond the pale of Islam and by substituting them as the Muslim Ummah for a

community in which love and reverence of the Quran is supreme. This cannot be tolerated and non-Muslims cannot be allowed to encroach upon the rights and privileges of the Muslim community to the utter disintegration of the Ummah. Moreover this does not affect the rights of the Qadianis to profess their faith in Mirza Sahib whether as a Prophet or as a Mujaddid, Promised Mehdi or Promised Messiah nor does it interfere with their right to practise their religion or to worship in their place of worship according to its dictates.

The Muslim Sharia affords full protection to the practice of religion by the non-Muslims as well as to its profession. This finds support from the Verses of the Holy Quran reproduced above and the interpretation of the same by the commentators. It is for this reason that the Holy Prophet ﷺ and his worthy successors agreed to the best terms *inter-alia* in connection with the freedom of religion to the Polytheists and non-Muslims whether at war with Muslims or not.

The first step in this direction which was taken by the Prophet ﷺ was the written Covenant with the Jews, Christians and other non-Muslims of Medina. The first Article of this Covenant establishes in the language of Dr. Muhammad Hamidullah that "all those who were parties to the agreement were considered to be as one Ummah (community)." This was clearly an attempt to make a political nation which could assist Muslims as well as non-Muslims.

In Article 26 of the Covenant it is stated that the Jews of Bani Auf are an Ummah with the Muslims which means that they formed a political unit on the basis of political alliance. The parties to the agreement who consisted *inter-alia* of Muslim Ummah agreed by the Covenant to be moulded into a political Ummah which was given the name of (امة واحدة من دون الناس) (a political entity as against other) (Article I) and (امة واحدة) (a united political entity) (Article 26).

After the formation of (امة واحدة من دون الناس) were described their respective rights and obligations in which it is implied that each one had the right to profess and practise his religion. This was, however, specifically provided in Article 26 that the Jews shall follow their religion and the Muslims shall follow their. (See Ibn-e-Hisham, Urdu Translation, Vol. 1, page 554).

In Al-Haroon Albramkah by Umar Abunnasar (Urdu Translation by Shaikh Muhammad Ahmad Pani Pati at pages 278-279) it is stated that in the time of Haroon-ur-Rashid there is not one example of prejudice or intolerance. In Syria, Egypt and Rome Christians had a general permission to construct Churches to worship in them and to take out the procession of the Cross. The Jews had complete right to worship in their Synagogues. Fire worshippers could keep their fire burning without any restriction and could worship fire. In Sind there was no restriction on the Hindus to worship in Temple or bowing before their idols. In short there was no compulsion in matter of religions.

In his book Tarihk Al-Tamaddan Al-Islami, Jarji Zaidan Editor of Al-Hilal of Egypt writes (Vol. 3 page 194) that one of the reasons of the hurried progress of the Mussalmans in the educational field was that the Caliphs of Islam had great regard for the Scholars of each nation and each religion and rewarded them generously. They never thought about their religion, lineage or race. Among them were people belonging to every religion i.e., Christian, Jews, Sabians, Samaritans and fire-worshippers. The Caliphs treated them with utmost respect and regard. The non-Muslims had the same freedom and status which the Muslims' Ameer and officers enjoyed.

At page 282 is given an example of the treatment of Haroonur Rashid and the tolerance shown by him towards the Christians. It is stated that "this tolerance was so strong that once being desperate of the successive breaches of promises of the Roman Caesar and the depredations at the border, he asked the Chief Justice, Imam Abu Yousaf, why the Churches of the Christians in the Islamic realm were

protected and who allowed them to take out processions of the Cross in the cities. Imam Abu Yousaf daringly replied that during the reign of Hazrat Umar after conquest of Roman Provinces, it was given in writing to the Christians that their Churches shall be protected and they had full right to practise their religion and to take out the Cross. Now it was not within the power of any one to abrogate this order.

It is well-known that Hazrat Umar refused to distribute the conquered land in possession of the Zimmis, (protected subjects) among the Muslim conquerors, notwithstanding their demand to the contrary. The covenant of amnesty given by Hazrat Umar to the residents of the Baitul Maqdas is a historical document, the relevant portions of which are as follows:—

“This amnesty is granted by Amirul Momineen, the slave of Allah to the people of Elia (إيليا). This amnesty covers their lives, property. Church, Cross, the healthy and the sick and all people of their religion. Their Churches shall not be inhabited nor shall be demolished nor their Crosses or properties shall be diminished. There will be no compulsion on them in the matter of religion”. (Tatikhe Tabri Vol. II Urdu translation by Syed Muhammad Ibrahim page 501; Covenant 357 pages 304, 305 of Siasi Wasiqa Jat by Dr. Muhammad Hamidullah; AI-Farooq by Shibli Numani Vol. II page 149).

Huzaifa Bin-llyaman gave a writing to the people of Madinar that their religion will not be changed and there will be no interference in their religious matters. (Tarikhe Tabri page 155).

On the occasion of the conquest of Jarjan it was stipulated in a contract that amnesty was given to their lives, property, religion and none of these things shall be changed (ibid page 155).

In the amnesty granted by the Holy Prophet ﷺ to the residents of Maqna, Hunain and Khyber it is stated that he

had come to know through a divine revelation that these three groups had returned to their houses. Let them return. "There is amnesty for them from Allah and his Prophet ﷺ. Not only there is amnesty for your lives but also your religion, property, slave and every thing that you own. In all these things you are under the protection of Allah and His Prophet ﷺ. Besides these the following other concessions are granted to them:—

1. Exemption from payment of Jazia.
2.
3.
4. Exemption from forced labour.
5. Exemption from participating in Military Manoeuvres.
6. Exemption from forcing them to vacate their houses for Military exigencies.
- 7 to 8.
9. Allowed to go out armed.
10. You can fight anyone who attacks you and in such light you will not be forced to pay the Diyat or be subject to retaliation for the murder of your enemy.
- 11 to 17.
18. There will be no restriction on your taking your dead bodies.
19. It is incumbent upon the family of the Prophet and all the Muslims to have full regard for your nobles.
- 20 to 21.
22. It is not permissible in Islam to force a man to become a Muslim.
- 23 to 26.

27. Whoever reads or listens to the subject of this letter and proposes alteration in it or opposes it is subject to condemnation from Allah. His Angels and the entire World..... I shall be his enemy (on the day of judgment).
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(Siasi Wasiqa Jat Covenant 34 pages 59 to 62).

Covenant No. 94 (ibid pages 96 to 98) is a covenant between the Prophet ﷺ and the Christians of Nijran. It contains most liberal conditions. The relevant conditions about religion are in Articles 8B and 9. The Prophet ﷺ made himself responsible for the freedom of their religion and for their soothsayers and religious leaders who lived in seclusion.

The covenant with Zaid bin Haris and other Christians of his community provided *inter-alia* for the complete freedom in matters of belief and practice of religion which was undertaken by the Holy Prophet ﷺ (Article 5) and "the protection of their Churches, places of worship, monastries places for rest of travellers whether in hills or plains or in dark caves or whether they are surrounded by populous places or are situated in the valleys or deserts" (Covenant No. 95 ibid page 109). "No Christian can be compelled to become a Muslim" (Article 23) "In religious discourse they should be treated well" (Article 24).

The Order of the Prophet ﷺ for the relatives of Salman Farsi, who were fire-worshippers (ibid page 331), granted similarly full protection in respect of their religion, (Article 8), "the restoration of their places of worship, their income and the freedom of their expansion and development (Article 4 ibid pages 334 and 335). "If a Christian is the wife of a Muslim she should be free to practise her religion and to consult her religious scholars

on matter (concerning religion). Whoever restrains his Christian wife from the practice of her religion is an opponent of this covenant from Allah and his Prophet and he is also a liar" (Article 35).

During his Caliphate Hazrat Umar gave a new amnesty to the people of Najran. He maintained all the facilities and concessions given to them by the Holy Prophet and gave them some additional specific concessions about the protection *inter-alia* of the manner of their worship, of their clergymen and hermits (Covenant No. 98 *ibid* 114, 115).

Sections 208 and 209 of the Muslim Conduct of State by Dr. Muhammad Hamidullah are as follows:—

"(208) The famous compendium of Hanafite law, viz. *al - bahr ur-Raiq*, is explicit that the graveyards of non-Muslims should be respected as much as those of Muslims; and just as their life, property and honour are respected in their life, so also their bones after their death. (209) Both Abu Hanifah and Ash-Shafi'iy agree that if non-Muslims wish to study the Holy Quran or the Hadith of the Prophet, or the Muslim law (*fiqh*), they cannot be prevented from that."

In section 200 of the book it is stated:

"Muslim law has maintained a considerable distinction between Muslim, and non-Muslim subjects. In many respects the latter are better off. They are exempt from the surplus property tax (*Zakat*) which all the Muslims male or female, young or old, pay every year at the rate of" 2-1/2% on their savings, above the minimum of 200 Dirhams (or about L 2 — 10). They are also exempt from conscription, whereas all Muslims are subject to compulsory military service. They enjoy a sort of autonomy, their cases are adjudicated by their co-religionists in accordance with their personal law. Their life and property is protected by the Muslim State even as those of the Muslim subjects."

In Tareekh-i-Afkar-i-Siyasat (تاریخ افکار سیاست) Abdul Waheed Khan writes at page 181 about the religious tolerance of Muslims:—

“Almost in every age religious tolerance has been a distinctive feature of the Muslim State. There are instances when some times religions restrictions on the Muslims were imposed by the Government and many a time Muslims had to suffer desperately when they were made to account for their religious beliefs (which may be in variance with the belief of the monarch). But the history is unable to furnish any example of the equality of treatment afforded to and the liberty in matters of religion enjoyed by non-Muslims as a subject of a Muslim State.”

He writes that in Islamic States there was complete religious liberty and members of different religions used to practise their religion in their own manners (according to their conscience). It was the duty of the Government to protect their places of worship. Some instances of oppressions suffered by Zimmis can be traced down to the time of Mutawaqqil Allah but one reason for it was that at that time non-Muslims had started conspiring against the established Government, and such conspiracies were held in their places of worship. It was for this reason that their movements had to be restricted and their dresses had to be prescribed by the Government. Otherwise Mutawaqqil Allah personally was absolutely an unorthodox person and was a supporter of religious tolerance.

He further writes that Abbasi Government went so far in religious tolerance that the followers of Maani who could not have any asylum in Iran although it was their own country (homeland), were permitted to propagate their ideas in Baghdad. Similiarly the learned people of India, Jews and Christian Missionaries used to propagate their religion in Islamic Countries without any restriction. During the Rule of Banu Ummayya the non-Muslims were appointed to high offices of the State but during the period of Banu Abbas a non-Muslim was appointed a Prime

Minister. The Prime Minister of Mohtashim i.e., Fazal bin Marwan was a Christian and during his tenure the entire management of Baitul Hikmat in which the books of different subjects were translated was in the hands of non-Muslims. The importance obtained by Jibrail family in the Court of Banu Abbas is a famous historical event.

Abdul Rahim in Muhammadan Jurisprudence (reprint 1958) refers at page 251 to a tradition of the Holy Prophet from Raddul Mukhtar, (Vol. III. page 319-20) 'Leave alone the non-Muslims and whatever they believe in'. It is on this principle that according to him Shafei verdict is that Muhammadan Law will abstain from interfering with a non-Muslim drinking alcohol while "in Abu Haneefa's opinion,.....the law will also uphold the sale of wine by a non-Muslim, and will hold a person who destroys it liable to damage. Similarly, according to him the law will not interfere with a Magian subject of the Muslim State marrying a person within the prohibited degrees of relationship as reckoned in Islam, and the Court will, if called by the wife, pass a decree against him for her maintenance."

In his book 'Islami Riyasat' Maulana Maudoodi Stated that:

"Zimmis are of two types. Firstly those who while achieving the guarantee from the Muslim State entered into a contract with it and secondly those who obtained the guarantee without such contract. The first type of Zimmis will be governed by the terms of the contract. So far as the second kind of Zimmis is concerned, it is clearly implied that 'we shall safeguard their lives, property and honour in the same manner as we protect our own lives, property or honour. The price of their blood will be the same as the price of the blood of Muslims. They will have perfect liberty to profess and practise their religion. Their places of worship will be immune. They will have a right to arrange for their religious education and the Islamic education will not be thrust upon them." (page 523).

It is clear from the Verses of the Holy Quran, the covenants of the Holy Prophet and his successors and the conduct of the other Muslim Caliphs in history that the non-Muslims enjoyed such concessions in those days which have not been provided by the Colonialists to their subjects in some countries till recently. In fact, such rights have not been provided by many states to their citizens. In respect of practising and professing off their religion the non-Muslims enjoyed full freedom and the right to profess and practise the religion was treated as virtually a fundamental human right.

Islam teaches absolute tolerance in matters of religion and leaves it to the conscience of a man to accept the religion of Islam. No compulsion in this respect is allowed in Islam. A person may believe or may not believe. Even the Holy Prophet ﷺ was not empowered to interfere with his belief except that his function was to take the message to him and explain the same, and give good news of paradise if he believed and to give bad news of hell if he disbelieved, (the last is his function in his capacity as (Bashir-un-Nazira).

All these arguments are however hardly relevant since the impugned Law does not force the Qadianis to change their belief and to be converted to Islam.

Faced with this situation Mr. Mujeebur Rehman complained that the Qadianis are restrained from professing Islam as their religion and they have been deprived of the right to call Azan which is a part of the religion and to call their places of worship as Masjid. But they are neither Muslims nor are these matters covered by the principle of Ikrah or force or threat to which these verses apply. The verses apply to conversion to Islam from an other religion.

Mr. Mujeebur Rehman discussed the binding nature of Covenants according to the Holy Quran and the Sunnah. It is not necessary to deal with these arguments since the Injunctions of (او فوا بالعقود) (fulfil your contract and (او فوا بالعهد) (fulfil your covenant) leave no doubt about the correctness

of this proposition. The best instance of this is of the treaty of Hudaibiya in which one of the conditions agreed upon by both parties was that if any Muslim who was with the polytheists of Makkah went with-out their permission to the Muslims, he would be returned to the Makkans. There were instances in which Muslims who were maltreated and tortured by the Makkans escaped and reached Madina but they were ordered by the Holy Prophet to return because of his obligations to the stipulations in the treaty.

Mr. Mujeebur Rehman argued that at the time of the establishment of Pakistan there was virtually a Covenant between Quaid-i-Azam and the Ahmadis and the declaration of Quaid-i-Azam about the complete equality in Pakistan of Muslim and non-Muslims and their freedom interalia of professing and practising their religion amounted to an implied contract or warranty, which were included or implied in different Constitutions of the Country upto 1973. The Constitutions guaranteed the right of all citizens of Pakistan to profess practise and propagate their religions and upto 1974 they did not declare the Quadianis non-Muslims.

No covenant between the Quadianis and Quaid-e-Azam was known to us that they shall be treated as Muslims nor this question arose at the time of establishment of Pakistan or during the life time of Quaid-e-Azam. No reliance can be placed upon the Constitutions of 1956, 1962 and the original Constitution of 1973 since the Quadianis were declared non-Muslims by a Constitutional amendment which was unanimously passed and which was the result of series of agitations by Muslims. It declared the Quadianis non-Muslims.

In order to understand the necessity for the enforcement of this Ordinance it would be necessary to consider the effect of the Constitutional amendment of 1974 by which the Quadianis were declared non-Muslims. The view put forth with vehemence by Mr. Mujibur Rehman was that the Constitution merely declared the Quadianis as non-Muslims but did not impose any liability upon them to

treat themselves as non-Muslims. We posed a question to him whether the Constitution was binding upon the Qadiani citizens of Pakistan or not. He agreed that it was binding on them. It would follow from this concession that the Qadianis are bound by the declaration that according to the Constitution and the law they are non-Muslims. They can be candidates in elections to the National and the Provincial Assemblies for seats reserved for non-Muslims. In suits involving question of their faith they must call themselves non-Muslims. No legal right can be claimed by them on the assumption of their being Muslims. Their insistence on calling themselves Muslims while arguing this petition is clearly unconstitutional.

Article 260 (3) declares the Qadianis as non-Muslims for the purpose of the Constitution and the law. Article 20 guarantees to the citizens of Pakistan the right *inter-alia* to profess their religion. This Article is no doubt subject to the other provisions of the Constitution. This point was in fact conceded by Mr. Mujibur Rehman. Read with Article 260(3) of the Constitution, the above provision of Article 20 will mean that the Qadianis can profess that they believe in the unity of Allah and/or the prophethood of Mirza Sahib, but they cannot profess themselves to be Muslims or their faith to be Islam. Inadvertently in the short order certain observations have crept in, but the position has been fully explained in this comprehensive judgment. It is not, therefore, correct to urge that the Constitution does not oblige them to call themselves non-Muslims.

The whole difficulty in this case arose because of the conduct of the Qadianis that despite their obligation not to call themselves Muslims or their faith as Islam, they persisted in calling themselves Muslims and carrying on their propaganda and preaching in the name of Islam. They should have refrained from directly or indirectly posing as Muslims but they obstinately persevered in trying the patience of the Muslim Ummah by acting contrarily.

One of the reasons for banning the use of epithets which are exclusive for the companions of the Prophet ۱۲۵

his wives and the members of his family is that by their use the Qadianis indirectly pose as Muslims. The expressions Ummul Mumineen (mother of the Muslims) Ameer ul Momineen, Khalifatul Muslimeen, Khalifat ul Momineen (all denoting Head or Chief of the Muslim Ummah) include the words Momineen (Muslims) or Muslimeen which may deceive the people that the bearers of such names are or call themselves Muslims. The expression 'Razi allah anho' is used in the Quran as a form of blessing for the companions of the Holy Prophet ﷺ or at most for the Muslims. The words 'Sahabi' and ahl-e-bait' are used by the Muslims for the companions and members of the family of the holy Prophet respectively all of whom were the best of Muslims. The use of such terms in respect of the companions or members of the family of Mirza Sahib means that the Qadianis are posing as Muslims. The other point no doubt is that in the view of the Muslims the use of such sacred expressions by the Qadianis in respect of the wife, members of the family, companions and successors of Mirza Sahib amounts to defiling them.

Similarly calling of Azan and the naming of Masjid for the place of worship is considered as sure sign of the person calling 'Azan' or of the persons calling 'Azan' or of the persons congregating or praying in the mosque (Masjid) is being Muslims.

The provisions banning the use of these epithets and expressions is in implementation of the Constitutional provision and a consequence of the reiteration in this Ordinance of the principle that Qadianis cannot call themselves or pose to be Muslims in any manner directly or indirectly.

The ban on preaching of religion is motivated by similar considerations.

The Qadianis achieved some little success among members of the Muslim Ummah mainly in the Punjab because of their strategy of calling themselves Muslims and assuring them that acceptance of Ahmadism did not mean relinquishment of Islam or conversion from belief to

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

We are in agreement with Professor Tahir ul Qadri that if the Quadianis had taken steps to implement the Constitutional provisions the promulgation of this Ordinance might not have been required. This is one reason why the propagation of the religion had to be banned.

Another important reason was that the Quadianis by posing themselves as Muslims try to propagate their religion to every Muslim they come across. They outrage his feelings by calling Mirza Sahib a Prophet because every Muslim believes in the finality of prophethood of Muhammad ﷺ. This creates a feeling of resentment and hostility among the Muslims which gives rise to law and order problem. His claim of being a Promised Messiah and Mehdi was also resented. This is not a mere claim. It would be clear from the history of Quadianism - in fact from the books of Mirza Sahib himself - that he had to face considerable hostility at the hands of not only the Ulema but also of the general body of Muslims. His writings are therefore couched in the most un-complementary and abusive language for his opponents. There were events when there were mass protests. See for instance Hayat Tayyiba by Abdul Qadir pages 121, 126, 140. Most of the writings of Mirza Sahib are full of imprecations and abuses for his opponents. He also mentioned the hostility of the Muslims generally to him. (See Hammamat

ul Bushra, page 33; Izala-i-Auham, page II). At page 35 of Hammamat ul Bushra, he wrote :

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

Some events caused such a tremor and shock that they were called earthquakes by the followers of Mirza Sahib. According to the enumeration of the compiler of Seerat-ul-Mehdi, there were five such earthquakes.

- (i) The first tremor which shook Ahmadism was the birth of a daughter in 1886 after the prediction by Mirza Sahib about the birth of the promised son during the same pregnancy.
- (ii) The second tremor was caused by the death of the son who was born after the daughter.
- (iii) The third one which staggered the Muslims of India was the claim of being the Promised Messiah and Mehdi.
- (iv) The fourth tremor was caused by the non fulfilment of the prediction about the death of Atham.
- (v) The fifth was the one caused by the death of Mirza Sahib (much before Molvdi Sanaullah and also of a fatal disease which was said to be Cholera, a death which according to the principle enunciated by Mirza Sahib was reserved for those who are forsaken by God and who invent lies against Him). (Seert-ul-Mehdi, No. 113 pages 86 to 90).

This enumeration is based on a prediction said to have been made by Mirza Sahib about five earthquakes. But if

each of these events be treated to be an earthquake within the meaning of that prediction, the enumeration is decidedly incomplete. The ridicule faced by Mirza Sahib over his failure to marry Mohammadi Begum was seismologically of much longer duration and of successive tremors. Similarly the opposition and hostility faced by Mirza Sahib on his claim of prophethood had been such that its intensity is undiminished till today. The first, second, fourth, fifth earthquake and the episode of Mohammadi Begum made Mirza Sahib the object of ridicule derision and banter for the Muslims, Christians and Hindus alike. The claim of being the Promised Messiah and Mehdi in 1891 and of being a Prophet or the manifestation of the Holy Prophet engendered lasting hostility, indignation, condemnation and censure among the Muslim masses, religious scholars and intelligent alike (see Seert-ul-Mehdi Vol. 1 pages 86 to 90; Vol. 2. pages 44, 64, 87, Vol. 3, page 94).

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

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

The expressions Ummul Momineen, Ahle-Bait, Sahabi, Ameerul Momineen, Khalifat-ul-Momineen and Khalifat-ul-Muslimeen were exclusively used by the Muslims for the family of the Prophet for the wives of the Prophet, for the companions of the Prophet and for those rightful Caliphs who ruled after the Prophet respectively. These very expressions which according to the Muslims were limited only for those superior personalities and those who were blessed with the association and society of the

Holy Prophet ﷺ are used by the Quadianis in respect of the wife, family and companions of Mirza Sahib who were held non-Muslims. This has always been resented by the Muslims. It was for this reason that the Ordinance made the use of such expressions by Quadianis, a criminal offence.

The expressions Ummahatul Momineen or Ummul Momineen and the word Azwajul Mutaharrat were used exclusively for the wives of the Prophet and this exclusive use has the sanction of the Holy Quran behind it. In regard to the wives of the Prophet it is said in the Quran (Q. 33 : 6) (وازرأجه أمهتهن). (his wives are their mothers). Similarly there are a number of traditions in which each wife of the Prophet was called Ummul Momineen (the mother of the Muslims). They are mothers of the Muslims in addition to each Muslims' natural mother and his foster mother (See Q. 4 : 23). The reason for this relationship is firstly the superiority of the wives of the Prophet over all the women and secondly the prohibition against marriage with any wife of the Prophet after him.

In verse Q. 33 : 32 it is said (ينساء النبي لسنن كاحد من النساء) (o wives of the Prophet you are not like all other women). Similarly in verse Q. 33 : 30 it is stated (ينساء النبي من بات منكن) (يا حاشة مبينة يضعف لها العذاب ضعفين)

(O. wives of the Prophet if you commit any act of indiscretion its punishment in the hereafter will be double of the punishment of the others and this is very easy for Allah).

These two verses clearly establish that the wives of the Holy Prophet ﷺ are not like other women. This is one reason why they have been given the name of Ummul Momineen or Azwajul Mutaharrat. This should also be kept in mind that the wives of the Holy Prophet ﷺ were left without any inheritance on account of the dictum that Ummah inherits the Prophet of Allah. Thus they were left

without any income to support" them. They lived during his life time in a state of absolute penury. In spite of this if they had money or edible in their homes they would prefer to give it in charity to a needy than satisfy their own wants.

Once they made certain demands. Soon came the warning from God. He gave them the choice to live a hard life or be divorced on payment of worldly goods and money (Q. 33 : 28). They, however, opted for the blessed association of the Holy Prophet ﷺ. Among these wives of the Holy Prophet there were some who had seen affluence because they belonged to rich families for example, Hazrat Sauda, Hazrat Safia, Hazrat Juwairya and Hazrat Umme Habiba. But they also preferred to live in a state of penury and want rather than leave the Holy Prophet ﷺ. It is impossible to compare these high personalities with any other woman and encroach upon their title for some other woman.

The other expression of 'Ahle Bait' from the use of which the Quadianis have been stopped is in respect of the members of the family of the Holy Prophet ﷺ. In Q. 11 : 73 it is said (رحمة الله وبركاته عليكم اهل البيت) (Allah's blessings be upon you 'O members of the family'). It is said in Q. 33 : 33

"انما يريد الله ليذهب عنكم الرجس اهل البيت و يطهركم تطهيرا"

(O, members of the family of the Prophet Allah wishes to remove from you all that is dirty and wants to cleans you with a thorough cleaning).

The object of these orders was to inform the family of the Prophet that they should remain away from all types of sins and disobedience and should maintain purity and cleanliness in matters of faith, action and manners.

It is clear from the Quran that these were the qualities of the members of the family of the Holy Prophet ﷺ, otherwise the son of Noah was not considered to be a member of his family because of his disobedience to the Injunctions of Allah. Verses 45 and 46 of Surah Hood (Q. 11 : 45, 46). read as follows:

"و نادى نوح ربه فقال رب ان ابني من اهلي وان وعدك الحق وانت احكم الحاكمين . قال يوح انه ليس من اهلك انه عمل غير صالح ، فلا تسئلن ما ليس لك به علم ، انى اعظك ان تكون من الجاهلين"

Noah cried unto His Lord and said : My Lord! Lo! my son is of my household! Surely Thy promise is the Truth and Thou art the Most Just of Judges. He said : Oh Noah ! he is not of thy household: Lo! he is of evil conduct).

The expression "Ahle Bait" is also exclusive for the members of the family of the Holy Prophet as would be evident from several traditions.

Those persons who are not Muslims or who have not been Muslims cannot be called by this name. The use of such name by the Quadianis for the members of the family of Mirza Sahib is nothing but adding insult to injury ; no other person can have the same qualities as the members of the family of the Holy Prophet ﷺ possessed. It is not therefore, surprising that the Muslims resented this insult. The use of the expression tends to create law and order situation and consequently it was in the interest of the Ummah to prevent the Quadianis from the use of this name by making its use by them a criminal offence.

The expression 'Raziullah Ahno, (رضى الله عنه) means God is well pleased with him. There is sufficient guidance in the Quran about those for whom this expression can be used. The following are the relevant Verses Q. 9 : 100, Q. 48 : 18 and Q. 58 : 22 : —

(Q. 9 : 100)

"والسابقون الاولون من المهاجرين و الانصار والذين اتبعوهم باحسان ، رضى الله عنهم ورضوا عنه واعد لهم جنت تجري تحتها الانهر خالدين فيها ابدآ ، ذلك الفوز العظيم"

Q. 9 : 100 And the first to lead the way, of the Muhajirin and the Ansar, and those who followed them in

goodness-Allah is well pleased with them and they are well pleased with Him, and He hath made ready for them Gardens underneath which rivers flow, where in they will abide for ever : That is the Supreme triumph.

Q. 48 : 18

"لقد رضى الله عن المؤمنين اذ يبايعونك تحت الشجرة فعلم ما فى قلوبهم فانزل السكينة عليهم واثبهم فتحاً قريباً"

Q. 48 : 18 Allah was well pleased with the believers when they swore allegiance unto thee beneath the tree, and He knew what was in their hearts, and He sent down peace of reassurance on them, and hath rewarded them with a near victory

Q. 58 : 22

"لا تجد قوما يؤمنون بالله واليوم الآخر يوادون من حاد الله ورسوله ولو كانوا آباءهم او ابناءهم او اخوانهم او عشيرتهم اولئك كتب فى قلوبهم الايمان وايدهم بروح منه و يدخلهم جنت تجرى من تحتها الانهر خلدين فيها ، رضى الله عنهم و رضوانه اولئك حزب الله ، الا ان حزب الله هم المفلحون"

Q. 58 : 22 Thou will not find folk who believe in Allah and the Last Day loving those who oppose Allah and His messenger, even though they be their fathers or their sons or their brethren or their clan. As for such, He hath written faith upon their hearts and hath strengthened them with a Spirit from Him, and he will bring them into Gardens underneath which rivers flow, wherein they will abide. Allah is well pleased with them, and they are well pleased with Him. They are Allah's party. Lo! is it not Allah's party who are the successful?

It is clear from these verses that Allah gave this good news to either companions of the Holy Prophet ﷺ or to

Momineen (believers). The expression 'Raziullah Anho' cannot be used for non-Muslims with whom Allah cannot be pleased. The heretic and Kafir has no share in this good news. For them the news is that they shall remain in hell rather than in paradise. In these circumstances it is not possible to lay down any such principle under which the heretic may also be able to use it. The established principle in Islam is that Allah will not forgive the unbelievers though forgiveness is prayed for them by Muslims. See Q. 9 : 80, Q. 63 : 6 and Q. 9 : 114 which are reproduced below :—

Q. 9 : 80

"استغفرهم او لا تستغفر لهم ، ان تستغفر لهم سبعين مرة فلن يغفر

الله لهم ، ذلك بانهم كفروا بالله ورسوله والله لا يهدي القوم الفاسقين"

Q. 9 : 80 Ask forgiveness for them (O Muhammad), or ask not forgiveness for them though thou ask forgiveness for them seventy times, Allah will not forgive them. That is because they disbelieved in Allah and His messenger, and Allah guideth not wrongdoing folk.

Q. 63 : 6

"سواء عليهم استغفرت لهم ام لم تستغفر لهم ، لن يغفر الله لهم ،

ان الله لا يهدي القوم الفاسقين"

Q. 63 : 6 Whether thou ask forgiveness for them or ask not forgiveness for them, Allah will not forgive them. Lo! Allah guideth not the evilliving folk.

Q. 9 : 114

"وما كان استغفار ابراهيم لابيهِ الا عن موعدة و عدها اياه ،

فلما تبين له انه عدو لله تبرأ منه ، ان ابراهيم لاواه حلیم"

Q. 9 : 114 The prayer of Abraham for the forgiveness of his father was only because of a promise he had promised him, but when it had become clear unto him that he (his father) was an enemy to Allah he (Abraham) disowned him. Lo! Abraham was soft of heart, long-suffering.

It would be evident from these verses that those who are not to be excused cannot hope that Allah will be pleased with them.

Mr. Mujeebur Rehman showed us a number of books in regard to Sufis and other Muslims for whom this expression was used. But this cannot be helpful to him because as stated above it can be used for the believers. It was not denied that this expression was not used by non-Muslims. This is sufficient answer to his arguments.

The other disputed expression is 'Sahabi'. This word has admittedly been used for the companions of the Holy Prophet ﷺ and not for non-Muslims. But the Qadianis used it for the companions of Mirza Sahib.

The meanings of this term were explained by Allama Sakhawi. "Abul Hussain writes in Motamad that 'Sahabi' is a person who has remained associated for long with the Holy Prophet ﷺ as a follower and acquired knowledge from him". (Path ul Mughees page 371).

Sahabi was therefore that fortunate person who had the good luck to associate with the Holy Prophet ﷺ as believer and who died as a believer. (See Mulakhkhas Isaba, Vol. I, page 19 and Usd-ul Ghaba Vol. I pages, 18, 19). A person who associates with one who is called a false Prophet, cannot be called by that special and technical name.

It is worthwhile noticing that the Holy Prophet ﷺ said

"وخير القرون قرني ثم الذين يلونهم ثم الذين يلونهم"

The tradition mentions three generations who are known as Sababa, Tabaeen and Taba Tabaeen. From this tradition also it is evident that Sahabi was a person who had association with the Holy Prophet ﷺ, Tabaeen were those persons who came after the companions and did not see the Holy Prophet ﷺ and Taba Tabaeen were those persons who followed the Tabaeen. The important

consideration of condition for being a Sahabi as stated above is that he must have met the Holy Prophet ﷺ. He must have met him as a believer and then died as a believer and not in unbelief.

The other expressions are Ameerul Momineen, Khalifatul Muslimeen, Khalifatul Momineen. These three expressions which include the words Momineen and Muslimeen (believers) are obviously exclusive for Muslims. It is a well known qualification of the highest office holder whether he is called by the name of President, or by the name of Prime Minister, King, Khalifatul Momineen, Khalifatul Muslimeen or Ameerul Momineen, that he should be a Muslim. Hazrat Abu Bakr had adopted the title of Khalifato Rasoolilla. Although every man is a Khalifat Ullah (Deputy of Allah on this earth) but Hazrat Abu Bakr only assumed the title of Khalifato Raso olillah. When the second Caliph took the reigns of Caliphate he thought that he would call himself Khalifato Khalifate Rasoolillah which means that he was to be a successor of the successor of the Holy Prophet ﷺ. But it was felt that if the word Khalifa (successor) is joined to the title of each succeeding ruler the title would go on elongating. Hazrat Umar therefore took the title of Ameerul Momineen. (Islam Ka Nizame Hukumat, pages 244, 245). The title of Ameerul Momineen or Khalifatul Muslimeen or Khalifatul Momineen thus became a title which was exceptional and exclusive for only rulers among the Muslims. No Muslim would like that this title be adopted by persons who are non-Muslims or who secede from the Muslim Ummah. It is for this reason and particularly on account of the hostility of the Muslims towards the Qadianis for the use of these epithets and expressions that this Ordinance was promulgated.

Mr. Mujeebur Rehman argued that the expression 'Raziullah Anho' was used for several Sufis, Sanits. The expressions Ameerul Momineen was used for Imam Malik who was called Ameerul Momineen fil Hadith and for Nizam of Hyderabad, the word Ummal Momineen was used for a female disciple of a Saint.

These arguments are besides the point. The stray use of such terminology for Muslims or for Saints among them was not taken exception to because at least all the persons for whom it was used were Muslims and not unbelievers, secondly it was not done for the purpose of imitating the Holy Prophet ﷺ, thirdly these examples were stray.

The use of such expressions by the Qadianis is based on the principle that Mirza Sahib was the manifestation of the Holy Prophet ﷺ and his alleged advent is the second advent of the Holy Prophet ﷺ. Consequently his companions, his wife, his members of the family and his successors are entitled to the same respect and recognition as the companions, the wives, the members of the family, the successors of the Holy Prophet ﷺ. If Mirza Sahib is Muhammad his companions are the Companions of the Holy Prophet ﷺ (Alfazel Qadian Vol. 3 No. 8 dated 15th July 1915 taken from Qadiani Mazhab, page 353).

Mirza Sahib is more specific. He said My person became his personality (صار وجودى وجوده) whoever enters my group entered the body of the Companions of the Holy Prophet ﷺ. (Khutaba-i-Ilhamia pages 258, 259).

The impugned Ordinance in this respect is fully justified.

The next question is about the ban on Azan. The Ordinance prohibits the non-Muslims i.e. Qadianis from calling persons to prayers by the formula of Azan. The word Azan means to call. Mo'azzan is the person who calls. These Dictionary meanings are clearly established from a reading of Verses Q.7 : 44, Q. 12 : 70 and Q. 22 : 27.

The Holy Quran says —

Q. 7 : 44

"قالوا نعم فاذن مودن بينهم ان لعنة الله على الظلمين"

And a crier in between them crieth: The curse of Allah is on evil-doers :

Q. 12 : 70

"ثم اذن مؤذن ايها العير انكم لسارقون"

And then a crier cried : O camel-riders! Ye are surely thieves?

Q. 22 : 27

"واذن في الناس بال الحج ياتوك رجالاً وعلى كل ضامر ياتين من

كل فج عميق"

And proclaim unto mankind the pilgrimage. They will come unto thee on foot and on every lean camel ; they will come from every deep ravin:

In these three verses the word Azzana (oil) of which Azan is a noun has been used in the meaning of call. The call is for information. The word Mo'azzin has been used in the sense of caller. These are the dictionary meanings of the words Azzana, Azan and Mo'azzin.

In the words (نودى للصلاة) in Q. 62 : 9 (when call is given for prayer) the reference is to the mode of call for prayer which is known as Azan. It is for this reason that these words were translated as 'when Azan is given'. The verse and its translation is as follows: —

"يا ايها الذين آمنوا اذا نودى الصلاة من يوم الجمعة فاسعوا الى

ذكر الله وذروا البيع ، ذالكم خير لكم ان كنتم تعلمون"

Q. 62 : 9. O ye who believe ! when the call is given (Azan) for the prayer of the day of congregation, haste unto the remembrance of Allah and leave your trading. That is better for you if ye did but know.

There was no concept of Azan before Hijrah. After the Hijrah people were called for prayer by a person calling (الصلاة جاعة) which connoted that the prayer was about to be offered. The Holy Prophet ﷺ gave importance to the order for calling for prayer. Three companions namely Hazrat

Abu Bakr, Hazrat Omar and Hazrat Abdullah bin Zaid dreamt about the manner of Azan. Out of three dreams, the dreams of Hazrat Abdullah bin Zaid and Hazrat Omer are well known. Hazrat Abdullah bin Zaid informed the Holy Prophet ﷺ about the dream on the same night but Hazrat Omar informed him in the morning. The Holy Prophet ﷺ directed Hazrat Bilal to call people for prayer by Azan from that day. Later the words (الصلوة خير من النوم) (prayer is better than sleep) were added in the Azan for morning prayer by Hazrat Bilal and the Holy Prophet ﷺ approved it. (Al-Jamiu-li-Ahkam-il-Quran (الجامع لاحكام القرآن) by Qurtubi, Vol. 6 page 225).

There is a difference of opinion about the necessity of Azan. However, as Abu Omer said Azan is the distinguishing characteristic or sign between Darul Islam and Darul Harb (ibid).

It is one of the characteristics, token or distinguishing mark [Aalamud-din (اعلام الدين)]. It is, therefore, considered to be a Shia'ar meaning distinguishing characteristic of the Muslims [Behrur Rai'q (بحر الرائق)] by Ibn Nujaim, Vol. I, page 240). It is said that there is a consensus on the point that it is a Shia'ar (distinguishing feature) of Islam (Fatawa Qazi Khan on the margin of Fatawa-e-Alamgeeri, Hujjatullah il Bahgha by Shah Wali Ullah, Vol. 1, page 474).

The following arguments will be sufficient for its being a Shia'ar: —

- (1) During the time of the Holy Prophet ﷺ the well-known methods for calling people to their places of worship were —
 - (a) the blowing of horn ;
 - (b) the ringing of bell ; and
 - (c) the lighting of fire.

