

JUDGMENT SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P. Nos. 3862, 3847, 3896& 4093of 2017.

MULANA ALLAH WASAYA. (W.P.NO. 3862/2017)

YOUNUS QURESHI, ETC. (W.P.NO. 3847/2017)

*TEHREEK LABBAIK YA RASOOL
ALLAH. (W.P.NO. 3896/2017)*

Civil Society through its President. (W.P.NO. 4093/2017)

VS.

*FEDERATION OF PAKISTAN THROUGH
SECRETARY MINISTRY OF LAW AND
JUSTICE, ETC. (W.P.NO. 3862/2017)*

*FEDERAL GOVERNMENT THROUGH
THE PRIME MINISTER OF ISLAMIC
REPUUBLIC OF PAKISTAN, ETC. (W.P.NO. 3847/2017)
(W.P.NO. 3896/2017)
(W.P.NO. 4093/2017)*

PETITIONERS BY:

Hafiz Arfat Ahmad Chaudhary and Ms. Kashifa Niaz Awan, Advocates assisted by Mr. M. Zahid Tanvir, Advocate along with Petitioner.

(In W.P.No. 3862/2017)

Mr. Muhammad Tariq Asad, ASC.

(In W.P.Nos. 3847 & 4093/2017)

Hafiz Farmanullah, Advocate.

Syed Muhammad Iqbal Hashmi,
Advocate/Intervener.

Ms. Ameer Jahan alias Bisma Naureen,
Intervener.

(In all Cases)

RESPONDENTS BY:

Mr. Arshad Mehmood Kiyani, DAG.

Ms. Naveeda Noor, Advocate for I.B.

M/s. Nouman Munawar, Asghar,
Representative of M/o Law & Justice.

Mr. Usman Yousaf Mobin, Chairman, NADRA.

Mr. Saqib Jamal, Director (Legal) and Mr.
Zulfiqar Ali, D.G. (Projects), NADRA.

Syed Junaid Jaffer, Law Officer, NADRA.

Mr. Kamran Riffat, Deputy Director (Legal),
FPSC, Islamabad.

Mr. M. Shahid Dayo, Deputy Director & Mr.
Zarnab Khattak, S.O. Establishment Division.

Mr. Qaiser Masood, Additional director (Law),
FIA.

Mr. Waqar Ch. Data Processing Officer
(Litigation), National Assembly.

(In all Cases)

Amici Curiae**(Religious Scholars):**

Prof. Dr. Hafiz Hassan Madni. (26.02.2018)

Prof. Dr. Sahibzada Sajid-ur-Rehman.

(27.02.2018).

Prof. Dr. Mohsin Naqvi (28.02.2018).

Mufti Muhammad Hussain Khalil Khel

(01.03.2018).

(In all Cases)**Amicus Curiae****(Constitutional Experts):**

Mr. Muhammad Akram Sheikh, Sr. ASC.

(02.03.2018).

Dr. Muhammad Aslam Khaki, ASC assisted by

Ms. Yasmeen Haider, Advocate (05.03.2018).

Dr. Babar Awan, Sr. ASC. (05.03.2018).

(In all Cases)**DATES OF HEARING:**

22.02.2018, 23.02.2018, 26.02.2018,

27.02.2018, 28.02.2018, 01.03.2018,

02.03.2018, 05.03.2018, 06.03.2018&

07.03.2018.

SHAUKAT AZIZ SIDDIQUI, J: Through this single judgment all the titled petitions are being disposed of as similar questions of law and facts are involved therein.

2. Maulana Allah Wasaya, Petitioner in W.P.No. 3862/2017, is a renowned religious scholar, author of many famous books on different subjects of Islam and has delivered umpteen lectures on “Aqida-e-Khatm-e-Nubawat”, which subject/issue has been the focus of his work. He has also written several books on the belief in the finality of the prophethood of Hazrat Muhammad (ﷺ) which include “Aina-e-Qadianiat”, “Parliament mein Qadiani Shikast” and “Thereek-e-Khatm-e-Nubuwwat 1953”.

3. The Petitioners in W.P.No. 3847/2017 (Younus Qureshi, Dr. Tayyab-ur-Rehman Zaidi, Maulana Fazal-ur-Rehman Madni) are religious scholars and Imams of different Jamia Masjid whereas Petitioner No.4 (Obaidullah) is a social worker; W.P.No. 3896/2017 was filed by Tehreek Labbaik Ya Rasool Allah through its member of Markazi Majlis-e-Shura, however, subsequently no one

appeared before this` Court to pursue the matter, however, as the petition was clubbed with other similar petitions, therefore, same is also being adjudicated herewith; wW.P.No. 4093/2017 was filed by the Civil Society through its President Muhammad Tahir. Later on, Syed Iqbal Hashmi, Advocate and Ms. Ameer Jahan alias Bisma Noreen joined proceedings before this Court as interveners.

4. The Petitioners invoked the constitutional jurisdiction of this Court by way of filing their respective writ petitions with the following prayers:

W.P.NO. 3862/2017:

“Wherefore, it is very respectfully prayed that this Honourable Court may graciously be pleased to;

- a) Direct the Respondent No.1 to immediately take all necessary measures for revival of all provisions (which were in existence prior to the promulgation of the (Elections Act, 2017) relating to Qadiani group/Lahori Group in their entirety with a further direction to the said respondent to ensure that all such provisions have been made part of the primary legislation i.e. the Elections Act, 2017;**
- b) Direct the Respondent No.3 to maintain, henceforth, a separate database of individuals belonging to Qadiani group/Lahori group entering in civil service so that in future they may not be posted in offices involving sensitive matter/s such as raised in the instant petition;**
- c) Direct the Respondent No.2 to immediately conduct a thorough investigation through credible and honest officer/s of law enforcement agencies to ascertain the elements and forces behind the unconstitutional and illegal acts detailed above;**
- d) Direct the Respondent No.3 to bring on record a detailed report showing individuals/officers belonging to Qadiani group/Lahori group currently**

serving in the Federal Government with their respective portfolios;

Any other relief, this Honourable Court deems fit and just in the circumstances may also be granted.”

W.P.NO. 3847/2017:

“It is, therefore, respectfully prayed that in the circumstances mentioned hereinabove, it is respectfully prayed that this Hon. Court may very graciously be pleased to:

- a. to constitute an impartial judicial commission to hold enquiry so that the persons responsible of committing the act to change the declaration and omitting the provisions of 7(b) and 7(c), previously existing in the Conduct of General Elections Order 2002, particularly respondents No. 8, 9 and 10 may be dealt with the in accordance with law;
- b. to restore the original “Declaration and Oath by the person nominated” in the Election Act 2017 as laid down in ‘Representation of the People (Conduct of Election) Rules, 1977’ and inset therein the contents of provisions 7(b) and 7(c), previously existing in Conduct of General Elections Order 2002;
- c. to direct respondent No.1 to make the enquiry report of Committee headed by Raja Zafar-ul-Haq public with immediate effect;
- d. Any other relief, this Hon’ble Court deems just may also be granted.”

W.P.NO. 3896/2017:

“For what has been discussed above, it is most humbly prayed that this Hon’ble Court, while allowing this Writ petition, direct the Federal Government, represented by the respondents, to publish and publicize the inquiry report submitted by Raja Zafar-

ul-Haq, and the culprits so determined therein, may very kindly be proceeded against under the relevant laws.

Any other relief, which this Hon'ble Court may deem appropriate, be also awarded in favor of the cause of the petition.”

W.P.NO. 4093/2017:

“It is, therefore, respectfully prayed that in the circumstances mentioned hereinabove, it is respectfully prayed that this Hon'ble Court may very graciously be pleased to:

- a) to constitute an impartial judicial commission to hold enquiry so that the persons including respondents No. 8, 9 and 10, responsible of committing the act changing the declaration and omitting the provisions of 7(b) and 7(c), previously existing in the Conduct of General Elections Order 2002, may be dealt with in accordance with law;
- b) to direct respondent No.1 to make the enquiry report of Committee headed by Raja Zafar-ul-Haq public with immediate effect;
- c) to ban those NGOs which are spreading secular thoughts in the country;
- d) Any other relief this Hon'ble Court deems just may also be granted.

Any other relief, which this Hon'ble Court may deem appropriate, be also awarded in favor of the cause of the petition.”

5. Mostly identical set of facts leading to the filing of the titled writ petitions are summarized hereunder:-

On 02.10.2017, the Federal Government introduced a new law called the Elections Act, 2017 (hereinafter referred to either as “the 2017 Act” or the “Impugned Act”)

whose object was to amend, consolidate and unify laws relating to the conduct of elections and matters connected therewith or ancillary thereto whereas as per Section 241 of the 2017 Act the following laws were repealed:-

- a) **The Electoral Rolls Act, 1974** (Act No. XXXIV of 1974);
- b) **The Delimitation of Constituencies Act, 1974** (Act No. XXXIV) of 1974);
- c) **The Senate Election Act, 1975** (Act No. LI of 1975);
- d) **The Representation of the People Act, 1976** (Act No. LXXXV of 1976);
- e) **The Election Commission Order 2002** (Chief Executive's Order No.1 of 2002);
- f) **The Conduct of General Election Order, 2002** (Chief Executive's Order No. 7 of 2002);
- g) **The Political Parties Order, 2002** (Chief Executive's Order No. 18 of 2002);
- h) **The Allocation of Symbols Order, 2002.**

As a consequence of repeal of the statutory provisions relating to Qadiani Group/Lahori Group (hereinafter referred to "Qadianis") in the aforementioned repealed statutes and rules framed thereunder as well as framed in pursuance of the Constitution (Second Amendment) Act, 1974 (which, needless to state, were the outcome of a long, untiring and determined efforts of the Muslims of the country including clauses 7(b) and 7(c) of Conduct of General Elections Order, 2002 dealing with the status of a minority and mechanism of determining religion of a candidate) were annulled which ignited a countrywide protest. Several people whose religious feelings were outraged and hurt thronged Islamabad and staged a protest/sit-in near Faizabad which paralyzed life in the twin cities and brought the government machinery to an obvious, though unadmitted, grinding halt.. As a result of the public reaction, the Federal Government came up with a certain amendments in the 2017 Act through Act No. XXXV of 2017 (hereinafter referred to as "the amending Act") published in the official Gazette on 19.10.2017,

however, unfortunately the amendments were disproportionate to the magnitude of the wrong committed earlier as several provisions relating to Qadianis which were an integral part of the repealed statutes were still not revived in their entirety and the amending Act was perceived as a mere eyewash. Through the 2017 Act most matters relating to Qadianis were left to be handled by delegated legislation/rules to be framed by the Election Commission of Pakistan (hereinafter referred to as “the Commission”) in exercise of powers conferred by Section 239 of the 2017 Act, and that too without any proper approval of the Federal Government which is tantamount to subverting the Constitution of the country besides being reflective/indicate of some hidden hand involved in the birth of a completely avoidable controversy. The unnecessary enactment of several provisions of the 2017 Act resulted in disturbance of public peace, order and tranquility. Another plea which has been raised through these petitions is that Qadianis usually do not disclose their identity like other minorities in the country and many of them are working at very senior positions in government offices where they can, and may actually have; manipulated affairs to their obvious advantage.