But none of these manners was approved by the Holy Prophet ﷺ; he ultimately approved the manner of call by Azan.

- (2) The principle in Islam is that a person calling Azan shall be treated to be a Muslim unless proved otherwise. It is reported on the authority of the father of Ibne Hassam Madani who said that "the Holy Prophet ﷺ sent us with a raiding party and directed us that when you see a Mosque and listen to the voice of a person calling Azan, do not assassinate anyone (Sunan Abi Daud, page 361). This Hadith is also reported in Sahih Bukhari, Vol. I, page 86) on the authority of Hazrat Anas.

- (3) There is another tradition of Hazrat Anas:

"عن انس ان النبي صلى الله عليه وسلم كان يغير عند صلوة الصبح وكان يستمع فاذا سمع اذانا امسك والا اغار"

("The Holy Prophet ﷺ attacked the enemy at the time of morning prayers he would stop if he heard from that place the call of Azan otherwise he would attack) (Sunan-e-Abi Daud, Vol. I, page 354, also Mishkat, Vol. I, page 160 (Urdu translation).

The reason for the direction of the Holy Prophet ﷺ in the first Hadith and his own conduct in restraining himself from attack on hearing Azan is that Azan bears a presumption that the persons living in the locality are Muslims who were immune from attack.

The Jurists have for this reason taken the view that whoever calls Azan should be treated to be a Muslim. If people give evidence in respect of a Zimmi (protected non-Muslims) that he had called Azan he should be treated as a Muslim (Bahrur Raiq, Vol. I, by Ibne Nujaim, page 279, Raddul Mukhtar by Ibne Aabideen, Vol. 1, page 353).

In view of these opinions, Mr. Mujeebur Rehman argued that a person who calls Azan should be treated as a Muslim. But this argument is not correct since the object of the above tradition is only to the effect that by the calling of Azan there should be a presumption in favour of one being a Muslim but this presumption is rebuttable; it is not conclusive. If ultimately it is found that the person calling Azan is really a non-Muslim or his beliefs become evident which prove him a non-Muslim he cannot be allowed to take advantage of calling Azan and claim to be entitled to be called Muslim on that account only. It is clarified in Raddul Mukhtar, Vol. I, page 279, that the call of Azan by Moazzin in a Mosque raises a presumption of his being a Muslim because he is allowed to call it usually, meaning thereby that if he had been a non-Muslim he would not have been allowed by those who offered prayer in the Mosque to call Azan. It is, however, clarified that the Azan by a Kafir is not at all correct. From this it can be concluded that a person does not become Muslim only by calling Azan. Weighty presumption in favour of Islam shall arise if he does it by habit and also believes in the unity of Allah and the Prophethood of the Holy Prophet ﷺ.

Now we may take up the argument of Mr. Mujibur Rehman. He relied upon the above traditions of the Holy Prophet ﷺ and Verse 4 : 94 which is as follows:

"يا ايها الذين امنوا اذا ضربتم في سبيل الله فتبينوا ولا تقولوا لمن القى اليكم السلام لست مؤمناً تبغون عرض الحياة الدنيا فعند الله مغانم كثيرة كذلك كنتم من قبل فمن الله عليكم فتبينوا ، ان الله كان بما تعملون خبيراً"

Q. 4 : 94 O ye who believe! when ye go forth (to fight) in the way of Allah, be careful to clarify the truth or found not the truth, and say not unto one who offereth you peace : "Thou art not a believer," seeking the chance-profits of this life (so that ye may despoil him). With Allah are plenteous spoils. Even thus (as he now is) were ye before ; but Allah hath since (been) gracious unto you. Therefore take care to discriminate Allah is ever informed of what ye do.

The answer to this argument is in the verse itself. The word (تینوا) (clarify the truth or find out the truth) wishing like a Muslim or saying there is no God but God or calling Azan or praying in what is like a Masjid may raise a presumption about one's being a Muslim but it is rebuttable, which means that if there is proof in rebuttal he should not be called Momin or Muslim.

Professor Tahir ul Qadri submitted that the Book of Allah discriminates between righteousness and inequity and relied upon verses Q. 25 : 1; Q. 41 :34; Q. 5 : 100; Q. 35 : 22; Q. 59 : 20; Q. 34 : 4, Q. 57 : 10; 32 : 18. The Muslims and Momins have been defined and their qualifications described. Just as it is not possible to call unrighteousness by the name of righteousness or evil by the name of good so it cannot be permissible to call a non-Muslim by the name of Muslim and vice versa. There is a well-known Hadis that if some one calls a person an infidel (kafir) and he is not an unbeliever the heresy will turn towards the false accuser. There is no reason why a non-Muslim should be called a believer or Muslim. The argument is unexceptionable.

Mr. Mujebur Rehman conceded that Azan is a Shia'ar of the Muslims but submitted that it is the Shia'ar of Quadianis also. Where the same Shia'ar is common to both, the matter would be governed by verse Q. 5 : 2 and Q. 3 : 64. They are as follows:—

"يا ايها الذين امنوا لا تحلوا شعائر الله ولا الشهر الحرام ولا الهدى ولا القلاند ولا آمين البيت الحرام يبتغون فضلاً من ربهم و رضواناً ، واذا حللتم فاصطادوا ، ولا يجزمنكم شان قوم ان صدوكم عن المسجد الحرام ان تعتدوا ، وتعاونوا على البر والتقوى ، ولا تعاونوا على الاثم والعدوان واتقوا الله ان الله شديد العقاب"

Q. 5 : 2. O ye who believe! Profane not Allah's monuments nor the offerings nor the garlands, nor those repairing to the Sacred House, seeking the grace and pleasure

of Allah. But when ye have left the Sacred territory, then go hunting (if ye will). And let not your hatred of a folk who (once) stopped your going to the inviolable place of Worship seduce you to transgress : But help ye one another unto righteousness and pious duty. Help not one another unto sin and transgression, but keep your duty to Allah. Lo ! Allah is severe in punishment.

Q. 3 : 64

"قل يا اهل الكتاب تعالوا الى كلمة سواء بينا وبينكم الا نعبد الا الله ولا نشرك به شيئاً ولا يتخذ بعضنا بعضاً ارباباً من دون الله ؕ فان تولوا فقولوا اشهدوا بانا مسلمون"

Q. 3 : 64. Say ; O People of the Scripture ! Come to what is (acknowledged) to be common between us and you ; that we shall worship none, but Allah, and that we shall ascribe no partner unto Him, and that none of us shall take others for lords besides Allah, And if they turn away, then say : Bear witness that we are they who have surrendered (unto Him).

It may be stated the words (تعالوا الى كلمة سواء بينا وبينكم) have been translated "come to an agreement between us and you" by Pickthall. This translation is not correct because the reference is to something equally common in this verse and not to any agreement. The Urdu translation by Maulana Fateh Muhammad is, however, un-exceptionable and it is reflected in the translation given above.

The argument of Mr. Mujeebur Rehman is that what is good and common between the Qadianis and the Muslims should not be interfered with because it is Kalimatin Sawain (كلمة سواء) between them. For the interpretation of the expression Kalimatin Sawain (كلمة سواء) he referred to Madarik-ul-Tanzeel, Vol. I, page 22. It is said that Kalimatin Sawain (كلمة سواء) (something equal) means such a thing which is equal "between us and you" and in respect

of which there is no opposition between Torah, Bible and the Quran. Kalma means that we should not worship anyone except Allah. Ibn e Kaseer said that Kalimat in Sawain (كلمة سواء) means to worship one God and this has been the common call off all the Prophets (Tafseer Ibne Kaseer (Urdu), Vol. 1, c 76).

According to Addurrul Mansur by Suyuti (Vol. 2, page 40) by Kalmatin Sawain (كلمة سواء) is meant that "There is no god but Allah." Mufti Muhammad Shafi said about Kalimat in Sawain (كلمة سواء) that on this people should join. From this Mr. Mujeeb-ur-Rehman deduced that it cannot be made a punishable offence.

In Chapter 41, verse 33 it is stated —

Q. 41:33

"ومن احسن قولاً لمن دعا الى الله وعمل صالحاً وقال انى

من المسلمين"

Q. 41 : 33 And who is better in speech than him who prayeth unto his Lord and doth right, and saith : I.o! I am of those who surrender (unto Him).

The reason for revelation of this verse was, as stated by Al-Qalbi that when the Moazzin called Azan and the Muslims stood for offering their prayers the Jews used to cut jokes and used insulting language in respect of Moazzin. They scoffed at his voice. In this verse, therefore, Azan has been stated to be (احسن قول) (most pleasant utterance or best utterance. (Qurtubi, Vol. 6 pages 224 and 225).

It has already been seen that the Azan of a non-Muslim is not Azan and consequently the expression most pleasant utterance cannot be applied to it. The above verse defines a Momin or Muslim which leaves no doubt that Azan is a (احسن قول) (most pleasant utterance) only when called by a Muslim since it qualifies for being so called alongwith the caller's good action and his faith as a Muslim.

There was a controversy before the Court as it has always been on the reason of revelation of verse Q. 5 : 2. The question is whether the Shia'ar (signs) of Allah referred to therein were the characteristics or signs of the polytheists or they were of Muslims. Mr. Mujeebur Rehman quoted authorities from the opinion of the commentators for supporting the view that the characteristics or Shaa'ir referred to in this verse were of the polytheists but Mr. Riazul Hasan Gilani relied upon the other set of opinions. The opinion of Pir Muhammad Karam Shah, now a Judge of the Supreme Court Shariat Bench in his well-known commentary Ziaul Quran favours the opinion of Mr. Mujeebur Rehman.

There are some views that this verse has been abrogated. Mr. Mujeebur Rehman argued that the portion of the verse (لا تحلوا شعائر الله) was never abrogated.

It is not necessary to enter into this controversy. If the verse related to the characteristics or Shaa'ir of non-Muslims about taking animals for slaughter in Mina at the time of Hajj, a different order was passed in Q. 9: 28 which is as follows:

Q. 9 : 28

"يا ايها الذين امنوا انما المشركون نجس فلا يقربوا المسجد الحرام بعد عامهم هذا وان خفتهم عيلة فسوف يغنيكم الله من فضله ان شاء ان الله عليم حكيم"

Q. 9 : 28 O ye who believe ! The Idolaters only are unclean, so let them not come near the inviolable place of worship after this their year. If ye fear poverty (from the loss of their marchandise) Allah shall preserve you of His bounty if He will. Lo ! Allah is knower, Wise.

The Polytheists or Idol worshippers were restrained from coming near the Kaa'ba. There is a Hadith also that in order to implement this divine Injunction the Holy Prophet

ﷺ sent Hazrat Ali to Makkah decreeing the prohibition of Hajj for non-Muslims.

This Injunction is prohibitory of the Idol worshippers performing their Shaa'ir in Kaa'ba and the decree of the Holy Prophet ﷺ was prohibitory of their Shia'ar of Hajj (see Tafheemul Quran, vol. 2, p. 186, note 25). It is thus obviously concluded from it that Islamic Sharia does not allow a non-Muslim to adopt Shaa'ir of Islam, because Shaa'ir means the distinguishing features of a community with which it is known. If an Islamic State inspite of its being in power allows a non-Muslim to adopt the Shia'ar of Islam which effects the distinguishing characteristics of Muslim ummah, it will be the failure of that State in discharge of its duties. To allow a non-Muslim to adopt Islamic Shia'ar in an Islamic State amounts to an illegal behaviour with the Shia'ar of Islam and as such reason for its prohibition becomes stronger. The above mentioned verse 9 : 28 and the subsequent Practice of the Holy Prophet prove the power of legislation of the Islamic State to prevent non-Muslims from adopting the Shia'ar of Islam. It is for this reason that it is also in the legislative power of the Islamic State to provide punishment for the non-Muslim who does not abstain himself from adopting the Shia'ar of Islam as has been provided in the impugned Ordinance. This will also cover the arguments of Mr. Mujibur Rehman about Taazir.

Mr. Mujibur Rehman formulated the following points in this respects: -

- (1) If Azan is one of the Islamic Shia'ar (distinguishing feature) and the same Shia'ar be found common among the non-Muslims, whether the non-Muslims can be stopped from it ?
- (2) Whether in view of the Injunction regarding Kalimatin Sawain (كلمة سواء) it is not essential that the Muslims and non-Muslims should join in it?

- (3) Whether saying of what is (احسن قول) (most pleasant utterance) can be made a punishable offence ?

The answers to these questions have already been given and may be summed up now. In view of verse 9 : 28 and the rule emanating from it non-Muslims can be stopped from persuing a Shia'ar which is common among Muslims and non-Muslims. Kalimatin Sawain (كلمة سواء) has been used in respect of different matters but in view of the answer to the first question the second question becomes redundant. However, it may be emphasized that though the non-believers used to perform Tawaf but they were not permitted to do so after the Muslims took control of the Khana Kaaba. It has been held that the Azan by a non-Muslim is not covered by the expression (احسن قول) (best of utterances) and if under the answer the first question a person can be restrained from that Shia'ar he can also be directed to be punished for violation of the restrained order.

The conduct of the Quadianis when they were in Qadian and held a majority and considerable influence there is relevant. The Quadianis had stopped the Muslims from calling Azan in their own mosques. The Ahrar sent some volunteers to call Azan in mosques of Muslims in Qadian but the Quadianis attacked them with slicks and caused a large number of injuries to each of them. They had to remain bed ridden in hospitals. (Tehrik-i-Khatam-e-Nubuwwat 1891 — 1974 by Shorish Kashmiri, page 78). This could have been by brute force only during the British Rule. This is an example that what they considered to be their Shia'ar (distinctive feature) was made by them practically unlawful for the Muslims. It follows that in their view also such restraint by the majority in power is legal.

The argument of Mr. Mujeebur Rehman against the prohibition of naming their place of worship as masjid was that according to the Quran, the word masjid is not exclusive for the Muslims but has been used for the

mosque of those who are non-Muslims now. When asked whether during the last 1400 years places of worship of persons other than Muslims have ever been known by the name of masjid he answered in the negative, but after a few days stated that he had been able to trace out at least one synagogue of the Jews in Karachi on which the words masjid-e-Bani Israel are written. He showed Photographs of the writing from which it appears that the place of worship is a synagogue but it has been translated by someone as masjid-e-Bani Israel. Such a name is not common among the Jews.

The question whether places of worship of persons other than those who are followers of the Holy Prophet ﷺ have been called in the Quran by the name of masjid besides the point. Islam has been the divine religion from the very beginning, i.e. starting with Adam. If the word masjid has been used for the places of worship of those who belonged to the Ummah of some other Prophet and followed the then prevailing religion of Islam, it cannot be concluded that the name masjid was the name given to the places of worship of non-Muslims too. The point is that during the last 1400 years this name has been exclusively given to the mosques of the Muslims. It has been in fact customary only among the Muslims to call their mosques as masjid.

In the Holy Quran the word masjid has been used within its dictionary meanings but now the same word is understood in the technical sense of the place of worship of the Muslims only (see Al-Alaqaat-ul-Duwaliiyya fil Islam p. 212). According to this even Eidgah, (place of offering Eid prayer) is not a masjid.

Reference was made to the verse 22 : 40 which is as follows: —

Q. 22 : 40

“الذين اخرجوا من ديارهم بغير حق الا ان يقولوا ربنا الله
ولو لا دفع الله الناس بعضهم ببعض لهدمت صوامع وبيع وصلوات و

مساجد يذكر فيها اسم الله كثيراً ، ولنصرن الله من ينصره ، ان الله
لقوى عزيز "

Q. 22 : 40 Those who have been driven from their homes unjustly only because they said : Our Lord is Allah — For had it not been for Allah's repelling some men by means of others, cloisters and churches and oratories and mosques, wherein the name of Allah is oft mentioned, would assuredly have been pulled down. Verily Allah helpeth one who helpeth Him. Lo! Allah is Strong, Almighty.

It was argued in view of this sanctity attacked to the places of worship of all denominations that a person cannot be prevented from calling his place of worship as masjid. It is, however, explained by Qurtbi that out of the names given to the places of worship cloisters, churches and oratories relate to the places of worship and hermitages or monasteries of non-Muslims while the word masjid has been used to denote the places of worship of Muslims (Ahkamul Quran, Vol. 12, page 72). But assuming that the word masjid has been used even for the places of worship of these who after the Advent of the Holy Prophet ﷺ fall in the category of non-Muslims, it will have to be acknowledged that the word masjid was used for the places of worship of the then Muslims only.

Masjid has also been considered to be a Shia'ur of Muslims in the Hadith already referred to in connection with the discussion of Azan Assassination was prohibited where masjid was seen. This was because of the masjid being a distinctive feature of Islam [Shia'ar (شعار)]. The person who offered prayer in it has to be presumed to be a Muslim unless proved to the contrary.

The following two verses No. 17 and 18 from Chapter 9 (Q.9) : 17-18) provide solution to the problem before us:-

Q. 9 : 17

"ما كان للمشركين ان يعمرؤا مسجد الله شهدين على انفسهم

بالكفر ، اولئك حبطت اعمالهم ، و في النارهم خالدون"

Q. 9 : 17 It is not for the idolaters to tend Allah's sanctuaries, bearing witness against themselves of disbelief. As for such, their works are vain and in the Fire they will abide.

Q. 9 : 18

"انما يعمر مسجد الله من آمن بالله واليوم الاخر واقام الصلوة
واتى الزكوة ولم يخش الا الله فعسى اولئك ان يكونوا من المهتدين"

Q. 9 : 18 He only shall tend Allah's sanctuaries who believeth in Allah and the Last Day and observeth proper worship and payeth the poor-due and feareth none save Allah. For such (only) is it possible that they can be of the rightly guided.

There has been a difference of view whether the non-Muslims or Idolaters can construct a mosque or enter into it. Regarding the construction the accepted principle is that though made by non-Muslims, it must be made to serve as the place of worship of the Muslims. There is, however, a difference of view about the right of entry. The Malikis and Hamblis are against their entry in the masjid. The Shafie considered it lawful with the permission of the management except in the case of Masjid-e-Haraam. But the Hanafi view is that they can enter a masjid.

The Holy Prophet ﷺ had expelled the hypocrites from the masjid. It has been related on the authority of Ibn-e-Abbas that "once while delivering the sermon on Friday the Holy Prophet ﷺ ordered some persons who were sitting in the congregation for prayer, by name to get out from the masjid because they were munafiqeen (hypocrites). (Ruhul Maani by Alusi, Vol. II, page 10).

This discussion may be summed up by the opinion of Sir Zafarullah Khan, a renowned Ahmadi.

'If Ahmadis are non-Muslims they can have no concern with masjid (mosque)'. (Tahdis-e-Nemat page 162).

The proposition was correctly put by him. But the Ordinance only prevents the Quadianis from naming or calling their places of worship as mosque.

This is not objectionable in Shariah. Rather it advances the Shariah objective.

The right to propagate other religions in an Islamic State cannot be un-limited on account of the principle of Irtidad (conversion of a Muslim to another religion). The Holy Quran says as under:—

Q. 5 : 54

"ياايها الذين آمنوا من يرتد منكم عن دينه فسوف يأتى الله بقوم يحبهم ويحبونه اذلة على المؤمنين اعز على الكافرين يجاهدون فى سبيل الله ولا يخافون لومة لآثم ، ذلك فضل الله يؤتیه من يشاء ، والله واسع عليم"

Q. 5 : 54 O ye who believe! Whoso of you becometh a renegade from his religion, (know that in his stead) Allah will bring a people whom He loveth and who love Him, humble toward believers, stern toward disbelievers, striving in the way of Allah, and fearing not the blame of any blamer. Such is the grace of Allah which He giveth unto whom He will. Allah is All-Embracing, All-knowing.

Q 2 : 217

"ومن يرتدد منكم عن دينه فيمت وهو كافر فأولئك حبطت اعمالهم فى الدنيا والآخرة وأولئك اصحاب النار هم فيها خالدون"

Q. 2 : 217. And Whoso becometh a renegade and dieth in his disbelief such are they whose works have fallen both in the world and the Hereafter. Such are rightful owners of the Fire: they will abide therein.

It is not necessary to go into this question at any length since this has been the established practice of all religions that the conversion of a person from one religion to another was never looked with less than hostility by his co-religionists. An example in point is the antagonism

shown by the Hindus including those in power in the so called secular state on group conversion of the Scheduled Castes to Islam.

It is possible that the reason may be that such secession from one religion to another is likely to be a disintegrating force for that religious community. In the Quadianis' Literature also any person converted from Islam to Quadianism and then re-converted to Islam is known as Murtad and is believed to be liable to torture in hell like a non-Muslim. In this situation it is difficult to lay down that Islam confers a fundamental right upon non-Muslims to propagate their religion among Muslims unconditionally.

There have been instances in Islamic history when religious discussions were held in the Court of the Caliph or Monarch about the superiority of one's religion. Muslim and non-Muslim religious scholars alike participated in it but such instances cannot be held to be effective precedents in favour of any alleged right of propagation of one's religion in order to convert the Muslims to a religion other than Islam.

Mr. Mujeebur Rehman did not rely upon directly on any verse of the Quran, tradition of the Holy Prophet ﷺ or the opinion of any jurist to substantiate his argument that Islam allows to non-Muslims a right to propagate their religion in an Islamic State.

He submitted that according to the Quran it is a duty to preach and what complements this duty is the right of the unbeliever to preach his religion. He referred to verse Q. 2 : 170;

Q. 2 : 170

"واذا قيل لهم اتبعوا ما انزل الله قالوا بل نتبع ما الفينا عليه آباءنا"

اولوكان اباؤهم لا يعقلون شيئا ولا يهتدون"

And when it is said unto them : Follow that which Allah hath revealed, they say : We follow that wherein we found our fathers. What! Even though

their fathers were wholly unintelligent and had no guidance

and submitted that the verse condemns blindly following one's ancestors. He also cited Verses Q. 2 : 1 12 ; Q. 5 : 105, Q. 26 : 71 to 75 and Q. 43 : 21 to 25 and submitted that a joint reading of these verses shows that whenever the Prophet preached to the infidels the message of truth they had only one answer that their ancestors were sufficient for them though their ancestors had no sense at all. It is the spirit of Islam that this stress on the doctrine of Taqlid should be vanquished by resort to both type of arguments i.e., Afaqi (آفاقي) and Anfusi (انفوسى). The Afaqi argument deals with the order of nature, the creation of the earth and sky the alternation of day and night etc as described in the Quran. They should be made to realise the orderliness and beauty of the system which would not be possible if there had been two gods. Anfusi argument means that they should ponder over the creation of different stages of life and they would discover that only one God has created man.

This is the method about which the Quran says:

Q. 16 : 125

"ادع الى سبيل ربك بالحكمة والموعظة الحسنة وجادلهم بالتى

هى احسن"

Call unto the way of thy Lord with wisdom and fair exhortation, and reason with them in the better way. He emphasized that the main thing is argument

Q. 8 : 42

"ولكن ليقضى الله امرا كان مفعولا ليهلك من هلك عن بينة

ويحيى من حى عن بينة"

He who perished (on that day) might perish by a clear proof (of His sovereignty) and he who survived might survive by a clear proof (of His sovereignty).

Lastly he referred to verses Q. 6 : 149; Q. 28 : 75; Q. 37 : 156, 157; Q. 27 : 64; Q. 21 : 24 and Q. 2 : 111 relevant portions of which are reproduced below: —

Q. 6 : 148

"هل عندكم من علم فتخرجوه لنا"

Have you any knowledge that you can adduce for us?

Q. 37 : 156

"ام لكم سلطان مبین"

(O have you a clear authority)

Q. 37 : 157

"قاتوا بكتابكم ان كنتم صادقین"

(Then produce your book, if you are truthful).

Q. 28 : 75

"فقلنا هاتوا برهانكم"

(We shall say : Bring your proof).

Q. 21 : 24

"قل هاتوا برهانكم"

(Say bring your proof)

Q. 27 : 64

"قل هاتوا برهانكم"

(Say bring your proof)

Q. 2 : 111

"قل هاتوا برهانكم"

(Say bring your proof)

He also cited a number of commentaries on the interpretation of these verses. It is not necessary to reproduce them as the meanings of these verses are clear that the Muslims can ask the Polytheists and non-Muslims to give argument in favour of their strong belief.

But Mr. Mujeebur Rehman's argument is that this gives the non-Muslim a right to preach his religion to convert them.

We do not agree with this even as a remote possibility.

All these verses relate to the principles of Tableegh or propagation of Islam and the manner and method to be used for such propagation. The principle is that when talking to a non-Muslim for the purpose of propagating Islam one should be gentle and polite and should not only demonstrate logically and rationally all good points in Islam but also let the non-Muslim place his view about the good points in his own religion before him. It is necessary that a view point of the non-Muslim about his own religion should be plainly put forward so as to enable Muslims to refute them and to demonstrate the superiority of Islam over the conceptual philosophy of the other religion. In fact the Quran does not only allow such free discourse among two persons but asks the Muslims to challenge the non-Muslim to bring forth the arguments in favour of his belief as is clear from the word (هاتوا برهانكم) (bring your arguments), which is suggestive of the inability of the non-Muslims to give any such argument. (See Almaraghi Vol. 1 page 194 It is said (فهو في عرف التخاطب تكذيب) (This is in the general rule of language a form of address for falsification).

There is a conclusive presumption that the arguments of the Quran cannot be refuted. No argument favourable to unbelief is possible.

This negates the possibility of the conversion of the Muslim by being influenced by the discourse of the non-Muslim in favour of his religion. The verses only apply to the form of persuasion which is required for propagation of Islam before the non-Muslim. These verses cannot be turned for the benefit of the non-Muslims in support of their claim to propagate their religion.

As stated there is nothing in the Holy Quran, the Sunnah of the Holy Prophet ﷺ or the commentaries on

them recognising the right of a non-Muslim to propagate or preach his religion among Muslims.

These verses and commentaries also are not sufficient for holding in favour of the fundamental rights of non-Muslims to propagate and preach their religion among Muslims. Despite this it is for the Islamic State to allow the non-Muslims to preach their religion as has been done in Article 20 of the Constitution but this can be allowed if the non-Muslims preach as non-Muslims and not by passing off as Muslims. It is for the legislature to lay down other conditions also.

Maulana Maudoodi in his book 'Islami Riyasat' pages 582 to 602 has dealt with the rights of the Minorities at length and has also stated in favour of publishing materials in an Islamic State by non-Muslims to prove the superiority of their religion, but he added that propagation of one's religion before Muslim individually is not permissible. He further added that no Muslim can be allowed to change his religion.

Mr. Mujeebur Rehman cited from the Declaration of Human Rights of United Nations passed in 1948. The Article relied upon by him is as follows:—

"Art. XVIII. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."

There is nothing in this Charter to give to the citizens of a country the right to propagate or preach his religion.

Lastly reference may be made to two pamphlets issued by the Islamic Council one is the 'Declaration of Human Rights' and the other is "A Model of an Islamic Constitution." Generally the Human Rights described in the two Pamphlets on the basis of the Injunctions of the Quran and the Sunnah of the Holy Prophet ﷺ include the human rights as approved by the United Nations. Some of

the rights are in addition, for example right to justice, right to protection against abuse of power, right to Asylum, rights of the Minorities to be governed in their personal matters by their own personal laws, rights and obligations to participate in the conduct and management of public affairs, status and dignity of workers, right to social security, etc.

In the pamphlet entitled 'Universal Islamic Declaration of Human Rights' paragraphs XII and XIII deal with the right to freedom of belief, thought and speech and right to freedom of religion. They are reproduced below:-

"XII. (a) Every person has the right to express his thoughts and beliefs so long as he remains within the limits prescribed by the law. No one, however is entitled to disseminate falsehood or to circulate reports which may outrage public decency, or to indulge in slander, innuendo or to cast defamatory aspersions on other persons.

(b) Pursuit of knowledge and search after truth is not only a right but a duty of every Muslim

(c) It is the right and duty of every Muslim to protest and strive (within the limits set out by the law) against oppression even if it involves challenging the highest authority in the State.

(d) There shall be no bar on the dissemination of information provided it does not endanger the security of the society or the state and is confined within the limits imposed by the law.

(e) No one shall hold in contempt or ridicule the religious beliefs of others or incite public hostility against them ; respect for the religious feelings of others is obligatory on all Muslims.

XIII. Every person has the right to freedom of conscience and worship in accordance with his religious beliefs".

Similarly Articles 8 and 16 of the Pamphlet 'A Model of an Islamic Constitution' deal with the religious rights of the minorities and are as follows:—

"8 Every person has the right to his thoughts, opinions and beliefs. He also has the right to express them so long as he remains within the limits prescribed by law.

16. (a) There is no compulsion in religion.
- (b) Non-Muslim minorities have the right to practise their religion.
- (c) In matters of personal law the minorities shall be governed by their own laws and traditions, except if they themselves opt to be governed by the Shariah. In cases of conflict between parties, the Shariah shall apply."

It may be noticed that the right to propagate one's religion is not included in the Human Rights of the Minorities. This is in accordance with what has been stated above.

Article 20 of the Constitution confers the fundamental right upon all citizens of Pakistan to profess, practise and propagate one's religion but this right is subject to law, public order and morality. It reads :

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.

In the case of Jabindar Kashore PLD 1957, S.C. page 9, the Supreme Court had an occasion to interpret similar language in Article 18 of the Constitution of 1956. It was held that the words 'subject to law' do not permit the Legislature to take away with another hand what has been given by the Constitution by one hand and this right may

only be regulated but cannot be taken away. Mr. Justice Muhammad Munir, Chief Justice (Retd) made the following observations in this respect:—

“But the scope of regulation by law cannot be so curtailed when a law and order situation arises”.

Article 20 is also subject to law and order, and the right of preaching is subject to it.

It has already been noticed from historical review of Mirza Ghulam Ahmad's claims and their evolutionary trend that the Muslims of the Indian Sub-Continent had feeling of un-easiness soon after the claim of Mirza Ghulam Ahmad to be a Mujaddid and mamoor un minallah (a person appointed by Allah). They had shown an apprehension prophetically enough that this was likely to be the first step towards Prophethood. Mirza Sahib was quick in refuting this and in claiming that he was a firm believer in the finality of the prophethood of the Holy Prophet Muhammad (P.B.H.) and in his view any claim to prophethood was not less than kufr (unbelief).

This uneasiness resentment and hostility among the Muslims increased when the claim of being the Promised Messiah and Mehdi was made in 1890. It would be clear from the books of Mirza Sahib and other Qaudiani literature that Muslims crowded around the places of his stay in different cities whenever he visited them. The Ulema were also extremely agitated.

This agitation reached its peak by the distinct claim of Mirza Sahib to prophethood made in 1901.

After the establishment of Pakistan, there was such an agitation on this point that the Martial Law of 1953 had to be enforced to curb it. This, however did not succeed in quietening the Muslims' demand as voiced by the Ulema in their 22 points programme for incorporating in the Constitution the non-Muslim and minority status of the Qaudianis.

The agitation continued despite the imposition of Martial Law till the representatives of the Muslim public in

the Parliament and the National Assembly had to pass the Constitution (Second Amendment) Act 1974 after giving a full hearing to the Qadianis through Mirza Nasir Ahmad, Chief of the Qadiani Sect, and to add a definition to Article 260 of the Constitution of 1973 declaring the Qadianis of the two well-known groups as non-Muslims and placing them through an amendment in Article 106, in juxtaposition with other minorities in Pakistan like Christians, Parsis and Hindus, etc.

As a result of the declaration which was the result of a unanimous demand of the Muslims it was not possible for the Qadianis to call themselves Muslims or to propagate Islam of their concept as true Islam but they showed the least respect for the Constitutional Amendment and continued as before to call their faith as Islam. They continued to propagate their religion freely by publication of books, journals, etc as well as among individual Muslim to create resentment which obviously was likely to create law and order situation and all this continued till the present Ordinance was passed and promulgated. In these circumstances the Ordinance appears to be covered by the exception in Article 20 about its being subject to maintenance of law and order.

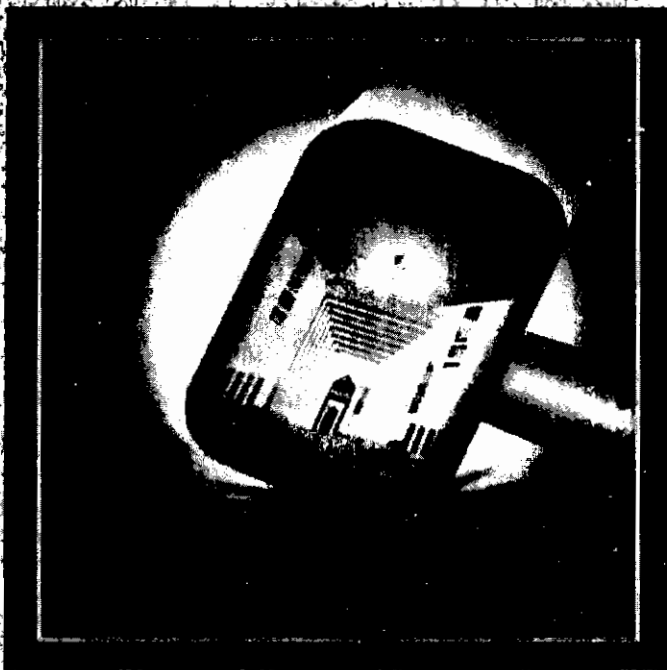
For the above reasons the two petitions are without force and are dismissed.

Before finishing this judgment we would like to place on record our deep appreciation of the assistance given to us by Mr. Mujeeb-ur Rahman, petitioner and Mr. Riazul Hasan Gilani, Advocate for the Federal Government. Mr. Gilani's preparation and presentation of the case was commendable.

Islamabad dated the 28th October, 1984.

(PLD 1985 FSC 8)





SUPREME COURT OF PAKISTAN
(SHARIAT APPELLATE BENCH)

1988

- Mr. Justice Muhammad Afzal Zullah
(Chief Justice)
- Mr. Justice Nasim Hasan Shah
- Mr. Justice Pir Muhammad Karam Shah
- Mr. Justice Maulana Muhammad Taqi Usmani

SUPREME COURT OF PAKISTAN

SHARIAT APPELLATE BENCH

Mr. Justice Muhammad Afzal Zullah, Chairman,

Mr. Justice Nasim Hasan Shah,

Mr. Justice Shafi-ur-Rahman,

Mr. Justice Pir Muhammad Karam Shah,

Mr. Justice Maulana Muhammad Taqi Usmani,

Capt. (Retd.) ABDUL WAJID and 4 others—Appellants

versus

FEDERAL GOVERNMENT OF PAKISTAN—Respondent

Shariat Appeals Nos. 24 and 25 of 1984, decided on 11th January, 1988.

(On appeal from the judgments/orders of the Federal Shariat Court, Lahore, dated 12-8-1984 in Shariat Petitions Nos. 17/1/1984, 2/L/1984, 17/L/1984 and 21/L/1984).

Manzoor Ellahi, Advocate-on-Record for Appellant No. 1 (in S.A. No.24 of 1984).

Appellant No. 2 in person (in S.A. No.24 of 1984).

Appellant No. 1 (In person) and Hameed Aslam Qurèshi, Advocate-on-Record and others in person (in S.A. No.25 of 1984).

Dr. Riazul Hasan Gilani, Deputy Attorney-General and Ch. Akhtar Ali, Advocate-on-Record for Respondent (in both Cases).

Dates of hearing: 10th and 11th January, 1988.

JUDGMENT

JUSTICE MUHAMMAD AFZAL ZULLAH (CHAIRMAN).--Appeals Nos.24 and 25 of 1984 jointly filed by two and four appellants respectively, are directed against a decision of the Federal Shariat Court, rendered under Article 203-D of the Constitution. They were preferred under Article 203-F, have now been withdrawn and dismissed accordingly.

The impugned judgment was passed on two petitions of the appellants separately presented, wherein a law: "Anti-Islamic Activities of the Quadiani Group, Lahori Group and Ahmadis (Prohibition and Punishment) Ordinance 1984", was challenged and sought to be rendered ineffective on the touchstone of the "Injunctions of Islam", in pursuance of Article 203-D. The Court declined to grant the prayer, after giving detailed reasons (running into over 200 pages), as required by Clause (2) (a) of the said Article.

Appeal No.24 of 1984 is by the 'Lahori Group' and No.25 of 1984 by the 'Quadiani Group' of the 'Ahmadis', as they are described in Article 106 and Clause (3) of Article 260 of the Constitution. They were added originally by Second Amendment in 1974; which was enacted by a duly elected parliament, in what have been considered as free and impartial elections, on the basis of adult franchise. This Court had also accepted it as competent to frame the constitution after the split of the country into two parts. It passed the amendment not only with the necessary higher percentage of votes for this purpose but also unanimously in each House. There was no dissent. The sole member walk out by one of the original movers was, as the official

record/proceedings show, on the ground that the amendment did not go far enough.

The amendment defined the followers of Mirza Ghulam Ahmad, generally known 'the Ahmadis', as non-Muslims. It was enacted, in a democratic and parliamentary-cum-judicial method. The acknowledged leaders of both the groups of Ahmadis were afforded opportunity of hearing in very lengthy proceedings by a Special Committee of the Full House. The resolution referred to this committee (moved, amongst others, also by the sole member who later staged a walkout), inter alia, contained that the Ahmadis were "indulging in subversive activities internally and externally."; and that, in the then recent Conference of 140 delegations from all over the world, held in Mecca-Al-Mukurram, it was unanimously held that "Quadianism is subversive movement against Islam and Muslim World, which falsely and deceitfully claims to be an Islamic sect" - (National Assembly Parliament Debates Volume 4--1974), hence the amendment was sought. After lengthy hearing and voluminous proceedings (which are matter of record) the Special Committee unanimously resolved, as follows:

"(a) That the Constitution of Pakistan be amended as follows:-

- (i) that in Article 106 (3) a reference be inserted to persons of the Qadiani Group and the Lahori Group (who call themselves 'Ahmadis');
- (ii) that a non-Muslim may be defined in a new clause in Article 260.

To give effect to the above recommendations a draft Bill unanimously agreed upon by the Special Committee is appended.

(b) That the following explanation be added to section 295-A of the Pakistan Penal Code:-

"Explanation.- A Muslim who professes, practises or propagates against the concept of the finality of the

prophethood of Muhammad (peace be upon him) as set out in clause (3) of Article 260 of the Constitution shall be punishable under this section."

(the Gazette of Pakistan Extraordinary dated 14-11-1974--pp. 1205 and 1206)

The draft Bill recommended by the Committee is the same as was finally passed by the Parliament (for text see National Assembly Parliament debates, Volume-5, 1974).

It would have been noticed that the said Special Committee had recommended an amendment in the Penal Code also. It cannot be denied that these measures were adopted to resolve a longstanding controversy raging in the country for nearly three quarters of a Century over the position of Ahmadis—(appellants' description in ground No.10 in "Addendum dated 15-1-1985" filed in Appeal No.24 of 1984 is: "microscopic minority", as against Muslims who form the "vast majority" not only in Pakistan but as against Muslim World, it is even much less). There has been blood shed, martial law, judicial inquiry and interventions, prosecutions and agitations over this controversy. All solutions had earlier been tried. This time the Constitutional and Parliamentary method was used. The law impugned before the Federal Shariat Court, which prima facie seems to be a sequel and result of what has been stated above, attempts to control and prevent some of the Anti-Islamic activities of the Ahmadis which had resulted in the grave consequences noticed above.

Coming to the appeals before us, as indicated already, the appellants challenged the impugned law before the Federal Shariat Court on the touch stone of 'Islamic Injunctions'. It has the jurisdiction under Article 203-D of the Constitution to declare it as repugnant to them, as distinguished from the jurisdiction possessed by the other superior Courts to annul a law on ground of its repugnancy to a fundamental right, as guaranteed in the Constitution. The Federal Shariat Court having declined to accept the prayer, that the impugned law was repugnant to the Injunctions of Islam they filed appeals to (the Shariat

Appellate Bench of) this Court. The said Shariat Bench of the Supreme Court has been constituted under Chapter 3-A of the Constitution and has the exclusive jurisdiction to hear appeals against decisions of Federal Shariat Court under Article 203-D. The Bench consists of three permanent Judges of the Court and two Ulema Judges. The permanent Judges on this Bench are three senior Judges of the Supreme Court having been members of superior judiciary for nearly twenty years. The Ulema Judges are scholars of international fame, who have organized (and head) eminent Darul Ulums and possess a high degree of attainment in various branches of knowledge. They have also served on the Federal Shariat Court before appointment to the Shariat Appellate Bench.

The appeals in hand were fixed for 22-5-1985 but were adjourned on a request received from the appellants' side. (Appellant No.1 in Appeal No.24 of 1984 prayed for adjournment on the ground of his illness, for few months. Advocate-on-Record of appellants in Appeal No.25 of 1984 had also supported the adjournment request). They again came up for hearing after two and a half years before a Full Bench. Cases like the present one, according to our practice, are not heard in a Bench of less than five Judges. The two Ulema Judges are a necessary part of this Bench.

In this background, to our surprise when it was expected that these appeals would be heard this time, again the same appellant sent application for adjournment for a year, this time on the ground that though he had recovered from illness, he had not yet recovered his full memory. He had not engaged a lawyer. He insisted on arguing his case, when adjourned. The intrinsic evidence in the application and some questioning of his co-appellant, who is an Advocate, showed that it was a lame excuse. We declined long adjournment and ordered that the applicant/appellant might appear and argue on the next day.

When the second appeal (No.25/1984) was taken up, the appellants therein sprung a still bigger surprise. They also were not willing to argue the case. Similar attempts

were made on the basis of two applications placed on record, more than two years ago. It was well-known to the appellants that the requests in the applications were of such nature that orders could be sought in Chambers at least for the fixation of these applications. They related to the summoning of the tape-records regarding proceedings before the Federal Shariat Court and the expungement of a part of the impugned judgment, before the hearing of the appeal.

Be that as it may, the first request for tape-records, as explained at the Bar, was for resolving the controversy regarding the nature of arguments before the Federal Shariat Court, reference to which is made from page 9 to page 152 of the impugned judgment, and the same was sought to be expunged in the second application.

At the end of this application, the Court was told to 'determine' this issue "before the appeal is taken"; otherwise, the appellants "will have no interest left in appeal". Thus, a serious attempt was made to get the appeal adjourned for another long period.

After some discussion, we declined to summon the tape-records, at this stage, as it would entail unnecessary adjournment, and at the same time we assured the appellants that if they argue the appeals and during their hearing we felt the need for summoning the tape-records we would do so on our own initiative.

Finding no further scope to Press any further the first request at this stage, the second application was then pressed. It was also an extraordinary request, in the circumstances. We were being virtually told to "expunge" nearly two-third of the impugned judgment as unnecessary, irrelevant and 'outrageous' for the appellants' religious reasons forgetting that even jurisdictional facts and aspects of the new dispensation under Article 203-D of the Constitution, essentially relate to the religion (دين) of Islam. They were required to establish that the law in question was repugnant to the 'Injunctions 4 of Islam'-- as a Deen.

Not only this, the facts recorded at page 8, paras 13 and 14 of the judgment (not sought to be expunged) showed that despite some formal statement, made presumably to change position : if the verdict went against the appellants, they did argue with "persistence" and "emphasis" that they are not non-Muslims. Twice learned Deputy Attorney-General, who was present in Federal Shariat Court, refuted the appellants on this fact; when, they tried to show that the record was not correct. We also noticed that in their grounds of appeal, the appellants in Appeal No.24 of 1984 in para 1 of "the Addendum", have not denied the correctness of what is recorded in the opening part of page 9 of the impugned judgment. Its jurisdictional aspect, however, has been questioned.

After hearing on the question of expungement, we felt that the request of the appellants in Appeal No.25 of 1984 could not be granted, as a preliminary relief without hearing the appeal; whereafter if need be, during the main hearing of the appeals the points and portions for expungement, might be noted for orders on this question in the final judgment. Now law was cited to show that it would not be the proper procedure for us to follow in the appellate jurisdiction. In that eventuality it might also have been examined whether the scope of special jurisdiction conferred by Article 203-F vis-à-vis the validity and "reasons" for the impugned judgment, the expungement, setting aside, upholding of the objected part or any other order, was the lawful course to be adopted. As already noticed, the appellants having themselves taken a decision (not to be interested in appeals if their request was not allowed) did not evince any interest in this approach to the subject, yielding finality to the impugned judgment.

Before going on the next application, the fourth in the two appeals, it is necessary to mention that we have during writing of this judgment, discovered from the appellants' own pleadings and memoranda submitted in this Court and in the Federal Shariat Court that, they did argue the point: that, they are not non-Muslims. If the appellants would have argued the appeal, we might have considered all this

in juxtaposition to the constitutional position and what they stated before us as also in their statements before the Federal Shariat Court. After that the legal question might also have been examined: that if the appellants did argue a point and invited the Court to give decision on it, which went against them, could they in an appeal under Article 203-F, succeed in getting the decision on these arguments expunged on the grounds stated in the application or that the Federal Shariat Court had no jurisdiction in the matter.

The last application of the appellants in Appeal No. 25 of 1984 (there is no such applications in Appeal No. 24 of 1984), presented in Court, sought the exclusion of the two Ulema Judges from this Bench on the ground of bias. They are stated to have expressed opinion in favour of the enactment of a law as is involved in the appeals before us. Written material, in this behalf, was also placed on record. After having perused the same, we felt that it was like the expression of an opinion in a tentative manner and that too without hearing the full arguments as often Judges do when hearing applications for stay or preliminary arguments for admission of regular cases, or for that matter, when granting leave to appeal even in this Court. It has never been treated per se as either creating any kind of bias, prejudice or bar. Moreover, the Ulema Judges we have noticed, felt more concerned and bound than any other, by the Qur'anic Verse No. 135, in Chapter IV (Surah Al-Nisa). The text and the translation follow:-

”يا ايها الذين امنوا كونوا قوامين بالقسط شهداء الله ولو على
انفسكم اولوالدين والاقرباين ان يكن غنياً او فقيراً فالله اولى بهما فلا تتبعوا
السهوى ان تعدلوا وان تلوا وتعرضوا فان الله كان بما تعملون خبيراً“

“O, ye who believe, be maintainers of justice, bearers of witness for Allah's sake though it may be against your own selves or your parents or near relations, be he rich or poor. Allah is most competent to deal with them both, therefore, do not follow your low desires

lest you deviate, and if you swerve or turn aside then surely Allah is aware of what you do."

The Qur'an and Sunnah are full of Injunctions emphasising undiluted justice, with its much more pronounced importance in our polity, as compared to Western jurisprudence. It is one of main pillars of Islam-after Touhid and Risalat like Taqva in one sense. It is in this light that in a conceptual sense, totally different from Western ideas, Islam in a given situation, does not prohibit hearing of a case and decision even against oneself. Qur'an does not treat it as an impossibility, though such an extreme case might arise only rarely.

The treatment of similar objection by Federal Shariat Court in *Federation of Pakistan v. Hazoor Bukhsh and 2 others* PLD 1983 FSC 255 at pages 281 and 302, is also unexceptionable. Reliance therein was placed on *Miss Asma Jilani v. The Government of Punjab* and another PLD 1972 SC 139 at 178; *Mr. Zulfiqar Ali Bhutto v. The State* PLD 1978 SC 125 at 132 and on *Interpretation of Statutes* by Maxwell 12th Edn. at pages 50, 51 and a case from English jurisdiction, cited as *Re Mew (1862)* 31 L.J.Bk. 87.

Even if opinions relied upon by the appellants, be treated as firm in judicial sense which is not the case," the principle of Rujoo (رجوع) in Islam would come in. In view of what happened in Court, it is not necessary to dwell on this aspect. Both the learned Ulema Judges stated that they firmly believed that if after hearing the arguments, they felt the need for Rujoo 'they will do so'. It has now been discovered that both the learned Ulema Judges have done so on several important subjects: One, for example, the question of imposition of death sentence in a Tazir offence and the other relating to charge of interest by a Muslim in Dar-ul-Harb. They both follow Imam Abu Hanifa's view on this point. See: *Hayat-i-Imam Abu Hanifa* by Muhammad Abu Zuhra--Urdu Version by Malik Sons. It reads as follows:-

”جو شخص میری دلیل سے نا آشنا ہے، اسے میرے کلام سے فتویٰ دینا حرام ہے۔ فتویٰ صادر کرتے وقت ارشاد فرماتے ہیں کہ یہ میری ذاتی رائے ہے جو اپنی حد تک سب سے بہتر ہے۔ اگر اس سے عمدہ قول مل سکے تو وہ زیادہ ترین صحت ہے۔ فرمایا کرتے تھے، لوگوں کی رائے سے احتراز کیجیے۔“ (المیزان الکبریٰ ص ۵۸، طبع مصر)

Not only this, we in addition to this procedure to ensure confidence, also adopted the one laid down by this Court in an absolutely similar situation in Islamic Republic of Pakistan v. Abdul Wali Khan PLD 1976 SC 57 at p.188, 1975 Pakistan Supreme Court Reports. When an objection was raised regarding the sitting of the two Judges on the Bench hearing that case, it was observed as follows at page 214 of the Report: PLD 1976 S C 57 at p. 188;

“As regards the objection taken to the Constitution of the Bench, learned counsel were informed on the very first day that no party to a litigation can claim the right to be tried by a particular Judge or Judges of his choice. In the case of superior Courts, it is entirely a matter for the Judge or Judges concerned to decide as to whether they will or will not sit in that particular case. Mr. Wali Khan has been informed that both the learned Judges, against whom the objection has been raised, have now recorded minutes in writing which have been placed on the record of these proceedings to say that they do not feel embarrassed in sitting to hear this proceeding, The objection based purely on conjectures is, therefore, in our view, unwarranted. Judges concerned are fully conscious of their own responsibilities. There is nothing to show that they are in any way disqualified from sitting to hear this reference. The objection is, accordingly, overruled.”

The relevant principles have been discussed in that case. No further discussion is necessary. The appellants refrained from referring to this case and insisted on citing Chairman, Federal Land Commission and another v. Sardar Ashiq Muhammad Khan Mazari and 37 others 1985 S C M

R 317; which it seems, was not approved for reporting. However, when the opinion of two Judges on the Bench at the end of the report, was brought to the notice of the objectors, this case was not pressed any further. Attempt, nevertheless was made to distinguish Abdul Wali Khan's case. We did not agree on this point. The two Ulema Judges then were asked as to whether they would in any way feel embarrassed in sitting on the Bench; to which, both answered in the negative. These proceedings were of such solemn character that we genuinely felt that now the hearing of Appeal No.25 of 1984 would commence. But abruptly, without consulting his other co-appellants or informing the Advocate-on-Record, appellant No.1 who was then standing at the Bar, announced that they withdraw the appeal. We pointed out to him that he did not consult the others, to which he responded with indication that their's was also the same position. Then the other appellants present in Court and the A.O.K. stood up and withdrew the appeal. We ordered its dismissal accordingly.

To our further surprise, the second appellant in Appeal No.24 of 1984 which stood adjourned to next day as stated earlier, also stood up and withdrew his appeal without any argument or giving any reason. It is emphasised that no such applications had been filed by the appellants in Appeal No.24 of 1984, as were filed in Appeal No.25 of 1984. He was then asked about his co-appellant's attitude to which the reply was that he would be contacted for this purpose. The next day none appeared in that appeal. We waited for quite some time and perforce passed order for its adjournment to another date. Though, according to facts if required a finding of abandonment, as in the case of B.Z. Kaikaus v. Federal Government of Pakistan and others PLD 1982 S C 409 could be rendered, we refrained from doing so, in the interest of the absent party. After some time, Mr. Manzoor Illahi Advocate-on-Record, filed his power of attorney and other documents with the application to withdraw Appeal No.2 of 1984 on behalf of appellant No.1 also, which we dismissed accordingly as withdrawn.

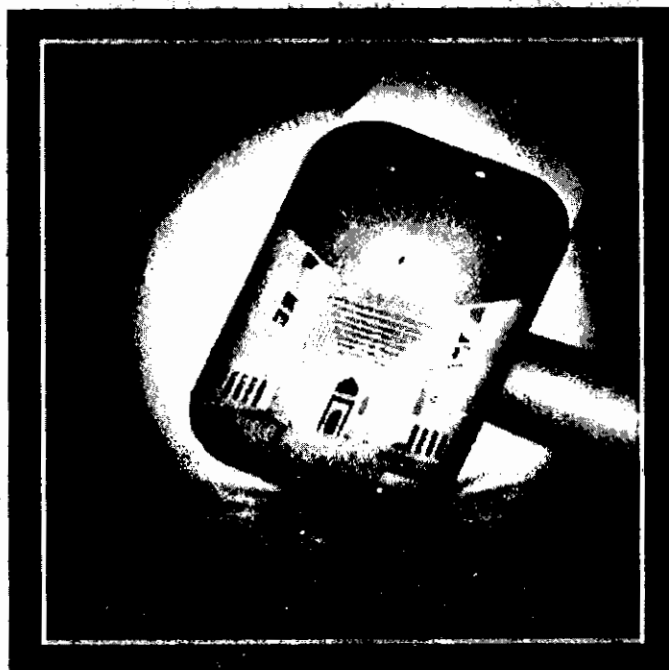
Before parting, it needs be observed that, in the circumstances of the case, for the sake of propriety, we have not examined nor have tried otherwise to discover the underlying intention and motive for the conduct of the appellants. Amongst others, the questions which arise, in this context, are that if they were genuine, in this behalf, why did they seek decision of the first two applications particularly the one relating to the expungement of major part of impugned judgment, before the hearing of the appeal. This exercise would have involved examination of merits by the same Bench, the constitution whereof was objected to in the third application. It means that till then they had no apprehension that justice would not be done on that vital issue. And most important of all, they, as noted earlier, had already decided not to press the appeal if second application was disallowed. If they had to withdraw the appeal due to this reason then why it was not done at that stage when we declined to accept the most extraordinary plea and the facade that some members of the Court were biased was raised, although the decision not to press the appeal had already been taken by them.

Thus, in view of the facts and circumstances noted above, both the Shariat Appeals Nos.24 and 25 of 1984 stand dismissed as withdrawn and the impugned judgment of the Federal Shariat Court shall rule the field. There shall be no orders as to costs.

Petition dismissed as withdrawn.

(PLD 1988 Supreme Court 187)





LAHORE HIGH COURT
1987

○ Mr. Justice Muhammad Rafiq Tarar

LAHORE HIGH COURT

Mr. Justice Muhammad Rafiq Tarar, J

MALIK JAHANGIR M. JOYA — Petitioners

versus

THE STATE — Respondent

Criminal Miscellaneous No. 1592-B of 1987.

Mujeebur Rehman, Malik Mahmood Majid and Mirza Naseer Ahmad for Petitioner.

Khalilur Rehman Ramdey, A.-G. and
Awais Nasim for the State.

Rashid Murtaza Qureshi for the Complainant.

Date of hearing: 28th June, 1987.

JUDGMENT

MR. JUSTICE MUHAMMAD RAFIQ TARAR.-- This is a petition for bail on behalf of Malik Jahangir Muhammad Khan Joya, Advocate who is accused of offence u/s 298-C of the P.P.C.

2. The F.I.R. version is that on 18-3-1987 the petitioner and his co-accused who are Qadianis by faith displayed badges bearing "KALMA TAYYABA" on their persons and thus committed the offence u/s 298-C of the P.P.C.

3. The petitioner and his co-accused moved an application for bail in the Sessions Court, Sargodha. Co-accused were granted bail by the Additional Sessions Judge but this concession was denied to the petitioner because of this "adamant attitude" towards law and successive acts of abusing the concession of bail.

4. On 9-6-1987, Sh. Mujib-ur-Rehman Counsel for the petitioner had almost completed his arguments when Syed Riaz-ul-Hassan Gilani Advocate submitted that the offence falls u/s 295-C of the P.P.C. which is punishable with death or imprisonment for life. He maintained that Mirza Ghulam Ahmad Qadiani proclaimed himself as "Muhammad dur Rasul Ullah" and his followers believe him as such, therefore, when they wear "KALMA TAYYABA" on their persons they defile the sacred name of the Holy Prophet Muhammad (peace be upon him) because by Muhammad dur Rasulullah they mean Mirza Ghulam Ahmad Qadiani. In support of the contention he produced an extract from "Kalima-tul-Fasal by Mirza Bashir Ahmad which reads as under:

”پس مسیح موعود خود محمد رسول اللہ ﷺ ہے جو اشاعت اسلام کے لئے دوبارہ دنیا میں تشریف لائے۔ اس لئے ہم کو کسی نئے کلمہ کی ضرورت نہیں۔ ہاں اگر محمد رسول اللہ ﷺ کی جگہ کوئی اور آتا تو ضرورت پیش آتی۔“
(کلمۃ الفضل ص 58 از مرزا بشیر احمد ایم اے)

Sh. Mujeeb-ur-Rehman did not controvert the contents of the above noted extract. He however stated that he does not want to discuss to the question pertaining to faith and requested that his statement to that effect be recorded.

5. The learned Advocate-General requested for adjournment as he had to attend the Provincial Assembly and case was adjourned to 14.6.1987. On the said date, Sh. Mujeeb-ur-Rehman, Malik Mahmood Majid and Mirza Naseer Ahmad Advocates submitted an application for withdrawal of the bail application. The grounds taken in this petition are that in the course of arguments the

petitioner's counsel (Sh. Mujeeb-ur-Rehman, Advocate) submitted that the arguments be restricted to the limited question of bail and that "he did not wish to enter into detailed arguments which might touch on the merits of the main case and findings whereupon may prejudice the case of the prosecution or the defence". It is further stated that the counsel also requested that his statement to this effect may be recorded but the same "could not be recorded" and the case was adjourned on the request of the learned Advocate-General who wanted to go to the Assembly Chambers. It was further submitted that "certain extraneous matters were brought under discussion and it appeared as if the Court was about to enter into a roving enquiry into matters which are not mentioned in the F.I.R. and which are, if at all, more appropriately a subject for investigation or trial" and "in the circumstances the petitioner feels that it will be better in the interest of justice to withdraw his bail application for the present".

The learned Advocate-General took strong exception to the contents of the application and the language used therein. He added that insinuations made amount to contempt of Court and as such he be given opportunity to make a reply statement in order to place on record the correct factual and legal position. The matter was adjourned to 22-6-1987 and then to 28-6-1987 on which date the learned Advocate-General addressed arguments and Mr. Rashid Murtaza Qureshi, Advocate filed a reply to the withdrawal application wherein it is stated that the withdrawal of the petition is being sought mala fide to avoid adjudication of the question of applicability of Section 295-C of the P.P.C. Quoting references from various religious books of the Qadiani community including Aik Ghalti Ka Azala, Auiena-i-Kamalat-e-Islam and Tabligh-i-Risalat written by Mirza Ghulam Ahmad it has been asserted therein that Mirza Ghulam Ahmad Qadiani proclaimed himself as "Muhammad dur Rasul-ullah"; he used most filthy language against all those who rejected his claim to Prophethood and, on his own showing, he was a product (خودکاشته بودا) of the British imperialism, therefore,

when he claims that he is "Muhammad dur Rasul-ullah" and his followers believe him as such they offer gravest contempt and insult to the Holy Prophet Muhammad (peace be upon him). Relying on the aforesaid references it is submitted that discussion on the question of faith is inevitable as the meaning which the Qadianis attach to the "KALMA TAYYABA" has to be gone into specially when they do not controvert writings of Mirza Ghulam Ahmad and other Qadianis containing the meaning which was assigned to the words "Muhammad dur Rasul-ullah". A copy of the aforesaid application was delivered to the counsel for the petitioner in Court and he was asked if he would like to make any submission in reply but- he stated that he would not add anything to his request for withdrawal.

6. The plea that Court was about to commence "a roving enquiry on the question of faith (so was stated in Court but in the withdrawal application the words "arguments which might touch on the merits and "matters which are not mentioned in F.I.R....." have been used) has been taken to avoid the question sought to be raised by the learned Advocate-General and the learned counsel for the complainant. It is pertinent to note that in the bail application it has been contended that "there is no definite law regarding Kalama Tayyaba relating to the Non-Muslims.....". I do not want to make a detailed comment on this assertion as the bail application has been withdrawn but in view of the insinuation made, it may be pointed out that for Non-Muslim Qadianis, the use of KALMA TAYYABA in the sense or with the meaning attributed by them becomes relevant for seeing whether the act complained of amounts to defiling the sacred name of the Holy Prophet Muhammad (peace be upon him).

7. I would not have incorporated the contents of the application and that of the reply, had a request simpliciter to withdraw the main application been made but the learned counsel for the petitioner chose to use improper language and to include uncalled for insinuation. The learned Advocate-General submitted that these remarks

amount to contempt. This situation necessitated the recording of contents of the withdrawal application and the reply in this order. As regards initiation of contempt proceedings, though the language used is intemperate and insinuation made is contemptuous but as the advocates who made the withdrawal application belong to minority community, this Court should show benevolence and decline to proceed further in the matter.

With these observations the bail application is dismissed as withdrawn.

Application dismissed

(PLD 1987 LAHORE 458)





BALUCHISTAN HIGH COURT
(QUETTA)
1987

○ Mr. Justice Amir-ul-Mulk Mengal

BALUCHISTAN HIGH COURT (QUETTA)**Mr. Justice Amir-ul-Mulk Mengal****ZAHIRUDDIN and 4 others Petitioner****versus****THE STATE Respondent**

Mujeeb-ur-Rehman assisted by Mubarak Ahmed, Syed Ali Ahmed Tariq, Khalid Malik, Ehsanul Haq and Mirza Abdul Rashid for Petitioners.

Ch. Muhammad Ejaz Yousuf, Muhammad Moquim Ansari and Basharatullah as Amicus-curia for the State.

Dates of hearing: 19th September, 3rd, 4th and 5th October, 1987.

Criminal Revisions Nos. 38 to 42 of 1987.

Decided on 22nd December, 1987.

JUDGMENT

MR. JUSTICE AMIR-UL-MULK MENGAL-- I propose to dispose of the following Criminal Revisions by this single judgment since these petitions arise out of common questions of facts and law.

- (1) Criminal Revision No.38 of 1987, Zahiruddin v. The State.
- (2) Cr. Revision No.39 of 1987, Rafi Ahmed v. The State.
- (3) Criminal Revision No.40 of 1987, Abdul Majid v. The State.
- (4) Criminal Revision No.41 of 1987, Abdur Rehman v. The State.
- (5) Criminal Revision No.42 of 1987, Ch. Muhammad Hayat v. The State.

The relevant facts leading to filing of these petitions are that different F.I.Rs. were lodged against the petitioners with identical allegations that they were wearing badge of 'KALMA TAYYABA' although they were Ahmadis. Consequently challans were put before the Extra-Assistant Commissioner-1, and City Magistrate, Quetta, who after conducting the trial convicted the petitioners under section 298-C, P.P.C. and sentenced each of them to undergo rigorous imprisonment for one year and to pay fine of Rs. 1,000 each and in default to further undergo rigorous imprisonment for one month.

The fact that petitioners are Ahmadis and were wearing badge of KALMA TAYYABA was not disputed by any one of them at the trial.

Being dissatisfied with the order of conviction the petitioners preferred appeals in the Court of learned Sessions Judge, Quetta who was pleased to transfer the same to the Additional Sessions Judge-1, Quetta. After hearing the appellants the learned Additional Sessions Judge-1, Quetta was pleased to dismiss the appeals vide his order dated 16-6-1987.

All these petitions have been filed against the aforesaid orders dated 10-7-1986 passed by City Magistrate and order dated 16-6-1987 passed by Additional Sessions Judge-1, Quetta.

Learned counsel for the petitioners Mr. Mujeeb-ur-Rehman raised several legal questions which were of public importance, hence the Court appointed Mr. Muhammad Moquim Ansari and Mr. Basharatullah, Advocates as amicus curiae. Besides....., Mr. Ejaz Yousuf, was also heard as State counsel.

Before proceeding further it will be proper to dispose of the preliminary legal objections as raised by Mr. Mujeeb-ur-Rehman learned counsel for petitioners. It was vehemently urged that since five separate appeals filed by the appellants, were disposed of by a common judgment, hence learned appellate Court has erred in law by violating the provisions of section 367, Cr.P.C, read with section 424, Cr.P.C. Learned counsel referring to the word "every trial" as used in section 366, Cr.P.C. canvassed that there is no conception under Criminal Procedure Code for consolidating the judgments. It was further averred that even if a common judgment is written, it is required of the judge to discuss the case of each individual accused person separately and with reference to material on record. It was also contended that if a judge without discussing the evidence of every individual accused person separately and distinctly and without making reference to the evidence regarding the individual accused person passes a common judgment, the same becomes erroneous and thus, liable to be set aside with orders of remanding the same for re-writing. Reference was made to the following cases:--

- (i) Raja Muhammad v. The State reported in PLD 1965 Karachi 637. In this case it was observed that disposal of two cross-cases by one judgment is not illegal. However, care must be taken that each case should be disposed of separately on material of its record without reference to the material and record of other case.
- (ii) The case of Gul Sher v. The State reported in PLD 1963 Karachi 598 wherein it was held that when two appeals are heard together each appellant is

entitled to consideration of his case separately and individually.

- (iii) **Tahir v. The State** reported in 1968 P Cr. L J 465 wherein it was observed that if the judgment of appellate Court is neither setting out facts of case nor points for determination nor discussion of evidence led, the appeal cannot be said to have been disposed of as required by law.
- (iv) Another reference to the case of **Syed Abdul Waheed v. The State** reported in 1968 P Cr. L J 776 also indicates that appellate Court dealing with six appeals and arriving at omnibus judgment was said to have not complied with the relevant provisions of Cr.P.C. and the case was remanded for rehearing and decision by separate judgment on evidence in each case.
- (v) Finally the case of **Kalubepari v. The State** reported in PLD 1958 Dacca 549 was relied upon wherein it was held that final Court of appeal on facts, at least, give some indication in its judgment as to the application of its mind to the evidence from which at least the Court of revision would be in a position to judge whether there had or had been a proper appreciation of evidence and all the points falling to be decided in the case by the final Court of appeal on facts.

From the perusal of the aforesaid judgments and section 24, Cr.P.C. it may be observed that the judgment of the appellate Court should deal with the material on record and should contain reasons for inferences drawn or conclusions reached regarding each individual accused persons. The other purpose seems to be that the judgment of the appellate Court should be such as to enable the High Court in revision to grasp the nature of the case without reference to the record. If a judgment deals with the material on record and also discusses the relevant provision of law and gives reasons for its conclusions, said judgment,

cannot be said to have been passed in violation of section 424, Cr.P.C.

Applying the observations made in the cases referred to hereinabove to the present case, it may be pointed out that the learned Appellate Court has dealt with the legal as well as factual aspects of the case. Since all the petitioners have admitted the fact that being Ahmadis they were wearing badge of KALMA TAYYABA hence the point for determination was whether or not they have committed an offence within the meaning of section 298-C, P.P.C. This point was common in all the appeals hence it cannot be said that the appellants were prejudiced in any manner by common judgment or that the learned appellate Court failed to abide by the provisions of sections 367 and 424, Cr.P.C. I have perused the judgment of the appellate Court in the light of the arguments advanced by the learned counsel for the petitioners and I see no reason to hold that the same is in contravention of section 424, Cr.P.C. The reason being that the nature of the offence was the same i.e. being Ahmadis the petitioners were wearing badge of KALMA TAYYABA. There was no occasion to make reference or to discuss the evidence as led by the prosecution for the reason that all the petitioners admitted before the trial Magistrate that they are Ahmadis and were wearing badge of Kalma Tayyaba. All of them took a common stand that by doing so they in fact have committed no offence. Since in all the five petitions, point for determination was whether wearing of badge of KALMA TAYYABA by Ahmadis constitutes an offence within the purview of section 298-C, P.P.C. hence common judgment did not suffer from any legal infirmity. Furthermore, no injustice has been caused to the petitioners. I, therefore, see no reason to dislodge the judgment on this preliminary legal objection.

It was next contended by Mr. Mujeeb-ur-Rehman that the conviction awarded to the petitioners is not sustainable as the charge put to the petitioners was defective. According to learned counsel, the Magistrate while framing charge violated provisions of Chapter XIX Cr.P.C.

particularly section 223, Cr.P.C. Learned counsel contended that the charge as read out to the petitioners was different from the questions put to the petitioners under section 342, Cr.P.C. The contention was that questions as put to the petitioners in their statements recorded under section 342, Cr.P.C. could not have been put to the petitioners without first amending the charge to that effect. In order to appreciate the aforesaid contention it may be profitable to reproduce the charge against the petitioners, which was as follows:-

”تم پر یہ الزام ہے کہ تم نے قادیانی احمدی ہوتے ہوئے کلمہ طیبہ کا بیج لگا کر زیر دفعہ ۲۹۸ ج تعزیرات پاکستان کی خلاف ورزی کی ہے۔ کیا تم جرم سے انکار کرتے ہو یا اقرار کرتے ہو۔“

The relevant question put to the petitioners under section 342, Cr.P.C. was as under:-

س: کیا یہ درست ہے کہ آپ نے کلمہ طیبہ کا بیج لگا کر قادیانی ہونے کے ناطے مسلمانوں کی دل آزاری کی ہے۔ اس لئے تم نے جرم ۲۹۸ ج تعزیرات پاکستان کا ارتکاب کیا ہے۔“

Mr. Mujeeb-ur-Rehman urged with the considerable vehemence that there was palpable inconsistencies in the question put to the accused/petitioners under section 342, Cr.P.C. and the contents of the charge. This according to the learned counsel caused great prejudice to the petitioners in their defence inasmuch as they were misled.

After perusal of the relevant provision of Cr.P.C. relating to framing of charge, irresistible conclusion would be that the object of framing of charge appears to enable an accused person to exactly know the allegations which he has to meet and for which he should be ready before taking of evidence. The legal requirement in this context would be to provide the particulars of the offence with which the accused person is charged with certainty and accuracy of facts. If the accused person is well-aware of the allegations which the prosecution wants to prove against him and he knows the substantive charge which he is to meet, the object of framing of charge would be satisfied.

Relying on the case of *Sardar Gian Singh v. Emperor* as reported in A I R 1938 Lahore 828 and the case of *Muhammad Ehsan Khan v. State* as reported in 1968 P Cr. L J. 759, the learned counsel argued that the "manner" in which the offence was committed must specifically be put to the accused in the charge. I have perused the aforesaid two judgments. Both of which incidently pertain to the offence of cheating and it was observed in the aforesaid cases that the term "manner" in section 223, Cr.P.C. includes with reference to an offence of cheating, every ingredient by virtue of which the act ceases to become one of mere non-criminal deception and becomes one of cheating within the meaning of section 415, P.P.C. and the effect of the deception upon the victim's body, mind, reputation or property would thus, be a part of the "manner" of cheating.

Examining the facts of this case in the light of observations made in aforesaid cases as well as the provisions enshrined in Cr.P.C., I am of the view that the charge has been properly put to the petitioners and petitioners were not misled in any manner in setting up the defence. The slight change in the questions put under section 342, Cr.P.C. has in no manner handicapped the petitioners in their defence because the questions so put were akin in substance, covering ingredients of section 298-C, P.P.C. The petitioners were well aware that they were facing charge under section 298-C, P.P.C. They, therefore, took a common plea that by wearing badge of Kalma Tayyaba they have committed no offence under law because Kalma Tayyaba is part of their religion. I failed to understand how the petitioners were hampered in their defence or were in any manner prejudiced from the questions put to them under section 342, Cr.P.C. The result, therefore, would be that this objection is not tenable, thus, the same is overruled.

This leads us to the moot question which needs determination and which may be put as under:-

"Whether by wearing a badge of Kalma Tayyaba the petitioners who were Qadiyanis have committed an offence within the meaning of section 298-C, P.P.C.

Lengthy and dexterous arguments were advanced by Mr. Mujeeb-ur-Rehman and learned Amicus Curiae on this point. The contentions raised by Mr. Mujeeb-ur-Rehman may be summarised on the point as under:-

- (a) Wearing of badge of Kalma Tayyaba does not constitute an offence within the meaning of section 298-C, P.P.C, because Kalma Tayyaba has not been expressly mentioned in section 298-C, P.P.C. and on the principle of literal construction it cannot be deduced that it forms part of section 298-C, P.P.C.
- (b) The omission to mention Kalma Tayyaba in section 298-C is not accidental but it is intentional. The legislature was fully well aware that saying or uttering Kalma Tayyaba is common between Muslims and Ahmadis.
- (c) The criminal law should be interpreted strictly and that too in favour of the subject. The principle of Expressio Unius Est Exclusio Alterius i.e. Express mention implied exclusion was not properly appreciated by Courts below.
- (d) That in order to construe the true meaning of section 298-C, P.P.C. the Rule of "Ejusdem Generis and Nosoitur Associis" are applicable.
- (e) It was further contended that "Or" as used several times in section 298-C, P.P.C. has been used mostly in explanatory and illustrative form. The same has been used very often neither in conjunction nor in disjunction. However, the learned counsel submitted that only three offences are made out in section 298-C, P.P.C.
- (f) That mens rea is the basis of commission of any offence which is lacking in the present case.

On the other hand the learned Amicus Curiae Mr. Muhammad Moquim Ansari as well as Mr. Basharatullah, advanced lengthy arguments. The salient features of their arguments may be summed up as under: -

- (i) The intention of the Legislature is manifest and clear. The literal and grammatical meanings of the words used in the aforesaid sections required no further interpretation. The Rule of Eiusdem Generis and Noscitur Associjs are not applicable, because the intention of legislature is absolutely clear.
- (ii) Going through the legislative history on the point, the learned amicus curiae submitted that sections 298-B and 298-C, P.P.C. are independent sections creating distinct offences. Section 298-B, relates to protect the Holy names, titles and places, whereas section 298-C, describes offences pertaining to general behaviour.
- (iii) It was further contended by them that intention of legislature can best be inferred from the preamble of a particular statute which provides a guideline indicating the intention of the legislature.

In order to appreciate the contentions as raised by the learned counsel for the parties it would be proper at this stage to reproduce Ordinance XX of 1984 called as Anti-Islamic Activities of Qadiani Group, Lahori Group and Ahmadis (Prohibition and Punishment) Ordinance, 1984:-

“Ordinance XX of 1984 Anti-Islamic Activities of Qadiani Group, Lahore Group and Ahmadis (Prohibition and Punishment) Ordinance, 1984.

An Ordinance to amend the law to prohibit the Qadiani Group Lahori Group and Ahmadis from indulging in Anti-Islamic activities.

(Gazette of Pakistan, Extraordinary, Part I, 26th April, 1984).

No. F.17(1)/84-Pub.--The following Ordinance made by the President is hereby published for general information:-

Whereas it is expedient to amend the law to prohibit the Qadiani Group, Lahori Group and Ahmadis from indulging in Anti-Islamic activities:

And whereas the President is satisfied that circumstances exist which render it necessary to take immediate action;

Now, therefore, in pursuance of the Proclamation of the fifth day of July, 1977, and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance:-

PART I—PRELIMINARY

1. Short title and commencement.--(1) This Ordinance may be called the Anti-Islamic Activities of Qadiani Group, Lahori Group and Ahmadis (Prohibition and Punishment) Ordinance, 1984..
- (2) It shall come into force at once.
2. Ordinance to override orders or decisions of Courts.- The provisions of this Ordinance shall have effect notwithstanding any order or decision of any Court: -

PART II—AMENDMENT OF THE PAKISTAN PENAL CODE (ACT XLV OF 1860)

3. Addition of new sections 298-B and 298-C. Act XLV of 1860.-- In the Pakistan Penal Code Act (XLV of 1860), in Chapter XV, after section 298-A, the following new sections shall be added namely: -

"298-B. Misuse of epithets, descriptions and titles, etc., reserved for certain holy personages or places.-

(1) Any person of the Qadiani 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 'Ameer-ul-Mumineen', 'Khalifa-tul-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) refer 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 Qadiani 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.

298-C. Person of Qadiani Group, etc., calling himself a Muslim or preaching or propagating his faith.- Any person of the Qadiani Group or the Lahori Group (who call themselves 'Ahmadis' or by any other name), who, directly or indirectly, poses himself as a Muslim, or calls, or refers to, his faith as Islam, or preaches or propagates his faith, or invites others to accept his faith, by words, either spoken or written, or by visible representations, 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. "

As the outset it was strenuously urged by learned counsel for the petitioners that to construe real meaning of the words used in an enactment and to know intention of the legislature, it is a well-settled principle that a statute must be read as a whole. According to the learned counsel it is the statute which is to be read as a whole and not some sections from here and there which may be read together. On this legal proposition the learned counsel argued further that section 298-B and section 298-C, PPC are both part of the same statute i.e. Ordinance XX of 1984, therefore, when there is ambiguity, (as according to the learned counsel the words of section 298-C, PPC are ambiguous) the same is to be interpreted with reference to section 298-B, PPC. It was further contended that only those actions of Qadianis which have been prohibited under section 298-B, PPC have been made punishable in section 298-C. According to the learned counsel a Qadiani or Ahmadi is said to have posed himself as a Muslim under section 298-C, PPC if he refers to or addresses to any other person, other than a Caliph or companion of the Holy Prophet Muhammad (peace be upon him), as 'Ameer-ul-Mumineen', 'Khalifa-tul-Mumineen', 'Khalifa-tul-Muslimeen', 'Sahaabi' or 'Razi Allah Anho' or for that matter recalls his place of worship as Masjid etc. which are mentioned in section 298-B (1), (a), (b), (c) and (d). Thus, the learned counsel attempted to conclude that since reciting of KALMA TAYYABA or wearing badge of Kalma Tayyaba are not mentioned in any of the clauses of section 298-B, the same cannot, therefore, be presumed to be offences in section 298-C, PPC. Having resort to the maxim *expresso unius exclusio alterius*, it was argued that the provisions of section 298-C are general whereas offences mentioned in section 298-B are particulars, therefore, the particular excludes the general and thus section 298-C, PPC provides only those actions as offences which are particularly and expressly mentioned in section 298-B, PPC. Another limb of the arguments of the learned counsel for the petitioners was that it is not the

function of the court to add words in the statute which otherwise are omitted by legislature. Since Kalma Tayyaba has not been mentioned, rather it is omitted in section 298-C, PPC, therefore, the same cannot be extended into or added to section 298-C, PPC. In fact the learned counsel was describing a well-settled rule of interpretation that offence cannot be created by implication.