6. On the preliminary date of hearing i.e. 14.11.2017, this Court suspended the applicability of the Impugned Act to the extent of [ختم نبوت] as being against the mandate and in stark conflict with the Constitution (Second Amendment) Act, 1974. Notice was issued to the learned Attorney General for Pakistan in terms of order XXVII-A CPC; respondents were directed to file their report and parawise comments whereas the Federation was also directed to place on record thereport of the Committee headed by Senator Raja Zafar-ul-Haq (“**the Zafar-ul-Haq Report**”), , which was subsequently submitted in Court on 20.02.2018 in a sealed envelope which is appended with this Judgment as **Annex-A**. During the course of proceedings, this Court through order dated 22.02.2018 directed NADRA to produce the record/statement showing total number of persons who had declared themselves as Qadianis with bifurcation of adults and minors, as well as number of

persons who registered themselves as Muslims but subsequently changed their status and obtained fresh CNIC as Qadianis, which information was made available to the Court on 23.02.2018 and is appended as **Annex-B**. Chairman NADRA also submitted the breakup of 10205 persons, showing age wise change of religion along with list of passports of 6001 persons on 27.02.2018, which is appended as **Annex-C and Annex-D**, respectively. On the same date, the Director General, FIA was directed to provide the travel history of 6001 persons who had travelled abroad after change of religion in the record of NADRA and a report in this regard was provided to the Court on 06.03.2018 in a sealed envelope which is appended to this judgment as **Annex-E**. Vide order dated 05.03.2018, the Secretaries of the National Assembly of Pakistan and Senate Secretariat were directed to provide extract of proceedings regarding enactment of the 2017 Act along with a list of the Senators who attended 267th Session of the Senate of Pakistan dated 22.09.2017, which information was made available on 07.03.2018 in a sealed envelope and is appended as **Annex-F**. Learned DAG also made available the forms of the Federal Public Service Commission, Passport, NADRA, Electoral Rolls in which declaration regarding religion is mandatory as well as the data of the Census of 1998 showing population of Qadianis along with Report of Census Commissioner and Statistics Division, Islamabad which is appended as **Annex-G**.

7. Learned Counsel for the Petitioners submitted that the matter in hand is extremely important and sensitive which involves the religious feelings and sentiments of Muslims as the Impugned Act, undermines the long struggle of Muslims of the country which they made towards the declaration, that followers of Mirza Ghulam Ahmad (Qadiani/Lahori Group) are non-Muslims, through the Constitution (Second Amendment) Act, 1974, whereas, they while hiding their real faith pose themselves and act as Muslims. Learned Counsel further submitted that in light of above constitutional amendments, several amendments aimed at

prohibiting Qadianis from indulging in anti-Islam activities were introduced in different laws including the laws repealed through the Impugned Act, whereafter, several criminal cases were registered against Qadianis for violating law of the land mainly for offering prayers, using Kalma Tayyaba badges, preaching religion, using Arabic expression like ‘Assalam o Alaikum’, etc and many of the offenders were prosecuted under relevant laws. Learned Counsel further added that through the impugned amendments made by the Government all the provisions relating to Qadiani Group/Lahori Group in the repealed statutes and rules framed thereunder in pursuance of the Second Constitutional Amendment have also been repealed, whereas, amendments later on made by the Federal Government, owing to public agitation in the country are not proportionate to the magnitude of the wrong committed by it earlier since several provisions relating to Qadiani group/Lahori group which were an integral part of the repealed statutes have still not been revived in their entirety.

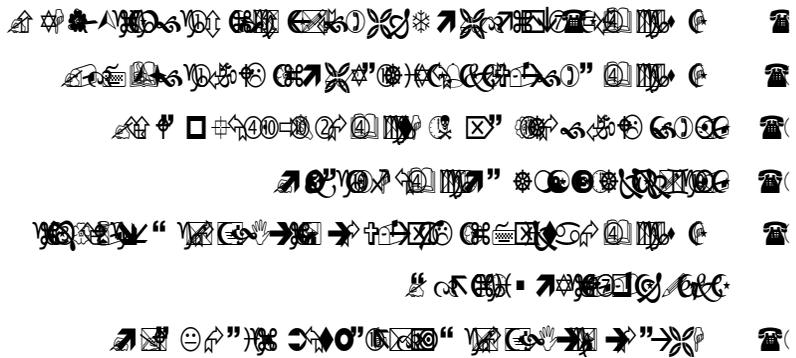
8. Learned Counsel further contended that question arised that why a settled matter for which the Constitution of the country was amended and for which scores of Muslims had sacrificed their lives has been reopened in a deceptive manner, when all previously enacted provisions relating to Qadiani Group/Lahori Group could have easily been made part of the new legislation and such state of affairs shows involvement of some hidden hand in it, whereas, the impugned change in legislation has infuriated and instigated Muslims living in the country which resulted in disturbance of public peace, order and tranquility, and if appropriate measures are not taken by the quarters concerned on emergency basis, it will cause communal hatred and clashes in the country. Learned Counsel also added that during the course of proceedings, on the direction of this Court regarding persons belonging to Qadiani group/Lahori Group holding key posts in the government, the Establishment Division has filed its report and parawise comments mentioning therein that “No such Data is available” meaning, thereby,

that nobody is aware of the actual number of Qadianis who are part of the fabric of our bureaucracy and in a position to manipulate things to their advantage. There is a possibility that, as such, Qadianis may even be in positions of power/decision-making in the Ministry of Religious Affairs or other constitutional bodies e.g.the Islamic Ideology Council.The details presented by different agencies before this Court during the course of proceedings have made it manifestly clear that individuals belonging to the said religion (which certainly cannot be and is not a sect of Islam) do not disclose their religious identities, thus, there is a strong likelihood that they, while using their official positions and at the same time concealing their religious identity, can influence any legislative process or policy making. Therefore, a direction to maintain separate database (as prayed in Clause “b” of Prayer clause of Writ Petition) is extremely essential. Learned Counsel further submitted that during the course of proceedings, upon the direction of this Court, NADRA has presented a shocking data showing that more than 10,000/- people have, in recent years, converted their religion from Islam to Qadianiat; it further came to light during the proceedings that NADRA has not framed any rule/regulation to regulate this rather these individuals were successful in converting their religion from Islam to Qadianiat on the basis of a simple affidavit that earlier provided entry in column of religion was incorrectly recorded as Islam/Muslim. This being the position, learned Counsel submitted that Federal Government should be issued a direction to frame proper rules under Section 44 of NADRA Ordinance, 2000 laying down proper guidelines for NADRA on the subject although NADRA is empowered under Section 45 of its Ordinance to frame Regulations but viewing the sensitivity of the matter, the subject should be made part of the Rules to be framed by the Federal Government under Section 44 of NADRA Ordinance. Learned Counsel while referring Section 239 (1) of Elections Act, 2017 submitted that “*the Commission may, by notification, in the official Gazette and publication on the website of the Commission, make rules for carrying out the purposes of this Act*”. The aforementioned Section of law has left

the subject of finality of prophethood completely unguarded. Prior to the promulgation of Elections Act, 2017, there were several enactments which were in field and now through Section 241 of the Elections Act, 2017 all those enactments (“Repealed Laws”) have been repealed. The Commission, under the Repealed Laws, after making rules, was obliged to get prior approval of the Federal Government but such condition has been dispensed with under Section 239 (1) of the Elections Act, 2017. The subject has, therefore, become vulnerable with the officials of the Commission, now at liberty to frame any rule even on the subject of finality of prophethood, hence, viewing the sensitivity of the matter, a proviso in Section 239 (1) should be directed to be inserted so as to exclude the subject of finality of prophethood from the legislative competence of the Commission. Moreover, this Court deriving its powers from the Constitution is fully competent to issue directions to the Government to make suitable amendments in the Elections Act, 2017. To support the aforementioned assertion, learned Counsel placed reliance on case law reported as Government of Punjab and others Versus Aamir Zahoor Ul- Haq and others (PLD 2016 Supreme Court 421), Mandi Hassan Alias Mehdi Hassan Versus Muhammad Arif (PLD 2015 Supreme Court 137), Election Comission of Pakistan through Secretary Versus Province of Punjab through Chief Secretary and others (PLD 2014 Supreme Court 668), Mian Sharif Shah Versus Nawab Khan and 5 others (PLD 2011 Peshawar 86), Mehram Ali Alias Yawar Ali Versus Federation of Pakistan and 4 others (PLD 1998 Lahore 347), and Government of Baluchistan through Additional Chief Secretary Versus Aziz Ullah Memon & 16 others (PLD 1993 Supreme Court 341). Learned Counsel lastly contended that the Federal Government has admitted this fact that vide two amendments, it has revived all provisions from the Repealed Laws on the subject of finality of prophethood. This admission shows that earlier a malicious attempt was made to frustrate/dilute the Second Constitutional Amendment. It is by now settled proposition that the effect of a constitutional provision cannot be diluted/frustrated through subordinate legislation i.e.an Act of

Parliament or Ordinance. Reliance in this regard was placed on the case law reported as Dr. Mubashar Hassan Vs FoP (PLD 2010 SC 265), Mubeen-ul-Islam Vs FoP (PLD 2006 SC 602), Ghulam Mustafa Insari Vs Government of Punjab (2004 SCMR 1903), Zaman Cement Company Vs Central Board of Revenue (2002 SCMR 312), Liaqat Hussain Vs FoP (PLD 1999 SC 504), Collector of Customs Vs Sheikh Spinning Mills (1999 SCMR 1402) and A.M Khan Leghari Vs Government of Pakistan (PLD 1967 Lahore 227).