In support of the aforesaid contention the learned counsel relied on the case of *Khizar Hayat v; Commissioner Sargodha Division and others* PLD 1965 Lah. 349. It was held in the aforesaid case that it is well-settled rule that the courts cannot extend a statute to meet a case for which provision has clearly and undoubtedly not been made. In this connection the following passage from *Craies on Statute Law, Sixty Edn.* from page 70, was also reproduced:-

"The authorities on this subject are numerous and unanimous. No case can be found to authorise any Court to alter a word so as to produce a 'casus omissus', said Lord Halsbury in *Mersey Docks v. Henderson*. In *Crawford v. Spooner*, the Judicial Committee said: We cannot aid the Legislature's defective phrasing of an Act, we cannot add and mend, and, by construction, make up deficiencies which are left there. 'In 1951 in *Magor and St. Mellons R.D.C. v. Newport Corp.* It was held by the House of Lords, that a Court has no power to fill any gaps disclosed in an Act. To do so would be to usurp the function of the Legislature."

The case of *Qasu and two others v. The State* reported in PLD 1969 Lah. 48 and the relevant observations being at page 52 read as under: -

"It is axiomatic that nothing is to be added to a statute, and words are not to be read into it. 'A case not provided for in a statute is not to be dealt with merely because there seems no good reason why it should have been omitted, and the omission consequently to have been unintentional' has been quoted as the gist of the decision in *Lloyds Bank v.*

Elliot by Maxwell in his book Interpretation of Statutes, Eleventh Edition, at page 12, under the heading 'Omission not to be Lightly Inferred'."

The third case referred to in support of the aforesaid contention was the case of Ch. Khadim Hussain v. The State PLD 1985 S C (AJ and K) page 125. On page 130 while following the principles laid down by the Supreme Court in case of State v. Zia-ur-Rehman and others reported in PLD 1973 S C 49 it was observed as' under:-

"It is only in the case of any ambiguity that a Court is entitled to ascertain the intention of the legislature by construing the provisions of the statutes as a whole while taking into account the circumstances which led to the enactment of the statute. The rule is well-founded that a statute has to be construed as a whole and every part of the statute is to be given a meaning consistent with the other provision thereof."

The aforesaid rules of interpretation or any other rules have been devised so as to exactly ascertain or discover the legislative intent in a statute. The fundamental and basic phenomena is to give effect to the legislative intent from the words used in a statute. If the words are plain and clear, need does not arise to have resort to different rules of interpretation but to give effect to the ordinary grammatical meaning of the words used in an enactment. This is now almost a well-settled law and if any reference is at all necessary reliance may be placed on the case of S.A.Haroon v. Collector of Customs, Karachi as reported in PLD 1959 SC (Pak.) 177. The relevant observations made by the Hon'ble Supreme Court as follows:-

"All rules of interpretation have been devised as aids to the discovery of the legislative intent behind an enactment. Where the words are plain and unambiguous that intent can be best judged by giving full effect to the ordinary grammatical meaning of those words. But when this is not the case, an attempt should be made to discover the true intent by considering the relevant provision in the context of

the whole Act in which it appears and by having regard to the circumstances in which the enactment came to be passed. The previous state of law the mischief sought to be suppressed and the new remedy provided are relevant factors to be given due consideration."

It is further a well-established principle of construction that the Courts are not supposed to add or to take from a statute anything unless there are adequate grounds to justify the inferences that the legislature intended something which was omitted to express. The intention of the legislature in the present case is manifest, unambiguous and clear. The same may be deduced from the legislative history, as aptly put by Mr. Basharatullah, learned *amicus curiae*. The first stage existed till 21-9-1974, when there was no express provision in law or under Constitution that Qadianis were non-Muslims. The second stage emerged when Constitution (Second Amendment) Act, 1974 was introduced in the Constitution of Islamic Republic of Pakistan (hereinafter referred to as the "Constitution"), on 21st of September, 1974. In the aforesaid amendment the following clause was added in Article 260 after clause (2):-

"(3) A person who does not believe in the absolute and unqualified finality of the Prophethood of Muhammad (peace be upon him) the last of the Prophets or claims to be a Prophet, in any sense of the word or of any description whatsoever, after Muhammad (peace be upon him), or recognizes such a claimant as a Prophet or a religious reformer, is not a Muslim for the purposes of the Constitution or law."

It was the stage when the legislature made a declaration that Qadianis are non-Muslims. After being declared as non-Muslims the Qadianis or Ahmadis etc. continued to claim themselves to be Muslims, but there was no penal section under any law to forbid them from claiming to be Muslims. However, for the purpose of the constitutional rights they were non-Muslims. Hereinafter

came the next stage when Muslims and non-Muslims were specified in the Constitution by an amendment so made in the Constitution, known as Constitution (Third Amendment) Order, 1983. Then came the last stage when it was felt necessary to provide penal clauses in law to give effect to the Constitutional amendment as mentioned hereinabove. This was done by Ordinance XX of 1984 already reproduced in the preceding paras by virtue of which sections 298-B and 298-C were introduced in the Pakistan Penal Code. It starts with the preamble:--

“Whereas it is expedient to amend the law to prohibit the Qadiani Group, Lahori Group and Ahmadis from indulging in anti-Islamic activities;”

meaning thereby that Qadianis being non-Muslims continued indulging in anti-Islamic activities. From this brief survey of legislation in respect of the status of Qadianis it may be conveniently gathered that Ordinance XX of 1984 was primarily meant to curb the activities of Qadianis from indulging in anti-Islamic Activities. The aforesaid amendment provided two sections 298-B and 298-C in Pakistan Penal Code. Section 298-B, P.P.C. is admittedly particular in its contents and certain actions have been forbidden under law which have already been mentioned in clause (1), sub-clauses (a) to (d) of section 298-B and sub-clause (2) provides punishment for the same. But the legislature further felt it necessary to add section 298-C which covers the general behaviour and conduct of Qadianis towards Muslims.

From the above discussion, I conclude and hold that section 298-B, P.P.C. and section 298-C, P.P.C. are two independent sections creating distinct offences. Section 298-B is primarily intended to protect the Holy names, titles, personages, places etc., from misuse. But section 298-C prescribes punishment for conduct and general behaviour of a Qadiani if he directly or indirectly poses himself as a Muslim, or calls, or refers to, his faith as Islam, or preaches or propagates his faith, or invites others to, accept his faith, by words either spoken or written, or by visible

representation or in any other manner whatsoever outrages the religious feelings of the Muslims. It is thus clear that there is no ambiguity in the words used in section 298-C, P.P.C. to discover the legislative intent. Mr. Mujeeb-ur-Rehman the learned counsel for petitioners then adopted another argument by contending that if the meaning of words used in a particular enactment or section thereof are ambiguous or two or some more words are susceptible of analogous meanings, they are understood to be used in their cognate sense. It was urged with vehemence that the words take their colours from similar words as are conjointly used in a particular provision of law. It in fact is the rule of *Noscitur Associis*. But from the bare perusal of section 298-C, P.P.C. it transpires that the aforesaid rule is not applicable because as already observed, section 298-C is an independent section creating distinct offences. I am, therefore, of the firm opinion that no other rule of interpretation or construction can be adopted in interpreting section 298-C, P.P.C. except that the legislative intent can be well-judged by giving effect to grammatical meanings of these words as well as scheme of the Ordinance. It thus, ends the discussion on this point.

Now advertng to the interpretation of the words as used in section 298-C, P.P.C., it is to be seen whether these words are susceptible of different meanings, connote more than one meaning or these are aptly used to indicate in the simplest form, the intention of the legislature. In this regard the first word which came to limelight was the word "pose" as used in the section. It was rightly pointed out by Mr. Mujeeb-ur-Rehman, the learned counsel for the petitioners that the word "pose" is in fact not a judicial word and it is not commonly used in legal terminology. It does not find mention. anywhere in any.... Judicial Dictionary. However, the word "pose" as used in the Concise Oxford Dictionary 6th Edition means (1) formulate (assertion, claim, etc.); propound (question, problem); place (artist's model etc.) in certain attitude. 2. Assume an attitude, esp for artistic purposes, or to impress others; set up, give oneself out, as (connoisseur etc.); as, pretend to be,

(3). Attitude of body or mind, esp. one assumed for effect. Likewise the word "Pose" as defined in Shorter Oxford English Dictionary, Volume II Third Edition revised, means an act of posing, an attitude or posture of the body, or of a part of the body, esp. one deliberately assumed, or in which a figure is placed for effect, or for artistic purposes, fig. An attitude of mind, esp. One assumed for effect, inter to assume a certain attitude. Similarly in Legal Thesaurus the word "Pose" means act as, act the part of, ape, assume the character of, assume the role of but the State Counsel Mr. Ejaz Yousuf, relied on the definition used in Corpus Juris Secundum wherein it means, affirm, to state as a proposition. The learned State Counsel then went on defining the word "affirm" and then allude but this was seriously objected to Mr. Mujeeb-ur-Rehman on the ground that meaning of words cannot be construed in that manner.

However, the simplest meaning of pose as used herein seems to be assumed the role of or to pretend to be what in fact one is not. Thus, in its simplest form if a Qadiani poses himself as Muslim means when he acts as a Muslim or he assumes the role of a Muslim. Thus, when a Qadiani by his conduct or by any positive act, assumes the role of a Muslim and acts as a Muslim, his act falls within the mischief of section 298-C, P.P.C. For instance if a Qadiani displays or brands himself by affixing badge of Kalma Tayyaba as in the instant case, he poses himself to be a Muslim.

The next word as repeatedly used in this section is "Or" accordingly to the learned counsel the word "or" has mostly been used in an illustrative or explanatory form. It has neither been used in conjunctive nor disjunctive form. However, according to the learned counsel, section 298-C, creates three offences which are as under -

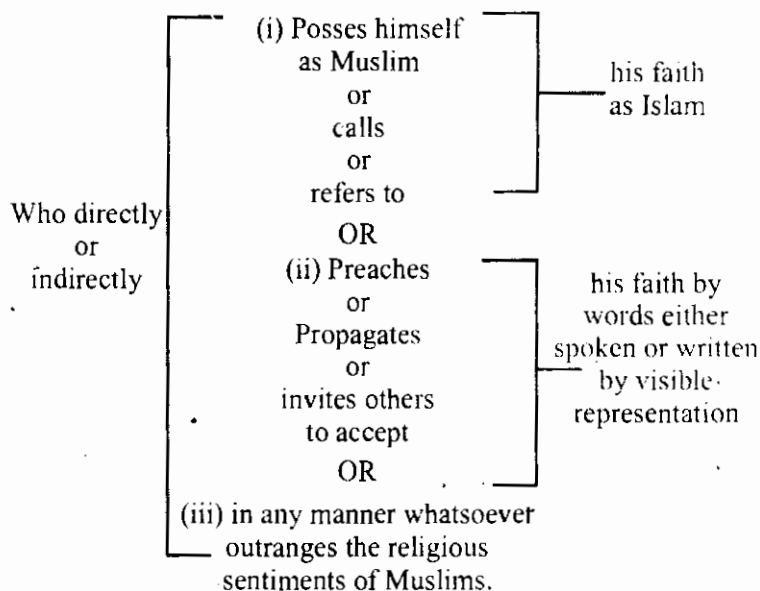
- (1) if a Qadiani, who directly or indirectly poses himself as Muslim or calls or refers to his faith as Islam:

- (2) Preaches or propagates or invites others to accept his faith by words either spoken or written or by visible representation.
- (3) in any manner whatsoever outrages the religious sentiments of Muslims.

Thus, according to the learned counsel the word "or" has been used only twice as disjunctive and the remaining "or" has been used in conjunctive or in illustrative form.

The learned counsel attempted to substantiate his version with the help of the following chart which he himself prepared and which is reproduced as follows:-

CHART I
SECTION 298-C



Mr. Basharatullah on the other hand contended that "OR" has been used disjunctively creating 7 offences in section 298-C, P.P.C. Be that as it may, the question put in simplest form is if a Qadiani poses himself as a Muslim or...commits an offence within the meaning of section 298-C, P.P.C. The word Muslim as defined by the Constitution 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 recognizes 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). Thus, a person enters the realm of Islam only if he believes in the unity and oneness of Almighty God and in the absolute and unqualified finality of Prophethood Muhammad (peace be upon him) as last of the Prophets. Learned Amicus Curiae Mr. Muhammad Moquim Ansari rightly pointed out that KALMA TAYYABA is not a Shiaar as pointed out by Mr. Majeed-ur-Rehman but it is one of the fundamentals of Islam without which no one can be entered in Din-e-Islam. It was also pointed out by learned State Counsel Mr. Ejaz Yousuf that as per Sahhie Bukhari Sharif, KALMA TAYYABA is one of the five fundamentals of Islam. It is otherwise known that whenever a non-Muslim converts his religion and adopts Din-i-Islam, the first fundamental is that he recites KALMA TAYYABA. There is thus, no cavil that KALMA TAYYABA is one of the fundamentals of a Muslim. He, who recites KALMA TAYYABA is generally known to be a Muslim. Thus, when a Qadyiani wears a badge of KALMA TAYYABA and roams in the streets, he poses himself to be a Muslim. In the instant case the petitioners admit that being Qadianis they have affixed badge of KALMA TAYYABA when they were apprehended. There remains thus, hardly any doubt that the petitioners committed an offence within the meaning of section 298-C, P.P.C. The petitioners failed to put any explanation for affixing the same except that as per arguments of the learned counsel for the petitioners that KALMA TAYYABA is common Shiaar between Muslims and Qadianis. This aspect has been thoroughly and dexterously dealt by the Federal Shariat Court in the case of Majib-ur-Rehman and 3 others v. Federal Government of Pakistan and another as reported in PLD 1985 F.S.C. 8 and it was observed at page 111 as under:-

"This Injunction is prohibitory of the Idol worshippers performing their Shia'ar in Kaa'ba and the decree of the Holy Prophet ﷺ was prohibitory of their Shia'ar of Hajj (see Tafheemul Qur'an, Vol.2, p.186, note 25). It is thus, obviously concluded from it that Islamic Sharia does not allow a non-Muslim to adopt Shia'ar of Islam, because Shia'ar means the distinguishing features of a community with which it is known."

This may be a complete answer to the arguments advanced by the learned counsel for the petitioners.

Now I embark upon to determine yet another point raised by Mr. Mujeeb-ur-Rehman that no criminal offence can be made out unless mens rea is proved, on the part of the accused. According to the learned counsel since KALMA TAYYABA being common between Qadianis and Muslims hence the same was in fact affixed not with an intention to ridicule KALMA TAYYABA or to pose themselves as Muslims or injure the feelings of Muslims but just to practice their own religion and there was no intention or mens rea for doing so. On the other hand Mr. Basharatullah, the learned-Amicus Curiae pointed out that generally criminal intention is fundamental ingredient for commission of an offence but it is not always to be found out in any particular offence. According to the learned Amicus Curiae there are provisions in Pakistan Penal Code in which no criminal intention is revealed. Reference was made to sections 124-A, 131, 340, 140 and 402-A, P.P.C.

Be that as it may, it is to be seen in the instant case as to what was the intention of the Qadiyanis to wear badge of KALMA TAYYABA and to go in crowded streets? The obvious reason seems to be that the petitioners intended to make the people believe that they are Muslims. This depicts the criminal intention or mens rea on their part. Thus, it cannot be argued, keeping in view the admitted facts of this case, that the petitioners acted with no mens rea or criminal intention because petitioners failed to give or assign any reason for affixing badge of KALMA

TAYYABA while going out in busy streets of the town except that they pretended to be Muslims or they wanted others to believe that they are Muslims.

The last but the most pertinent question in this petition was about the vires of Ordinance XX of 1984. Although Mr. Mujeeb-ur-Rehman has very candidly conceded that vires of any legislation cannot be challenged in exercise of revisional jurisdiction of this Court yet he attempted to argue this point indirectly. However, undoubtedly vires of any legislation cannot be challenged collaterally or incidentally before High Court in its revisional jurisdiction, as in this capacity question regarding illegality, impropriety, excess of jurisdiction or illegal assumption of jurisdiction by subordinate courts can only be scrutinized. It may be seen that this law (Ordinance XX of 1984) even otherwise has been declared as a valid piece of legislation by the Federal Shariat Court in case of *Mujeeb-ur-Rehman and others v. Federal Government of Pakistan* and another reported in PLD 1985 F S C 8. It was also pointed out by Mr. Mujeeb-ur-Rehman that appeal against the aforesaid judgment is sub judice before the Supreme Court. As per Article 203-GG of the Constitution, the verdict of Federal Shariat Court is binding on the High Court. The said provision of the Constitution is hereby reproduced:-

"203-GG. Subject to Articles 203-D and 202-F, any decision of the Court in the exercise of its jurisdiction under this Chapter shall be binding on a High Court and on all Courts subordinate to a High Court.

Thus, this Court while exercising revisional jurisdiction shall not call in question the validity of Ordinance XX of 1984.

So far as merits of the case are concerned, as discussed hereinabove, the petitioners have admitted that they are Qadiyanis and were wearing badge of KALMA TAYYABA, and no explanation whatsoever has come on record as to why they did so. The above factual and relevant legal aspects have been appropriately discussed and determined

by the trial Court as well as appellate Court. There is apparently no illegality, impropriety or excess or failure of jurisdiction in deciding the matter, warranting interference.

The upshot of the above discussion is that I find no merits in these petitions. However, regarding quantum of sentence taking into consideration the peculiar circumstance of case and the fact that petitioners are first offenders a lenient view is taken. Thus, the sentence of each of the petitioners is reduced from 1 year R.I. to 9 months' R.I. the amount of fine, however, shall remain the same.

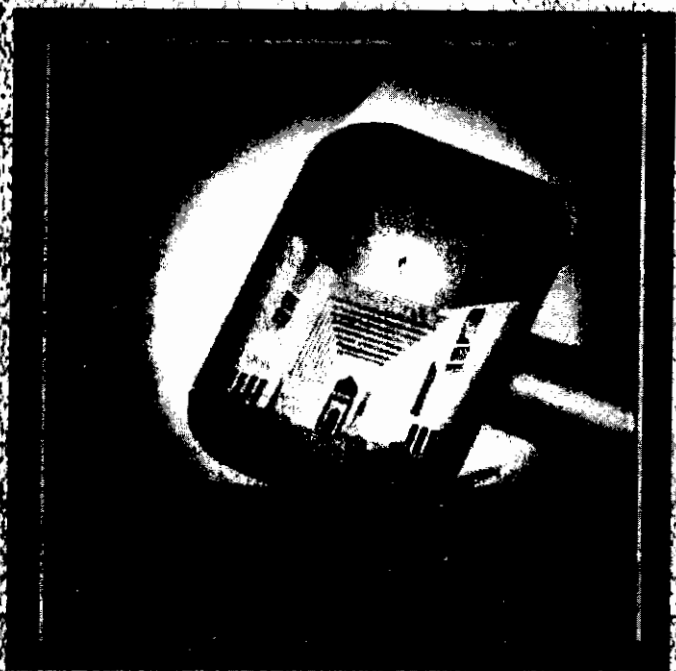
Resultantly, with the aforesaid reduction in sentence all the five petitions are dismissed.

Before leaving the case, I feel it incumbent to note my appreciation for the valuable assistance rendered by Mr. Mujeeb-ur-Rehman, and the learned Amicus Curiae, Mr. Basharatullah and Mr. Muhammad Moquim Ansari, Advocates, as well as Mr. Ejaz Yousuf.

Petitions dismissed.

(PLD 1988 QUETTA 22)





FEDERAL SHARIAT COURT 1990

- Mr. Justice Gul Muhammad Khan
(Chief Justice)
- Mr. Justice Abdul Karim Khan Kundi
- Mr. Justice Abdul Razzak A. Thahim
- Mr. Justice Fida Muhammad Khan

FEDERAL SHARIAT COURT

Mr. Justice Gul Muhammad Khan, Chief Justice

Mr. Justice Abdul Karim Khan Kundi,

Mr. Justice Ibadat Yar Khan,

Mr. Justice Abdul Razzak A. Thahim

Mr. Justice Fida Muhammad Khan, JJ

MUHAMMAD ISMAIL QURESHI Petitioner

versus

**PAKISTAN through Secretary, Law and Parliamentary
Affairs Respondent**

Shariat Petition No.6/L of 1987.

**Mian Abdul Sattar Najam, Deputy Attorney-General,
Hafiz S A.Rahman and Iftikhar Hussain Ch. for the
Federal Government.**

**Nazir Ahmad Ghazi, A.A.-G., Riaz-ur-Rehman
Yazdani and Jalaluddin Khuld, A.A.-G. for the Punjab
Government.**

**Mian Muhammad Ajmal, Addl. A.G. for the N.W.F.P.
Government.**

Hafiz S. A. Rehman for the Sindh Government.

Ghazi Rashid and Allah Bakhsh Gondal for Others.

Maulana Saeeddudin Sherkoti, Maulana Salauddin Yousaf, Maulana Abdul Shakoore, Maulana Fazal Hadi, Maalana Abdul Falah, Maulana Subhan Mahmood, Mufti Ghulam Sarwar Oadri, Maulana Gohar Aman and Maulana Riazul Hassan Noori Jurisconsults.

Dates of hearing: 26th to 29th November, 1989 and 4th to 7th March, 1990.

Decided on 30th October, 1990.

JUDGMENT

GUL MUHAMMAD KHAN, CJ.- This order shall also dispose of Shariat Petition No. 1/L of 1984 and S.S. M. No. 106/87 on the same point. Petitioner Muhammad Ismail Qureshi, Advocate, challenges section 295-C of the Pakistan Penal Code, which was enacted vide Ordinance I of 1988. Earlier, the same petitioner had moved a similar application (Shariat Petition No. 1/L of 1984) but before it could be decided the legislature, of its own, amended the law and inducted section 259-C, P.P.C., referred to above. The petitioner feeling unsatisfied even with that has approached this Court. Section 295-C reads as under:-

Section 295-C. Use of derogatory remarks etc, in respect of the Holy Prophet. Whoever by words, either spoken or written, or by visible representation, or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Muhammad ﷺ shall be punished with death, or imprisonment for life and shall also be liable to fine."

2. The precise objection taken against this provision is that the alternate punishment of life imprisonment therein is repugnant to the Injunctions of Islam as laid down in the Holy Qur'an and Sunnah of the Holy Prophet ﷺ. The contention raised is that any disrespect or use of derogatory remarks etc. in respect of the Holy Prophet ﷺ comes within the purview of hadd and the punishment of death provided in the Holy Quran and Sunnah cannot be

altered. The learned counsel had relied on Verse 13 of Surah Anfal, Verse 65 of Surah Al-Nisa in this regard. The learned counsel also referred to some Traditions of the Holy Prophet ﷺ in support of his plea to plead that the sentence of death only is the punishment and no Court shall be given the authority to pronounce the lesser sentence of life imprisonment.

3. This Court issued public notices and also requested some Jurisconsults to assist. The case was heard at Lahore, Karachi and Islamabad on so many dates and had the assistance of the following Jurisconsults:--

- (1) Maulana Subhan Mahmood Sahib.
- (2) Maulana Mufti Ghulam Sarwar Qadri Sahib.
- (3) Maulana Hafiz Salahuddin Yousaf Sahib.
- (4) Maulana Muhammad Abdo-hu Al-Falah Sahib.
- (5) Maulana Syed Abdul Shakoor Sahib.
- (6) Maulana Fazle Hadi Sahib and
- (7) Maulana Saeed-ud-Din Sherkoti Sahib.

Out of the above, the following supported the plea taken by the petitioner to say that sentence of death is only sentence for this offence:--

- (1) Maulana Subhan Mahmood Sahib.
- (2) Maulana Mufti Ghulam Sarwar Qadri Sahib.
- (3) Maulana Hafiz Salahuddin Yousaf Sahib.
- (4) Maulana Muhammad Abdo-hu Al-Falah Sahib.
- (5) Maulana Syed Abdul Shakoor Sahib and
- (6) Maulana Fazle Hadi Sahib.

The following further stated that in case repentance is shown by the offender the sentence would be waived:--

- (1) Maulana Subhan Mahmood Sahib.
- (2) Maulana Mufti Ghulam Sarwar Qadri Sahib and
- (3) Maulana Hafiz Salahuddin Yousaf Sahib.

Maulana Saeed-ud-Din Sherkoti, however, stated that even lesser punishment could be given.

4. Maulana Subhan Mahmood relied upon Verses 9:65 and 66, 33:57, 49:2, 2:217, 5:75, 39:1, 65, 47:28. He has related some Ahadith and juristic opinions wherein the contemner has been considered an apostate. He has further relied upon a Hadith related on the authority of Abu Qulabah wherein the punishment of contemner has been prescribed as death. He has also relied upon the Hadith related by Qazi Ayaz that Holy Prophet said "Kill the person who abuses the Prophet and whip the one who abuses his companions." He also relied upon Ahadith that the Holy Prophet ﷺ had punished his contemnors with death. He also referred to the consensus of opinion of the Jurists that the punishment of contemner is death. He further maintained that the punishment of life imprisonment can be given to a woman contemner or a non-Muslim contemner of the Holy Prophet ﷺ.

5. Maulana Mufti Ghulam Sarwar Qadri, relied upon Verses 49:57, 9:65,66, 9:61-62, 58:8, 33:57, 4:65, 2:104 of the Holy Quran and some Ahadith to say that punishment of death only is prescribed for contemner. He also referred to the Ahadith wherein the Holy Prophet ﷺ had pardoned his contemnors. He also cited verses of Holy Quran and also Ahadith of the Holy Prophet ﷺ to argue that they are clear on the point that repentance is acceptable in any offence. Reference was also made to the sayings of the prominent Hanfi Jurists specially Ibn Abidin and concluded that the repentance of the contemner is acceptable and this is the preferred view of Hanafi Jurists.

6. Maulana Hafiz Salahuddin Yousaf, relied upon the views of Hanfi Jurists that the repentance of the contemner can be accepted and thereafter he will not be given the punishment of death. He also cited verses of Holy Quran and Ahadith of the Holy Prophet ﷺ, particularly, a Hadith related on the authority of Ibn Abbas that Holy Prophet ﷺ said, "Kill the person who changes his religion (Islam)." In his view a Muslim contemner becomes an

apostate and so must be condemned to death. He also quoted opinion of Ibn Taimiyyah that the punishment of the contemner is death. He also relied upon the views of Imam Malik, Shafi and Ahmad to the same effect.

7. Maulana Muhammad Abdu-hu Al-Falah, among other verses relied Verse 4:46 of the Holy Quran and Ahadith of the Holy Prophet ﷺ wherein the Prophet has prescribed the punishment of death for his contemner. He further stated that there is consensus of the opinion among the Jurists on the Point that the punishment of the contemner is death.

8. Maulana Syed Abdul Shakoor cited Verses 9:24, 33:57 and 9:12. He also quoted Hadith of the Holy Prophet ﷺ that the punishment of contemner is death and that he did punish his contemnors with death. He further quoted views of different Jurists from the book Al-Fiqh ala Mazahibil Arb'a by Abdul Rehman Jazeeri, Vol. V, pages 274-275 and Raddul Mukhtar Vol. Ill pages 290-291.

9. Maulana Fazle Hadi, relied upon Verses 49:2, 33:57,28, 58:22, 9:12, 9:65 and 66. He also cited some Ahadith of the Holy Prophet ﷺ wherein the punishment of death has been prescribed for the contemner of the Prophet. He also quoted opinions of Jurists that the punishment of the contemner is death.

10. Maulana Saeed-ud-Din Sherkoti, quoted Verses 48:9, 49:2,3,53, 4:13, 2:187, 229 and 33:57 of the Holy Quran. He also cited many of Ahadith wherein the Holy Prophet ﷺ had punished his contemnors with death as also he had pardoned some of his contemnors. He also referred to many views of Jurists specially those described by Maulana Ashraf Ali Thanvi in his book Imdadul Fatawa Vol. V, pages 166-168.

11. Almost all the Jurisconsults have relied upon the following verses which are as under:-

“33:57 Lo! those who malign Allah and his Messenger, Allah hath cursed them in the world and the

Hereafter, and hath prepared for them the doom of the disdained.

Explaining this verse Allama Qurtubi writes:

"Everything which becomes a means of malignment of the Holy Prophet whether by quoting words bearing different meanings or similar actions comes under his malignment (اذى). (Al-Jamiu Liahkami I) Quran, Vol. XIV, page 238)."

Allama Ismail Haqqi while explaining this verse writes:

"With the malignment of Allah and his Prophet is meant only the malignment of the Prophet in fact, and mention of Allah is only for glorification and exaltation and to disclose that the malignment of the Prophet is indeed the malignment of Allah."

12. The next verses relied upon (9:61-62) is as follows:—

"9:61-62 And of them are those who vex the Prophet and say: He is only a hearer. Say: A hearer of good for you, who believeth in Allah and is true to the believers, and a mercy for such of you as believe. Those who vex the Messenger of Allah, for them there is a painful doom." (9:61).

"They swear by Allah to you (Muslims) to please you, but Allah, with His Messenger, hath more right that they should please him if they are believers." (9:62).

Ibn Taimiyyah while explaining these verses writes: "Verse 9:62 denotes that the malignment of the Prophet is the opposition (مما حاة — مشاقه) of Allah and His Prophet".

(*Assarim-ul-Maslol*, pages 20, 21)

13. Ibn Taimiyyah further writes: "It is related on the authority of Ibn Abbas that when a man from a group of contemners came to the Prophet, he said to him "why you and your friends abuse me." That person went and brought

his friends and they all swore in Allah and said that they have not abused him. On this the following verses were revealed:—

58:18:

“On the day when Allah will raise them all together, then will they swear unto him as they (now) swear unto you, and they will fancy that they have some standing. Lo! is it not they who are the liars?

58:20:

“The devil hath engrossed them and so hath caused them to forget remembrance of Allah. They are the devil’s party. Lo! is it not the devil’s party who will be the losers?

These verses are linked with Verse 58:20 which is as under:--

58:20:

“Lo! those who oppose Allah and His messenger, they will be among the lowest.”

14. Thus this link of the verses of the Holy Qur’an is obvious that these abusers and contemners of the Prophet are the opponents of Allah and His Prophet about whom the Qur’an says:

“When thy Lord inspired the angels, (saying) I am with you. So make those who believe stand firm. I will throw fear into the hearts of those who disbelieve. Then smite their necks and smite of them each finger (8:12).

That is because they opposed Allah and His messenger. Whoso opposeth Allah and His messenger, (for him) Lo! Allah is severe in punishment. (8:13).

And if Allah had not decreed migration for them. He verily would have punished them in this world, and

theirs in the Hereafter is the punishment of the Fire. (59:3).

That is because they were opposed to Allah and His messenger; and whoso is opposed to Allah (for him) verily Allah is stern in reprisal." (59:4).

So these verses clearly prescribe the severe punishment of death for the opponents of Allah and his Prophet, who include contemners of the Prophet ﷺ (ibid., page 24).

15. The Holy Qur'an further mentions in this regard:--

"If the hypocrites, and those in whose hearts is a disease, and the alarmists in the city do not cease. We verily shall urge thee against them, then they will be your neighbours in it but a little while. (33:60).

Accursed, they will be seized wherever found and slain with a (fierce) slaughter." (33:61).

These verses state that the punishment of these munafiqin (contemners) is death, (ibid., page 42).

16. The Holy Qur'an has described the glorification and exaltation of the Prophet in another way and has ordered the Muslims to maintain it and be careful in this regard otherwise their good deeds will be rendered vain. Qur'an says:~

"O ye who believe! Lift not up your voices above the voice of the Prophet, nor shout when speaking to him as ye shout one to another, lest your works to rendered vain while ye perceive not." (49:2).

Ibn Taimiyyah while explaining this verse writes "In this verse the believers have been prohibited from raising their voices over the voice of the Prophet and that their loud voice before the Prophet may not render their good deeds as vain and they will not understand it.

17. It is obvious from different Verses of Qur'an that infidelity and apostasy render actions of any person as vain. The Holy Qur'an says:--

"They question thee (O Muhammad) with regard to warfare in the sacred month. Say: Warfare therein is a great (transgression), but to turn (men) from the way of Allah, and to disbelieve in him and in the Inviolable place of Worship, and to expel his people thence, is a greater (sin) with Allah, for persecution is worse than killing. And they will not cease from fighting against you till they have made you renegades from your religion, if they can. And whoso becometh a renegade and dieth in his disbelief such are they whose works have fallen both in the world and the Hereafter. Such are rightful owners of the Fire: they will abide therein. (2:217).

This day are (all) good things made lawful for you. The food of those who have received the Scripture is lawful for you, and your good is lawful for them. And so are the virtuous women of those who received the Scripture before you (lawful for you) when ye give them their marriage portions and live with them in honour, not in fornication, nor taking them as secret concubines, whose denieth the faith, his work is vain and he will be among the losers in the Hereafter. (5:5).

This is the guidance of Allah whereby he guideth whomsoever of his bondmen he listeth. And if they had associated, to naught would have come all that they were wont to work. (6:88).

And verily it hath been revealed unto thee as unto those before thee (saying); If thou ascribe a partner to Allah thy work will fail and thou indeed will be among the losers. (39:65).

That is because they are averse to that which Allah hath revealed, therefore. He maketh their actions, fruitless. (47:9).

18. In order to stop insinuations against the Prophet, Holy Qur'an prohibited the believers to use ambiguous words as used by the jews for insulting the Prophet. The Holy Qur'an says:--

"O ye who believe! say not (unto the Prophet):

"Listen to us" but say "Look upon us, and be ye listeners. For disbelievers is a painful doom." (2:104).

Maulana Muhammad Ali Siddiqui while explaining this verse, writes: "The jews used this word as insult of the Prophet. The word 'raina (راعنا) has two meanings, good and bad. Its good meaning is "Be kind and attentive to us". The bad meaning is that jews spoke it Raena (راعينا) which means "Oh! our Shepherd" and they used this word to degrade the Prophet. So it is an innuendo amounting to contempt of the Prophet. Therefore Muslims were prohibited to use this word so as to stop all the means which lead to the contempt of the Prophet.

19. The jews used the word 'raina' (راعنا) as raena (راعينا) for defecting the religion (of Islam). Holy Quran says:--

"Some of those who are jews change words from their context and say: 'We hear and disobey; hear thou as one who heareth not' and 'Listen to us!' distorting with their tongues and slandering religion. If they had said: 'we hear and we obey; hear thou, and look at us' it had been better for them, and more upright. But Allah hath cursed them for their disbelief, so they believe not save a few." (4:46).

Allama Qurtubi writes, "they Muslims were prohibited from speaking this word so as to stop the means leading to the contempt of the Prophet. The glorification and exaltation of Prophet is the base of the religion and thus depriving it is depriving the religion." (Maalimul Quran by Muhammad Ali Siddiqui, Vol. I, Pages 463-468).

20. It has been related on the authority of Abdullah Bin Abbas that a munafiq man named Bishar had a dispute with a jew in some matter. The jew told him to go to the Prophet for decision and the munafiq told him to go to Kaab Bin Ashraf. Anyhow they went to the Holy Prophet

ﷺ and the Prophet decided in favour of the Jew. The person (munafiq) was not willing on that decision and thus they brought the dispute before Hazrat Umar. The Jew told Hazrat Umar that Holy Prophet ﷺ has already decided in my favour but this man was not willing on that. Then Hazrat Umar said to munafiq: "Is this so". He said "Yes". Hazrat Umar went inside, got his sword and killed the munafiq and said, "I decide so for the person who does not agree to the decision of the Holy Prophet." On this Verse 4:65 was revealed which is as under:--

"By nay, by thy Lord, they will not believe (in truth) until they make thee judge, of what is in dispute between them and find within themselves no dislike of that which thou decidest, and submit with full submission." (4:65). (*Ruhul Maani, Vol. V, page 67*)

This action of Hazrat Umar as approved by Holy Qur'an is an authority for the sentence of death for contempt of the Holy Prophet ﷺ.

21. The Holy Qur'an has further declared that the contempt of the Prophet is apostasy in any form it may be. Holy Qur'an says:—

"And if thou ask them (O Muhammad) they will say: We did but talk and jest. Say: Was it at Allah and his revelations and his messenger that ye did scoff? (9:65).

Make no excuse. Ye have disbelieved after your (confession of) belief. If we forgive a party of you, a party of you we shall punish because they have been guilty." (9:66).

22. Ibn Taimiyyah while explaining these verses writes, "This text is on the point that cutting jokes with Allah, his verses and His Prophet is infidelity. So the contempt is more liable to be infidelity as is derived from this verse that he who insults the Prophet becomes apostate." (*Assarimul Maslul, page 31*).

Abu Bakar Ibn Arabi while explaining this verse writes, "the hypocrites spoke this word either intentionally or as a joke and whatever the case may be it is infidelity because making joke with the words of infidelity is also infidelity. (Ahkmul Qur'an, Vol. II, page 964).

23. The Holy Qur'an, as a glorification of the Holy Prophet ﷺ prohibited even the slightest cause of annoyance and declared that marriage with the wives of the Prophet after his death is prohibited for the believers so as to avoid not being means of the contempt of the Prophet. Holy Quran says:--

"O ye who believe! Enter not the dwellings of the Prophet for a meal without waiting for the proper time, unless permission be granted you. But if ye are invited enter and when your meal is ended, then disperse. Linger not for conversation. Lo! that would cause annoyance to the Prophet, and he would be shy of (asking) you (to go); but Allah is not shy of the truth. And when ye ask of them (the wives of the Prophet) anything, ask it of them from behind a curtain. That is purer of hearts and for their hearts. And it is not for you to cause annoyance to the messenger of Allah, nor that ye should, ever marry his wives after him. Lo! that in Allah's sight would be an enormity. (33:53)."