9. Owing to the admitted delicacy and sensitivity of the matter at hand, this Court formulated the following questions and to dilate thereupon appointed Professor Dr. Hafiz Hassan Madni (Institute of Islamic Studies, University of the Punjab, Lahore), Dr. Mohsin Naqvi (Ex-Member, Council of Islamic Ideology), Professor Dr. Sahibzada Sajid ur Rehman (Member, Council of Islamic Ideology) and Mufti Muhammad Hussain Khalil Khel from Jamia-ul-Rasheed, Karachi as *amicus curiae* to grace this Court with their able assistance:-



The learned Scholars joined proceedings on different dates and rendered their able assistance as per the questions formulated by this Court. Besides making oral submissions, the learned amici also provided the summary in writing; the arguments of the learned amicus curiae are as follows.

10. Dr. Professor Hafiz Hassan Madni appeared before this Court on 26.02.2018 while rendering his able assistance submitted that:-

- i. That the Holy Quran and Sunnah are the supreme laws and no law violating the injunctions of Holy Quran and Sunnah can be enacted

in an Islamic State. In this regard he has mentioned *Surah Al-Nisa, verse 65 & Surah Al-Maidah Verse 47 etc.*

- ii. While citing Articles 1, 31-37, 42, 62, 203, 227 & 260 of the Constitution of Islamic Republic of Pakistan, he has emphasized that the Constitution speaks, in clear terms, about the supremacy of the Quran and Sunnah as the foundation for all laws of the country.
- iii. It has been further illustrated that it is the responsibility of the Islamic State and the Muslim Rulers *to establish the good, to forbid the evil, to do justice, and to enlighten and educate the masses*, while focusing on the teachings of Holy Quran and Sunnah. In this regard following verses of the Holy Quran have been quoted to emphasize the point:-

وَالْمُؤْمِنُونَ وَالْمُؤْمِنَاتُ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ يَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ وَيُقِيمُونَ الصَّلَاةَ وَيُؤْتُونَ الزَّكَاةَ وَيُطِيعُونَ اللَّهَ وَرَسُولَهُ أُولَئِكَ سَيَرْحَمُهُمُ اللَّهُ إِنَّ اللَّهَ عَزِيزٌ حَكِيمٌ

The believing men and believing women are allies of one another. They enjoin what is right and forbid what is wrong and establish prayer and give zakah and obey Allah and His Messenger. Those - Allah will have mercy upon them. Indeed, Allah is Exalted in Might and Wise. (Surah: 9 | Ayat: 71)

الَّذِينَ يَتَّبِعُونَ الرَّسُولَ النَّبِيَّ الْأُمِّيَّ الَّذِي يَجِدُونَهُ مَكْتُوبًا عِنْدَهُمْ فِي التَّوْرَةِ وَالْإِنْجِيلِ يَأْمُرُهُمْ بِالْمَعْرُوفِ وَيَنْهَاهُمْ عَنِ الْمُنْكَرِ وَيُحِلُّ لَهُمُ الطَّيِّبَاتِ وَيُحَرِّمُ عَلَيْهِمُ الْخَبَائِثَ وَيَضَعُ عَنْهُمْ إِصْرَهُمْ وَالْأَغْلَالَ الَّتِي كَانَتْ عَلَيْهِمْ فَاَلَّذِينَ آمَنُوا بِهِ وَعَزَّرُوهُ وَنَصَرُوهُ وَاتَّبَعُوا النُّورَ الَّذِي أُنزِلَ مَعَهُ أُولَئِكَ هُمُ الْمُفْلِحُونَ

Those who follow the Messenger, the unlettered prophet, whom they find written in what they have of the Torah and the Gospel, who enjoins upon them what is right and forbids them what is wrong and makes lawful for them the good things and prohibits for them the evil and relieves them of their burden and the shackles which were upon them. So they who have believed in him, honored him, supported him and followed the light which was sent down with him - it is those who will be the successful. (Surah: 7 | Ayat: 157)

كُنْتُمْ خَيْرَ أُمَّةٍ أُخْرِجَتْ لِلنَّاسِ تَأْمُرُونَ بِالْمَعْرُوفِ وَتَنْهَوْنَ عَنِ الْمُنْكَرِ وَتُؤْمِنُونَ بِاللَّهِ وَ لَوْ أَمَّنْ أَهْلُ الْكِتَابِ لَكَانَ خَيْرًا لَهُمْ مِنْهُمْ الْمُؤْمِنُونَ وَ أَكْثَرُهُمُ الْفَاسِقُونَ

You are the best nation produced [as an example] for mankind. You enjoin what is right and forbid what is wrong and believe in Allah . If only the People of the Scripture had believed, it would have been better for them. Among them are believers, but most of them are defiantly disobedient. (Surah: 3 | Ayat: 110)

وَلْتَكُنْ مِنْكُمْ أُمَّةٌ يَدْعُونَ إِلَى الْخَيْرِ وَيَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ ۗ وَأُولَٰئِكَ هُمُ الْمُفْلِحُونَ

And let there be [arising] from you a nation inviting to [all that is] good, enjoining what is right and forbidding what is wrong, and those will be the successful. (Surah: 3 | Ayat: 104)

إِنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَانِ وَإِيتَاءِ ذِي الْقُرْبَىٰ وَيَنْهَىٰ عَنِ الْفَحْشَاءِ وَالْمُنْكَرِ ۗ وَالْبَغْيِ ۗ يَعِظُكُمْ لَعَلَّكُمْ تَذَكَّرُونَ

Indeed, Allah orders justice and good conduct and giving to relatives and forbids immorality and bad conduct and oppression. He admonishes you that perhaps you will be reminded. (Surah: 16 | Ayat: 90)

يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوْمِينَ لِلَّهِ شُهَدَاءَ بِالْقِسْطِ ۗ وَلَا يَجْرِمَنَّكُمْ شَنَاٰنُ قَوْمٍ عَلَىٰ آلَا تَعْدِلُوا ۗ إِعْدِلُوا ۗ هُوَ أَقْرَبُ لِلتَّقْوَىٰ ۗ وَاتَّقُوا اللَّهَ ۗ إِنَّ اللَّهَ خَبِيرٌ بِمَا تَعْمَلُونَ

O you who have believed, be persistently standing firm for Allah, witnesses in justice, and do not let the hatred of a people prevent you from being just. Be just; that is nearer to righteousness. And fear Allah; indeed, Allah is Acquainted with what you do. (Surah: 5 | Ayat: 8)

وَعَدَ اللَّهُ الَّذِينَ آمَنُوا مِنْكُمْ وَعَمِلُوا الصَّالِحَاتِ لَيَسْتَخْلِفَنَّهُمْ فِي الْأَرْضِ كَمَا اسْتَخْلَفَ الَّذِينَ مِنْ قَبْلِهِمْ ۗ وَلِيُمَكِّنَنَّ لَهُمْ دِينَهُمُ الَّذِي ارْتَضَىٰ لَهُمْ وَلِيُبَدِّلَنَّهُمْ مِنْ بَعْدِ خَوْفِهِمْ أَمْنًا ۗ يَعْبُدُونَنِي لَا يُشْرِكُونَ بِي شَيْئًا ۗ وَمَنْ كَفَرَ بَعْدَ ذَلِكَ فَأُولَٰئِكَ هُمُ الْفَاسِقُونَ

Allah has promised those who have believed among you and done righteous deeds that He will surely grant them succession [to authority] upon the earth just as He granted it to those before them and that He will surely establish for them [therein] their religion which He has preferred for them and that He will surely substitute for them, after their fear, security, [for] they worship Me, not associating anything with Me. But whoever disbelieves after that - then those are the defiantly disobedient. (Surah: 24 | Ayat: 55)

الَّذِينَ إِنْ مَكَّنَّاهُمْ فِي الْأَرْضِ أَقَامُوا الصَّلَاةَ وَآتَوُا الزَّكَاةَ وَآمَرُوا بِالْمَعْرُوفِ وَنَهَوْا عَنِ الْمُنْكَرِ ۗ وَاللَّهُ عَاقِبَةُ الْأُمُورِ

[And they are] those who, if We give them authority in the land, establish prayer and give zakah and enjoin what is right and forbid what is wrong. And to Allah belongs the outcome of [all] matters. (Surah: 22 | Ayat: 41)

وَضَرَبَ اللَّهُ مَثَلًا رَجُلَيْنِ أَحَدُهُمَا أَبْكَمٌ لَا يَقْدِرُ عَلَىٰ شَيْءٍ وَهُوَ كَلٌّ عَلَىٰ مَوْلَاهُ ۗ أَيْنَمَا يُوَجَّهُهُ لِآيَاتِ بَخِيرٍ ۗ بَلْ يَسْتَوِي ۗ هُوَ ۗ وَمَنْ يَأْمُرُ بِالْعَدْلِ ۗ وَهُوَ عَلَىٰ صِرَاطٍ مُسْتَقِيمٍ

And Allah presents an example of two men, one of them dumb and unable to do a thing, while he is a burden to his guardian. Wherever he directs him, he brings no good. Is he equal to one who commands justice, while he is on a straight path? (Surah: 16 | Ayat: 76)

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَوْلِيَٰهَا ۚ وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ ۗ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ ۗ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا

Indeed, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice. Excellent is that which Allah instructs you. Indeed, Allah is ever Hearing and Seeing. (Surah: 4 | Ayat: 58)

لَقَدْ أَرْسَلْنَا رُسُلَنَا بِالْبَيِّنَاتِ وَأَنْزَلْنَا مَعَهُمُ الْكِتَابَ وَالْمِيزَانَ لِيَقُومَ النَّاسُ بِالْقِسْطِ ۗ وَأَنْزَلْنَا الْحَدِيدَ فِيهِ بَأْسٌ شَدِيدٌ وَمَنَافِعُ لِلنَّاسِ وَلِيَعْلَمَ اللَّهُ مَن يَنْصُرُهُ وَرُسُلَهُ بِالْغَيْبِ ۗ إِنَّ اللَّهَ قَوِيٌّ عَزِيزٌ

We have already sent Our messengers with clear evidences and sent down with them the Scripture and the balance that the people may maintain [their affairs] in justice. And We sent down iron, wherein is great military might and benefits for the people, and so that Allah may make evident those who support Him and His messengers unseen. Indeed, Allah is Powerful and Exalted in Might. (Surah: 57 | Ayat: 25)

وَأَقِيمُوا الْوَزْنَ بِالْقِسْطِ وَلَا تُخْسِرُوا الْمِيزَانَ

And establish weight in justice and do not make deficient the balance. (Surah: 55 | Ayat: 9)

وَأَوْفُوا الْكَيْلَ إِذَا كِلْتُمْ وَزِنُوا بِالْقِسْطَاسِ الْمُسْتَقِيمِ ۗ ذَلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا

And give full measure when you measure, and weigh with an even balance. That is the best [way] and best in result. (Surah: 17 | Ayat: 35)

وَيَقُومِ أَوْفُوا الْكَيْلَ وَالْمِيزَانَ بِالْقِسْطِ ۗ وَلَا تَبْخَسُوا النَّاسَ أَشْيَاءَهُمْ وَلَا تَعْتُوا فِي الْأَرْضِ مُفْسِدِينَ

And O my people, give full measure and weight in justice and do not deprive the people of their due and do not commit abuse on the earth, spreading corruption.