24. The Holy Prophet ﷺ is the best interpreter of the above-noted verses of the Holy Qur'an and it is also proved by his Sunnah that his contemner is liable to the penalty of death. Reference may be made to the following Ahadith:-

- (i) It has been related on the authority of Hazart Ali that Holy Prophet ﷺ said: "Kill the person who abuses a Prophet and whip by stripes the one who abuses my companions." (Al-Shifa, Qazi, Ayaz Vol.11, page 194).
- (ii) It has been related on the authority of Ibn Abbas that a blind person in the period of Holy Prophet ﷺ had a female slave who used to abuse the Holy

Prophet ﷺ. This blind person bade her to abstain from it and warned her not to do so but she didn't care. One night when she was as usual abusing the Holy Prophet ﷺ, this blind person took a knife and attacked her belly and killed her. Next morning when the case of murder of this woman was referred to the Holy Prophet ﷺ, he collected the people and said, "who has done this job. Stand and confess because of my right on him for what he has done." On this the blind person stood and came rolling the people before the Holy Prophet ﷺ and said, "O Prophet, I have killed this slave woman because she abused you. I have constantly forbade her but she didn't care for that. I have two beautiful sons from her and she was my very good companion, but yesterday when she started abusing you, I took my knife and attacked on her belly and killed her." The Holy Prophet ﷺ said, "O people! be witnesses that the blood of this woman is vain (بساطل)." (Abu Daud, Vol.II, pages 355-357).

- (iii) It has been related on the authority of Hazrat Ali that a jew woman used to abuse the Holy Prophet ﷺ and thus a person killed her. The Holy Prophet ﷺ declared her blood as vain (ضائع) (ibid).
- (iv) It has been related on the authority of Abu Barzah who said, "I was sitting with Abu Bakar when he became furious at a person." I said to him, "O! Caliph of the Prophet of Allah. "Order me to kill him". On this he became normal and stood up and went inside and called me and said, "What did you say? I said, "Order me to kill him." He said, "Had I ordered you, would you have killed him?" I said, "Yes." He said, "No," I swear by Allah that no one other than the Holy Prophet ﷺ is in the position that his contemner be killed." (ibid).

- (v) It has been related on the authority of Jabir Ibn Abdullah that Holy Prophet ﷺ said, "who will help me against Kaab bin Ashraf. He has indeed teased Allah and His Prophet." On this Muhammad Ibn Maslamah stood and said, "O Prophet of Allah! Do you want me to kill him." Prophet said, "Yes". Then he went along with Abbas Ibn Hiber and Ibad Ibn Bishar and killed him. (Bukhari, Vol.II, page 88).
- (vi) It has been related on the authority of Bara Ibn Azib who said that Holy Prophet sent some persons of Ansar under the headship of Abdullah Ibn Atik to a jew named Abu Rafia who used to tease the Holy Prophet ﷺ and they killed him. (Assarimul Maslul by Ibn Taimiyyah, page 152).
- (vii) It has been related on the authority of Umair Ibn Umayyah that he had a 'mushrikah' sister who teased him when he met the Holy Prophet ﷺ and used to abuse the Holy Prophet ﷺ. At last one day he killed her with his sword. Her sons cried and said, "We know her murderers who killed our mother and the parents of these people are 'mushrik', (infidels)." When Umair thought that her sons may not murder wrong persons, he came to the Holy Prophet ﷺ and informed him of the whole situation. The Prophet said to him, "Have you killed your sister?" He said, "Yes." Prophet said, "Why" He said that she was harming me in your relation. The Prophet called her sons and asked about the murderers. They showed other persons as murderers. Then Prophet informed them and declared her death as vain. (Majmauz Zawaid wa Manbaul Fawaid, Vol.V, page 260).
- (viii) It has been narrated that after the conquest of Makka, the Holy Prophet, after giving general pardon, ordered killing of Ibn Khatal and his she-slaves who used to compose defamatory poems

about the Holy Prophet. (Al-Shifa by Qazi Ayaz, Vol. II, page 284 Urdu Translation).

- (ix) It has been narrated by Qazi Ayaz in Shifa that a person abused the Holy Prophet ﷺ. The Prophet said to Sahaba "Who will kill this person." On this Khalid Ibn Walid said, "I will kill him." The Prophet ordered him and he killed him (ibid).
- (x) It has been narrated that a person came to the Holy Prophet and said, "Oh Prophet! My father abused you and I couldn't bear it thus killed him." The Holy Prophet ﷺ confirmed his action." (ibid), page 285).
- (xi) It has also been related that a woman who belonged to Bani Khatmah tribe used to abuse the Holy Prophet ﷺ. The Holy Prophet ﷺ said to his companions, "who will take revenge from this, abusive woman." A person of her tribe took the responsibility and killed her. He then came to the Holy Prophet who said "In this tribe the two goats will not quarrel and the people will live in unity and integrity." (ibid), page 286).

25. Abdur Razaq in his Musannaf has related the following Traditions about the contempt of the Holy Prophet ﷺ and its punishment:

- (i) Hadith No.9704: It has been related on the authority of Ikrimah that a person abused the Holy Prophet ﷺ. The Holy Prophet ﷺ said, "who will help me against my (this) enemy." Zubair said, "I". Then he (Zubair) fought with him and killed him. The Holy Prophet ﷺ gave him this goods.
- (ii) Hadith No.9705: It has been related on the authority of Urwah Ibn Muhammad (who relates from a companion of the Prophet) that a woman used to abuse the Holy Prophet ﷺ. The Holy Prophet ﷺ said, "who will help me against my

(this) enemy." On this Khalid Ibn Walid went after her and killed her.

- (iii) Hadith No.9706: It has been related on the authority of Abdur Razaq who relates from his father that when Ayub Ibn Yahya went to Adnan, a man was referred to him who had abused the Holy Prophet ﷺ. He consulted (the Ulama) in this matter. Abdur Rahman Ibn Yazid Sanani advised him to kill him and he killed him. Abdur Rahman had related to him a hadith in this regard that he had met Umar and had got a great knowledge from him. Ayub also referred this action to Abdul Malik (or Walid Ibn Abdul Malik). He replied him appreciating his action.
- (iv) Hadith No.9707: It has been related on the authority of Saeed Ibn Jubair that a person falsified the Holy Prophet ﷺ. The Prophet sent Ali and Zubair and said to them, "kill him when you find him."
- (v) Hadith No.9708: It has been related on the authority of Ibn Taimi who relates from his father that Hazrat Ali ordered the person who blamed (abused) the Holy Prophet ﷺ be killed. (Musannaf Abdur Razaq, Vol.V, pages 377-378).

26. It is pertinent to mention here that Holy Prophet ﷺ had pardoned some of his contemners but the Jurists concur that Prophet himself ﷺ had the right to pardon his contemners but the Ummah has no right to pardon his contemners. (Assarumul Maslul, Ibn Taimiyyah, pages 222-223).

27. Ibn Taimiyyah writes, "Abu Sulaiman Khattabi said, "When the contemner of the Holy Prophet ﷺ is a Muslim then his punishment is death and there is no difference of the opinion among the Muslims about this matter in my knowledge." (Assarumul Maslul, page 4).

28. Qazi Ayaz writes, "Ummah is unanimous on the point that the Punishment of a Muslim who abuses the

Holy Prophet ﷺ or degrades him is death. (Al-Shifa, Vol.II, page 211).

Qazi Ayaz further writes, "Every one who abuses Holy Prophet ﷺ, points out any defect in him, his lineage, his religion or in any of his qualities, or makes allusion with him or resembles him with another thing as his insult, disrespect, degradation, disregard or his defect, he is contemner and he will be killed, and there is consensus of the ulema and Jurists on this point from the period of Sahaba till this time. (Al-Shifa By Qazi Ayaz, Vol.II, page 214).

29. Abu Bakar Jassas Hanafi writes, "There is a difference of opinion among the Muslims that a Muslim who maligns or insults the Holy Prophet ﷺ intentionally becomes apostate liable for death. (Ahkamul Quran Vol.II, page 106). It will be useful to note one Hadith here:-

"It has been related on the authority of Abdullah Ibn Abbas that Prophet ﷺ said, "Kill the person who changes his religion (Islam)." (Bukhari, Vol.II, page 123).

30. It has been related by Qazi Ayaz that Haroonur Rashid asked Imam Malik about the punishment of the contemner of the Prophet and told him that some Jurists of Iraq had suggested the punishment of whipping him stripes. Imam Malik became furious on that and said, "O Amir ul Muainin! how the Ummah has the right to exist when her Prophet is abused. So kill the person who abuses the Prophet and whip stripes to one who abuses the companions of the Prophet." (Al-Shifa, Vol.II, page 215).

31. Ibn Taimiyyah, while relating the opinions of the Jurists in this connection, writes, "Abu Bakar Farsi Shafie has related that there is consensus of opinion among the Muslims that the punishment of contemner of the Prophet is death, if he is Muslim." (Assarimul Maslul, page 3).

32. The above discussion leaves no manner of doubt that according to Holy Qur'an as interpreted by the Holy Prophet ﷺ and the practice ensuing thereafter in the

Ummah, the penalty for the contempt of the Holy Prophet ﷺ is death and nothing else. We have also noted that no one after the Holy Prophet ﷺ exercised or was authorised the right of reprieve or pardon. The next question arising in the case is thus to specify or clearly define the offence of contempt of the Holy Prophet.

33. The words (سب — شتم) and (اذى) have been used for the contempt of the Prophet in Holy Qur'an and Sunnah. (سب) means to suffer, to harm, to molest, to contemn, to insult, to annoy, to irritate, to injure, to put to trouble, to malign, to degrade, to scoff. (Arabic English lexicon, E.W. Lane, Book-I, Part-I page 44). The word (شتم) means to insult, to abuse, to revile, to scold, to curse, to defame. (Ibid., pages 212, 249).

Allama Rashid Raza, while explaining the meaning of the word (اذى) writes, "It means anything with which the body or the mind of a living person is pained though very lightly." (Al-Manar, Vol.X, page 445).

Allama Ibn Taimiyyah, while explaining the significance of the contempt writes, "It means to curse the Prophet, prays for any difficulty for him, or refers to him such a thing which does not behove with his position or uses any insulting) false and unreasonable words or imputes ignorance to him or blames him with any human weakness etc." (Aasarinul Maslul, Ibn Taimiyyah, page 526).

34. Ibn Taimiyyah, while concluding the discussion about the scope and what constitutes the offence of the contempt of the Prophet ﷺ writes, "Sometimes a word in a situation may amount to injury and insult while such a word may not amount to injury and insult on another occasion. This shows that the interpretation of the words which bear different meanings and senses changes with the change of circumstances and occasions. And when (سب) (insult, contempt) has neither been defined in Shariah nor in dictionary, the custom and usage will be relied upon in

determining, its interpretation. So what is considered contempt and insult in the custom and usage that will be considered contempt and insult in Shariah as well and vice versa." (Assarimul Maslul, Ibn Taimiyyah, page 540).

35. Criminal liability may require the wrongful act to be done intentionally or with some further wrongful purpose in mind, or it may suffice that it was done recklessly; and in each case the mental attitude of the doer is such as to make punishment effective. If a person intentionally chose the wrong doing, penal discipline will furnish him with a sufficient motive to choose the right instead, for the future. If, on the other hand, he committed the forbidden act without wrongful intent, yet realising the possibility of the harmful result, punishment may be an effective inducement to better conduct in the future.

36. Yet there are other cases in which, for sufficient or insufficient reasons, the law is content with a lower form of mens rea. This is the case with crimes of negligence. A person may be held responsible for some crimes if he did not do his best as a reasonable man to avoid the consequence in question. In another case the law may go even beyond this; holding, a man responsible for his acts, independently altogether of any wrongful state of mind or culpable negligence. Wrongs which are thus independent of fault may be distinguished as wrongs of Strict liability.

37. The wrongs thus are of three kinds:--

- (1) Intentional or Reckless Wrongs, in which the mens rea amounts to intention, purpose, design, or at least foresight.
- (2) Wrongs of Negligence, in which the mens rea assumes the less serious form of mere carelessness, as opposed to wrongful intent or foresight. With these wrongs defences such as mistake will only negative mens rea if the mistake itself is not negligent.
- (3) Wrongs of Strict Liability, in which the mens rea is not required, neither wrongful intent nor

culpable negligence being recognised as a necessary condition of responsibility, and here defences like mistake are of no avail.

38. An intention thus is the purpose or design with which an act is done. Suppose one buys a gun. His intention may be to shoot for sport or game, to use in self-defence or to shoot some one to cause his death. However, if the latter act is proved as not shooting for defence but as killing then the intention can be said to be to do this very thing i.e., to kill him.

39. An unintentional act is one lacking such purpose or design. An act such as killing, which consists of a cause and an effect, may be unintentional when the actor brings about consequences which he does not intend. One may kill by mistake, say firing at a game or wrongly imagining him to be someone else. In the former cases he fails to foresee the consequences, in the latter he is ignorant of some of the circumstances.

40. A system of law, however, could provide that a man be held liable for such consequences, even though he did not intend them. In the first place, such a rule would obviate the need for difficult inquiries into the mental element. But secondly, and more important, the rule could be justified on the ground that a man should not do acts which he foresees will involve consequential harm to others, whether or not he intends to cause this harm. Such behaviour is clearly reckless or blameworthy, unless the risk can be justified by reason of the social interest of the act itself.

41. Both in this special connection and generally, then it is to be observed that the law may, and sometimes does, impute liability, outside the strict definition of intention, for what is called constructive intention. Consequences which are in fact the outcome of negligence merely are sometimes in law dealt with as intentional. Thus he who intentionally does grievous bodily harm to another, though with no desire to kill him, or certain expectation of his death, is guilty of murder if death ensues.

42. Law frequently, though by no means invariably, treats as intentional, all consequences due to that form of negligence which is distinguished as recklessness that is to say, which the actor foresees as the probable results of his wrongful act. The foresight of the reasonable man is of course an obviously useful evidential test, whereby to infer, what the actor himself foresaw, but the rule just mentioned has transformed it into a presumption of law which cannot, it seems, be rebutted. Intention thus covers acts expressly intended or those done recklessly.

43. In the Shariah, it makes no difference whether the criminal intent precedes the offence or synchronizes with it. In either case the penalty is identical. This principle is substantiated by the following Tradition of the Holy Prophet ﷺ:-

“Allah condones all those sinister ideas coming into the minds of the members of my Ummah which they have not expressed or put into practice.”

That is why the Shariah draws no line of distinction between homicide or infliction of injury decided upon beforehand and unpremeditated homicide or injury and lays down identical penalty in both the cases. The prescribed punishment for murder is ‘qisas’ whether it is premeditated or not.

44. The intention may be definite or indefinite. The intention of an offender to do a definite wrong to an indefinite person will be regarded as definite intent. If the offender is conscious of the potential results of his act and does intend to produce all or some of those results his offence would in spite of its indefinite results be treated as a definite act, whatever the results produced by it. The Hanafites and the Hamblites as well as some Jurists of the Shafi’ee School do not differentiate between definite and indefinite intents in criminal cases including homicide. Hence if the act of the offender results in homicide he is a wilful killer whether or not his intention of murder involves a definite victim.

Further, in determining the accountability of the offender and the sort of offence he is guilty of, the Jurists place both definite and indefinite intents on equal footing and regard them as subject to the same injunction except when the offence consists of homicide and the criminal intent is indefinite.

45. The Shariah has kept in view the difference between criminal intent and the motive of crime, right from its very beginning but has not admitted of the bearing of the motive on the commission and pattern of the crime and the punishment entailed by it. Thus, it matters little in the Shariah whether the motive of offence is noble, just as killing, in retaliation, for the murder of one's next of kin or for the indignity suffered at the hands of the victim, or whether the motive is ignoble just as killing in lieu of pecuniary compensation or to commit larceny.

46. In other words, the motive of crime has nothing to do with the criminal intent; nor does it affect the pattern of crime or its punishment. So it is practically possible to reject the effect of motive so far as the 'hadd', 'qisas' offences are concerned but it is not so in the case of penal punishment. The motive does not affect the 'hadd' or 'qisas' offences because the law-maker has confined the Powers of the Court to the prescribed punishments, admitting of no consideration of the motive behind the commission of offences. But in the case of 'tazeer' punishments the law-maker empowers the Court to determine the quantum of Penalty and choose the kind of penalty so that it may be possible for the Court to take into account the motives of offences in the determination of the quantum of Punishment.

47. In other words the difference between the man-made laws in force and the Islamic Shariah is that the latter does not recognize the effect of motives in the case of offences which are categorised as 'Hudood' or 'Qisas' but in the case of other offences, there is nothing in the Shariah inhibiting the Court to take into account the motive of

crimes although it does not theoretically admit of its effect on Punishment.

48. It will be seen from the above discussion that Shariah recognises an offence liable to Hadd only if it is accompanied by an express intention. Shariah also waives the penalty of Hadd if any doubt occurs therein. It is also based on a Tradition of the Holy Prophet ﷺ that doubts dispel sentences of Hadd.

49. So the wrongs of the first category only in para. 37 above will attract the penalty of Hadd and it will apply to the contemner of the Holy Prophet ﷺ. Further, as intention is to be gathered from the facts surrounding the event, the acts falling in the second and third categories will not attract the sentences of Hadd, provided the accused shows that he never intended to commit the offence and is penitent if the words said, jesture made or the act done were ambiguous or they could show some straits of guilty mind or malice. We may also clarify that penitence, in an alleged offence of contempt of the Holy Prophet ﷺ, would be availed to show that mind of the accused had no guilty straits or malice and the penalty will be dispelled on that account and not for the reason that penitence can wipe out an intended contempt.

The Holy Qur'an says:

"33:5 And there is no sin for you in the mistakes that ye make unintentionally, but what your hearts purpose (that will be a sin for you), Allah is forgiving, merciful."

"6:54 When those come to thee who believe in Our Signs, Say: "Peace be on you; Your Lord had inscribed for Himself (the rule of) Mercy: verily, if any of you did evil in ignorance, and thereafter repented and amended (His conduct), lo! He is oft-Forgiving, Most Merciful."

"16:106 Anyone who, after accepting faith in Allah, utters unbelief, except under compulsion, His heart remaining firm in faith but such as open

their breast to unbelief, on them is Wrath from Allah, and theirs will be a dreadful penalty."

"40:19 (Allah) knows of (the tricks) that deceive with the eyes, and all that hearts (Of men) conceal."

50. It has been related on the authority of Hazrat Umar that he heard the Prophet ﷺ say "the reward of deeds depends upon the intention and every person will get the reward according to what he had intended. So whoever emigrated for worldly benefits or for a woman to marry, his emigration was for what he emigrated for." (Bukhari, Vol.I, page 1, Hadith No.1).

51. It has been related on the authority of Ubbaye Ibn Ka'b who said, "There was a person among the Ansar whose house was situated at the farthest end of Madina, but he never missed any prayer along with the Messenger of Allah ﷺ. We felt pity for him and said to him: O, so and so, why don't you buy a house near the Prophet's house so as to save you from the troubles of the heat and the coming from a long distance. He said: Listen! by Allah, I do not like my house to be situated by the side of Muhammad ﷺ. I took (these words of his) ill and came to the Apostle of Allah (ﷺ) and informed him about (these words). He (the Holy Prophet) called him and he said exactly like that (which he had mentioned to Ubbaye Ibn Ka'b) but made a mention of this also) that he wanted a reward for his steps. Upon this the Apostle of Allah (ﷺ) said: in fact for you is the reward which you intend. (Muslim, Vol. I, English Translation by Abdul Hameed Siddiqui, pages 323-324, Hadith No.1404). The above Tradition clearly shows that on the face of it the words said sounded contemptuous but that was not the intention of the utterer and so he was absolved of any penalty.

52. It has been related on the authority of Yahya Ibn Sayyed that the Apostle of Allah was seated while a grave was being dug at Madina. A man suddenly looked down into the grave and said: Bad is the sleeping place of a believer. The Apostle of Allah retorted: What a bad thing you have said! The man explained: I have not meant that,

but I meant that fight in the way of Allah (is better). Then the Apostle of Allah said thrice: There is nothing like death in the way of Allah. There is no other tract of land in the world in which I would prefer my grave. (Mishkat, Vol.III, pages 662-663, English Translation by Fazlul Karim, Hadith No. 575).

53. It is relevant to mention here that the mere fact that the words uttered sounded contemptuous of the Prophet is not an offence until it is based on malicious action or degradation. For example, speaking loudly has been prohibited before the Prophet. The Holy Qur'an says, "O ye who believe! Raise not your voice above the voice of the Prophet nor speak aloud to him in talk, as ye may speak aloud to one another, lest your deeds become void and ye perceive not." (49:2). In this connection Allama Qurtubi while explaining Verse 49:2 writes, "this is the prohibition of shouting and raising the voice over the voice of Prophet which actually injured him. However, it will be no offence if it is done for the cause of battle or for frightening the enemy etc.

54. Allama Alusi, while explaining Verse 49:2 writes, "When this verse was revealed Sabit Ibn Qais" whose voice was naturally loud, went to his house and closed his door and started weeping. When he didn't attend the gatherings of the Prophet for a long time, the Holy Prophet ﷺ enquired about him. The companions said to the Prophet that he had closed the door of his house and is weeping inside the house. The Holy Prophet ﷺ called him and asked him, "What happened to you, He said, 'O Prophet! when this verse was revealed, having loud voice, I feared that I may not be one of those whose good deeds will be rendered vain." The Holy Prophet ﷺ said to him, "you are not among them. You will live with blessings and die with blessings." According to Hassan it was based on the ground that his loud voice was a natural thing because he was dumb and mostly dumbs speak with loud voice, and his loud voice was not meant to degrade or insult the Holy Prophet ﷺ as that of the hypocrites about whom this verse was revealed." (Ruhul Maani, Vol. XXVI, pages 124-125).

55. Allama Alusi further writes, "their shouting before the Prophet is of two kinds: (i) which does not amount to rendering the good deeds vain; (ii) which amounts to rendering the good deeds vain. The first is not based on malicious and insulting action as in case of shouting and speaking with loud voice in battles, quarreling with opponents of injury or insult as Prophet ordered on the day of the battle of Hunain to Hazrat Abbas to call the people with loud voice and he called people with such a loud voice that all the pregnant women delivered their pregnancies by that. And the second is based on malicious and insulting actions as was done by the hypocrites and infidels, (ibid).

56. Qurtubi writes that the last portion of this verse was revealed about a person who said, "I will marry Hazrat Aisha after the death of the Prophet." When Prophet was informed he was greatly injured by that. At this occasion this verse was revealed which prohibited marrying with the wives of Prophet for ever and the Holy Prophet said, "My wives in this world will be my wives in the-hereinafter." But before the revelation of this verse there had practically happened that the Holy Prophet ﷺ once divorced a wife named Kalbiah and she married with Ikrima Ibn Abu Jahal and according to some she married with Ashas Ibn Qais Kindi. This shows that at that time it was not a source of the injury of the Prophet in their mind by saying to marry his wife after his death as it had not been prohibited." (ibid., page 230).

57. The Holy Prophet ﷺ didn't punish Mistah, Hassan and Hamnah who had actually participated in the accusation of Hazrat Aisha and he also did not declare them as hypocrites. Ibn-e-Taimiyyah, explaining that position writes, "they had not intended the injury of the Prophet and there was not any-sign of that, while Ibn Ubayy had intended the injury. This was because at that time it had not been told to them that the wives of the Prophet in this world will be his wives hereinafter and it was possible about their wives in general sense. It is for this reason that Holy Prophet ﷺ hesitated in their matter and consulted

Ali and Zaid and enquired from Barirah and consequently didn't declare those who didn't intend the injury of the Prophet as hypocrites on the possibility in their mind that Holy Prophet might have divorced the accused wife. But after the order that his wives in this world will be his wives hereinafter and that they are the mothers of the believers, their accusation would be the injury of the Prophet at any cost." (Assarimul Maslul, ala Shatimir Rasul, page 49).

58. Maulana Ahmad Yar Khan Badayuni writes, "intention" of the contemner is necessary for proving the offence of contempt of the Holy Prophet ﷺ. If a person said, "The Holy Prophet ﷺ was poor and was not a fortunate." So he will become infidel only when he intends the contempt of the Prophet with that." (Nurul Irfan, Part X, page 74).

59. Some of the Jurists are, however, of the opinion that if the contempt of the Holy Prophet ﷺ is in manifest and express words, the contemner will not be asked as to what was his intention but if the words are such which bear or have the capacity of bearing different meanings and senses out of which only one amounts to contempt, he will be asked as to what was his "intention." (Al-Shifa by Qazi Ayaz, Vol.II, page 221).

60. We, however, do not agree. Firstly, the meaning and import of words differ from place to place. Again context may also suggest different meaning. The accused therefore, must be allowed an opportunity to explain lest an innocent person is punished. It is related that Holy Prophet ﷺ said, The mistake of Qazi judge) in releasing a criminal is better than his mistake in punishing an innocent." (Sunan Al-Baihaqi, Vol. VIII, page 184). The Holy Qur'an also confers right of hearing on every accused. It is to be noted that though Allah Almighty knows, that whatever is written in the scrolls by the guardian Angels, about the deeds of a person in this world, is correct beyond any doubt, yet we find that the man will be heard and if he objects to the writings of the angels, Allah shall call witnesses including his hands, feet, eyes and ears. See al-

Qur'an 17:13, 14, 36:65, 27:20, 22, 16:93 and 21:23. We also find from the Traditions referred to in páras.36-41 above that the right of an accused to explain is there and cannot be taken away. It is, therefore, only after the explanation that the Court can decide whether the words so said were intended to malign, were they used maliciously and contemptuously or were uttered innocently.

61. It has been related on the authority of Ubaidullah Ibn Rafi' a that he heard Hazrat Ali saying, "Allah's Apostle sent me, Az-Zubair and Al-Migdad somewhere saying, 'Proceed till you reach Rawdat Khakh. There you will find a lady with a letter. Take the letter from her'. "So, we set out and our horses ran at full pace till we got at Ar-Rawda where we found the lady and said (to her). "Take out the letter." She replied, "I have no letter with me." We said, "Either you take out the letter or else we will take off your clothes." So she took it out of her braid. We brought the letter to Allah's Apostle and it contained a statement from Hatib Bin Abi Balta'a to some of the Maccan pagans informing them of some of the intentions of Allah's Apostle. Then Allah's Apostle said, "O Hatib what is this? Hatib replied, "O Allah's Apostle "Don't hasten to give your judgment about me. I was a man closely connected with the Quraish, but I did not belong to this tribe, while the other emigrants with you, had their relatives in Mecca who would protect their dependents and property. So I wanted to recompense for my lacking blood relation to them by doing them a favour so that they might protect my dependents. I did this neither because of disbelief nor apostasy nor out of preferring kufr (disbelief) to Islam." Allah's Apostle said, "Hatib has told you the truth....." (Bukhari, Vol.IV, pages 154-155, Hadith No.251).

62. A Hanafi Jurist, Allama Muhiyuddin, writes, "the jurists opine that in matter of the contempt of the Prophet ﷺ the ruler or the judge has to look into the situation and the general conduct of the contemner before deciding the matter." (Akham Al-murtad, Numan Abdur Razaq Samraqi, page 109).

63. An Indian renowned scholar Maulana Ahmad Raza Khan Brailwi writes in this regard, "There is difference between the words of infidelity and the Position of the person who quotes these words and becomes infidel with that. (Tamhid-e-Imam, page 59). He further says, "The use of the word raina (رأى) is not contempt now as it is not said in the context of contempt of the Prophet in these days." (Khatm-e-Nubuwwat, page 71).

64. It has been related that a jew woman named Zainab Bint al-Haris mixed poison in meat and offered it to the Prophet ﷺ liked eating the meat of the arm of the goat, she mixed more poison in that part of the meat. Holy Prophet ﷺ and Bishar Ibn Al-Bar'a who was accompanied with the Holy Prophet ﷺ ate from that. But when Holy Prophet ﷺ started eating, he felt that it is poisonous and thus threw it out from his mouth. Then Holy Prophet ﷺ called that jew woman and asked her about that. She confessed to have mixed poison in that meal. The Holy Prophet ﷺ then asked her as to why she had done so. She answered that she thought if you (Prophet) are a king, we will get rid of you and if you are a Prophet, there will be no harm to you. The Holy Prophet ﷺ forgave her. (Aqziyah al-Rasul by Muhammad Ibn Farj Urdu Translation, pages 189,190).

65. It is also to be noted that Allah Almighty creates no distinction or inequality in the status of the Prophets though He did bestow on some of them more gifts than others. We quote here for reference the following verses from the Holy Qur'an:--

"17:55 We did bestow on some Prophets more (and other) gifts than on others: and We gave to David (the gift of) the Psalms."

"2:253 Those apostles we endowed with gifts, Some above others; To one of them Allah spoke; Others He raised. To degress (of honour); To Jesus the son of Mary. We gave clear (Signs), and strengthened him with the Holy Spirit. If Allah

had so willed, succeeding generation would not have fought among each other, after clear (Signs) had come to them, But they (chose) to wrangle, some believing and others rejecting. If Allah had so willed they would not have fought each other; but Allah fulfilleth His plan."

"2:136 Say ye; "We believe in Allah, and the revelation given to us, and to Abraham, Ismail, Isaac, Jacob, and the Tribes, and that given to Moses and Jesus and that given to (all) Prophets from their Lord; We make no difference between one and another of them; and we bow to Allah in Islam)."

"3:84 Say: We believe in Allah, and in what has been revealed to us and what was revealed to Abraham, Ismail, Isaac, Jacob, and the Tribes, and in (the Books) given to Moses, Jesus, and the Prophets, from their Lord; We make no distinction between one and another among them, and to Allah do we bow our will (in Islam)."

and Verses 2:285, 4:150 and 4:152.

66. Practically, all the Jurisconsults and Scholars agreed that in view of the above verses and the equal status of all the Prophets as such, the same penalty of death as determined above shall apply, in case any one utters contemptuous remarks or offers insult, in any way, to any one of them.

67. In view of the above discussion we are of the view that the alternate punishment of life imprisonment as provided in section 295-C, P.P.C. is repugnant to the Injunctions of Islam as given in Holy Qur'an and Sunnah and therefore, the said words be deleted therefrom.

68. A clause may further be added to this section so as to make the same acts or things when said about other Prophets, also offence with the same punishment as suggested above.

69. A copy of this order shall be sent to the President of Pakistan under Article 203-D(3) of the Constitution to take steps to amend the law so as to bring the same in conformity with the Injunctions of Islam. In case, this is not done by 30th April, 1991 the words "or imprisonment for life" in section 295-C, P.P.C. shall cease to have effect on that date.

Order accordingly.

(PLD 1991 Federal Shariat Court 1)





LAHORE HIGH COURT
1992

○ Mr. Justice Mian Nazir Akhtar

LAHORE HIGH COURT

Mr. Justice Mian Nazir Akhtar

SARFRAZ AHMAD and 7 other Petitioners

versus

THE STATE

.....

Respondent

CrI. M. No.2162/B of 1992,

Decided on 2nd August, 1992.

Mubashir Latif for Petitioners.

Nazir Ahmad Ghazi, A.A.G. for the State.

Rashid Murtaza Qureshi for the Complainant.

Date of hearing: 15th July, 1992.

JUDGMENT

MR. JUSTICE MIAN NAZIR AKHTAR.-- The petitioners had applied for pre-arrest bail in a case registered against them and a few other persons for offences under sections 295-A, 295-C and 298-C of the P.P.C. at P.S. City Nankana Sahib District Sheikhpura. They were allowed an interim pre-arrest bail by my learned brother Rashid Aziz Khan, J. vide his order, dated 10.6.1992.

2. During the course of arguments, the learned A.A.G. and the complainant's learned counsel stated in a fair manner that they did not oppose confirmation of bail of the two ladies namely Mrs. Sarfraz Ahmad and Mrs. Balqis Begum as their case was covered by the exception to section 497 of the Cr.P.C. Hence the interim pre-arrest bail granted to them is confirmed.

3. Mr. Mubashir Latif, learned counsel for the petitioners contended that Sarfraz Ahmad petitioner No. 1 and Ijaz Ahmad, petitioner No.3, were Muslims and not Qadianis and that they were falsely and maliciously roped in the case. The said petitioners were present in the Court and on Court question firmly stated that they were not Qadianis and were true Muslims following the faith / Fiqah of Ahl-e-Hadith and considered followers of Mirza Ghulam Ahmad to be 'wrong'. They further stated that Mirza Ghulam Ahmad in his claim of prophethood was a 'liar' and he as well as his followers belonging to Qadiani and Lahori groups were 'Kafirs' and outside the fold of Islam. During the course of investigation it was verified that Sarfraz Ahmad, petitioner No.1, his wife petitioner No.2 and Ijaz Ahmad, petitioner No.3 were Muslims. Therefore, interim bail granted to Sarfraz Ahmad and Ijaz Ahmad is also Confirmed. I may however observe that the police finding that Mrs. Sarfraz Ahmad, petitioner No.2 is not a Qadiani is open to serious doubts because in reply to several Court questions she did not say a single word against Mirza Ghulam Ahmad or his followers. She has been allowed bail primarily on the ground of womanhood and the further question whether or not she is a Qadiani and whether she has committed any offence is left to be decided by the trial Court.

4. So far as Babar Ahmad petitioner No.8 is concerned, his name does not appear on the disputed invitation cards and there is no material to connect him with the commission of the offences alleged in the F.I.R. Hence the interim bail allowed to him is also confirmed.

5. As regards the other petitioners namely Bashir Ahmad, Muhammad Yousaf and Ijaz Ahmad son of Siraj Din, the petitioner's learned counsel contended as under:—

- (i) In view of the provisions of section 196 of the Cr.P.C. the F.I.R, (which includes the offence under section 295-A of the P.P.C.) lodged by a private person is non-existent.
- (ii) The offence under section. 298-C of the P.P.C. does not fall within the prohibition of section 497 of the Cr.P.C. There being no defiling of the name of the Holy Prophet, the offence under section 295-C was not made out.
- (iii) The mere use of the words:

1- "السلام عليكم" - 2- انشاء الله - 3- "كتاب مسنونہ" -
4- "بسم الله الرحمن الرحيم" - 5- "محمد و نصلی علی رسولہ الکریم" -

did not constitute any offence and that Qadianis had the right to use the same.

- (iv) Law merely prohibits the Qadianis to use the words specified in section 298- B of the P.P.C. and not the other expressions used in the invitation cards.
- (v) The invitation cards were got published by Sarfraz Ahmad, who was not a Qadiani. He placed on the record a photo copy of the receipt to show that payment for printing of the 50 invitation cards was made by Sarfraz Ahmad.

4. On the other hand, Mr. Nazir Ahmad Ghazi, the learned Assistant Advocate-General, strenuously opposed the prayer for bail in respect of Bashir Ahmad, Muhammad Yousuf and Ijaz Ahmad son of Siraj Din and urged that there was nothing to show that the police was actuated with mala fide intentions to arrest them. He pointed out that the petitioners neither pleaded mala fides in the petition nor any argument was raised to show that their arrest would be

mala fide. He further submitted that the Qadiani and Lahori followers of Mirza Ghulam Ahmad cannot use Shiair-e-Islam so as to pose themselves as Muslims. He added that Qadianis were a separate community which had nothing to do with Islam and the Muslim Ummah because Mirza Ghulam Ahmad had falsely proclaimed himself to be a prophet in clear violation of the teachings of Islam and had declared that all those who did not believe in him were Kafirs. He even went to the extent of laying a claim that he was Adam, Ibrahim, Moosa, Isa and even Muhammad, the Holy Prophet (نعوذ بالله من ذلك). He had ventured to attribute to himself the verses; of the Holy Qur'an, which were revealed entirely in relation to the Prophet Hazrat Muhammad ﷺ. While, reciting (كلمه طيبه) when the Mirzais utter the word 'Muhammad', they predominently visualize Mirza Ghulam Ahmad Qadiani. Likewise, they send Darood on Mirza Ghulam Ahmad Qadiani. Thus while reciting the 'Kalma Tayyaba' and 'Darood', they have in their mind Mirza Ghulam Ahmad Qadiani and by so doing they defile the fair name of the Holy Prophet ﷺ. In support of his contentions he referred to some passages from the following books:—

- (1) Haqeeqat-ul-Vahi, (2) Rohani Khazain, Vols. 18 and 19, (3) Tuhfa Golarvia, (4) Taryaqa-ul-Qaloob, (5) Zamima Anjam-e-Athum, (6) Aik Ghalati Ka Azala, (7) Tazkira, (8) Dafi-ul-Bala, (9) Durr-e-Sameen, (10) Kashti-e-Nooh, (11) Tabligh-e-Rasalat, (12) Nazool-e-Masih.

He also placed reliance on the following judgments:—

- (1) Murad Khan v. Fazal-e-Subhan and another PLD 1983 SC 82;
- (2) Mujibur Rahman and 3 others v. Federal Government of Pakistan and another PLD 1985 FSC 8;
- (3) Malik Jehangir M. Joya v. The State PLD 1987 Lak. 458, and

- (4) **Mirza Khurshid Ahmad and another v. Government of Punjab and others PLD 1992 Lah. 1.**

Mr. Rashid Murtaza Qureshi, learned counsel for the complainant reiterated the arguments raised by the learned A.A.G. and added that the petitioners had committed the offence mentioned in the F.I.R. and deserved maximum punishment under the law. They were non-Muslims but lent their names to be published on an invitation card which on the face of it shows that the invitation was from Muslims. He further urged that the cards were got published by Nasir Ahmad and not by Ijaz Ahmad as claimed by the petitioners' learned counsel. He further submitted that the Mirzais were repeatedly committing the offence under the above-referred sections and deserved to be severely dealt with.

5. The first argument of the petitioners' learned counsel that the F.I.R. is incompetent as a whole because it includes an offence under section 295-A of the P.P.C., cognizance whereof is barred without the order of the authorities specified in section 196 of the Cr.P.C., has no force. The bar contained in section 196 of the Cr.P.C. is relatable to cognizance of an offence by the Court and not to the power of a private person to report the matter to the police. Even otherwise, the F.I.R. includes offences under sections 295-C and 298-C of the P.P.C. and the bar regarding cognizance by a Court without the order of the competent authority does not extend to the said offences.