قُلْ أَمَرَ رَبِّي بِالْقِسْطِ ۗ وَأَقِيمُوا وُجُوهَكُمْ عِندَ كُلِّ مَسْجِدٍ وَادْعُوهُ مُخْلِصِينَ لَهُ الدِّينَ ۗ كَمَا بَدَأَكُمْ تَعُودُونَ

Say, [O Muhammad], "My Lord has ordered justice and that you maintain yourselves [in worship of Him] at every place [or time] of prostration, and invoke Him, sincere to Him in religion." Just as He originated you, you will return [to life] (Surah: 7 | Ayat: 29)

- iv. The learned Amicus Curiae from the above quoted verses of the Holy Quran concluded that the Ruler(s) as well as the Government of an Islamic State cannot be equated with the Ruler(s) and Government of a secular state. The Islamic State has to perform various functions for the betterment and uplift of the Ummah, which are not to be found in the duties of the ordinary Rulers. The authority and power enjoyed by the ruler in an Islamic State is, in fact, a

sacred trust to be discharged by him in accordance with the commands of the Allah Almighty and the Sunnah of Holy Prophet (PBUH). In discharge of the sacred trust, he has to obey the commands mentioned in the above-quoted verses, which, inter-alia; include the establishment of good and eradication of evil from the society. The “establishment of good” is achieved by the enforcement of the injunctions of Holy Quran and Sunnah, under the Islamic concept of *Amr bil Maroof*.

- v. On the basis of the above quoted authorities, the learned Amicus Curiae has concluded that an Islamic State cannot make legislation contrary to the Holy Quran and Sunnah and the Constitutional position in this regard is very clear, therefore, as to whether an Islamic State can make any law whereby a non-Muslim could, directly or indirectly, be allowed to pose or recognize himself as a Muslim and whether an Islamic State can permit the non-Muslim citizens to pose themselves as Muslims, the learned Amicus Curiae has responded that ***neither such legislation nor such permission*** as referred in question Nos. 1 & 2 can be accorded to by an Islamic State.
- vi. The learned Amicus Curiae while relying upon the authority of the *Sunnah*, a primary source of Islamic law and the guidance for the Ummah for all times to come, has emphasized these principles in a number of traditions. The learned *amicus curiae* while citing traditions of the Holy Prophet (PBUH), about the treatment meted out to the apostates or the false claimant of the Prophethood have contended that the Holy Prophet (PBUH) himself treated those as non-Muslims who laid claims of Prophethood during his lifetime. Two examples in this regard have been cited, one is about the false prophet-hood of Muselma Qazzab and the other is Aswad Ansa. The strict action against both the false claimants is sufficient to establish that there is no room for any false claimant of Prophethood in Islam and they have been considered as heretics by the Prophet (PBUH) himself. The action of Muslims against such miscreants is a strong authority on the issue that the State is obligated to ensure that the claimants of Prophethood and their followers shall be taken with iron hands to ensure the protection of Deen, which is one of the most

essential obligations of the Islamic State. In this regard following traditions from the Sunnah are worth to mention:-

- Abu Huraira told me that Allah's Apostle; said, While I was sleeping, I saw (in a dream) two gold bracelets round my arm, and that worried me too much. Then I was instructed divinely in my dream, to blow them off and so I blew them off, and they flew away. I interpreted the two bracelets as symbols of two liars who would appear after me. And so one of them was Al-Ansi and the other was Musailama Al-Kadhdhab from Al-Yamama. (Sahih Bukhari – 3621)
- Narrated Ibn `Abbas: Musailama-al-Kadhdhab (i.e. the liar) came in the life-time of Allah's Apostle with many of his people (to Medina) and said, If Muhammad makes me his successor, I will follow him. Allah's Apostle went up to him with Thabit bin Qais bin Shams; and Allah's Apostle was carrying a piece of a date palm leaf in his hand. He stood before Musailama (and his companions) and said, If you asked me even this piece (of a leaf), I would not give it to you. You cannot avoid the fate you are destined to, by Allah. If you reject Islam, Allah will destroy you. I think that you are most probably the same person whom I have seen in the dream. (Sahih Bukhari)
- Narrated Jafar bin `Amr bin Umaiya: I went out with 'Ubaidullah bin `Adi Al-Khaiyar. When we reached Hims (i.e. a town in Syria), 'Ubaidullah bin `Adi said (to me), Would you like to see Wahshi so that we may ask him about the killing of Hamza? I replied, Yes. Wahshi used to live in Hims. We enquired about him and somebody said to us, He is that in the shade of his palace, as if he were a full water skin. So we went up to him, and when we were at a short distance from him, we greeted him and he greeted us in return. 'Ubaidullah was wearing his turban and Wahshi could not see except his eyes and feet. 'Ubaidullah said, O Wahshi! Do you know me? Wahshi looked at him and then said, No, by Allah! But I know that `Adi bin Al-Khiyar married a woman called Um Qital, the daughter of Abu Al-Is, and she delivered a boy for him at Mecca, and I looked for a wet nurse for that child. (Once) I carried that child along with his mother and then I handed him over to her, and your feet resemble that child's feet. Then 'Ubaidullah uncovered his face and said (to Wahshi), Will you tell us (the story of) the killing of Hamza? Wahshi replied Yes, Hamza killed Tuaima bin `Adi bin Al-Khaiyar at Badr (battle) so my master, Jubair bin Mut`im said to me, 'If you kill Hamza in revenge for my uncle, then you will be set free. When the people set out (for the battle of Uhud) in the year of 'Ainain ..'Ainain is a mountain near the mountain of Uhud, and

between it and Uhud there is a valley.. I went out with the people for the battle. When the army aligned for the fight, Siba' came out and said, 'Is there any (Muslim) to accept my challenge to a duel?' Hamza bin `Abdul Muttalib came out and said, 'O Siba'. O Ibn Um Anmar, the one who circumcises other ladies! Do you challenge Allah and His Apostle?' Then Hamza attacked and killed him, causing him to be non-extant like the bygone yesterday. I hid myself under a rock, and when he (i.e. Hamza) came near me, I threw my spear at him, driving it into his umbilicus so that it came out through his buttocks, causing him to die. When all the people returned to Mecca, I too returned with them. I stayed in (Mecca) till Islam spread in it (i.e. Mecca). Then I left for Taif, and when the people (of Taif) sent their messengers to Allah's Apostle, I was told that the Prophet did not harm the messengers; So I too went out with them till I reached Allah's Apostle. When he saw me, he said, 'Are you Wahshi?' I said, 'Yes.' He said, 'Was it you who killed Hamza?' I replied, 'What happened is what you have been told of.' He said, 'Can you hide your face from me?' So I went out when Allah's Apostle died, and Musailamah Al-Kadhdhab appeared (claiming to be a prophet). I said, 'I will go out to Musailamah so that I may kill him, and make amends for killing Hamza. So I went out with the people (to fight Musailamah and his followers) and then famous events took place concerning that battle. Suddenly I saw a man (i.e. Musailamah) standing near a gap in a wall. He looked like an ash-colored camel and his hair was disheveled. So I threw my spear at him, driving it into his chest in between his breasts till it passed out through his shoulders, and then an Ansari man attacked him and struck him on the head with a sword. `Abdullah bin `Umar said, 'A slave girl on the roof of a house said: Alas! The chief of the believers (i.e. Musailamah) has been killed by a black slave.

- Narrated Ibn `Abbas: Musailama Al-Kadhdhab came during the lifetime of the Prophet and started saying, If Muhammad gives me the rule after him, I will follow him. And he came to Medina with a great number of the people of his tribe. Allah's Apostle went to him in the company of Thabit bin Qais bin Shammas, and at that time, Allah's Apostle had a stick of a date-palm tree in his hand. When he (i.e. the Prophet) stopped near Musailama while the latter was amidst his companions, he said to him, If you ask me for this piece (of stick), I will not give it to you, and Allah's Order you cannot avoid, (but you will be destroyed), and if you turn your back from this religion, then Allah will destroy you. And I think you are the same person who was shown to me in my dream, and this is Thabit bin Qais who will answer your questions on my behalf. Then the Prophet went away from him.

- vii. The action taken by the first righteous Caliph *Hazrat Abu Bakar Siddique (R.A)* against the seven apostate tribes during his Caliphate, the fight against those who refused to pay *Zakat* and his action against the false claimant of Prophethood *Aswad Ansa* have also been mentioned to illustrate the point.
- viii. He has also emphasized that ShaairAllah, which are symbols of Islam, have to be respected and preserved. From the verses of the Holy Quran and the traditions of Holy Prophet (PBUH), the Consensus of the Prophet's Companions, R.A.A (*Ijma-e-Sahaba*), the *Pact of Hazrat Umar (R.A)*, it has been contended that non-Muslims are not entitled to use the ShaairAllah, which are distinct and separate characteristic of Muslim Ummah and it is the responsibility of the Islamic State to protect and safeguard the same from incursion at the hands of the non-Muslims.
- ix. With reference to use of Islamic Shaairs by Qadianis, he has specifically emphasized that on account of **four reasons**, the practice of establishing ShaairAllah has to be vigorously and strictly pursued, as compared to other non-Muslims in Islamic State, which according to him are as follows:-
- a. Qadianis consider themselves as Muslims and the rest as non-Muslims, therefore, the element of deception in case of Qadianis is much stronger than the other religious communities of the world as none of them claim themselves as Muslim. In order to counter that deception it is more essential and cautious to take initiatives to stop Qadianis from using ShaairAllah specific to Muslims.
 - b. By calling *Mirza Ghulam Ahmad Qadiani* as Prophet, the Qadianis infringe the emotions of the Muslim majority and the use of ShaairAllah by them is nothing short of disgrace and disrespect of Islamic rituals. The learned Amicus Curiae, in this regard, has quoted various quotations from the Qadianis' Literature.
 - c. The worst thing which Qadianis have done, which also distinguishes them from others, is their claim that Muslims are heretics. It is quite unfortunate that at the first instance they have discovered a new religion and mockingly named it as Islam and then went on to call those who believed in the finality of the Holy Prophet (PBUH) as heretics; such shameful claim has not been made by any other non-Muslim entity in Pakistan and elsewhere in the world. On account of

such disgrace to the Muslims' belief, the Qadianis cannot liable to be allowed to use Islamic Symbols, Rituals and names.

- d. The learned Amicus Curiae contended that from various writings of the Qadianis, it is quite clear that Qadianis themselves claimed to have separate identity. Then how and why, can they be allowed to use Islamic Rituals, quite contrary to their own stated claim? If they claim to be a separate identity, then they should be asked to maintain their separate identity and they cannot be allowed to employ the deceptive means so as to masquerade, themselves, in the Muslim costume.
- x. The learned Amicus Curiae also submitted that under the Shariah there would be no infringement of the fundamental rights of the citizens if an Islamic State demands its citizens to disclose their religion and religious belief and such practice has been in vogue during the caliphate of *Hazrat Umer* (R.A), when registers were maintained in this regard.
- xi. The learned Amicus Curiae has also contended that non-Muslims in an Islamic State are not entitled to pose themselves as Muslims and if they do so, it falls within the ambit of high treason, and disloyalty to the State of highest order. The learned Amicus Curiae in this regard has cited examples of treatment meted to *Zanadiqa* by the forth righteous Caliph *Hazrat Ali* (R.A). The learned Amicus Curiae has contended that it has serious repercussions as a person earlier posing himself as a Muslim, if later found as non-Muslim or turns back from Islam, would be considered an apostate and the punishment for such offense is severe in accordance with the Shariah.
- xii. The learned Amicus Curiae has further contended that if such a person is holding a key post and it is confirmed that he has misstated about his religion, then the most immediate effect of such misstatement to the State should be his removal from the office, and recovery of the benefits and privileges derived by him during his service, besides other penal action. The learned Amicus Curiae has suggested various actions to be taken by an Islamic State to stop masquerading of non-Muslims as Muslims which are as follows:-
- Before induction of persons in sensitive institutions a thorough investigation about their faith may be conducted with the help of the religious experts and psychiatrists and for this purpose a Board may be constituted with the task of giving ideological verification.
 - If a person in order to secure social benefit changes, though falsely, his religion from Islam to any other

religion then the punishment of apostasy as ordained in Islam may be inflicted. On the contrary, if a Qadiani claims himself as a Muslim, then the punishment of Zandiqah may be inflicted upon him.

- A Board named as “Imtina e Qadianat Board” (Prohibition of Qadianiat Board) may be constituted to act as a watchdog regarding implementation of the Constitutional provision and other legislation made in this behalf from time to time.
- Qadianis may be prohibited from using the name Ahmadia as the name Ahmad is specified for the Holy Prophet (PBUH) in the holy Quran. Similarly, they may be stopped from using the terms *Deen e Haq, Islamiat, Muslim TV Ahmadia*, use of “*Allah Unse Razi Ho*”, use of *Alay he Salam, Khalifah, Rhematullah, Noor Ullah, Shaheed, Marhoom, Jannat ul Firdous, writing of Kalma Tayyabah or Bismillah* on graves, Burial of Qadianis in Muslim Graveyards, etc.

11. Prof. Dr. Sajid-ur-Rehman appeared on 27.02.2018 and while making his submissions stated that:-

- i. The Constitution of Islamic Republic of Pakistan has defined the Muslim and Non-Muslim in Article 260(3). Therefore, it is not permissible for the State to pose a non-Muslim as Muslim in violation of the definition of Muslim given in the Constitution and vice versa.
- ii. For anybody, religion is a matter great honor and pride for himself. To deprive somebody from his honor and prestige is the gravest of sins. A tradition of the Holy Prophet (PBUH) has been quoted to this effect by the learned amicus curiae. It is narrated by Hazrat Sabit bin Zahaq (R.A) that the Holy Prophet (PBUH) said “To call a Muslim as hieratic is just like killing him” and if the opposite meaning of this tradition is kept in mind then a non-Muslim cannot be called as Muslim.
- iii. An Islamic State is based upon Islamic Ideology alone, the colour, creed, geography and division on the basis of nationalism has no recognition in the Islamic State, therefore, it is the responsibility of the State to protect and defend the Islamic Ideology.

- iv. Islam does not compel anybody to embrace Islam as his religion. Islamic State not only recognizes the rights of non-Muslims living under its jurisdiction but also assures them full protection and defence. Any non-Muslim can join the Muslim Community by just embracing the Islam but, he cannot deceive the Muslims by merely posing himself as Muslim. In the earlier days of Islam, the non-Muslims were given their due rights, however, at the same time Muslim identity was kept separate. Some steps were taken to identify Muslims from non-Muslims and through such distinction it was not aimed at to ridicule the non-Muslims, rather it was necessary to maintain separate identities. It is settled proposition of Islamic Law that a non-Muslim cannot be forced to join the Muslims' army, a non-Muslim cannot be forced to pay Zakat, a non-Muslim cannot be compelled to offer prayers and for such purposes a distinction between Muslim and non-Muslim in order to make the implementation of Shariah more effective, is imperative.
- v. From all perspectives, believes of Muslims and non-Muslims are based on two different ideologies and it is the responsibility of the Islamic State to maintain, preserve and defend its ideology. It is not possible for an Islamic State to allow non-Muslims to pose themselves as Muslims and there is no concept of any such legislation in Islam.
- vi. If it is proved that a non-Muslim has represented himself as a Muslim, in order to get some advantage or position, then it is deception and disloyalty to the State. The non-Muslim minorities are bound by the social contract between them and the State. The Constitution has given them certain assurances and rights, but such assurances are dependent upon the actual disclosure of the faith by the non-Muslims. If a non-Muslim does not disclose his true faith, then how would he be able to enjoy his rights? It is for this reason the law and Constitution demand true disclosure of his faith by every individual otherwise it would result in the breach of the Constitution.
- vii. It is the foremost responsibility of the State to avail the basic information about every citizen as without doing so determination of their rights and obligations would not be possible. Even the Holy Prophet (PBUH) after migrating to Madinah conducted the

population census so as to ascertain the true numbers of Muslim Males, Females and Children which itself drew a distinction line between the Muslims and non-Muslims. If one sees the Charter of Madinah and the parties to it whether they were Muslims, Persians or infidels every one entered into it with his separate religious identity. Hazrat Umar Farooq (R.A) had constituted a specific department for keeping the identity of the citizens. Without religious identity it is also difficult to settle the economic affairs e.g. how is it possible to implement the family laws without knowing the true religious identity? How distinction can be drawn between the permissible and forbidden foods without true religious identity? In short, for the effective administration and maintenance of law and order, it is necessary for the State to keep record of all such information without which a State cannot discharge its obligations.

12. Dr. Professor Mohsin Naqvi concluded his submissions while adhering to the questions putforth by this Court in the following words:-

- i. One of the main objectives of the Shariah is protection of faith and the next to it is the protection of life, rest of the objectives i.e. protection of intellect, family, honour, wealth and property come thereafter. On account of the foremost importance of protection of faith, according to Muslim Jurists, the most important duty of the Muslim State and Muslim Rulers is to take measures to protect Muslims' faith.
- ii. It is the duty of the Islamic State to keep an eye on non-Muslim citizens and communities so as to ensure that they are not part of any conspiracy against the majority Muslim community to protect Islam and Muslims. This is in light of the command given by Allah Almighty in verse 102 of Surah Al-Nisa. It is the duty of the Islamic State to preserve its ideological boundaries in the like manner as it is obliged to defend its territorial boundaries.
- iii. That verse 4 of Surah Al-Munafiqeen has been cited to demonstrate that anybody who poses himself as Muslim but actually he is not, is covered by the expression "*Munafiqeen*" and the action mentioned in that verse is equally attracted to those Qadianis who pose themselves as Muslims.

- iv. A Muslim State can make it compulsory for its non-Muslim Citizens like Christian, Hindus, Sikhs, Budhs, Qadianis and Lahoris to register themselves as such. The Islamic State is also liable to issue separate identity cards to its non-Muslim citizens or to specify a separate column for this purpose. Penal sanctions may be provided for misstatements.
- v. In the period of Hazrat Umar (R.A) he had ordered for preparation of registers for this purpose, wherein, citizens were categorized in accordance with their tribes, religion and occupations. During the *Khilafat e Usmania* yellow colored badges were introduced for the non-Muslims wherein their occupations were also mentioned.
- vi. In an Islamic State if a non-Muslim, infidel or non-believer, poses himself as Muslim and gets undue advantages, he may be tried for an offence of mutiny.
- vii. Demand of true disclosure of faith from the citizens, by an Islamic State cannot by any means be termed as violation of fundamental rights. It may be pointed out that steps taken towards protection of rights of Muslims and non-Muslims by an Islamic State cannot be labeled as *discrimination*.
- viii. It may also be pointed out that the status of non-Muslims living in an Islamic State cannot be equated to earlier concept of *dimmis*, contractual or *Mustamin* as found in early literature of Islamic Jurisprudence and law, rather, their status is of citizens and any legislation in this regard has to be done in accordance with the international scenario.

13. On 01.03.2018 Mufti Muhammad Hussain Khalil Khel while apprising the Court with his response to the questions formulated by it submitted as follows:-

- i. An Islamic State is quite different from a secular democratic State. In a secular democratic State the sovereignty belongs to the people, however, in an Islamic State the Sovereignty belongs to the Allah Almighty. Islamic State is an ideological and principled organization, in which the affairs of the State are primarily rest upon the persons who believe in Islamic ideology and Islamic way of life. In an Islamic State the Muslims have no authority to deviate from

the limits prescribed by Allah Almighty and the system of governance has to remain within the folds of Islam, where no legislation can be made in violation of the injunctions of Holy Quran and Sunnah. It is the prime responsibility of the Ruler in an Islamic State to protect the geographical boundaries, material interests and administrative affairs of the State along with the ideological boundaries as well as objectives of the Shariah. If the State is performing its functions then it is a good omen but if it neglects then the concept of Iqamat e Deen comes into play which according to verse 13 of Surah Shoorah is the collective responsibility of the Ummah.