6. There is no force in the contention of the petitioners' learned counsel that Qadianis are only forbidden to use the words, specified in section 298-B of the P.P.C. and that they were at liberty to use all other Shiair-e-Islam and expressions commonly used by Muslims including those printed on the invitation cards. The use of the words specified in section 298-B of the P.P.C. (by the followers of Mirza Ghulam Ahmad belonging to Qadiani or Lahori groups) would constitute an offence under the said section and the use of the other Shiair-e-Islam by the Qadianis including those printed in the invitation cards,

prima facie, would constitute an offence under section 298-C of the P.P.C. A bare reading of the card creates an irresistible impression that the persons who have extended the invitation or lent their names to be published for Takeed-i-Mazeed or further reminder to attend, are Muslims. The mere fact that the offence under section 298-C of the P.P.C. does not fall within the prohibition of section 497 of the Cr.P.C. does not entitle petitioners Nos.4, 5 and 6 to claim bail particularly when there is nothing to show that they were sought to be arrested with mala fide intentions and ulterior motives. Mala fides have neither been pleaded nor urged during arguments.

7. There is considerable force in the arguments of the learned A.A.G. and the complainant's learned counsel that the followers of Mirza Ghulam Ahmad belonging to Qadiani or Lahori groups are non-Muslims and constitute a separate community not forming a part of the 'Muslim Umma'. This view finds full support from the judgments in the cases of Mujeeb-ur-Rehman and Khurshid Ahmad referred to by the learned A.A.G. The followers of Mirza Ghulam Ahmad belonging to Qadiani or Lahori groups have been declared to be non-Muslims under Article 260(3)(b) of the Constitution of Pakistan. Mirza Ghulam Ahmad had laid a claim that he was Ahmad and Muhammad and that he possessed all the qualities of Hazrat Muhammad ﷺ and all other Prophets. He claimed that finality of prophethood of Hazrat Muhammad ﷺ was not affected due to his prophethood because he was none else but Hazrat Muhammad ﷺ (in Zilii or Broozi form). The Qadianis who believe in the teachings of Mirza Ghulam Ahmad recite 'Darood-o-Salam' for him, which according to Muslims is the entitlement of the Holy Prophet, Hazrat Muhammad ﷺ. By sending 'Darood' on Mirza Ghulam Ahmad the Qadianis treat him equal to Hazrat Muhammad ﷺ and thereby relegate the Holy Prophet to the position of Mirza Sahib. This act of the Qadianis, prima facie, amounts to defiling the sacred and exalted name of the Holy Prophet Hazrat Muhammad ﷺ.

which is punishable under section 295-C of the P.P.C. It was vociferously urged by Mr. Nazir Ahmad Ghazi, the learned A.A.G. that the 'Darood' in the form of (نعمده نصلی علی رسولہ الکریم) printed on the disputed invitation cards was meant for Mirza Ghulam Ahmad but the said assertion was not controverted by the petitioners' learned counsel. The offence under section 295-C of the P.P.C. is punishable with death or imprisonment for life and fine and falls within the prohibition of section 497 of the Cr.P.C.

8. For the foregoing discussion, Bashir Ahmad, Yousaf and Ijaz Ahmad, petitioners Nos.4, 5 and 6 respectively are not entitled to the concession of pre-arrest bail. The interim bail order, dated 10.6.1992 qua them is, therefore, recalled and their bail petition dismissed. The petition in respect of the petitioners Nos.1, 2, 3, 7 and 8 is allowed and the interim bail order qua them is confirmed.

Order accordingly.

(1992 PCr. LJ 2346)





LAHORE HIGH COURT
1992

○ Mr. Justice Mian Nazir Akhtar

LAHORE HIGH COURT

Mr. Justice Mian Nazir Akhtar

NASIR AHMAD and another Petitioners

versus

THE STATE Respondent

CrI. Misc. No. 2163/B of 1992,

Mobashar Latif Ahmad for Petitioners.

Nazir Ahmad Ghazi. A.A.G. for the State.

Rashid Murtaza Oureshi for the Complainant.

Decided on 2nd August, 1992.

ORDER

MR. JUSTICE MIAN NAZIR AKHTAR-- The petitioners seek bail in a case registered against them and a few other persons for offences under sections 295-A, 295-C and 298-C of the P.P.C. at P.S. Nankana Sahib. District Sheikhpura.

2. According to the allegations made in the F.I.R. Nasir Ahmad, petitioner No.1 is a Qadiyani and often propogates Qadiayni religion. In this connection a criminal case stands registered against him already. In the present

case, invitation cards for marriage ceremony of the daughter of Nasir Ahmad petitioner were got printed and distributed by the accused persons. The cards embody expressions Shiair-e-Islam like

- 1 - "السلام عليكم" - 2- انشاء الله" - 3- "نكاح مسنونہ" -
4- "بسم الله الرحمن الرحيم" - 5- "نحمدہ و نصلی علی رسولہ الکریم"

which are used by Muslims. Thus by publishing the invitation cards containing Shiair-e-Islam the petitioners and their co-accused have posed themselves to be Muslims in violation of the provisions of section 298-C of the P.P.C.

3. The learned counsel for the petitioners has raised the following points to claim bail:—

- (1) The F.I.R. is incompetent as it includes the offence under section 295-A of the P.P.C. cognizance whereof is barred in the absence of an order under the authority of the Central or Provincial Government, or from an officer empowered in this behalf by either of the two Governments as provide" under section 196 of the Cr.P.C.
- (2) The offences under section 298-C of the Cr.P.C. does not fall within the prohibition contained under section 497 of the Cr.P.C. There being no defiling of the sacred name of the Holy Prophet 'Muhammad ﷺ', the offence under section 295-C of the P.P.C. was not made out.
- (3) The mere use of words

- 1 - "السلام عليكم" - 2- انشاء الله" - 3- "نكاح مسنونہ" -
4- "بسم الله الرحمن الرحيم" - 5- "نحمدہ و نصلی علی رسولہ الکریم"

did not constitute any offence and that the Qadiyanis had the right to use the same.

(4) Law merely prohibits Qadiyanis to use the words specified in section 298-B of the P.P.C. and not the other expression used in the invitation cards.

(5) Invitation cards were got published by Sarfraz Ahmad, co-accused who was not Qadiyani.

4. On the other hand, Mr. Nazir Ahmad Ghazi, the learned A.A.-G. strenuously opposed the prayer for bail and urged that Mirza Ghulam Ahmad and his followers belonging to Qadiyani or Lahori groups are non-Muslims and constitute a separate community and were not entitled to pose themselves as Muslims in any manner. In this connection he referred to several extracts from the following books/pamphlets of Mirza Sahib:—

- (1) Haqeeqat-ul-Vahi, (2) Rohani Khazain, Vol. XVIII (a compilation of Mirza Sahib's writings). (3) Tuhf Golarvia, (4) Tariaq-ul-Qaloob, (5) Zamima Anjam-e-Athum, (6) Aik Ghalati Ka Azala, (7) Albushra. (8) Tazkira, (9) Dafi-ul-Bala, (10) Durr-e-Sameen, (11) Kashti-e-Nooh, (12) Tabligh-e-Rasalat and (13) Nazool-e-Masih.

He also referred to some passages from the book 'Kalama-tul-Fasal written by Sahibzadah Mirza Bashir Ahmad M.A. (son of Mira Ghulam Ahmad Qadiani) to urge that the Qadiyanis treat all other Muslims who do not accept Mirza Ghulam Ahmad to be the promised Maseeh or Prophet, as Kafirs and non-Muslims. He placed reliance on the case of Mujeeb-ur-Rehman and others v. Federal Government of Pakistan 1985 FSC 8, Malik Jehangir M. Joia v. The State PLD 1987 Lah. 458 and Khurshid Ahmad v. The Government of Punjab PLD 1992 Lah. 1 to urge that followers of Mirza Ghulam Ahmad belonging to Qadiani or Lahori groups are non-Muslims and by virtue of provisions of section 298-C of the P.P.C., are not entitled to pose themselves as Muslims directly or indirectly. He urged that Shi'air-e-Islam embodied in the invitation cards give an impression that the persons who have extended the invitation or lent their names for Takeed-e-Mazeed (further reminder to attend) are Muslims. Moreover, the Qadianis send Darood on Mirza Ghulam Ahmad treating him equal or even superior to Hazrat Muhammad ﷺ (نعوذ بالله من ذلك) and in this way, defile the sacred name of the Holy Prophet

and commit the offence under section 295-C of the P.P.C. Mr. Rashid Murtaza Qureshi, learned counsel for the complainant adopted the arguments of the learned A.A.G. and added that the petitioners had committed the offences mentioned in the F.I.R. and deserved maximum punishment under the law. He pointed out the petitioner No.1 was a habitual offender against whom another criminal case stood registered. He submitted that the petitioners had falsely posed themselves as Muslims and sent the invitation cards to several Muslims as well and thus injured their feelings. He controverted the assertion of the petitioners' learned counsel that the cards were got printed by a Muslim named Sarfraz Ahmad and has placed on the record a copy of the affidavit of Sagheer Ahmad Sheerazi, proprietor of Sheerazi Printing Point, Jaranwala in which he deposed that the cards were got printed by Nasir Ahmad, petitioner No.1.

5. The first contention raised by the petitioners' learned counsel that the F.I.R. is incompetent as a whole merely because it includes the offence under section 295-A of the P.P.C, cognizance whereof is barred in the absence of an order by the Central or Provincial Government or an officer authorised by either of the two, has no substance. The F.I.R. includes other offences under sections 295-C and 298-C of the P.P.C. as well which require no order from any official authority in the matter of taking of cognizance by the Court. Moreover, the stage of taking cognizance of the offence by the Court has not yet reached so as to attract the provisions of section 196-A of the Cr.P.C. The police can conduct investigation into the offences mentioned in the F.I.R. and submit a challan in the Court of competent jurisdiction. If the order of the competent authority allowing the Court to take cognizance of the offence under section 295-A of the P.P.C. is not received, then the Court would be competent to take cognizance of other offences alone.

6. A bare reading of the invitation cards, prima facie, gives an impression that these have been got published and sent by Muslims. No doubt, under section 298-B of the P.P.C., some sepecific expressions like Amir-ul-Momineen,

Khalipha-tul-Momineen, Khalipha-tul-Muslimeen, Suhabi or Ahail-e-Bait cannot be used by the Qadiani or other followers of Mirza Ghulam Ahmad. However, the express prohibition qua use of the said expression does not give a licence to the Qadianis to use other expression or Shi'air-e-Islam commonly used by Muslims because by so doing they would be posing themselves as Muslims which is forbidden by the law.

7. The argument raised by the learned A.A.G. and the complainant's learned counsel that Mirza Ghulam Ahmad and his followers are non-Muslims and belong to a separate community not forming part of the Muslim Ummah embodies nothing but the whole truth. The teachings of Mirza Ghulam Ahmad show that he considered only his own followers to be Muslims and declared all other Muslims who did not accept his claim of prophethood to be Kafirs and non-Muslims. In *Kalimat-ul-Fasal*, Mirza Bashir Ahmad has made detailed discussion in Chapters 2, 3 and 6 on the basis of teachings of Mirza Sabib to show that all those who did not believe in the claims and teachings of Mirza Ghulam Ahmad were Kafirs and non-Muslims and that the Qadianis/Ahmadis should not attend their marriage or death ceremonies. Mirza Ghulam Ahmad did not attend the funeral ceremony of his own son Fazal Ahmad who did not believe in him. Ch. Zafarullah Khan the first Foreign Minister of Pakistan did not participate in the funeral prayers of Hazrat Qaid-i-Azam, the Founder of Pakistan. Thus there can be no cavil with the proposition that followers of Mirza Ghulam Ahmad belong to a separate community and are otherwise non-Muslims in the true religious sense. They have been so declared by virtue of the provisions of sub-Article (3-B) of Article 260 of the Constitution of Pakistan.

8. Mr. Nazir Ahmad Ghazi, the learned A.A.G. has referred to a large number of books, pamphlets and writings of Mirza Ghulam Ahmad to show that he was "planted" by the British Imperialism. He referred to the application of Mirza Sahib (sent to the Lieutenant-Governor of Punjab) in which he described himself as a

(خودکاشته پورا) of the British Government (Tableegh-i-Risalat, Vol. VII, page 88). He contended that the basic object of teachings of Mirza Sahib was to persuade Muslims of the Sub-continent to bow their heads in complete obedience to the British Government, to consider obedience to the British Government as a part of Islam, to treat Jihad as Haram in future, and to break the Muslims' bond of love for Hazrat Muhammad ﷺ through (شرك في الرسالت) (i.e. sharing of prophethood with Hazrat Muhammad ﷺ). He has also urged that the teachings and beliefs of Mirza Ghulam Ahmad relating to Almighty Allah, the Holy Prophet and finality of his prophethood, the Holy Qur'an, the KALMA TAYYABA, the traditions of the Holy Prophet, the concept of Eiman, Haj, Jihad, respect for the earlier Prophets including Christ, respect for Ahl-e-Bait and the Holy places of Makka and Madina are diametrically opposed to those of Muslims throughout the world. The above arguments have considerable weight but since I am dealing with a bail matter, I need not enter into an elaborate discussion on the said points. However, I may briefly refer to some of the beliefs and teachings of Mirza Ghulam Ahmad for the limited purpose of disposal of this bail petition and to see whether the Darood printed on the disputed invitation cards is meant for Mirza Ghulam Ahmad or not and whether it can directly or indirectly have the effect of defiling the sacred name of Hazrat Muhammad ﷺ.

9. According to Muslims Darood-o-Salam is the entitlement of the Holy Prophet Hazrat Muhammad ﷺ by virtue of the following verse of the Holy Qur'an:--

"ان الله وملتكته يصلون على النبي يا ايها الذين آمنوا صلوا عليه

(اتزاب : 56)

وسلموا تسليما"

Darood-o-Salam is the highest act of virtue which fosters the Muslims' bond of love and respect for the Holy Prophet ﷺ. The question arises whether Mirza Ghulam

Ahmad ever claimed that he was a Nabi/Prophet and deserved Darood (صلوة) like the Holy Prophet?

10. Muslims throughout the world uphold the cherished belief of absolute and unqualified finality of prophethood of Hazrat Muhammad ﷺ. They firmly and contemptuously reject the idea of arrival of any new Prophet after Hazrat Muhammad ﷺ. According to the Holy Qur'an the Prophet Hazrat Muhammad ﷺ is (حاتم النبیین) (last of the prophets) who himself declared in unambiguous words that there could be no Prophet after him. However, Mirza Sahib claimed to be a Prophet and advanced the idea that Hazrat Muhammad ﷺ was not the final seal on Prophethood but was the holder of seal for approving Prophets in future (Haqeeqat-ul-Vahi, pages 27-28). He advanced the novel idea of second appearance (بعثت) (تانيه) of Hazrat Muhammad ﷺ and claimed that in him Hazrat Muhammad ﷺ had again appeared in the world in Bruzi form and added that in his first appearance in Arabia he was like (هلال) (moon of the first night) and that in his second appearance through him (Mirza Sahib) he was like (بدر كامل) (full moon). In this way, he not only claimed equality with but superiority over the Holy Prophet ﷺ, (نعوذ بالله من ذلك).

11. Following the teachings of his father, Mirza Bashir-ud-Din Mehmood declared that any person can progress and achieve the highest status and can even excel Hazrat Muhammad ﷺ, (Alfazal 17th July, 1922), (نعوذ بالله من ذلك)

12. It is the firm belief of Muslims that after Allah, the highest position in the universe is enjoyed by Hazrat Muhammad ﷺ and that no Muslim can imagine to be equal to him. What to speak of the Holy Prophet, no Muslim can claim to be equal to a companion (صحابي) of the

Holy Prophet. However, Mirza Sahib has ventured to claim complete equality and identity with Hazrat Muhammad ﷺ. He asserted (in Khutba Ilhamia) that any person who differentiated between him and Mustafa (i.e., Hazrat Muhammad, ﷺ) neither saw nor recognised him (Mirza Sahib) (نعوذ بالله من ذلك). He claimed that he got the name of Muhammad ﷺ and Ahmad ﷺ alongwith the status of prophethood because he was lost in the love of the Holy Prophet. In his Pamphlet captioned as 'Aik Ghalti Ka Azala? he wrote as under:-

”نبوت کی تمام کھڑکیاں بند کی گئیں مگر ایک کھڑکی سیرت صدیقی کی کھلی ہے یعنی فنا فی الرسول کی۔“
(ایک غلطی کا ازالہ ص 3 مندرجہ روحانی خزائن ج 18 ص 207 از مرزا غلام احمد قادیانی)

Strangely enough, Hazrat Abu Bakar Siddique whose love for the Holy Prophet was exemplary and matchless did not acquire the status of a Prophet. The reason is obvious. The door of new prophethood was closed for ever. Hence, any degree of love for the Holy Prophet cannot fructify into prophethood. However, other spiritual positions short of prophethood can be attained by Muslims. The companions of the Holy Prophet who had profound love for the Holy Prophet were warned by Allah not to raise their voice above that of the Holy Prophet failing which their good deeds were to be lost imperceptibly. Allah's warning was meant to keep Muslims within certain limits so that they should not show equality with the Holy Prophet even in respect of the volume of their voice. Due to love for the Holy Prophet Muslims love the Ahl-e-Bait and even the places where he lived and moved about. They love the sand, dust, dates and even streets of Makka and Madina. The burial place of the Holy Prophet (Roza-i-Rasool) is loved and respected by Muslims as a part of Jannat in view of the tradition of the Holy Prophet (مابین بیٹی و منبری روضة من ریاض الجنة) (Siraj-ul-Munir, Sharrah Jame-al-Sagheer, page 246). However, Mirza Ghulam Ahmad has ventured to show disrespect to Hazrat Muhammad ﷺ by claiming equality and identity with

him. He also showed disrespect to the Holy places of Makka and Madina by declaring Qadian as Haram like Makka and Madina and by saying that a visit to Qadian was superior to and better than Nafli Haj. He went to the extent of using derogatory language about burial place of the Holy Prophet Hazrat Muhammad ﷺ. Apparently in his zeal to show superiority of the Holy Prophet over Christ and to repudiate the idea of ascendance of Christ from heavens, Mirza Sahib, wrote as under:—

”ہم بارہا لکھ چکے ہیں کہ حضرت مسیح کو اتنی بڑی خصوصیت آسمان پر زندہ چڑھنے اور اتنی مدت تک زندہ رہنے اور پھر دوبارہ اترنے کی جو دی گئی ہے، اس کے ہر پہلو سے ہمارے نبی ﷺ کی توہین ہوتی ہے اور خدا تعالیٰ کا ایک بڑا تعلق جس کا کچھ حد و حساب نہیں، حضرت مسیح سے بھی ثابت ہوتا ہے۔ مثلاً آنحضرت ﷺ کی سو برس تک بھی عمر نہ پہنچی مگر حضرت مسیح اب قریباً دو ہزار برس سے زندہ موجود ہیں اور خدا تعالیٰ نے آنحضرت ﷺ کے چھپانے کے لئے ایک ایسی ذلیل جگہ تجویز کی جو نہایت متعفن اور تاریک اور تاریک اور حشرات الارض کی نجاست کی جگہ تھی۔ مگر حضرت مسیح کو آسمان پر جو بہشت کی جگہ اور فرشتوں کی مسائگی کا مکان ہے بلا لیا۔ اب بتلاؤ محبت کس سے زیادہ کی؟ عزت کس کی زیادہ کی؟ قرب کا مکان کس کو دیا اور پھر دوبارہ آنے کا شرف کس کو بخشا۔“ (تحفہ گلزویہ ص 119 مندرجہ روحانی خزائن ج 17 ص 205 از مرزا قادیانی)

Whatever the worth or value of the argument qua the comparative status of Hazrat Muhammad ﷺ and Hazrat Eisa/Christ (علیہ السلام) one thing is clear that Mirza Sahib had made highly disparaging remarks about the burial place of the Holy Prophet which a Muslim shudders to imagine. Mirza Sahib claimed that he was superior to Hazrat Imam Hasan and Imam Hussain رضی اللہ عنہما and slighted them in his books Dafi-ul-Bala, Nazool-ul-Maseeh and Durr-e-Samin (Some relevant extracts are reproduced in Appendix-A, attached to the order. The traditions of the Holy Prophet Hazrat Muhammad ﷺ embody profound love for Hazrat Imam Hassan and Imam Hussain رضی اللہ عنہما but

Mirza Ghulam Ahmad (who proclaimed himself to be 'Muhammad') has shown contempt and disrespect for Hasnain رضی اللہ عنہا.

13. After expressing the above-referred views which shock the minds and injure the feeling of Muslims, Mirza Sahib has claimed that he deserved Darood-o-Salam. According to him Allah sends Darood on him. The book Tazkirah containing revelations of Mirza Ghulam Ahmad contains the following revelation at page 777:-

"صلى الله عليك و على محمد"

In his book Arbaeen No.2 Mirza Ghulam Ahmad said as under:—

”بعض بے خبر ایک یہ اعتراض بھی میرے پر کرتے ہیں کہ اس شخص کی جماعت اس پر فقرہ علیہ الصلوٰۃ والسلام اطلاق کرتے ہیں اور ایسا کرنا حرام ہے۔ اس کا جواب یہ ہے کہ میں مسیح موعود ہوں اور دوسرے کا صلوٰۃ یا سلام کہنا تو ایک طرف خود آنحضرت صلی اللہ علیہ وسلم نے فرمایا ہے کہ جو شخص اس کو پاوے، میرا سلام اس کو کہے اور احادیث اور تمام شروح احادیث میں مسیح موعود کی نسبت صداہا جگہ صلوٰۃ و سلام کا لفظ لکھا ہوا موجود ہے۔ پھر جبکہ میری نسبت نبی علیہ السلام نے یہ لفظ کہا صحابہ نے کہا بلکہ خدا نے کہا تو میری جماعت کا میری نسبت یہ فقرہ بولنا کیوں حرام ہو گیا۔“

(اربعین نمبر 2، صفحہ نمبر 3 مندرجہ روحانی خزائن ج 17 ص 349 از مرزا قادیانی)

Again the book Haqeeqat-ul-Vahi (by Mirza Ghulam Ahmad) contains the following revelation in Chapter 4. page 75:—

"اصحاب الصفة وما ادرك ما اصحاب الصفة — ترى اعينهم

تفويض من الدع — يصلون عليك"

(حقیقت الوہی، صفحہ 75 مندرجہ روحانی خزائن ج 22 ص 78 از مرزا قادیانی)

The same revelation is also found at pages 242 and 631-32 of the book Tazkirah. Meaning thereby that Ashaab-i-Suffa (persons sitting on the platform) recite Darood for

Mirza Ghulam Ahmad. Thus it is evident that the Qadianis recite Darood-o-Salam for Mirza Ghulam Ahmad and thereby equate him with Hazrat Muhammad ﷺ. This prima facie, amounts to defiling the sacred and exalted name of the Holy Prophet Hazrat Muhammad ﷺ because in this manner his position is lowered to that of Mirza Ghulam Ahmad who, on his own showing was, (خودکاشته بودا) of the British Government, who considered faithfulness and obedience to the British Government as a part of Islam, declared 'Jehad' to be Haram, who slighted Imam Hussain رضی اللہ عنہ and who declared all Muslims (who did not believe in him) to be Kafirs. During the course of arguments it was firmly asserted by the learned A.A.G. that the Darood (نحمدہ و نصلی علی رسولہ الکریم) printed on the invitation cards in question was meant for Mirza Ghulam Ahmad but this assertion was not controverted by the petitioners' learned counsel. Hence, there are reasonable grounds for believing that the petitioners have committed an offence under section 295-C of the P.P.C. which falls within the prohibitory clause of section 497 of the Cr.P.C.

14. For the foregoing discussion, the petitioners do not deserve the concession of bail. Resultantly, their bail petition is dismissed.

Bail refused.

APPENDIX "A"

- 1- کربلائے است سیر ہر آنم صد حسین است در گریبانم
(ترجمہ) کربلا ہر وقت میری سیر گاہ ہے اور سو 100 حسین میرے گریبان میں ہیں۔
(نزول المسح، صفحہ 99، مندرجہ روحانی خزائن، جلد نمبر 18، صفحہ 477 از مرزا قادیانی)

2- وقالوا على الحسين فضل نفسه اقول نعم والله ربى سيظهر.

(ترجمہ) اور انہوں نے کہا کہ اس شخص نے امام حسن اور امام حسین سے اپنے تئیں اچھا سمجھا، میں کہتا ہوں کہ ہاں اور میرا خدا عنقریب ظاہر کر دے گا۔

(اعجاز احمدی ص 52 مندرجہ روحانی خزائن، جلد نمبر 19، صفحہ 164 از مرزا قادیانی)

3- نسيتم جلال الله والمجد العلى وماوردكم الاحسين انكر فهذا على الاسلام احدى المصائب لى دفعات المسك قدر مقنطر.

(ترجمہ) تم نے خدا کے جلال اور مجد کو بھلا دیا اور تمہارا اور صرف حسین ہے۔ کیا تو انکار کرتا ہے۔ پس یہ اسلام پر ایک مصیبت ہے۔ کستوری کی خوشبو کے پاس گوہ کا ڈھیر ہے۔

(اعجاز احمدی ص 82، روحانی خزائن، جلد نمبر 19، صفحہ 194 از مرزا قادیانی)

4- اے قوم شیعہ:- اس پر اصرار مت کرو کہ حسین تمہارا منجی ہے۔ کیونکہ میں سچ سچ کہتا ہوں کہ آج تم میں ایک ہے کہ اس حسین سے بڑھ کر ہے۔

(دافع البلاء، صفحہ نمبر 13، روحانی خزائن، جلد نمبر 18، صفحہ نمبر 233 از مرزا قادیانی)

5- افسوس! یہ لوگ نہیں سمجھتے کہ قرآن نے تو امام حسین کو رتبہ اجیت کا بھی نہیں دیا بلکہ نام تک مذکور نہیں۔ ان سے تو زید ہی اچھا رہا جس کا نام قرآن شریف میں موجود ہے..... میں مسیح موعود نبی اور رسول ہوں اب سوچنے کے لائق ہے کہ امام حسین کو اس سے کیا نسبت ہے۔

(نزول المسیح، صفحہ نمبر 44 مندرجہ روحانی خزائن ج 18 ص 421 تا 423 از مرزا قادیانی)

6- تم نے مشرکوں کی طرح حسین کی قبر کا طواف کیا پس وہ تمہیں چھڑانے سکا اور نہ مدد کر سکا۔ تم نے اس کشتہ سے نجات چاہی کہ جو نو میدی سے مر گیا۔ اور بخدا اس کی شان مجھ سے کچھ زیادہ نہیں۔ میرے پاس خدا کی گواہیاں ہیں پس تم دیکھ لو اور میں خدا کا کشتہ ہوں لیکن تمہارا حسین دشمنوں کا کشتہ ہے۔

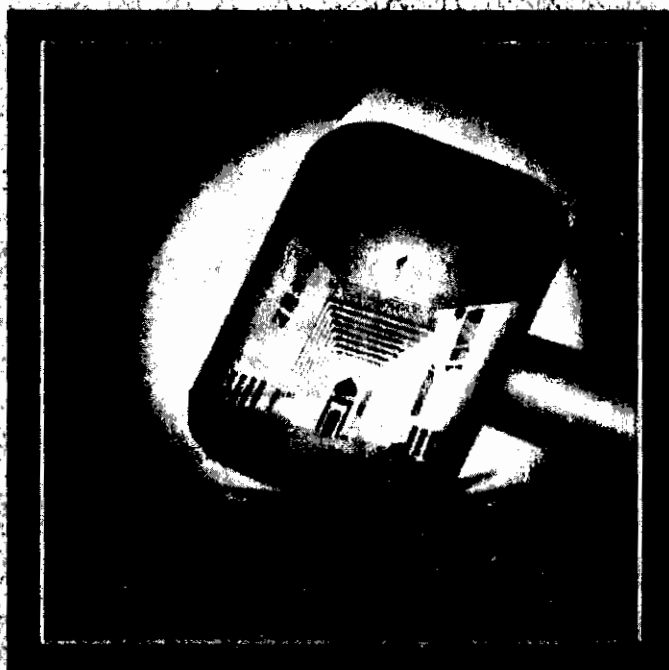
(ضمیمہ نزول المسیح، اعجاز احمدی، صفحہ 80۔ روحانی خزائن ج 19 ص 192، 193 از مرزا قادیانی)

7۔ امام حسین نے جو بھاری نیکی کا کام دنیا میں آ کر کیا، وہ صرف اس قدر ہے کہ ایک دنیا دار کے ہاتھ پر انہوں نے بیعت نہ کی اور اس کشاکش کی وجہ سے شہید ہو گئے..... اگر ہم امام حسین کی خدمات کو لکھنا چاہیں تو کیا ان دو تین فقروں کے سوا کہ وہ انکار بیعت کی وجہ سے کربلا میں روکے گئے اور شہید کئے گئے۔ کچھ اور بھی لکھ سکتے ہیں؟

(رسالہ تشحیذ الاذہان نمبر 2، جلد نمبر 1، مرتبہ مرزا محمود)

(1992 P Cr. L. J. 2351)





LAHORE HIGH COURT
1992

○ Mr. Justice Khalil-ur-Rehman Khan

LAHORE HIGH COURT

Mr. Justice Khalil-ur-Rehman Khan

Mirza KHURSHID AHMAD and another—Petitioners

versus

GOVERNMENT OF PUNJAB and others—Respondents

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

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

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

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

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

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

Decided on 17th September, 1991

JUDGMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"The applicant has submitted this application for being impleaded as a respondent. A copy of the

petition has been provided to the learned counsel for the writ-petitioner, who suggests that the applicant in the meanwhile may file the written statement, and the question of impleadment may be taken along with the main petition. This is acceptable to the learned counsel for the applicant.

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

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

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

their views is necessary as these are matters of daily occurrence involving the members of Qadiani community. If these are matters of daily occurrence then it involves all citizens, inclusive of Muslims and Christians. They are therefore, entitled in opposition to this petition to be heard. The two applications are, therefore, accepted and the applicants are allowed to be impleaded as respondents. These two applications stand disposed of accordingly.

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

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

Learned Advocate-General in his arguments indicated the books of Qadiani community with reference to which he wanted to show that the views expressed therein if allowed to be propagated publicly would amount to commission of offences under the Pakistan Penal law and would also outrage the religious feelings of the Muslims, the predominant majority of the country and thus ignite riots. He pleaded that prohibition was imposed in the interest of the members of Qadiani community also as their public conduct and acts would have resulted into clashes causing serious threat to their safety. Learned Advocate-General explained that the learned counsel for the petitioners having himself stated that religious topics including the life of Prophet Muhammad ﷺ and the life and teachings of Mirza Ghulam Ahmad, founder of the Qadiani community will be recounted, cannot urge that doctrinal controversies and religious polemics be not allowed to be urged. He added that by laying bare the outrageous nature of the teachings and writings of the founder and his disciples, the purpose is neither to raise doctrinal controversies or religious polemics but to show the devastating effect that the propagation of these views would have on the law and order situation. He further urged that it would be wrong to contend that by this exercise, he is seeking adjudication of questions of faith or religious belief. He explained that members of Qadiani community are entitled to profess and practise faith or religious belief of their choice and whether their faith is good or bad is not his concern but when they come to practise their religious belief in the manner that amounts to propagation or invite others to such manifestations or outrage the religious feelings, then they or any one doing so commits offences under the law of the land. He urged that he has, therefore, the right to explain to the Court the religious topics with reference to books of the petitioners community which will be outraging the religious feelings and would amount to commission of offences and which formed basis for taking preventive measures in terms of section 144, Cr.P.C.

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

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

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

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

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

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

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

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

It is, therefore, apparent that Ahmadis and Muslims are two separate and distinct entities and reference to the

books of Ahmadiyya community and its founder would be necessary not only to distinguish the two entities but also to show the validity as well as necessity of the passing of the impugned orders and directions. With these reasons the application (C.M. 2051-89) stands disposed of.

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

- (1) Order, dated 20th March, 1989, of the Provincial Government banning the centenary celebrations announced and advertised by the officebearers of Local Organization of Ahmadiyya community;
- (2) Order, dated 21st March, 1989, passed under section 144, Cr.P.C. by the District Magistrate, Jhang; and
- (3) Order, dated 25th March, 1989, of the Resident Magistrate, Rabwah;

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

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

"WHEREAS it has been made to appear to me that Qadianis in District Jhang are going to hold Centenary Celebration of Qadianiat on 23rd March, 1989, for which they have arranged illumination, decoration of buildings, erection of decorative gates, holding of processions and meetings, distribution of pamphlets and pasting of posters on walls, distribution of sweets and service of special food, exhibition of badges, buntings and banners etc. which is highly being objected by the Muslims and is likely to

disturb public peace and tranquillity and thereby cause danger to human life and property;

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

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

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

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

- (i) Illumination on buildings and premises;
- (ii) Erection of decorative gates;
- (iii) Holding of processions and meetings;
- (iv) Use of loudspeaker or megaphone;
- (v) Raising of slogans;
- (vi) Exhibition of badges, buntings and banners etc;

- (vii) Distribution of pamphlets and pasting of posters on the walls and wall-writings;
- (viii) Distribution of sweets and service of food;
- (ix) Any other activity directly or indirectly which may incite and injure the religious feelings of Muslims.

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

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

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

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

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

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

The factual background of the passing of these orders was that holding of the centenary celebrations was announced in the press by the office-bearers of the local organization of the Ahmadiyya community. The legal position obtaining in the year 1989 as regards the Ahmadis is that through constitutional amendment of 1974, they have been declared non-Muslims. Despite this constitutional mandate and despite the fact that Ahmadis verbally concede that Constitution is binding on them as any other citizen, yet they persisted in calling themselves Muslims or their faith Islam and also using the epithets exclusively used for the members of the Family and Companions of Holy Prophet Muhammad ﷺ with the names of members of family etc. of Mirza Ghulam Ahmad. Ordinance XX of 1984 was then promulgated to restrain the Ahmadis from calling themselves what they are not, since they cannot be allowed to deceive anybody specially the Muslim Ummah by passing off as Muslims. The provisions banning the use of exclusive epithets and expressions were also incorporated in implementation of the constitutional provisions so that Ahmadis cannot call themselves or pose to be Muslims directly or indirectly. It may be added that the Federal Shariat Court in the case of Mujeebur Rehman (supra) has held that "Article 260(3) declares the Qadianis as non-Muslims for the purpose of the Constitution and the law. Article 20 guarantees to the citizens of Pakistan the right, inter alia, to profess their religion. This Article is no doubt subject to other provisions of the Constitution. This

point was in fact conceded by Mr. Mujeebur Rehman. Read with Article 260(3) of the Constitution, the above provision of Article 20 will mean that the Qadianis can profess that they believe in the unity of Allah and/or the prophethood of Mirza Sahib, but they cannot profess themselves to be Muslims or their faith to be Islam". The reasons for constitutional declaration and imposition of ban through Ordinance XX of 1984 are given in detail in Mujeebur Rehman's case. In short, these are: —

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

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

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

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

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

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

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

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

It is pertinent to note that position taken in the petition is that “it is their legal and constitutional right to

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

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

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

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

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

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

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

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

- (1) Claim to prophethood of Mirza Ghulam Ahmad and endeavour even to excel the Holy Prophet (p.b.u.h.);
- (2) Insolent writings respecting God Almighty;
- (3) Abusive and disparaging writings and views concerning Jesus Christ;
- (4) Insolent and disparaging remarks about members of Family of the Holy Prophet;
- (5) Writings depicting Muslim Ummah as heretics and as an Ummah different from Qadianis with abuses hurled to eminent religious scholars of Muslims.

20. The relevant objected to views or the opinion concerning Muslims contained in the books and read out during the arguments are not being reproduced as the very

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

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

Kashti-i-Nuh:
Ruhani Khaz'in, Vol. 19, p. 50.”

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

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

(Zamimah Anjam-i-Atham)
Ruhani Khazain, Vol. 11, p.289.

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

(Nur al-Quran)
Ruhani Khazain, Vol.9, p.387

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

(Kashti-i Nuh)
Ruhani Khazain, Vol. 19, p.71.

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

(Satt Bachan)
Ruhani Khazain, Vol.10, p.296.”

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

“Jesus had an inclination for prostitutes perhaps due to his ancestral relationship with them, otherwise no

pious man could allow a young prostitute to touch his head with her filthy hands, and massage his head with the unclean perfume purchased with the earnings of adultery, and rub his feet with her hair. Let the intelligent judge what sort of character such a person must possess."

(Zamimah Anjam-i-Atham)
(Ruhani Khazain, Vol. 11, p. 291).

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

(Nur al-Quran)
Ruhani Khazain, Vol.9, p.449".

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

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

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

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

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

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

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

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

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

"Your sins are forgiven".

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

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

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

"God selected Adam and Noah, Abraham's House and Imran's House over (everyone in) the Universe. They are descendants one of another. God is Alert, Aware. (Remember) when the wife of Imran said 'My Lord! I have vowed for you whatever is within my womb. Accept it from me. See! You, only you are the Hearer, the Knower. When she gave birth she said: My God! I have given birth to a daughter. God was quite aware

of what she had given birth to, for a male is not like a female – I have named her Mary, and ask you to protect her and her offspring from Satan the Outcast.

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

(Quran, 3:33-37)

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

(Quran, 3:42,43)

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

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

(Quran, 3:45-47)

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

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

(Ouran, 19:16-32)."

26. Moreover the Muslims are forbidden to degrade or defile the men or leaders of others religions so that the

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

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

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

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

The provocative nature of these writings does not end merely because some other writings contain views of Mirza Ghulam Ahmad which are in accord with the views of Muslim Ummah. The reliance of Mr. Mujeebur Rehman on such writings is inapt. In order to demonstrate this, one particular instance may be quoted and analysed as it would also repel the plea of the learned counsel for the petitioners that recounting of history or repetition of particular views would not amount to commission of offence under section 298-C, P.P.C.

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

29. Learned counsel for the petitioners while advancing the aforementioned pleas, assumed that these acts, the carrying out of which was prohibited or the centenary celebrations as were being planned to be held were innocuous, innocent, harmless, rather lawful. This

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

occurred. It was held that on facts the magistrate was entitled to regard the hostile response by the Catholics as the natural consequence of Wise's insulting conduct.

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

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

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

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

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

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

صفحہ ۶: ”کیونکہ یہ محمد ثانی اسی محمد ﷺ کی تصویر اور اسی کا نام ہے۔“

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

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

صفحہ ۱۶: ”اور اسی بنا پر خدا نے بار بار میرا نام نبی اللہ اور رسول اللہ رکھا:۔..... اسی لحاظ سے میرا

نام محمد اور احمد ہوا۔ پس نبوت اور رسالت کسی دوسرے کے پاس نہیں گئی۔ محمد کی چیز محمد کے پاس ہی

رہی علیہ الصلوٰۃ والسلام۔“

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

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

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

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

In view of the above-noted stand taken in the affidavit, Mr. Mujeebur Rahman was asked, as to the belief of Mirza Khurshid Ahmad and other members of Ahmadiyya community regarding status of Mirza Ghulam Ahmad Qadiani and as to his writings wherein he claimed prophethood and whether KALMA TAYYABA alone is to be recited by a person entering Qadiani faith or something else is also to be accepted, recited or believed. The answer given was that Qadianis do not believe in absolute and unqualified finality of the Prophethood of Muhammad ﷺ and they believe that Mirza Ghulam Ahmad was a Mehdi, Maseeh Ma'ood. He added that what has been relied upon by the opposite side has been clarified by the founder of the community in Izala-auham pages 169-170, Kashti-e Nooh, Roohani Khazain, Vol. 7, page 67; Vol. 14, page 323;

Vol. 8, page 252 and in Paigham-e-Sulch contained in Roohani Khazain, Vol. 23, page 459. This message according to him was written by Mirza Ghulam Ahmad one day before his death i.e., on 25th May, 1908. He explained that what has been stated in Ek Ghalti Ka Izala, Aaiena-i-Kamalat or Tabligh-i-Risalat is to be understood in the concept of Zil (ظل) and buruz (بروز) which is concept of spiritual resemblance and identity and means complete subservience of one person into the other. According to him this concept does not in any manner involve physical reappearance or reincarnation.

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

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

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

“It would be seen that the consequences of the dictum that Mirza Sahib himself was Muhammad and Ahmad (they were the names of the Holy Prophet ﷺ) were anomalous enough. The companions of Mirza

Sahib became the companions of the Holy Prophet. In the formula recited by Muslims there is no God but God and that Muhammad ﷺ is His Prophet, Muhammad is Mirza Sahib. Whenever the word Muhammad is recited or read, it means Mirza Sahib”.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

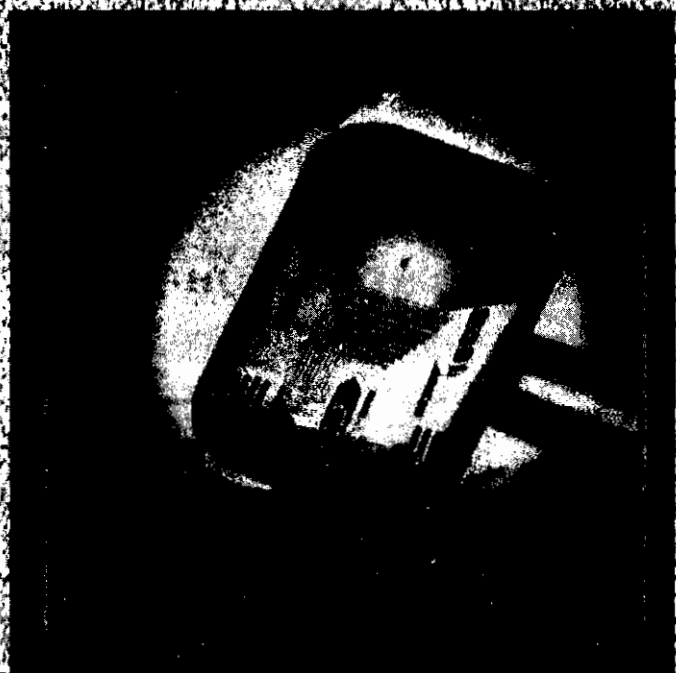
39. The reasons of public policy, public good and interests of the ordinary people of the country thus provide justifiable basis for banning the celebrations, making of the directions by the District Magistrate as well as Resident Magistrate. It has already been pointed out that activities of Ahmadis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

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

Petition dismissed

(PLD 1992 Lahore 1)





LAHORE HIGH COURT 1994

- Mr. Justice Khalil-ur-Rehman Khan
- Mr. Justice Sh. Muhammad Zubair
- Mr. Justice Mian Nazir Akhtar

LAHORE HIGH COURT

Mr. Justice Khalil-ur-Rehman Khan

Mr. Justice Sh. Muhammad Zubair

Mr. Justice Mian Nazir Akhtar

RIAZ AHMAD and 3 others Petitioners

versus

THE STATE Respondent

Criminal Miscellaneous No.140/B of 1994,

Decided on 9th June 1994

Khawaja Sarfraz Ahmad for Petitioners.

Nazir Ahmad Ghazi, A A.-G. for the State.

Rasheed Murtaza Qureshi for Pakistan Christian party and Pakistan Masihi Kashatkar Party.

Dates of hearing 10th and 11th April, 1994.

JUDGMENT

KHALIL-UR-REHMAN KHAN, J.—This Full Bench was constituted by the learned Chief Justice for determination of the questions framed by the learned Single Judge in a bail petition moved by Riaz Ahmad and 3 others, petitioners, in a case under section 295-C of the

Pakistan Penal Code registered vide F.I.R. No.160 dated 20th November, 1993, with Police Station Piplan, District Mianwali. The questions are:—

- (a) Whether the police can investigate into a criminal case after receiving the complaint and without formally entering the F.I.R. in the daily diary?
- (b) Whether in such like sensitive cases, under section 295-C, P.P.C., the delay in registering the same emanating from the police practice of obtaining permission from the superior officers can be given any weight?
- (c) Whether the language used by the accused (as per the allegation made in the F.I.R.) which is said to be in accord with the teachings of Mirza Ghulam Ahmad is derogatory to the Holy Prophet Hazrat Muhammad ^ﷺ and constitute the offence under section 295-C, P.P.C.?"
- (d) Whether section 295-C, P.P.C. is in conflict with any provision of the Constitution of the Islamic Republic of Pakistan, 1973?

2. Khawaja Sarfraz Ahmad Advocate, addressed arguments on behalf of accused-petitioners. Mr. Nazir Ahmad Ghazi, Assistant Advocate-General appeared for the State. Mr. Rashid Murtaza Qureshi Advocate, argued the matter on behalf of the complainant as well as on behalf of Pakistan Christian Party and Pakistan Masihi Kashtkar Party.

3. Learned counsel for the petitioners argued that section 154 read with sections 156 and 157 of the Code of Criminal Procedure make it obligatory for a police officer to enter the complaint in the prescribed book, that is, F.I.R. register and then embark upon the investigation. He added that normally no investigation can commence without recording formal F.I.R. He was further of the view that a police officer legitimately can consult the superior and seek guidance before registration as well as during investigation of a criminal case. With regard to third question, learned

counsel submitted that we should refrain from expressing opinion, as any observation made by us what to say of determining the question, would prejudice the accused at their trial. The position taken with regard to fourth question was that section 295-C, P.P.C. is not in conflict with any provision of the Constitution. He explained that he had not raised any such contention before the learned Single Judge and as such the learned counsel who raised this question is to substantiate the plea that section 295-C, P.P.C. is violative of any provisions of the Constitution of the Islamic Republic of Pakistan.

4. Mr. Nazir Ahmad Ghazi, Assistant Advocate - General argued that on receipt of a complaint relating to commission of a cognizable offence, the substance thereof is to be noted in the daily diary before commencing investigation and even if no entry is recorded in the daily diary and the police officer entertaining a suspicion holds inquiry into genuineness or otherwise of the complaint the inquiry/investigation so initiated may amount to mere irregularity but the same does not have the effect of vitiating the investigation or the trial. Reference was made to observations in the case of *Taj Muhammad alias Tajoo v. The State* 1991 PCr.LJ 2167. He also referred to the case of *Harsan v. The State* 1989 PCr.LJ 809 wherein the two cases *Anwar v. The State* 1975 PCr.LJ 750 and *Muhammad Haneef v. The State* PLD 1977 Lah. 1253 expressing the view that "the sanctity attached to the F.I.R. vanishes where the police had first visited the scene of incident and thereafter recorded the F.I.R." were noticed and the learned Judges, however, preferred to place reliance on the following observations made in the case of *Nazir Ahmad v. The State* 1976 PCr.LJ 993:-

"It makes no difference if the F.I.R. had been recorded on the spot, because although it is not an approved practice, F.I.R. not being a substantive piece of evidence, the recording of the same on the spot does not mean that the entire case of the prosecution should be thrown aside."

The learned Assistant Advocate-General also referred to the case of Gul Nawaz Lone and another v. Station House Officer PLD 1990 Lah. 428 to submit that even an information apparently covered by section 154, Cr.P.C. is first to be entered in the Station Daily Diary and it is only when the Officer Incharge of the Police Station has reasons to suspect the commission of a cognizable offence, that he is required to enter such information in the First Information Report Register. Reliance was also placed on Ch. Shah Muhammad v. S.H.O., Rahimyar Khan 1977 PCr.LJ 2 to show that if the police, suspecting that there was no reasonable ground for recording the F.I.R. or making the investigation, has refused to proceed in the matter, the action of the police cannot be said to be without lawful authority.

5. Mr. Rashid Murtaza Qureshi, Advocate, restricted his submissions to the last question. He argued that section 295-C, P.P.C. disregards the mandate contained in Articles 2-A and 3 of the Constitution of the Islamic Republic of Pakistan as firstly the punishment of defiling the sacred name of Holy Prophet Muhammad ﷺ is death and lesser punishment of imprisonment for life provided alongwith death sentence is contrary to the law of Almighty Allah and secondly section 295-C, P.P.C. fails to incorporate the other essential ingredients of the offence prescribed by Islam to the effect that defiling the name of other Prophets is also an offence punishable with same punishment of death. He argued that this Court should make the necessary declaration in respect of these matters.

6. Learned counsel representing the Masihi parties submitted that Christians respect all the revealed religions and its Prophets and that section 295-C, P.P.C. as has the objective of securing peace in the society by upholding sanctity of the Holy Prophet of Islam is not violative of so-called human rights and this section should rather be amended suitably in order to prohibit contumacious reproaches of Jesus Christ so that those who indulge in defiling the name of Holy Christ are also punished. He added that such an amendment will be in line with the

provisions of section 295-A, P.P.C. (added in 1927) which make deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs, punishable.

Learned counsel further submitted that respondent Christian parties are also of the view that the so-called human right organisations which are mouth pieces of foreign human right bodies and not the representative bodies of the masses, if are of the view that prohibition to defile the name of the Holy Prophet is violative of the human rights, then they should first raise their voice in the Christian countries in which the common law offence of blasphemy provides punishment for attacking the Christian religion only. Learned counsel "referred in this respect to Halsbury's Laws of England, Fourth Edition, Volume 11, para. 1009 as it is recorded therein "blasphemy is an indictable offence at common law consisting in the publication of words attacking the Christian religion only. It is not blasphemy to attack any religion except Christianity".

According to learned counsel, these bodies and others at the behest of enemies of Pakistan are raising these slogans only to create disharmony amongst the Christians and Muslims despite the fact that Islam and Christianity are revealed religions and both promote love, amity and peace amongst human beings. Learned counsel submitted that this Court with a view to promote amity and to secure peace of society declare that defiling of the name of Holy Christ is also an offence according to tenets of Islam and section 295-C, P.P.C. in this respect is deficient and as such violative of the scheme of the Constitution of Islamic Republic of Pakistan.

7. We have given serious consideration to the respective contentions and pleas of the learned counsel for the parties. At the very outset, it is pertinent to record that in the context of the questions referred to us we are not called upon to comment on the motives and objectives of certain human right bodies or Christian parties in

criticizing the provisions of section 295-C, P.P.C. Suffice it say that peace of the society is the paramount consideration and every effort by all concerned, the parliament, the executive, the judiciary and the citizens of all shades of opinion and religions should be directed towards maintenance of harmony, cohesion, amity and peace of the society. This object should not be difficult to achieve as Islam more than any other religion upholds and respects all the revealed religions and also the faith of others. Islam does not believe in sermons only but emphasizes on practising in letter and spirit all that it ordains to believe. Every Muslim citizen is duty bound to follow the ordains contained in Verse 108 of Sura 6 (Al-Inam) which reads:—

"ولا تسبوا الذين يدعون من دون الله فيسبوا الله عدواً بغير علم كذلك
زينا لكل طمة عملهم ثم الى ربهم مرجعهم فينبهم بما كانوا يعملون"

"Revile not ye
Those whom they call upon
Besides God, lest
They out of spite Revile God
In their ignorance.
Thus have We made
Alluring to each people
Its own doings.
In the end will they
Return to their Lord,
And We shall then
Tell them the truth
Of all that they did."

The Muslim citizen who constitute 97% of the population by respecting faith of others and through tolerance, patience and orderly behaviour can defeat the nefarious activities and designs of disruptionists and thus secure peace of society. As regards the declarations mentioned by Mr. Rashid Murtaza Qureshi, Advocate, reference to judgment of the Federal Shariat Court in the case of Muhammad Ismail Qureshi v. Pakistan through Secretary, Law and Parliamentary Affairs PLD 1991 FSC 10

will be pertinent as in this judgment, it was held that the words "or imprisonment for life" in section 295-C, P.P.C. shall cease to have effect since 30th April, 1991. The Federal Shariat Court further observed that a clause be added to section 295-C so as to make the same acts or things when said about other Prophets, also offence with the same punishment. The matter of making addition to section 295-C, we were told, is under active consideration of Pakistan Law Commission as well as the Islamic Ideology Council constituted under the Constitution. Section 295-C as per submissions of the learned counsel for the petitioners, the Assistant Advocate-General is not in any manner violative of the provision of the Constitution. The pleas advanced by Mr. Rashid Murtaza Qureshi, learned counsel for complainant and the Christian Parties also do not show any repugnancy. Our answer to the fourth question is, "that nothing could be pointed out to show that the provisions of section 295-C are violative of any provision of the Constitution".

8. As regards third question, the learned counsel for the parties were of the view that this question should not have been raised for determination by the Full Bench as its determination would prejudice the accused at the trial and in any case determination of this question as essentially pertains to the merits of the case, would not result in decision of a question of law of general application. We are in agreement with the learned counsel. This question is premised on facts which for their proof require recording of evidence. It is also correct that determination of this question is likely to prejudice the accused at trial and statements attributed, words used or publication made will have to be examined and their effect determined in each individual case and no principle of law of general applicability can be laid down. We, therefore, as requested refrain from examining this question.

9. Learned counsel for the parties with regard to the second question did not address detailed arguments as they were of the view that the police officer can legitimately consult his superior officers and seek their guidance in

serious and sensitive criminal cases and in the matter of registration as well as investigation of cases. The question as to what weight is to be given to the factor of delay in registering a criminal case specially in sensitive cases, cannot be answered by giving any formula or laying down any hard and fast rule. Such a matter of course has to be left for the trial Court to evaluate on the basis of the overall evidence available on record in a given case. These observations are sufficient for the disposal of the second question.

Now we take up the first question which reads:—

“Whether the police can investigate into a criminal case after receiving the complaint and without formally entering the F.I.R. in the daily diary.”

The provisions relevant to the question are contained in sections 154 to 157, section 44 of the Police Act, Rule 24.1 and Rule 24.2 of the Police Rules. Section 154, Cr.P.C. provides in essence that every information relating to the commission of a cognizable offence shall be reduced into writing and the substance thereof shall be entered in a book to be kept by such officer in such form as the Provincial Government may prescribe in this behalf.

Section 155 provides that when information is given to an officer in-charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter in a book to be kept as aforesaid the substance of such information and refer the informant to the Magistrate and that no police officer is to investigate a non-cognizable case without the order of a Magistrate of the first or second class having power to try such case or send the same for trial to the Court of Session.

Section 156 then provides that any officer in charge of a police station may without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XV relating to the place of inquiry or trial, and that no proceeding of a police officer in any such

case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate. The offences under section 497 or section 498 of the Pakistan Penal Code are to be investigated upon a complaint made by the husband of the woman, or, in his absence, by some person who had the care of such woman on his behalf at the time when such offence was committed.

Section 157, subsections (1) and (2) may be reproduced for ready reference:

157 (1) If, from information received or otherwise an officer in-charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report, and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the Provincial Government may, by general or special order, prescribe in this behalf to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender: Provided as follows:—

- (a) when any information as to the commission of any such offence is given against any person by-name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;
- (b) if it appears to the officer in-charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

(2)

In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1), the officer in charge

of the police station shall state in his said report his reasons for not fully complying with the requirements of that subsection, and, in the case mentioned in clause (b), such officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the Provincial Government, the fact that he will not investigate the case or cause it to be investigated. Section 44 of Police Act, 1861 reads as under:—

"44. Police Officers to keep diary.— It shall be the duty of every officer in-charge of Police Station to keep of general diary in such form as shall, from time to time, be prescribed by the Provincial Government and to record therein all complaints and charges preferred, the names of all persons arrested, the names of the complainants, the offences charged against them, the weapons or property that shall have been taken from their possession or otherwise, and the names of the witnesses who shall have been examined.

Magistrate of the District shall be at liberty to call for and inspect such diary'."

Reference may also be made to the Police Rules contained in Chapter XXIV of Punjab Police Rules, 1934.

According to rule 24.4, "if the information or other intelligence relating to the alleged commission of a cognizable offence, is such that an officer in charge of a police station has reason to suspect that the alleged offence has not been committed, he shall enter the substance of the information or intelligence in the station diary and shall record his reasons for suspecting that the alleged offence has not been committed and shall also notify to the informant, if any, the fact that he will not investigate the case or cause is to be investigated."

In sub-rule (3) of Rule 24.4, it is further written that when reasonable suspicion of such commission arises a First Information Report shall be recorded in the police

station concerned and investigation under section 157, Criminal Procedure Code, shall be made. To the same effect is rule 24.1 of the Punjab Police Rules. These rules are in line with the proviso to section 157 and section 154 of the Cr.P.C. It was because of these provisions that in Shah Muhammad case (supra) the learned Judge observed that if the police suspecting that there was no reasonable ground for recording F.I.R. or making investigation, has refused to proceed in the matter, the action of the police cannot be said to be without lawful authority.

10. The question whether the criminal investigation commenced without recording the F.I.R. is illegal and has the effect of vitiating the arrest and the trial came up before the Courts earlier too. In the case of Emperor v. Khawaja Nazir Ahmad AIR 1945 Privy Council 18, it was observed as under:—

"In the case of cognizable offences, receipt and recording of a first information report is not a condition-precedent to the setting in motion of a criminal investigation. No doubt in the great majority of cases, criminal prosecutions are undertaken as a result of information received and recorded in this way, but there is no reason why the police, if in possession through their own knowledge or by means of credible though informal intelligence which genuinely leads them to the belief that a cognizable offence has been committed, should not of their own motion undertake an investigation into the truth of the matters alleged. Section 157 when directing that a police officer, who has reason to suspect from information or otherwise that an offence which he is empowered to investigate under section 156 has been committed shall proceed to investigate the facts and circumstances supports this view."

11. Again in the case of Parbhu v. Emperor AIR 1944 Privy Council 73, the contention of the accused that his arrest having been effected in Jind territory by a British Indian Officer, was illegal and that the illegality of his

arrest vitiated the whole subsequent proceedings, was repelled holding that when the accused was presented for trial at Rohtak he had been validly surrendered to the Court thereby the Jind authorities and so far as that Court was concerned, proceedings before them were regular and the validity of the trial and conviction of the accused was not affected by any irregularity in his arrest. The judgment cited by Mr. Nazir Ahmed Ghazi, learned Assistant Advocate-General depicts those category of cases which lay down the principle that F.I.R. not being a substantive piece of evidence, any irregularity committed by the police in recording the same, cannot result in throwing aside the prosecution case in its entirety. The irregularity coming to notice in each case is to be considered in the light of overall evidence available on record. The delay if any, in recording the F.I.R. occurs the reason for the delay, the circumstances surrounding the occurrence, the position of the parties, the nature of the offence, the susceptibilities of the parties and their social conditions and the conduct of the police officials and all related factors will have to be considered while evaluating the evidence on record. The delay in recording the F.I.R. obviously is inconsequential if the prosecution case stands established on record beyond reasonable doubt. There may be cases where in the particular circumstances thereof F.I.R. may have been recorded even after the occurrence or the incident and arrest of the accused. The case of *Taj Muhammad v. State* represents such a situation. This very question was also considered in Full Bench case of *M. Bashir Saigol and another v. The State* and another PLD 1964 (W.P.) Lah. 148. *Sardar Muhammad Iqbal, J.* in para. 6 relying on the Privy Council Judgment in *Khawaja Nazir Ahmed's* case observed that "I agree in principle that it is not necessary that the first information report should mention the names of all or any of the accused so as to empower the investigating agency to set in motion. In fact the recording of a first information report is not a condition-precedent and the police, on the receipt of credible information that a cognizable offence has been committed may, under the Code of Criminal Procedure or other statute or law

authorising them in this behalf, start investigation without recording or drawing up a formal first information report. Again in *Rehman and others v. The State* PLD 1968 Lah. 464. the Division Bench also following the Privy Council case of *Khawaja Nazir Ahmed* and Full Bench case of *Bashir Saigol and others* observed as under:—

‘Any person may set the criminal law in motion, by making a report under section 154 of Criminal Procedure Code, 1898. The information so given is called the First Information. It is the basis upon which an investigation is commenced under Chapter XIV (Part V) of the Code of Criminal Procedure. However, receipt and recording of first information report is not a condition-precendent to the setting in motion of criminal investigation. It is true that the absence of F.I.R. deprives the accused of his right to cross-examine the first informant on its basis. However, the fact that no F.I.R. was made or was proved at the trial, would not vitiate the conviction.’

The same view was reported in *Shakeel Ahmed v. The State* PLD 1972 Lah. 374. This Court’s view was also followed by the Federal Shariat Court, in the case of *Ghulam Muhammad v. The State* PLD 1981 FSC 120. These are the cases in which the legality of the investigation and proceedings taken or the trial held were challenged on account of violation of provision of sections 154, 156 and 157, Cr.P.C. The answer returned was that receipt and recording of F.I.R. is not a condition-precendent to setting in motion of criminal investigation and that illegality committed in this respect does not per se vitiate the arrest or the trial. This is one aspect of the matter.

12. The other aspect is represented by other set of cases where the superior Courts have pointed out the duty enjoined on a Police Officer under sections 154, 155, 156 and 157. In respect of this view reference may be made to the Full Bench decision in *M. Anwar, Barrister-at-Law v. The Station House Officer, Civil Lines, Police Station, Lahore* and another PLD 1972 Lah. 493. *Sardar Muhammad*

Iqbal, J., who was member of the Full Bench in the case was also member in case of *M. Bashir Saigol and another v. The State and another* PLD 1964 (W.P.) Lah. 148, speaking for the Full Bench observed:—

“Before parting with the case, we would like to observe that if there is an information relating to the commission of a cognizable offence, it falls under section 154 of the Code of Criminal Procedure, and a police officer is under a statutory obligation to enter it in the prescribed register. The condition-precedent is simply two-fold; first, it must be an information and secondly, it must relate to a cognizable offence on the face of it and not merely in the light of subsequent events. A police officer is bound to receive a complaint when it is preferred to him, or where the commission of an offence is reported to him orally he is bound to take down the complaint. If he does not incorporate in the register a complaint so made, he fails to perform a statutory duty as a public servant and, therefore, renders himself to be dealt with by his superior officers for neglect of duty. Thus, it does not depend on the sweet will of a police officer who may or may not record it. The information referred to in section 154 of the Code of Criminal Procedure appears to us to be something in the nature of a complaint, or accusation, or at least information of a crime, given with the object of putting the police in motion in order to investigate. In the case of a first information, it is not required by law that the police officer is to receive it only if it is given in writing and to record it only if in his opinion it is correct. The question whether or not it is correct depends on the investigation which a police officer is to conduct under section 157 of the Code of Criminal Procedure. The guarantee of the correctness of the first information is ensured by section 182 of the Pakistan Penal Code under which if any person gives the first information statement to a police officer which is recorded under section 154 of the Code of Criminal

Procedure, and if it ultimately turns out to be false, the informant shall be liable to punishment with imprisonment of either description for a term which may extend to six months, or with the fine which may extend to one thousand rupees, or with both.

13. This case thus lays emphasis on the performance of a statutory duty by the police officer as a public servant, and police officer failing to comply with the mandate of law contained in sections 154 and 155, Cr.P.C. renders himself liable to be dealt with in accordance with law. These provisions on the one hand curb arbitrariness of the police officer and on the other secure to citizen a record to be referred to for the purpose envisaged by law. The freedom of movement and personal liberty of citizens is sought to be secured by enjoining the police officer to record the F.I.R. or at least substance thereof in the daily diary. At the same time, it is to be kept in mind that for commencement of investigation, in a crime, the recording of F.I.R. is not a condition-precedent. What is the effect of non-performance of a statutory duty is a separate question and its effect in a given case is to be canvassed by the parties and will be determined by the Court in the circumstances of each given case. We, therefore, answer the first question accordingly.

14. Bail applications will now be put up for hearing after receiving order from the Honourable Chief Justice.

(Sd.)

KHALIL-UR-REHMAN KHAN,
JUDGE.

SH. MUHAMMAD ZUBAIR, J.--I agree.

MIAN NAZIR AKHTAR, J.—I have had the advantage of going through the judgment proposed to be delivered by my learned brother Khalil ur-Rehman Khan, J. I fully agree with the reasoning and the answers to the various questions under reference but would like to add a few lines in respect of question (d).

2. The provisions of section 295-C of the P.P.C. have made it possible to bring the culprits to book through the judicial process and has set a trend in the society to resort to the law. The registration of a criminal case under the above-referred section of the Pakistan Penal Code provides a lease of life to an accused with full opportunity to defend himself in a Court of law through a counsel of his choice and in case of conviction, to avail of the remedies of appeal revision etc., in the higher Courts. No person, muchless a Muslim, can possibly oppose this law as it curtails arbitrariness and promotes the rule of law. If the provisions of section 295-C of the P.P.C. are repealed or declared to be ultra vires to Constitution, the time old method of doing away with the culprits at the spot would stand revived. Being conscious of this aspect of the matter learned counsel for the Pakistan Christian Party and Pakistan Masihi Kasntakar Party has urged that the provision be made more comprehensive so as to make blasphemy qua other Prophets including the Holy Christ, punishable with the same sentence of death. The matter is already being considered by the Government and it is hoped that the needful would be done in the near future.

(Sd.)

MIAN NAZIR AKHTAR,
JUDGE.

MIAN NAZIR AKHTAR, J.- The petitioners seek bail in a case registered against them vide F.I.R. No.160, dated 21-11-1993 for an offence under section 295-C of the P.P.C. at Police Station Piplan, District Mianwali. Riaz Ahmad, petitioner No.1 is father of Basharat Ahmad, petitioner No.2 and uncle of Qamar Ahmad and Mushtaq Ahmad petitioners Nos.3 and 4.

2. The case was registered against the petitioners on a written application dated 17-11-1993 submitted by Muhammad Abdullah son of Muhammad Muzaffar to the S.H.O. of Police Station Piplan in respect of an occurrence

which had taken place on 11-11-1993. The contents of the F.I.R. are reproduced below:—

”میں تحفظِ ختمِ نبوت کا کارکن ہوں۔ میں اپنے گاؤں کے قریب مورخہ ۹۳-۱۱-۱۱ ٹائم ایجنے دن تقریباً اپنے Cousin کے ساتھ سڑک پر کھڑا تھا کہ کسی ریاض احمد ولد رستم خان، بشارت احمد ولد ریاض احمد، قمر احمد و مشتاق احمد پسران محمود احمد جو کہ غیر مسلم (قادیانی) ہیں ہمیں دیکھ کر ہماری طرف بڑھے اور طعناً کہنے لگے کہ یہ سرکاری مسلمان ہیں اور ہمارے مذہبی جذبات مجروح کئے۔ لیکن ہم خاموش کھڑے رہے اور جواباً کچھ نہ کہا۔ لیکن اس کے باوجود الزام علیہان مسلسل حضور ﷺ کی شان کے خلاف گستاخانہ کلمات کہتے رہے اور یہ کہا کہ ہم مرزا غلام احمد کو سچا نبی مانتے ہیں جو کہ حضور پاک ﷺ کی شان سے کم نہ ہیں اور ساتھ ہی حضرت محمد مصطفیٰ ﷺ کی ذات کی بابت ناقابلِ برداشت کلمات کہتے ہوئے انہوں نے یہ کہا کہ ہمارے نبی کے تین لاکھ معجزات ہیں۔ لیکن آپ کے نبی کے تین ہزار معجزات تھے۔ اسی بحث کے دوران قمر احمد ولد محمد حسن، نذیر احمد ولد بابو خان ہمارے قریب آگئے۔ انہوں نے بھی الزام علیہان کے بیان کردہ نازیبا کلمات اور گفتگو سنی اور وہ مسلمان ہونے کی حیثیت سے سچ بات کی شہادت دیں گے۔ اگر مذکورہ حالات کو مد نظر رکھ کر الزام علیہان کے خلاف کارروائی نہ کی گئی تو ہمارے علاقے کے مذہبی جذبات جو کہ دبے ہوئے ہیں، جنگل کی آگ کی طرح بھڑک اٹھیں گے اور امن عامہ کے نقص کے علاوہ مذہبی اختلافات پورے ملک کو پلیٹ میں لے لیں گے۔ لہذا الزام علیہان کے خلاف مقدمہ درج فرما کر مشکور فرمائیں۔ نوازش ہوگی۔“

3. The petitioners filed an application for grant of bail in the Court of the learned Sessions Judge, Mianwali who dismissed the same vide the order dated 3-1-1994. A relevant part of the order is reproduced below:—

”Whatever is stated above, prima facie amounts to defiling the sacred and exalted name of Holy Prophet Hazrat Muhammad (peace be upon him) because in this manner his position is lowered to that of Mirza

Ghulam Ahmad. Hence there are reasonable grounds for believing that the petitioners have committed an offence under section 295-C of the P.P.C., which falls within the prohibitory clause of section 497, Cr.P.C."

4. The petitioners' learned counsel contends as under:—

- (i) There is serious background of enmity against each petitioner. On 9-12-1991, Muzaffar, father of the complainant, moved an application before the District Magistrate for removal of Riaz Ahmed, petitioner No.1, from the office of Lambardar as he belonged to Qadiani Sect and was not liked by the majority of residents of the area. His application was accepted vide order, dated 6.6.1993. Petitioner No.1 went in appeal before the Commissioner, Sargodha Division who allowed it vide order, dated 31.7.1993. Muzaffar, father of the complainant, went in revision before the Board of Revenue to assail the appellate order passed by the Commissioner, Sargodha Division which is still pending.
- (ii) One Ghulam Qadir resident of Chak No.15 made a report before the police on 4-6-1993 against Nazir Ahmad and Abdullah complainant and a few others for commission of the offence of trespass, criminal intimidation and mischief. After proper investigation, the police found the case to be false and recommended its cancellation. Thereafter, he filed a private complaint in the Court of Ilaqa Magistrate on 16-8-1993. Qamar and Mushtaq, petitioners Nos.2 and 4 appeared as prosecution witnesses in the private complaint referred to above. After perusing the preliminary evidence, the Court summoned Abdullah etc vide order, dated 31-10-1993 (Annexure C/4).
- (iii) The case against the petitioners is cooked up and an outcome of the above-referred enmity. Moreover, the report was lodged with the delay of

six days which makes the prosecution story doubtful.

- (iv) The petitioners being 'Ahmadis' follow the teachings of Mirza Ghulam Ahmad, founder of Ahmadia community who never proclaimed to be equal to the Holy Prophet Hazrat Muhammad ﷺ. In fact, none can make such a claim. Mirza Sahib had declared that he was subservient to the Holy Prophet Hazrat Muhammad ﷺ. Moreover, Mirza Sahib never directly compared himself with Rasool-e-Pak ﷺ. The writings of Mirza Sahib reflect profound reverence and love for the Holy Prophet Hazrat Muhammad ﷺ. In this connection, the following references may be seen"—

1.	کشتی نوح	20-21
2.	آئینہ کمالات اسلام	15-160-164-224-226
3.	چشمہ معرفت	302
4.	پیغام صلح	459-461
5.	تزیان القلوب	141
6.	لیکچر سیا لکوٹ	206
7.	قادیان کے آریہ اور ہم	456
8.	براہین احمدیہ	101-104

- (v) The petitioners' faith is that Mirza Ghulam Ahmad was merely "Mehdi Maood" or "Masih Maood" and nothing else.
- (vi) The Full Bench has left the question as to whether the language used by the accused is derogatory to the Holy Prophet Hazrat Muhammad ﷺ and constitutes an offence under section 295 of the

P.P.C., to be decided by the trial Court. Hence this Court should not examine this question.

- (vii) At any rate, the petitioners' faith has necessarily to be seen while determining the question as to whether, *prima facie*, they have committed the offence alleged against them. The petitioners' learned counsel particularly relied on para. 5 of the judgment in the case of *Nasir Ahmed v. The State* 1993 SCMR 153 which is reproduced below:—

“After hearing the learned counsel for the parties at some length, we find that serious question which requires examination is whether “defiling” takes place *ex facie* by the written or spoken words or the act of the person accused of the offences or that this is to be seen keeping in view the totality of the milieu, including necessarily the faith, the intention, the object and the background of the person using them. We have got the impression *prima facie* that *ex facie*, use of these expressions does not create in a Muslim, or for that matter anyone else, any of the feelings of hurt, offence or provocation etc. etc. nor is it derogatory to the Holy Prophet Muhammad (peace be upon him) or the Muslims. It is only when the person reading or hearing them goes deep into the background of the person using them and brings his own special knowledge of the faith, beliefs and latent intentions of such an accused that the alleged results are likely to follow.”

5. On the other hand, Mr. Nazir Ahmad Ghazi, learned Assistant Advocate-General submits as under: —

- (i) The police investigation shows that the occurrence had actually taken place.
- (ii) Admittedly, there is civil litigation between Muzaffar, father of the complainant, and Riaz Ahmed, petitioner No.1. However, despite the said litigation, Muzaffar or his son Abdullah

never came forward with such allegations earlier. Moreover, if he wanted to involve him in a false case, he could have involved him under any other provision of the Penal Code and would not have gone to the extent of falsely bringing in the sacred name of the Holy Prophet Hazrat Muhammad ﷺ who is dearest to his heart and soul, like any other Muslim.

- (iii) Even if some hostility exists between the complainant and the accused party, there is no enmity or hostility between the accused persons and the three eye-witnesses who are independent and fully supported the complainant's version during the course of investigation.
- (iv) The delay in reporting the matter, in the circumstances of the present case, does not adversely affect the prosecution case. Had the complainant been a liar he would have conveniently stated that the occurrence had taken place on 17th of November, 1993 when the report was actually lodged. The police is competent to conduct investigation even before formal registration of the F.I.R. The case does not involve any recovery or circumstantial evidence. Hence, the delay does not affect the veracity of the prosecution case. The case entirely depends upon the oral evidence furnished by the complainant and the three eye-witnesses. If the witnesses are believed then it is not possible to say that the occurrence had not taken place. Even in ordinary criminal cases, delay per se, is not sufficient to throw out the prosecution case, if reliable evidence regarding commission of the offence is available. Reliance is placed on the following judgments:—

- (i) Taj Muhammad alias Tajoo v. The State 1991 PCr.LJ 2167.
- (ii) Ch. Muhammad v. S.H.O., Rahim Yar Khan and 2 others 1977 PCr.LJ 2.

- (iii) Harsari v. The State 1989 PCr.LJ 809.
 - (iv) Gul Nawaz Lone and another v. S.H.O. PLD 1990 Lah. 428.
 - (v) Ghulam Siddique v. S.H.O. Saddar Dera Ghazi Khan and 8 others PLD 1979 Lah. 263.
 - (vi) Muhammad Hassan v. S.S.P., Faisalabad and 7 others 1992 PCr.LJ 2307.
 - (vii) Alam Sher and 5 others v. The State 1975 PCr.LJ 1188.
- (v) The petitioners' learned counsel has contended that nobody can claim equality with or superiority over the Holy Prophet Hazrat Muhammad ﷺ and that the petitioners being followers of Mirza Ghulam Ahmad can never think of uttering the words attributed to them in the F.I.R. However, the words used by the petitioners are not merely their own words but are the part of the teachings of Mirza Ghulam Ahmad. In this connection, para. 82 of the judgment in the case of Zahir-ud-Din v. The State 1993 SCMR 1718 may be seen. The language used by the accused is almost the same which has been used by Mirza Ghulam Ahmad in his book "Barahin-e-Ahmadia", Vol. V, Chapter II (Nusratul Haq), page 56 and "Haqeeqat-ul-Wahi", page 67. The words uttered by the accused are in accord with their faith.
- (vi) Prima facie, the language used by the accused constitutes an offence under section 295-C of the P.P.C. which falls within the prohibitory clause of section 497 of the Cr.P.C. The petitioners have lowered the position of the Holy Prophet to that of Mirza Ghulam Ahmad who is not a Muslim within the meaning of Article 260(3)(a) of the Constitution of Pakistan. Moreover, Mirza Ghulam Ahmad was planted to serve the interests

of British imperialism and any one who treats him as equal to Hazrat Muhammad ﷺ dishonours the Holy Prophet.

- (vii) The question whether the petitioners have committed the offence shall be finally decided by the trial Court but at bail stage a tentative appraisal of the material can be made and a prima facie view formed regarding commission of the offence.

6. There is considerable force in the argument of the learned Assistant Advocate-General that the delay in reporting the matter to the police, in the circumstances of the present case, is not sufficient to doubt the prosecution case. The case does not involve any circumstantial evidence or recovery and depends upon ocular testimony furnished by the complainant and the three eye-witnesses. In ordinary criminal cases promptness of F.I.R. is insisted upon to avoid deliberations before reporting the matter to the police and to enable the Investigation Agency to secure circumstantial evidence in order to ascertain the correctness or otherwise of the complainant's version. Moreover, there was nothing to stop the complainant from alleging that the occurrence had taken place on 17-11-1993 (when the written complaint was submitted before the S.H.O.). As regards investigation conducted before formal registration of the F.I.R., suffice it to say that while dealing with this aspect of the matter the Full Bench of this Court vide its order dated 25-4-1994 had held, "receipt and recording of F.I.R. is not a condition-precedent to setting in motion of criminal investigation and that illegality committed in this respect does not, per se, vitiate the arrest or the trial". Hence at this stage, I am not inclined to doubt the veracity of the complainant due to the delay in reporting the matter to the police.