- ii. Islam considers all other ideologies as defective, incomplete and flawed but even then Islam enjoins upon its followers to respect other religions and to give due deference to them. The principles of humanity, fulfillment of promises and contracts, observance of tolerance, integrity, humbleness and justice. Islam enjoins upon Muslims to deal with non-Muslims in a fair and transparent manner, to help the needy, to accept the gifts, to visit their patients, to accept their services, to respect their rituals and ceremonies, to cooperate with them in exchange of knowledge and technology, to engage with them in business and trade, to employ them or to enter into their employment. They have all rights of equality before the law, which are available to a Muslim. They have all rights to enter into trade and to flourish in economic affairs and to educate themselves as any other Muslim citizen of the State.
- iii. While referring to verse Nos. 9 & 13 of Surah Al-Baqrah, it has been contended that a Muslim State cannot allow its non-Muslim citizens to pose themselves as Muslims. Neither the State can make any legislation in this regard nor can grant such permission.
- iv. The learned amicus curiae has specified certain areas of Islamic Law wherein a complete distinction of a Muslim from non-Muslim has to be observed and any misstatement from any side, can cause a Muslim to indulge into highly sinful and forbidden acts, resulting into insurmountable legal complications and with drastic results, which can ruin the very rubric of the Muslim Society. The areas as pointed out by the learned amicus curiae are as under:-

- The Law of Marriage, Divorce, Custody, Guardianship and other Family Laws.
 - Law of Inheritance and Wills.
 - Shariah directives relating to Funeral and Burial.
 - Shariah directive relating to Slaughtering.
 - Shariah directives relating to sale/purchase of Liquor and enforcement of punishment of liquor.
 - Shariah directives relating to acceptance of testimony (Shahadat).
 - Shariah directives relating to Qada.
 - Shariah directives relating to Zakat, Ushr and Khiraj.
 - Shariah directives relating to Auqaf.
 - Shariah directives relating to leading in prayers.
 - Shariah directives relating to issuance of Certificates and process of attestation of permissible and forbidden edibles and other things.
 - Shariah directives relating to use of Islamic Shaairs.
 - Shariah directives relating to participation in Jihad (War).
 - Shariah directives relating to Salam, condolences, and other social customs and traditions.
 - Shariah directives relating to maintaining of separate identity from non-Muslims.
 - Shariah directives relating to entrance in Harmain and performance of Hajj and Umrah.
 - Shariah directives relating to observance of sanctity of the month of Ramazan.
 - Shariah directives relating to participation in religious ceremonies of non-Muslims.
 - Shariah directives relating to the ability to comment upon the Holy Quran.
 - Shariah directives relating to ability to Ijtihad in solution of contemporary issues.
 - Shariah directives relating to entrance of usury contracts and transactions *inter se* the non-Muslims.
 - Shariah directives relating to ability to become head of the State and other important positions.
- v. While relying upon the principles of Maslah Murslah the learned amicus curiae has contended that such non disclosure of faith leads to devastating results, therefore, the State is bound to curb the same. The learned amicus curiae while responding to first two questions has unequivocally stated that there is no scope of such legislation or permission in Islam which is contrary to the injunctions of Holy Quran and Sunnah.

- vi. That the Islamic State is the outcome of a social contract between the citizens which is manifested in the Constitution. The intentional hiding of the real identity by a citizen is nothing but a disloyalty to the State which is dishonesty and cheating of highest order and its consequences in the destruction of the society are quiet obvious.
 - vii. Learned amicus curiae in response to the question that what measures can State adopt to address this issue has stated that the Pact of Umar (R.A), commonly known as “Shuroot e Umriah” is the guiding document in this regard. The learned amicus curiae emphasized the importance of this document throughout the Islamic History.
 - viii. While taking guidance from the verse 10 of Surah Mumtinah, the learned amicus curiae has contended that the Islamic State can examine any of its individuals to identify the veracity of claim about his religion. It has been contended that the Holy Prophet (PBUH) was used to examine the ladies claiming to be Muslims leaving their husbands at Makkah and joining the Islamic State at Madina. Learned amicus curiae have stressed the significance of this verse of the Holy Quran in determination of the faith of the individuals living under the Islamic State. The learned amicus curiae has maintained that the verse of the Holy Quran and the tradition of Holy Prophet (PBUH) in this regard is a guiding source for all times to come if such need arises in future.
 - ix. The learned amicus curiae has maintained that it would not be in conflict with the fundamentals rights of the citizens to know about their true religion, rather it would be in line with the Constitutional functions of the State as many of the rights which are specific to non-Muslims would be discharged easily. He has also cited example of the Law of Return of Israel and Section 30 of the Charter of United Nations in this regard.
14. Since, the matter also involved interpretation of the Constitution, therefore, this Court further formulated some questions relating to the interpretation of the Constitution and with the consent of learned Counsel for the Petitioners as also the learned DAG, appointed Mr. Muhammad Akram Sheikh, Sr. ASC, Dr. Babar

Awan, ASC and Dr. Muhammad Aslam Khaki, ASC as *amici curiae* to render their able assistance to this Court. For convenience those questions are reproduced hereinbelow:-

- i. **As to whether in pursuance of amendment brought by way of Article 260(3(a)(b) of the Constitution of Islamic Republic of Pakistan, 1973, whereby Qadianis/Ahmadis were declared non-Muslims, necessary corresponding amendments/enactments made to achieve the object of amendments in the Constitution?**
- ii. **If answer of above question is in negative, which type of enactment is required to deal with the issue?**
- iii. **As to whether through an enactment of any law, any provision of the Constitution or amendment brought therein can be frustrated?**
- iv. **As to whether, to install filters and checks, acquiring knowledge about personal faith of citizens, can be termed as infringement to any fundamental right guaranteed by the Constitution of Islamic Republic of Pakistan?**
- v. **As to whether any citizen of Islamic Republic of Pakistan belonging to minorities can be allowed to take cover of majority religion and after taking all benefits declare his real status of non Muslim, remains entitle to financial benefits?**

The afore-noted amici apart from making their submissions orally before the Court also submitted their contentions in writing which are recorded hereinbelow.

15. Mr. Muhammad Akram Sheikh, Sr. ASC put appearance as *amicus curiae* on 02.03.2018 and in response to the Court formulations submitted that:-

FORMULATION 1:

As to whether in pursuance of amendment brought by way of Article 260 (3)(a)(b) of the Constitution of Islamic Republic of Pakistan 1973, whereby Qadianis/Ahmedis were declared non-Muslims, necessary corresponding amendments/enactments were made to achieve the object of amendments in the Constitution?

OPINION:

The Second Constitutional Amendment (ACT No. XLIX of 1974), added Clause (3) to Article 260 of the Constitution of the Islamic Republic of Pakistan 1973 whereby a "Muslim" and "Non-Muslim" was defined and person belonging to the *Qadiani* group (called by whichever name) were expressly declared to be non-Muslims. Pursuant to this Amendment of 1974, Article 106 of the Constitution

was also amended to include persons of the *Qadianis*, *Ahmedis* or Lahori Group amongst minorities for the purposes of allocation of seats.

Thereafter, further amendments in various statutes were brought through promulgation of the (Prohibition and Punishment) Ordinance (XX of 1984) about Anti-Islamic Activities of the *Qadianis* Group, Lahori Group and *Ahmadis*. Specifically, the 1984 Ordinance inserted Section 298-B and 298 - C in the Pakistan Penal Code, 1860 which was aimed at specifically preventing the members of the Ahmadi Group from impersonating themselves as Muslims in any way, or misusing or derivatively employing any sacrosanct epithets, titles reserved by Muslims for certain holy personages or places.

Moreover, the amendment of Article 106 goes a long way to show that the aforesaid minority community had to file nomination papers against their own reserved seats and had to declare themselves as non-Muslims.

Careful perusal of relevant statutes like the Civil Servants Act, and relevant documents such as the application forms for obtaining passports and ID cards, it is found that in order to obtain a passport or/and a CNIC from authorities in Pakistan, every Muslim individual has to sign a declaration that he believes in the absolute finality of the Prophethood of Prophet Muhammad (PBUH); however, no such provision or requirements to declare or disclose religion before the FPSC or other state institutions hiring man power both in higher and lower cadres.

FORMULATION 2:

If the answer of the above question is in negative, which type of enactment is required to deal with the issue?

OPINION:

Subsequent to the 2nd Constitutional Amendment, laws have been made to carry out the requisite intention of the said Amendment, as has been summarized above. Yet, these law and such amendments may be rendered more effective by bringing about administrative changes at the grassroots level, such as inserting a requirement to filing a declaration by the competing candidates for Civil Services posts and exams. Such a requirement is not entirely alien to our state institutions, as it is already a prerequisite for induction into the military service in Pakistan.

FORMULATION 3:

As to whether through an enactment of any law, any provision of the Constitution or amendment brought therein can be frustrated?

OPINION:

In our Constitutional system, no law could be enacted to frustrate any provision of the Constitution or Amendments made therein, and any Law, which is repugnant to the Constitution, has no validity or force from inception.

FORMULATION 4:

As to whether, to install filters and checks, acquiring knowledge about personal faith of citizens, can be termed as infringement to any fundamental right guaranteed by the Constitution of Islamic Republic of Pakistan?

OPINION:

This question is quite onerous, as installation of filters and checks requires knowledge about the personal faith of individuals, which may become a tool in the hands of the administration and is capable of being misused; with this note of caution, and with the intent to protect minorities, such data could be collected by making "Declarations" necessary.

The aforementioned measures are rooted in inter alia Article 36, which mandates protection of minorities, in the following terms:

Article 36: "The State shall safeguard the legitimate rights and interests of minorities, including their due representation in the Federal and Provincial services."

Whereas the Preamble to the Constitution states that:

"Wherein adequate provisions shall be made for minorities to freely profess and practice their religion develop their cultures."

FORMULATION 5:

As to whether any citizen of Islamic Republic of Pakistan belonging to minorities can be allowed to take cover of majority religion and after taking all the benefits declare his real status of non-Muslim, remains entitled to financial benefits?

OPINION:

In order for the State to provide protection to minorities - not only their person or property but also to their religion conscience and religious practices - and to ensure that they have adequate freedom to lead their lives according to the dictates of their creed, inevitably requires their identification to the State. This is because, without such identification, the State cannot practically comprehend the scope and magnitude of its responsibility towards its minority citizens in any meaningful terms, of managing and ensuring enjoyment of their rights and taking such steps

which will ensure dispensation of their fundamental rights to profess their faith and their religion in accordance with the law, as guaranteed by Article 20, read with Article 36.

A citizen belonging to a minority in the Islamic Republic of Pakistan is already entitled to adequate protection under the Law and the Constitution, which are represented with white color on 1/4th of the National Flag. Hence, neither a member of a majority group nor a member of a minority group can change sides, to avail benefits accorded to sects other than its own; and if this is done, it tantamount to a plain fraud on the law, liable to be visited with penalties provided under the law. It should be clearly understood that *Qadianis*, *Ahmedis* and Lahori group are admittedly a distinct and separate religious (minority) sect, having been declared as such by the Second Constitutional Amendment, followed by corresponding changes brought about in the law. They themselves consider and declare members of other sects of Islam as non-believers/non-Muslims.

Therefore, the constraint for respecting each other's feelings is mutual and reciprocal. The majority community i.e. the Muslims have to accord maximum respect to the minorities and give them their due rights, whereas, the State has an obligation to accord them their privileges as mandated by the Hon'ble Supreme Court in its celebratory judgment in *Suo Moto Case No. 1 of 2014* (cited as *PLD 2014 SC 699*) wherein Article 20, 33 and 36 are discussed in detail.

OPINION REG. MISCELLANEOUS LEGAL ISSUES:

➤ Competence of this Hon'ble Court to issue directions:

This Hon'ble Court has ample power to issue directions to the Executive for introducing Legislative enactments, as has been settled by the following judgments:

- Government of Balochistan Vs. Azizullah Memom (PLD 1993 SC 341)

17. In these circumstances, as Ordinance II of 1968 is declared to be void being in conflict with Articles 9; 25, 175 and 203 of the Constitution, the question arises what further relief should be granted as in the absence of Ordinance II of 1968 there should be some valid law to hold the field. It has been admitted that District Judges and Civil Judges are functioning in every, district. In cases ' of violation of fundamental rights the Superior Courts are empowered to issue direction to the Federal Government or the Provincial Governments to bring the law in conformity with fundamental rights and/or enforce law and issue notification, in that regard. The State as

defined in Article 7 is bound to discharge its Constitutional obligations. In case of failure even the legislature and executive can be directed to initiate Legislative measures to bring law in conformity with the fundamental rights. In these circumstances while maintaining the impugned judgments, we dismiss the appeals, declare Ordinance 11 of 1968 as void being in conflict with Articles 9, 25, 175 and 203 of the Constitution and direct the appellant--

- (i) to issue necessary notification in terms of subsection (2) of section 1 of Ordinance XII of 1972 for enforcing the aforesaid Ordinance by creating posts of and separately appointing Judicial Magistrates and Executive Magistrates and to place Judicial Magistrates under the administrative control of the High Court within a period of three months;
 - (ii) to take necessary steps as required by the Constitution to amend and implement laws and rules relating to Courts, judiciary and its officers and lower staff to bring them in conformity with Articles 9, 25, 175 and 203 of the Constitution within a period of six months
- Province of Sindh Vs. M.Q.M (PLD 2014 SC 531 - Para 75)

75. Mindful of Court's constitutional mandate and institutional constraint in a system based on trichotomy of powers, the Court would restrain itself from making any declaration which amounts to rewriting the law. However, when it comes to the conclusion that a law or certain provision therein is not in conformity with the constitutional provisions and declares it ultra vires of the Constitution, it can issue appropriate directions to the Government to bring the law in conformity with those provisions.

Power of the Court to give direction to the Federation for taking legislative measures

In *Government of Baluchistan Vs. Azizullah Memon* PLD 1993 Supreme Court 341 the Court while declaring a law ultra vires of the Constitution directed the federation to introduce necessary legislations.

The Hon'ble High Court is fully competent and empowered to give direction to federation or a province for taking administrative actions/measures required by the Constitution but no direction can be issued to the legislature to legislate a particular law however a direction can be issued.

- Al-Jehad Trust Vs. Federation of Pakistan (1999 SCMR 1379)

25. It is apparent that direction/directions to take administrative actions/measures required by the Constitution can be issued against the

Federation, but no direction can be issued to the Legislature to legislate a particular law. However, a direction can be issued to the Federation to initiate administrative and legislative measures for complying with the mandate of the Constitution. After having held as above the Full Bench of the High Court of Sindh granted the following reliefs in the above Constitution Petition in which separation of judiciary from the executive was sought in terms of clause (2) of Article 175 of the Constitution:

"12. I would, therefore, allow the above two petitions in the following terms:--

"(A) The respondent in the first petition i.e. respondent No.2 (i.e. the Province of Sindh) in the second petition is directed--

(i) to issue necessary notification in terms of subsection (2) of section 1 of Ordinance No.XII of 1972 for enforcing the provisions of the aforesaid Ordinance for bifurcating magistracy into Judicial Magistrates and Executive Magistrates and to place the Judicial Magistrates under the administrative control of the High Court within a period of six months;

(ii) to issue necessary Notification under sub-rule (2) of Rule 2 of the Sindh Civil Servants (Efficiency and Discipline) Rules, 1978 and Rule 4 of the Sindh Civil Services (Appointment, Promotion and Transfer) Rules, 1974, notifying the High Court as the Authority within a period of sixty days,

(iii) to initiate legislative measures within a period of six months in order to make necessary amendments in the West Pakistan Civil Courts Ordinance, 1962, Cr.P.C.. Sindh Civil Servants Act, 1973, Sindh Civil Servants (Efficiency and Discipline) Rules, 1973, the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, and in the other enactments to make the same in conformity with above Articles 175 and 203 of the Constitution,

16. Dr. Muhammad Aslam Khaki, ASC, appointed as *amicus curiae* appeared on 05.03.2018 and while assisting this Court on the formulations apprised that:-

- i. While relying upon the famous tradition of the Holy Prophet (PBUH) that "Indeed all actions are based on the intentions" the learned *amicus curiae* contended that even though some hidden element of ulterior motives may be there, we cannot challenge the intention of some body. The learned *amicus curiae* has also narrated the incident of displeasure of the Holy Prophet (PBUH) over the killing of a person who at the last moment, during the fight when Hazrat Osama bin Zaid bin Harsa (R.A) overpowered him, recited the Kalma but still Hazrat Osama bin Zaid bin Harsa (R.A) killed

- him. The Holy Prophet (PBUH) had stated that have you dissected his heart to check his faith?
- ii. The learned amicus curiae stated that even today in Pakistan thousands of Christians and Hindus due to rigid marriage and dissolution laws in their respective religions embrace Islam for the purpose of entering into or getting rid of matrimonial bond and then they go back to their original religion. The learned amicus curiae contended that this conversion is also a type of ulterior motive but what is the law against such conversion?
 - iii. The learned amicus curiae also stated that what about a Muslim who declares himself Ahmadi, avails the benefit of minority like reserved quota in service, age relaxation, candidate for minority seats in local bodies or in the legislative assemblies, etc. and after availing it, he changes his religion back to Islam?
 - iv. The learned amicus curiae also stressed that the faith or religion is based upon the some body's own state of mind and consciousness instead of any legal force. Learned amicus curiae while citing example of Mr. Zulfiqar Ali Bhutto and Mumtaz Qadri maintained that many a times a person is murderer in the eyes of law but not in the eyes of general public.
 - v. The learned amicus curiae also pointed out that the most cherished Islamic Principle is prohibition against compulsory change of religion, therefore, neither a person can compulsaroly be entered into a religion nor expelled there from. While citing verses No. 54, Surah 5 and verse 217 of Surah 2 the learned amicus curiae tried to substantiate that the punishment for apostate is for akhirat and not in this world, therefore, State cannot enforce it. However, the other type of apostate are those who choose to become rebel of the State and it is where the State can interfere on the principle of war against rebels. Learned amicus curiae also maiuntained that in the international scenario enforcing any punishment of apostasy would bring devastating results for Muslim minorities living in other parts of the world. Moreover, prohibiting Qadianis from preaching their religion is a sort of 'one sided operation' which is not justified in Islam and even the devil has been given fair opportunity of

competition with the rival humans by Almighty Allah. The learned *amicus curiae* has suggested following measures to check the fraud:-

- If a person has availed the rights/ privileges as a muslim or as a non-muslims, and then he changes his religion, he can be denied any benefit or right arising out of his change in religion, like, service against the quota of under developed area- etc.
- While making entry of new changed religion in the N.I.C, a column should also show his previous religion and the date of change of his religion.
- We should control the prices, terrorism, poverty and not the faith.
- A legal mechanism should be developed for change of religion having uniform standard for all modes and styles of change even from other religions to Islam.
- Requirements for change of religion like public notice, data entry in record of Nadra etc be legislated.

17. Dr. Babar Awan, ASC, appointed as *amicus curiae* appeared on 05.03.2018 and submitted that:-

Learned Amicus while reading out Article 260 (3)(a)(b) submitted that as per said Article every person is a Muslim who believes in the unity and oneness of Almighty Allah, in the absolute and unqualified finality of Allah, as well as 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 any person as a prophet or religious reformer, who claimed or claims to be prophet in any sense of the word or of any description whatsoever after Muhammad (PBUH), whereas, non-muslims include persons belonging to the Christian, Hindu, Sikh Budhist or Parsi community, a person fo the Qadiani group or the Lahore group /Ahmadis or by by any other name), or a Bahai as well as person belonging to any of the scehedule castes. Learned Amicus while referring to Article 227 of the Constitution submitted that it provides for bringing all the existing laws in conformity with the injunctions of Islam and as laid down in the Holy Quran and Sunnah, whereas; it discourages every enactment which is repugnant to injujctions of Islamam. Moroever, no legislation shall have any affect on the personal laws of

non-muslim citizens or their status as citizens of this country. Learned Amicus while elaborating the impugned amendment in the light of said Article contended that same is violative of the basic provisions of this Article as deletion of oath of the electoral candidate can result into concealment of status of minority by the Qadianis/Ahmadis/Lahor Group.

Learned Amicus Curiae added that although Parliament is vested with the powers of introducing new legislations but such powers are not unqualified and unflattered as every right has a rider, whereas, there is no doubt in holding that the impugned amendments are not only violative of the above said Articles of the Constitution but also of its preamble and the deletions, incorporations in the existing statutes and enactments being ultra vires to the Constitution are void.

Learned Amicus further added that higher judiciary is duty bound to examine the constitutionality of any law if it found to be promulgated in derogation of the Fundamental Rights as envisaged by Art.8 and 227 of the Constitution, or where any provision of any law was found contrary to the very theme of the Constitution then it is to be declared void. Moreover, any enactment aimed at benefitting a specific person or community should also be discouraged and declared void as such exercise instead of promoting the administration of justice would cause injustice in the society amongst the citizens who were being governed under the Constitution. Learned Counsel in connection with these submissions placed reliance on the case law reported as *(PLD 2012 SC 106)*, *(PLD 2012 SC 870)* & *(PLD 2010 SC 265)*.