7. The facts narrated by the petitioners' learned counsel do establish background of hostility between the petitioners and the complainant as well as his father, Muzaffar. In the facts and circumstances of a particular case, it may be possible to hold, even at bail stage that probably an accused person has been roped in due to past

enmity or hostility with the complainant party. However, in the present case I am not persuaded to hold so far the following reasons:

- (a) The hostility between Muzaffar father of the complainant dates back to 9-12-1991 when he had moved an application before the District Magistrate for removal of Riaz Ahmed, petitioner No.1 from the office of Lambardar. Since then he or for that matter his son did not attempt to involve him in any criminal case, either to create a ground for his removal or otherwise to wreak vengeance upon him.
- (b) Despite civil and criminal litigation, no untoward incident had taken place between the parties from December, 1991 till before the present occurrence which had taken place on 11-11-1993.
- (c) The case is supported by three other witnesses namely Nazir Ahmed son of Babu Khan, Muhammad Qamar son of Muhammad Hassan and Qadir Ahmed son of Nazir Ahmad, who do not seem to have any motive to falsely depose against the accused-petitioners.
- (d) The Investigating Officer has come to the conclusion that the occurrence narrated in the F.I.R. had taken place.

8. Therefore, I am not inclined to agree with the petitioners' learned counsel that the case is entirely cooked up due to past hostility of the complainant party against the petitioners. Anyhow, the above view is purely tentative and it would be open to the trial Court to decide the matter finally in the light of the evidence adduced by the parties. The petitioner's learned counsel did not argue whether the language said to have been used by the petitioners was, in any manner derogatory to Hazrat Muhammad ^ﷺ and whether it amounted to defiling his exalted and sacred name. He mainly urged that the prosecution case was false and a product of past enmity. Moreover, his attempt was

that at bail stage this Court should not go into this question and leave it to be decided by the trial Court, moreso when in the present case the Full Bench of this Court had also preferred the same course vide its order dated 25-4-1994.

9. It is settled law that for purposes of disposal of a bail petition, tentative assessment of the material on the record has to be made. In this connection I may refer to the judgment of the Hon'ble Supreme Court in the case of Khalid Javed Gilan v. The State PLD 1978 SC 256.

10. According to the allegations made in the F.I.R., the petitioners had stated that Mirza Ghulam Ahmed was a true prophet not in any manner lesser in dignity than Hazrat Muhammad ﷺ. While comparing him with the Holy Prophet Hazrat Muhammad ﷺ they stated that number of miracles of Hazrat Muhammad ﷺ was three thousand but that of Mirza Ghujam Ahmad was three lacs.

11. It is not unlikely that a Quadiani would utter the above referred words because the same are also found in the writings of Mirza Ghujam Ahmad. The number of three thousand miracles of the Holy Prophet Hazrat Muhammad ﷺ is mentioned in Mirza Ghujam Ahmad's Book Tohfa Golarv contained in book "Roohani Khazain", Vol. 17, page 153. The relevant part reads as under:—

”کوئی شریر انفس ان تین ہزار معجزات کا بھی ذکر نہ کرے جو ہمارے نبی ﷺ سے ظہور میں آئے اور حدیبیہ کی پیش گوئی کو بار بار ذکر کرے کہ وہ وقت اندازہ کردہ پر پوری نہیں ہوئی۔“

12. As regards himself, originally Mirza Ghujam Ahmad gave the number of his miracles as over three thousand and thereafter gave higher number of one lac, three lacs and ten lacs in his different books. The relevant extracts from his books are given below:—

(الف) ”خدا کے عظیم الشان نشان بارش کی طرح میرے پر اتر رہے ہیں اور غیب کی باتیں میرے پر کھل رہی ہیں۔ ہزار ہا دعائیں اب تک قبول ہو چکی ہیں۔ اور تین ہزار سے زیادہ نشان ظاہر ہو چکا ہے۔“

(تریاق القلوب ص 6 مشمولہ روحانی خزائن، جلد 15، صفحہ 140 از مرزا قادیانی)

(ب) ”میں اس امر میں صاحب مشاہدہ ہوں۔ خدا مجھ سے ہم کلام ہوتا ہے اور ایک لاکھ سے بھی زیادہ میرے ہاتھ پر اس نے نشان دکھلائے ہیں۔“

(ضمیمہ النبوی فی الاسلام، صفحہ 341 - مصنف: مولوی محمد علی لاہوری، چشمہ معرفت، حصہ دوم، صفحہ 60 روحانی خزائن ج 23 ص 428 مصنف مرزا غلام احمد قادیانی)

(ج) ”میری تائید میں اس نے وہ نشان ظاہر فرمائے ہیں کہ آج کی تاریخ سے جو ۱۶ جولائی ۱۹۰۶ ہے۔ اگر میں ان کو فرداً فرداً شمار کروں تو میں خدا تعالیٰ کی قسم کھا کر کہہ سکتا ہوں کہ وہ تین لاکھ سے بھی زیادہ ہیں۔“

(حقیقت الوحی، صفحہ 67 روحانی خزائن ج 22 ص 70 از مرزا قادیانی)

(د) ”اور میں اس خدا کی قسم کھا کر کہتا ہوں جس کے ہاتھ میں میری جان ہے کہ اسی نے مجھے بھیجا ہے اور اسی نے میرا نام نبی رکھا ہے اور اسی نے مجھے مسیح موعود کے نام سے پکارا ہے اور اس نے میری تصدیق کے لئے بڑے بڑے نشان ظاہر کئے ہیں جو تین لاکھ تک پہنچتے ہیں۔“

(حقیقت الوحی، [ترجمہ] صفحہ 68 مندرجہ روحانی خزائن ج 22 ص 503 از مرزا قادیانی)۔

Mirza Ghulam Ahmad was not satisfied even with his claim of three lac miracles and at another place laid a claim that number of Allah's signs (miracles) in respect of his prophecies exceeded ten lacs. The relevant part from his book Baraheen Ahmadia is given below:-

”ان چند سطروں میں جو پیشگوئیاں ہیں وہ اس قدر نشانوں پر مشتمل ہیں جو دس لاکھ سے زیادہ ہوں گے اور نشان بھی ایسے کھلے کھلے ہیں جو اول درجہ پر خارق عادت ہیں۔ سو ہم اول صفائی بیان کے لئے ان پیشگوئیوں کے اقسام بیان کرتے ہیں۔ بعد اس کے یہ ثبوت دیں گے کہ یہ پیشگوئیاں پوری ہوئی ہیں۔ اور درحقیقت یہ خارق عادت نشان ہیں اور اگر بہت سی سخت گیری اور زیادہ سے زیادہ احتیاط سے بھی ان کا شمار کیا جائے تب بھی یہ نشان جو ظاہر ہوئے، دس لاکھ سے زیادہ ہوں گے۔“

(براہین احمدیہ، جلد پنجم، صفحہ 56 مندرجہ روحانی خزائن ج 21 ص 72 از مرزا قادیانی)

13. The petitioner's learned counsel strongly urged that the petitioners merely believe that Mirza Ghulam Ahmad was Maseeh Maud and Medhi Maud and nothing else. He was subservient to the Holy Prophet Hazrat Muhammad ﷺ and was lower to the position of Rasool-e-pak ﷺ. Mr. Nazir Ahmad Ghazi the learned Assistant Advocate-General with equal force repudiated the above argument of the petitioners' learned counsel and urged that the petitioners are admittedly Quadiani who believe that Mirza Ghulam Ahmad was a Prophet and had acquired this status with the stamp of the Holy Prophet Hazrat Muhammad ﷺ. In this connection he referred to the pamphlet captioned as (ایک غلطی کا ازالہ) written by Mirza Ghulam Ahmad. The contents of the pamphlet fairly support the contention of the learned A.A.G. He also referred to the following quotation from Mirza Ghulam Ahmad's book Nazool-e-Maseeh.

Mirza Sahib has attributed to himself a number of Qura'nic verses revealed in respect of Hazrat Muhammad ﷺ. A few references are given below: —

”میں رسول اور نبی ہوں یعنی باعتبارظلیت کاملہ کے میں وہ آئینہ ہوں جس میں محمدی شکل اور محمدی نبوت کا کامل انعکاس ہے۔ اگر میں کوئی علیحدہ شخص نبوت کا دعویٰ کرنے والا ہوتا تو خدا تعالیٰ میرا نام محمد، احمد اور مصطفیٰ اور مجتبیٰ نہ رکھتا اور نہ خاتم الانبیاء کی طرح خاتم الاولیاء کا مجھ کو خطاب دیا جاتا بلکہ میں کسی علیحدہ نام سے آتا۔ لیکن خدا تعالیٰ نے ہر ایک بات میں وجود محمدی میں مجھے داخل کر دیا۔“ (نزول المسیح، صفحہ 3 مندرجہ روحانی خزائن ج 18 ص 381 از مرزا قادیانی)

Mirza Sahib has attributed to himself a number of Qura'nic verses revealed in respect of Hazrat Muhammad ﷺ. A few references are given below:-

1- وما ارسلناك الا رحمة للعالمين.

(حقیقت الوہی، ص 82 تذکرہ ص 64 طبع چہارم)

2- سبحن الذی اسرئ بعبدہ لیلأ.

(حقیقت الوہی، ص 78 تذکرہ ص 63, 64 طبع چہارم)

3- انا اعطینک الکوثر.

(حقیقت الوہی، ص 102 تذکرہ ص 306 طبع چہارم)

4- انا فتحنا لک فتحاً مبیناً.

(حقیقت الوہی، ص 74 تذکرہ ص 199, 72, 39 طبع چہارم)

5- فتدلی فکان قاب قوسین او ادنی.

(حقیقت الوہی، ص 86 تذکرہ ص 54, 54 طبع چہارم)

6- الرحمن. علم القرآن.

(حقیقت الوہی، ص 72 تذکرہ ص 178, 35 طبع چہارم)

7- قل ان کنتم تحبون اللہ فاتبعونی یحببکم اللہ.

(تذکرہ ص 62, 48, 37 طبع چہارم)

8- یسن. انک لمن المرسلین.

(حقیقت الوہی، ص 107 تذکرہ ص 522 طبع چہارم)

9- هو الذی ارسل رسولہ بالہدی و دین الحق لیظہرہ علی الدین کلہ.

(تذکرہ ص 194, 37 طبع چہارم)

10- مارمیت اذرمیت ولكن اللہ رمی.

(تذکرہ ص 194 طبع چہارم)

11- قل انما انا بشر مثلکم یوحی الی انما الہکم الہ واحد.

(تذکرہ ص 199, 70 طبع چہارم)

Further Mirza Ghulam Ahmad claimed that he deserved Darood-o-Salam and that his followers could

legitimately write with his name ﷺ (for reference see Arbaeen No.2, page 6). The Book "Tazkira" which according to the Quadrianis consists of revelations of Mirza Ghulam Ahmad contains the following one at page 777 ﷺ. Mirza Ghulam Ahmad has also referred to the following revelation in his Book (حقیقت الوحی), Chapter 4, page 74-75.

"اصحاب الصفہ وما ادرك ما اصحاب الصفہ — ترى اعينهم
تفيض من الدمع — يصلون عليك"

(حقیقت الوحی ص 74, 75 مندرجہ روحانی خزائن ج 22 ص 78 از مرزا قادیانی)

Thus, becomes abundantly clear that according to the claims of Mirza Ghulam Ahmad he was a Prophet, was named as Muhammad and Ahmad by Allah, was sent as (رحمة للعالمین) was Muhammad incarnate reflecting the complete image and Prophethood of Hazrat Muhammad ﷺ and deserved Darood-o-Salam like the Holy Prophet Hazrat Muhammad ﷺ. Hence it was not unlikely for the petitioners to have declared that Mirza Ghulam Ahmad was not lesser in his dignity or status than the Holy Prophet Hazrat Muhammad ﷺ. The petitioners' learned counsel has referred to a number of books of Mirza Ghulam Ahmad in which he has expressed deep reverence and love for the Holy Prophet Hazrat Muhammad ﷺ. A few references are quoted below: —

(الف) "نوع انسان کے لئے روئے زمین پر اب کوئی کتاب نہیں مگر قرآن۔ اور تمام آدم زادوں کے لئے اب کوئی رسول اور شفیع نہیں۔ مگر محمد مصطفیٰ ﷺ۔ سو تم کو شش کرو کہ سچی محبت اس جاہ و جلال کے نبی کے ساتھ رکھو اور اس کے غیر کو اس پر کسی نوع کی بڑائی مت دو۔"

(کشتی نوح ص 13 مندرجہ روحانی خزائن ج 19 ص 13 از مرزا قادیانی)

(ب) "بعد از خدا عشق محمد محترم گر کفر ایں بود بخدا سخت کافر م"

(لیکچر سیا لکوٹ ص 46 مندرجہ روحانی خزائن ج 20 ص 248 از مرزا قادیانی)

(ج) ”ہم نے ایک ایسے نبی کا دامن پکڑا ہے جو خدا نما ہے کسی نے یہ شعر بہت ہی اچھا کہا ہے:

محمد عربی بادشاہ ہر دوسرا کرے ہے روح قدس جس کے در کی در بانی
اسے خدا تو نہیں کہہ سکوں پر کہتا ہوں کہ اس کی مرتبہ دانی میں ہے خدا دانی

(چشمہ معرفت مندرجہ روحانی خزائن، جلد 23، صفحہ 302 از مرزا قادیانی)

(د) ”اسلام سے کچھ دن پہلے تمام مذاہب بگڑ چکے تھے اور روحانیت کھو چکے تھے۔ پس ہمارے نبی ﷺ اظہارِ سچائی کے لیے ایک مجددِ اعظم تھے جو گم گشتہ سچائی کو دوبارہ دنیا میں لائے۔ اس فخر میں ہمارے نبی ﷺ کے ساتھ کوئی بھی نبی شریک نہیں کہ آپ نے تمام دنیا کو ایک تاریکی میں پایا اور پھر آپ کے ظہور سے وہ تاریکی نور سے بدل گئی۔“

(لیکچر سیکلوت مندرجہ روحانی خزائن، جلد 20، صفحہ 206 از مرزا قادیانی)

(ہ) ”مخالفین نے ہمارے رسول ﷺ کے خلاف بے شمار بہتان گھڑے ہیں اور اپنے اس دجل کے ذریعہ ایک خلق کثیر کو گمراہ کر کے رکھ دیا ہے۔ میرے دل کو کسی چیز نے بھی کبھی اتنا دکھ نہیں پہنچایا جتنا کہ ان لوگوں کے ہنسی مذاق نے پہنچایا ہے جو وہ ہمارے رسول پاک ﷺ کی شان میں کرتے رہتے ہیں۔ ان کے دل آزار طعن و تشنیع نے جو وہ حضرت خیر البشر ﷺ کی ذات والا صفات کے خلاف کرتے ہیں، میرے دل کو سخت زخمی کر رکھا ہے۔ خدا کی قسم اگر میری ساری اولاد اور اولاد کی اولاد اور میرے سارے دوست اور میرے سارے معاون و مددگار میری آنکھوں کے سامنے قتل کر دیے جائیں اور خود میرے ہاتھ اور پاؤں کاٹ دیے جائیں اور میری آنکھ کی پتلی نکال پھینکی جائے اور میں اپنی تمام مرادوں سے محروم کر دیا جاؤں اور اپنی تمام خوشیوں اور تمام آسائشوں کو کھو بیٹھوں تو ان ساری باتوں کے مقابل پر بھی میرے لئے یہ صدمہ زیادہ بھاری ہے کہ رسول اکرم ﷺ پر ایسے ناپاک حملے کئے جائیں۔ پس اے میرے آسمانی آقا تو ہم پر اپنی رحمت اور نصرت کی نظر فرما اور ہمیں اس ابتلاءِ عظیم سے نجات بخش۔“

(ترجمہ عربی عبارات آئینہ کمالات اسلام، صفحہ 15 مندرجہ روحانی خزائن ج 5 ص 15 از مرزا قادیانی)

If the faith of the followers of Mirza Ghulam Ahmad is confined to his above-referred writings in which love and reverence for the Holy Prophet has been expressed, no Muslim can have any grievance against them. But unfortunately there are other writings of Mirza Ghulam Ahmad in which he not only ventured to claim complete equality and identity with the Holy Prophet Hazrat Muhammad ﷺ but also showed disrespect to him. This aspect of the matter was considered by the Hon'ble Supreme Court of Pakistan in the case of Zaheer-ud-Din (relied upon by the learned Assistant Advocate-General). The Court was pleased to observe in para. 82 of the judgment, "Not only that, Mirza Sahib, in his writings tried to belittle the glory and grace of the Holy Prophet (peace be upon him), he even ridiculed him occasionally". In this connection the Hon'ble Supreme Court was pleased to refer to the following quotations from the books of Mirza Ghulam Ahmad.

- (i) The Holy Prophet could not conclude the propagation of Islam and I complete the same. (Hashia Tohfa Golarvia, page 165).
 - (ii) The Holy Prophet could not understand some of the revelations and he made many mistakes (Izalatul Auham, published by Lahori Press).
 - (iii) The Holy Prophet had 3 thousand miracles" (Tohfa Golarvia, page 67 published at Rabwah).
 - (iv) I have one million signs."
- (Braheem Ahmadia, page 56).

The Hon'ble Supreme Court further noted that the belief of the Quadianis is that Mirza Ghulam Ahmad is (God forbid) Muhammad incarnate. In this connection, reference was made by the Court to the following quotation from Mirza Sahib's Khutbah Illhamia (page 171): "One who distinguishes between me and Muhammad, he has neither seen me nor known me."

Since the Quadianis believe in the totality of the teachings of Mirza Ghulam Ahmad which include his claim of possessing all the qualities and titles of honour of the Holy Prophet, they feel no hesitation in declaring him as a Prophet not lesser in position, dignity or honour than the Holy Prophet Hazrat Muhammad ﷺ. The learned Assistant Advocate-General has urged that such a declaration is derogatory to the Holy Prophet Hazrat Muhammad ﷺ because Mirza Ghulam Ahmad and his followers are non-Muslims under the provisions of Article 260(3) (a) and (b) of the Constitution of Pakistan and are treated so by the Muslim Umma throughout the world. He posed a question as to how the greatest Prophet of Allah can be relegated to the position of an imposter and a non-Muslim who was essentially planted to serve the cause of the British Imperialism? To substantiate his assertion, the learned A.A.G. has referred to the following writings of Mirza Ghulam Ahmad:—

(الف) ”میں بار بار اعلان دے چکا ہوں کہ میرے بڑے بڑے پانچ اصول ہیں۔ اول یہ کہ خدا تعالیٰ کو وحدہ لا شریک اور ہر ایک منقعت، موت اور بیماری اور لا چاری اور درد اور دکھ اور دوسری نالائق صفات سے پاک سمجھنا۔ دوسرے یہ کہ خدا تعالیٰ کے سلسلہ نبوت کا خاتم اور آخری شریعت لانے والا اور نجات کی حقیقی راہ بتلانے والا حضرت سیدنا و مولانا محمد مصطفیٰ ﷺ کو یقین رکھنا۔ تیسرے یہ کہ دین اسلام کی دعوت محض دلائل عقلیہ اور آسمانی نشانوں سے کرنا اور خیالات غازیانہ اور جہاد اور جنگجوئی کو اس زمانہ کے لیے قطعی طور پر حرام اور متمنع سمجھنا اور ایسے خیالات کے پابند کو صریح غلطی پر قرار دینا، چوتھے یہ کہ اس گورنمنٹ محسنہ کی نسبت جس کے ہم زیر سایہ ہیں یعنی گورنمنٹ انگلشیہ کوئی مقصدانہ خیالات دل میں نہ لانا اور خلوص دل سے اس کی اطاعت میں مشغول رہنا۔ پانچویں یہ کہ بنی نوع سے ہمدردی کرنا اور حتی الوسع ہر ایک شخص کی دنیا اور آخرت کی بہبودی کے لیے کوشش کرتے رہنا اور امن و صلح کاری کا موید ہونا اور نیک اخلاق کو دنیا میں پھیلانا۔ یہ پانچ اصول ہیں جن کی اس جماعت کو تعلیم دیجاتی ہے۔

(کتاب البریہ، ص 330 مندرجہ روحانی خزائن ج 13 ص 348 از مرزا قادیانی)

(ب) ”سومپرا مذہب جس کو میں بار بار ظاہر کرتا ہوں یہی ہے کہ اسلام کے دو حصے ہیں۔ ایک یہ کہ خدا تعالیٰ کی اطاعت کریں۔ دوسرے اس سلطنت کی جس نے امن قائم کیا جو جس نے ظالموں کے ہاتھ سے اپنے سایہ میں ہمیں پناہ دی ہو۔ سو وہ سلطنت حکومت برطانیہ ہے۔ اگرچہ یہ سچ ہے کہ ہم یورپ کی قوموں کے ساتھ اختلاف مذہب رکھتے ہیں اور ہم ہرگز خدا تعالیٰ کی نسبت وہ باتیں پسند نہیں رکھتے جو انہوں نے پسند کی ہیں لیکن ان مذہبی امور کو رعیت اور گورنمنٹ کے رشتہ سے کچھ علاقہ نہیں۔ خدا تعالیٰ ہمیں صاف تعلیم دیتا ہے کہ جس بادشاہ کے زیر سایہ امن کے ساتھ بسر کرو۔ اس کے شکر گزار اور فرمانبردار بنے رہو سو۔ اگر ہم گورنمنٹ برطانیہ سے سرکشی کریں تو گویا اسلام اور خدا اور رسول سے سرکشی کرتے ہیں۔“

(شہادۃ القرآن ص 84 مندرجہ روحانی خزائن ج 6 ص 380 از مرزا قادیانی)

14. Before proceeding further it would be advantageous to examine the provisions of section 295-C of the P.P.C. which read as under:—

“S. 295-C.--Whoever by words, either spoken or written, or by visible representation, or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Muhammad (may peace be upon him) shall be punished with death, or imprisonment for life, and shall be liable to fine.”

After the pronouncement of the Federal Shariat Court in the case of Muhammad Ismaeel Qureshi v. Pakistan through Secretary, Law and Parliamentary Affairs PLD 1991 FSC 10 the words “or imprisonment for life” in section 295-C of the P.P.C. have lost their efficacy w.e.f. 30-4-1991. Therefore, now the sentence for the offence is only death.

15. The word ‘defile’ means to corrupt purity or perfection of; to debase; to make ceremonially unclean; to pollute; to sully; to dishonour”.

(Black’s Law Dictionary, Fifth Edition page 380).

To violate the sacredness or sanctity of; to desecrate, profane; to sully the honour of, to dishonour.”

(The Oxford English Dictionary, Volume III, page 136).

16. A bare reading of the above provision of law makes it clear that any word either spoken or written, or visible representation or any imputation which defiles the sacred name of the Holy Prophet Hazrat Muhammad ﷺ directly or indirectly or by an innuendo i.e. latent defamation, amounts to an offence under section 295-C of the Code. The petitioners, on the one hand, had asserted that the position and status of Mirza Ghulam Ahmed was not less than that of Hazrat Muhammad ﷺ and on the other, stated that number of miracles of Mirza Ghulam Ahmed was three lacs while that of the Holy Prophet Hazrat Muhammad ﷺ three thousand.

The argument of the learned Assistant Advocate-General that the petitioners dishonoured the Holy Prophet Hazrat Muhammad ﷺ by relegating his position to that of Mirza Ghulam Ahmad, who was not a "Muslim" within the meaning of Article 260(3)(a) of the Constitution of Pakistan and was a false claimant of Prophethood according to the firm belief of the Muslim Umma, has considerable force. Prima facie, the petitioners appear to have committed an offence under section 295-C of the P.P.C. The mere fact that Mirza Ghulam Ahmad in a number of his books (referred to by the petitioners' learned counsel) had expressed profound love and respect for the Holy Prophet Hazrat Muhammad ﷺ is not enough to exonerate the petitioners who, according to the F.I.R, had used derogatory 'language about the Holy Prophet Hazrat Muhammad ﷺ and ventured to say that Mirza Ghulam Ahmad was not lesser in dignity or status than the Holy Prophet Hazrat Muhammad ﷺ. The offence being punishable with death falls within the prohibition of section 497 of the Cr.P.C.

17. The petitioners' learned counsel heavily relied on the judgment in the case of Nasir Ahmad v. The State 1993 SCMR 153 to urge that the question whether the petitioners had committed an offence under section 295-C of the P.P.C. may be left to be decided by the trial Court and that petitioners may be allowed bail at this stage. Of course, the

final determination of the question regarding commission of the offence has to be done by the trial Court but at this stage a tentative view can be formed on the basis of the material on the record. Moreover, the facts of the precedent case are entirely different. In the said case certain Shaair-e-Islam were used by the Qadianis in a marriage invitation card. It was felt that deeper probe regarding the faith intention etc., of the accused was needed. It was observed that the use of the expressions like

”بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ — السَّلَامُ عَلَیْكُمْ — اِنْشَاءً اللّٰهُ“

by any person, *prima facie*, “does not create feelings of hurt, offence or provocation etc. etc. nor is it derogatory to the Holy Prophet Muhammad ﷺ. It was further observed. “It is only when the person reading or hearing them goes deep into the background of the person using them and brings his own special knowledge of the faith, beliefs and latent intentions of such an accused that the alleged results are likely to follow.” Meaning thereby that the alleged results of hurt or provocation to Muslims or defilement of the sacred name of the Holy Prophet were likely to follow after going into the background of the accused, their faith, beliefs and intentions. Hence in the peculiar circumstances of the case, the Hon’ble Supreme Court left the matter to be decided by the trial Court and allowed bail to the accused persons. The facts of the present case are singularly different. The petitioners who are Qadianis had allegedly used derogatory language about the Holy Prophet ﷺ and openly declared that Mirza Ghulam Ahmad was not lesser in his position and status than the Holy Prophet. They also gave higher number of miracles of Mirza Ghulam Ahmad apparently to place him on a higher spiritual pedestal. Therefore, in the present case the petitioners *prima facie* appear to have committed an offence under section 295-C of the P.P.C,

18. For the foregoing discussion, I am not inclined to grant bail to the petitioners at this stage. Resultantly, their bail petition is dismissed. However, in order to avoid prejudice to them due to delay in conclusion of the trial the

trial Court is directed to give priority to this case over others and make every effort to conclude the trial expeditiously, preferably, within a period of three months.

19. It is clarified that the trial Court shall independently decide the case in the light of the material or evidence adduced by the parties without being-influenced by the observations made above.

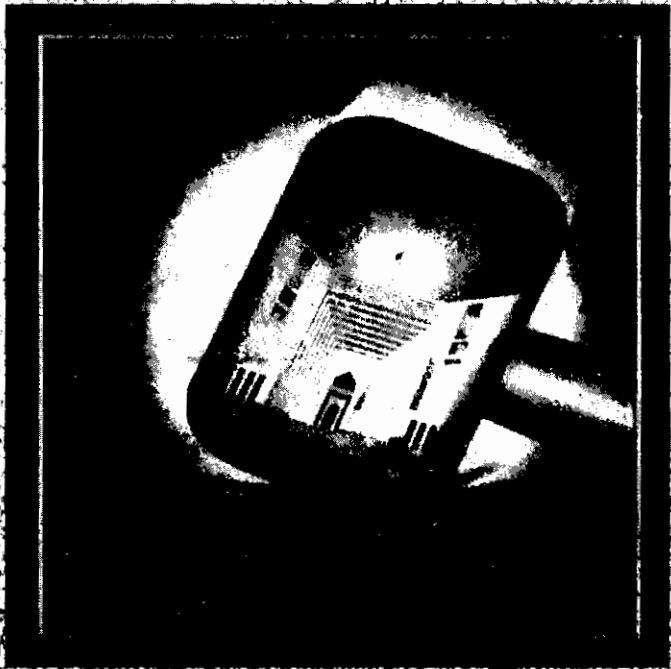
(Sd.)

(MIAN NAZIR AKHTAR),
JUDGE.

Bail refused.

(PLD 1994 Lahore 485)





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

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Mr. Justice Shafiur Rahman,
Mr. Justice Abdul Qadeer Chaudhry,
Mr. Justice Muhammad Afzal Lone,
Mr. Justice Saleem Akhtar,
Mr. Justice Wali Muhammad Khan

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. Fakruddin G.
Ebrahim, Sr. Advocate
Ch. Aziz Ahmad Bajwa,

- Advocate, Sr. Advocate
Mr. Mujeebur Rahman,
Advocate, Mr. Hamid
Aslam Qureshi, Advocate
on Record.
- For Appellant in : Ch. Aziz Ahmed Bajwa,
C.A. 412 of 1992 : Mr. C. A. Rehman,
Advocate, Mr. Hamid
Aslam Qureshi, Advocate
on Record.
- For Respondent / Federal : Dr. Riaz-ul-Hassan
Government in Civil : Gilani, Senior Advocate
Appeals No. 149 and : Only on 1.2.1993 and
150/89 and 412/92 : 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 : Mr. Maqbool Elahi Malik,
in C.A. 412/92 : Advocate General Punjab.
Mr. M. M. Saeed Beg,
Advocate, Rao
Muhammad Yusuf Khan,
Advocate on Record
- For Respondent No. 4 in C. : Mr. M. Ismail Qureshi,
A. 412/92 : 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 enforceable 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, Ordinance 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 Qadianis and Ahmadis as non-Muslim, by clause (3) of Article 260 proceeds further to distinguish from among non-Muslims the Qadianis 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 (ميلاد النبي ' نصر من الله ' السلام عليكم) 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. State of Bombay and others (AIR 1954 SC 388) and Ramanasramam by its Secretary G. Sambasiva Rao and others v. The Commissioner for Hindu Religious and Charitable 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 Court 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 Taysyaba. 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 Taysyaba or for that matter wearing of a badge of Kalma Taysyaba was considered to be one of permissible practices of the Qadianis 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 Deputy 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 negated 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 State. 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-Nabuwat 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, Buddhist or Parsi community, a person of the Qadiani 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. 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."

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. Misuse of epithets, descriptions and titles, etc, reserved for certain holy personages or places.--** (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. Person of Quadiani group, etc.. calling himself a Muslim or preaching or propogaling 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—

(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 Khatme-Nabuwat 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 Qadiani 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 Qadiani. There was no representation by words of mouth or otherwise by those wearing the 'Kalma Tayyaba' badges that they were Muslims and not Qadianis 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 Qadianis in the Province of Punjab. The District Magistrate, Jhang, also passed another order dated 21st March, prohibiting the Qadianis 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 revered 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 "Shaa'irs" 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 Qadianis 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 heard 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 Qadiani 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 Qadiani 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 Qadiani group, etc., calling himself a Muslim or preaching or propagating his faith. Any person of Qadiani 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 another 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 been 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 Musselman'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 Massachusetts 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 Qadiani 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 are 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 Ghulam 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 Qadiani, 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 Qadiani, page 62).
- (g) "Those who are my opponents have been included in the list of Christians, Jews and infidels." (Nazool-ul-Masih, Qadian, 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 I 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 lose 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 Cl.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 Qadiani 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 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 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 Qadiani or Laori group. They have a historical background 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 in 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 occurs 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 a 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 intentment 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 substantive 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 Qadiani, published in daily Al-Fazal Qadian 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 bunting\$, 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 altar 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 thanksgiving 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 a 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, I reiterate the view expressed in *Hakim Khan's case* (PLD 1992 S.C. 595)

4. The freedom of 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 Shafiqur 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)





SUPREME COURT OF PAKISTAN 1999

- Mr. Justice Saiduzaman Siddiqui
(Chief Justice)
- Mr. Justice Irshad Hassan Khan
- Mr. Justice Raja Afrasiab Khan
- Mr. Justice Muhammad Bashir Jehangiri
- Mr. Justice Nasir Aslam Zahid

SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Mr. Justice Saiduzzaman Siddiqui, Chief Justice

Mr. Justice Irshad Hassan Khan

Mr. Justice Raja Afrasiab Khan

Mr. Justice Muhammad Bashir Jehangiri

Mr. Justice Nasir Aslam Zahid

Civil Review Petitions No. 102, 103, 108 of 1993 and
Criminal Review Petitions No.2 to 5 of 1994

(On Review of the judgment of this Court dated 3rd
July, 1993 in Civil Appeals No. 149, 150 of 1989, 412 of
1992 and Criminal Appeals No.31-K to 34-K of 1988)

Mujibur Rehman Dard,
Sheikh Muhammad Aslam and
two others, Mirza Khurshid Ahmad
and another(in CRP. 102,103,108 of 1993)

and

Zaheeruddin, Rafi Ahmad, Abdul Majid
and Abdur Rehman (in Crl. Review
Petitions No.2 to 5 of 1993 respectively) ...Petitioners

Versus

Pakistan through Secretary, Law and Justice
and others

...Respondents

For the petitioners:	Nemo
For the respondent No.4 (in CRP No. 108/93)	Mr. M. Ismail Qureshi, Sr. ASC Mr. S.A.A. Jafri, AOR.
For the Complainant. ASC. (in Cr. R.P. 2/94)	Raja Haq Nawaz,
Date of hearing:	8th November, 1999.

ORDER

The Petitioners and their counsel called absent.
Dismissed for non-prosecution.

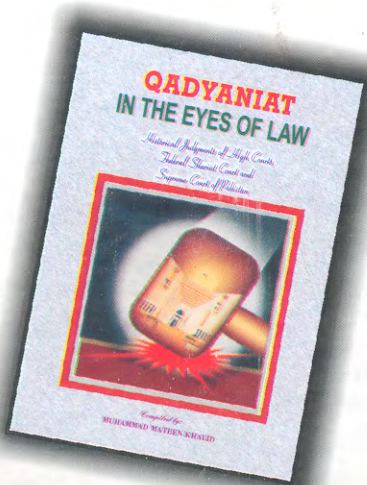
Islamabad,
08.11.1999

Petition dismissed as withdrawn.
(Not reported)



فتنہ قادیانیت کے خلاف عدالتی فیصلے (اردو)

قادیانیوں کے کفریہ عقائد اور ان کی سرگرمیوں کے بارے میں ایک صدی سے علمی اور عملی طور پر بہت کچھ کیا جا چکا ہے۔ بے شمار کتابیں اور رسائل، کسی بھی جرح سے نہ ٹوٹنے والے دلائل و براہین، لاکھوں مناظرے اور مباحثے، ہر جگہ قادیانیوں کو کھسکت فاش ہوئی مگر کمال ڈھٹائی ہے کہ نہیں مانتے۔ وہ صرف ایک ہی رست لگائے جاتے ہیں کہ صرف ”قادیانی“ سچے ہیں اور دیگر تمام غیر قادیانی چھوٹے۔ ان حالات میں ضرورت اس امر کی تھی کہ کوئی غیر جانبدار ادارہ جہاں مسلمان اور قادیانی دونوں اپنا اپنا موقف بلا روک ٹوک، بلا کم و کاست اور بلا خوف و خطر پیش کریں اور ان دونوں فریقوں پر ہر طرح کی بے رحم جرح ہوتا کہ دودھ کا دودھ اور پانی کا پانی ہو جائے۔ 7 ستمبر 1974ء میں ملکی کی منتخب پارلیمنٹ نے قادیانی اور لادھوری جماعت کے سربراہوں پر قادیانی عقائد کے حوالے سے جرح کرتے ہوئے 13 روز کی طویل بحث کے بعد متفقہ طور پر انہیں غیر مسلم اقلیت قرار دیا تھا۔ قادیانیوں نے پارلیمنٹ کے متفقہ آئینی فیصلہ کو تسلیم کرنے سے انکار کر دیا اور برابر اپنی قانون شکن سرگرمیاں جاری رکھیں۔ پھر حکومت نے قادیانیوں کو شعائر اسلامی استعمال کرنے سے باز رکھنے کے لیے 26 اپریل 1984ء کو ایک صدارتی آرڈیننس جاری کیا جس کی رو سے کوئی قادیانی خود کو مسلمان نہیں کہہ سکتا اور نہ ہی اپنے مذہب کی تبلیغ کر سکتا ہے۔ قادیانیوں نے اسلام دشمن طاقتوں کے ساتھ مل کر اس آرڈیننس کے خلاف پوری دنیا میں شور مچایا۔ پھر قادیانیوں نے اس آرڈیننس کو وفاقی شرعی عدالت، مختلف ہائی کورٹس اور سپریم کورٹ میں چیلنج کیا جہاں اعلیٰ عدالتوں کے جج صاحبان نے متفقہ طور پر اس آرڈیننس کو نہ صرف درست قرار دیا بلکہ انہیں تو بین رسالت کے مرتکب ہونے، قرآن مجید و کلمہ طیبہ میں تحریف کرنے، شعائر اسلامی استعمال کرنے، مسلمانوں کی دل آزاری کرنے، آئین و قانون شکنی کرنے، اپنے مذہب کی تبلیغ کرنے، جلسے و اجلاس منعقد کرنے، لٹریچر تقسیم کرنے سے سختی سے روک دیا۔ اعلیٰ عدالتوں کے یہ تاریخی اور دینی برحق فیصلے قادیانیوں کی اسلام اور پاکستان کے خلاف گھناؤنی سازشوں کا مکمل احاطہ کرتے ہیں۔ قادیانیوں کا اصل چہرہ بے نقاب ہوتا ہے تو ناقابل یقین داستانیں سامنے آتی ہیں۔ یہ تاریخ ساز اور جرات مندانہ فیصلے ہیں جنہیں تحریر کرتے ہوئے فاضل جج صاحبان کے قلم شمشیر صدیقی اور درہ فاروقی کا روپ دھار گئے۔ یہ شفاف فیصلے اعلیٰ اور چھوٹی عدالتوں کے ججوں، سیاست دانوں، وکیلوں، صحافیوں، دانشوروں، قانون کے طلباء اور علماء کرام کے لیے ایک راہنما کتاب کا کام دیں گے۔ زیر نظر کتاب میں موجود قادیانیت کے خلاف تمام عدالتی فیصلے نہایت ٹھوس اور قانونی بنیادوں پر صادر کیے گئے ہیں جنہیں پڑھنے کے بعد نہ صرف فتنہ قادیانیت کے بارے میں بے حد معلومات ملتی ہیں بلکہ یہ ہر مسلمان کے ایمان کو ایک نئی جلا بھی بخشتے ہیں۔ معروف سکا لرجنٹ **جسٹس** نے ان ایمان پر دو فیصلوں کو مرتب کر کے ایک ”اینٹی قادیانیت بی ایل ڈی“ کی صورت میں مسلمانوں کو گرانقدر تحفہ دیا ہے جس پر وہ مبارک باد کے مستحق ہیں۔ یہ کتاب ایک تاریخی دستاویز ہے جسے ہر گھر اور لادھوری میں ضرور ہونا چاہئے۔



Mr. Muhammad Mateen Khalid have written a lot in the past and now he has consolidated all the important judgments of high courts and Apex Courts of Pakistan in his book entitled "QADYANIAT IN THE EYES OF LAW" which is undoubtedly a great achievement and will prove to be a model collection in the legal history of Pakistan. For this laborious devoted effort of the author, I shall rightly attribute a tribute to him and consider him as an enthusiastic hidden qualitative good Advocate An Advocate of Tahaffuz-e-Khatam-e-Nabuwwat, I do offer him tribute from whole Muslim community and pray for him, may Almighty Allah bless him in every field of life and at the day of judgement as well (AMIN).

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