18. Syed Muhammad Iqbal Hashmi who joined the proceedings as an intervener endorsed the arguments rendered by the learned Counsel for Petitioners and further submitted that Allah Almighty has declared Prophet Hazrat Muhammad (PBUH) as Allah's last messenger and Allah ordained in the Holy Quran that "*Allah and his Angels shower their blessings on Allah's last Messenger. O you believers you should also offer your blessings (Durud Sharif) and convey*

your salams on him with all respects” (Sureh Ahzab). The learned Advocate/Intervenor further submitted that immediately after the death of Prophet Hazrat Muhammad (PBUH), a few imposters and false prophets rose in Arabia most notorious of whom was Musailama, who belonged to Banu Hanifa tribe of central Arabia. Sajjah, a lady prophetess belonged to Bani Yarhu and Banu Taghlile tribe and lived in Iraq bordering Arabia. False Prophet Tabah was also subjugated. The battle of Yamama was the bloodiest battle fought by the Muslims against Musailama (the false prophet). However, a large number of Muslims who had memorized the Holy Quran embraced shahadat. Muslim forces formed by Hazrat Abu Bakr Siddiq into eleven (11) corps each under its own commander were assigned different objectives, the first corps was placed under the command of Hazrat Khalid Bin Waleed who was required to take action against Taleaha of the Banu Asad concentrated at Buzakha and thereafter they proceeded against Bani Tamims at Butaha. Consequently, truth prevailed at the end of the day. Learned advocate/intervener further added that in the Government of India Act 1935 separate seats in the Central Legislative Assembly were reserved for Hindus, scheduled castes, Christians, Anglo Indians, Muslims and Sikhs. After 3rd June partition plan and independence of two dominions, i.e. India and Pakistan, each state formulated its own policies for communal representation, however, definition of “Muslims” remained untouched till the adoption and enactment of the Constitution of the Islamic Republic of Pakistan 1973, and 2nd Constitutional Amendment Act, XLIX of 1974 Constitution (Second Amendment) Act 1974, sub clause (3) of Article 260 was inserted, wherein belief for a Muslim in unqualified finality of Prophet Hazrat Muhammad (PBUH) was declared. Clause (2A) was inserted in Article 51 of constitution, wherein persons of Qadiani group were awarded one (01) seat in the National Assembly vide Act 71 of 1975. Clause (03) in Article 106 was substituted by P.O. No. 14 of 1985 wherein a seat in the assembly of each province was allocated to various Non-Muslims. Thereafter, vide the Legal Framework Order 2002 (CEO No.24 of 2002) Article 51 was amended,

interalia vide clause (2A) ten seats were reserved for Non-Muslims, this amendment was validated vide the 18th Constitutional Amendment incorporated in Article 270-A of the Constitution. An important constitutional development took place vide P.O. 24 of 1985 constitution, wherein 2nd amendment clause (3) of Article 260 was further amended as (3)(a) defined “Muslims” and (3)(b) defined “Non-Muslims”. Learned counsel further submitted that vide section 241 of the Election Act 2017, following previous Election Laws have been repealed, corresponding Rule making provisions are also ipso facto repealed:

- a. The Electoral Act 1974 – Sec 28. Power to make rules. (with approval of President)
- b. Delimitation of Constituencies Act 1974.
- c. Senate (Election) Act 1975 – Sec 88. Power to make rules. (Federal Government with commissioner to make rules).
- d. Representation of Peoples Act 1976 – Sec 107. Power to make rules. (Commissioner may with approval of the President make rules).
- e. Election Commission Order 2002 – Sec 9E. Power to make rules. (Commissioner may with approval of the President make rules).
- f. Conduct of General Election Order 2002 – Sec 9. Power to make rules. (President may make rules for carrying out the purposes of this order).
- g. Political Parties Order 2002 – Sections. Rules. (Election Commission may with approval of the President make rules).
- h. Allocation of Symbol Order 2002.

Section 239. Power to make rules. (Election Act, 2017).

1. Commission may after publication on website of commission make rules.
2. After hearing and deciding objections or suggestions filed within 15days of publications.

Learned Advocate/intervener further contended that even someone conversant and aware of the law may not be able to respond to/object within the stipulated period

of 15days and, therefore, more focus/wisdom was required especially when it came down to the classification of citizens as defined in clauses (a), (b) and (c) of sub-Article (3) of Article 260 of the Constitution.

The learned Advocate/intervener made a few suggestions regarding rule making procedure which are reproduced as under:

- Federal Government may in consultation with the Commission make rules.
- Draft may be published on website of the Commission and 30days time may be allowed for objections and suggestions and a hearing may be conducted between 31 to 40 days, thereafter, draft may be finalized.

Learned Advocate/intervener in the end relied on case law reported as “PLD 1989 SC 6” with the title Public at large v/s FOP.

19. Ms. Ameer Jahan alias Bisma Noreen, intervener endorsed the arguments made by the learned Counsel for Petitioners and in furtherance, submitted that the Impugned Act is in clear derogation of the Article 227 of the Constitution. She further pressed that those responsible for the amendments should be identified and disqualified from being members of the Parliament as they have committed treason with the Constitution. She prayed for acceptance of these writ petitions.

20. On this Court’s directions, learned DAG procured requisite documents Forms from the concerned departments including FPSC, Passport, NADRA, Ministry of Defence, FIA etc. including the extract of proceedings from both houses of Parliament and the Zafar-ul-Haq Report and submitted before this Court in a sealed envelope. Learned DAG while making his arguments *inter alia* submitted that titled petitions are not maintainable as determination of any law being repugnant to Quran and Sunnah or not, is the domain of the Federal Shariat Court. Notwithstanding, the learned DAG submitted that the impugned amendment was result of a typographical mistake and was unintentional which error has has since been rectified by reenactment of the amendment pertaining to

the oath of the electoral candidates and other provisions relating to one's religion thus these petitions have become infructuous and are liable to be disposed of accordingly in such terms.

21. I have heard the learned Counsel for the Petitioners, learned DAG, interveners and the learned scholars as well as Constitutional experts, appointed as friends of the Court (*Amicus Curiae*) and have also perused the record.

22. In order to understand the issues arose in these petitions, some historical events need to be narrated to give a perspective into the controversy before this Court, therefore, I feel obligated to mention the same. As a word of caution, it may be mentioned that the Court was only concerned with those historical events which have relevance with the issue in hand and it was nor desired, neither possible to give account of the events and literature spreading over a period of almost 150 years right from the rise of Mirza Ghulam Ahmed to the present day. Only those events have been mentioned which bear the irrefutable testimony based on the proceedings of the parliament, inquiry commission report, resolutions of the parties, political conventions, speeches of the leaders of both sides, news papers reports of relevant era, writings of the eminent scholars, and the facts incorporated in the judgments of the superior courts. While narrating the events, apart from the material mentioned above books titled as "*The Ahmadiya Movement*" by Bashir Ahmed M.A., and *Tehreek-e-Khatm-e-Nabowat* by Agha Shorash Kashmiri have been relied upon and the extracts have been reproduced in verbatim as needed.

23. Dr. Mehmood A. Ghazi, an eminent scholar, a Former Judge of the Shariat Appellate Bench of the Supreme Court of Pakistan while narrating [in preface to the book "*The Ahmadiya Movement*" by Bashir Ahmed M.A.] the causes of the rise of Qadianis movement in Indian Subcontinent has very eloquently mentioned that "*after the tragic failure of the War of Independence in 1857, the Muslims of the Indian Subcontinent found themselves in a grave economic, cultural crisis. The British imperialism took control of the whole Mughal Empire and adopted*

measures to consolidate and perpetuate its mastery over the South Asia. Every possible step to disintegrate, disunite, confuse and to create a defeatist mentality in the local population, more particularly, among the Muslim community was taken. Based on a long and deep study of Indian scene, the new policy designed by the colonial masters included attempts to raise pseudo-religious leaders to work for the interests of the colonizer in a religious grab. In pursuance of this diabolical design the fertile British mind found in a remote village of East Punjab called Qadian, one Mirza Ghulam Ahmad, a non-entity at that time. He was raised to project himself as a religious savior who claimed promises to deliver the Indian Muslim from the agony and dismay from which they were suffering. In order to build his personality he started writing in the local press and criticizing different religions. With the passage of time he began to lay foundations of a movement, subsequently known as the Qadiani or the Ahmadi movement, and astutely served the cause of British imperialism in India and abroad. The linchpin of the whole crusade was the propaganda against Jihad, the belief of which was motivating the Indian Muslims to rise against the British colonialism in India. The other underlying objective was the inculcation of a spirit of loyalty for the British rule and its acceptance as a divine blessing for the Muslims of India. The whole jugglery of the Mirza revolved around these two themes. His ridiculous revelations and prophecies directly or indirectly convey these two messages. The Mirza removed swiftly from the claim of the reformer to Mujaddid and then to the so-called "Promised Messiah" and finally had the audacity to lay claim to prophethood. All this took place in accordance with the well planned strategy to serve the interests of his mentors. It is most likely that he was influenced by his contemporary movement, Bahaism, masterminded by the Russian Czarists in Iran. Both these movements are flourishing in Israel now."

24. The nature and development of the movement and claims of its founder establish its real character. Religiously Qadianis are a distinct community and by far a non-Muslim entity by their own proclamations, faith and practice. Numerous

writings of the Founder and his successors bear testimony of the fact. On theological front, many prominent religious scholars have extensively written on Qadianiat based on their beliefs from their writings. Main Beliefs of the Qadianis can be summarized as follows:

- i) Only Qadianiat/Ahmadiat is the True Islam. Islam minus Mirza Ghulam Ahmad is a lifeless entity.
- ii) Mirza Ghulam Ahmed is a Mujadid, Mehdi, Promised Massiah, Zilli Nabi and Rasul, Krishna Avatar, and Promised one of all leading religions.
- iii) The Mirza is real Nabi and Rasul (non-law bearing). Nabi and Rasul will continue to come and guide the humanity like Abraham, Noah, Moses, etc. God addressed him as Nabi in his revelations without any zillior broozi tags. He is superior to Jesus Christ in all respects.
- iv) Muslims of the world who do not believe in his claims are confirmed Kafirs (heretics) and outside the pale of Islam.
- v) Prayer behind a non-Ahmadi Imam, marriage of an Ahmadi girl with a non-Ahmadi Muslim, saying funeral prayer of even a non-Ahmadi muslim child are forbidden by God.
- vi) The wife of Mirza is Um-ul-Mominin; his companions are Sahaba-i-Karam; Qadian is Madina-tul-Masih and seat of throne of his Rasul and real Nabi.
- vii) Jihad is forbidden for all times to come.
- viii) Jesus Christ died a natural death and is buried in Srinagar, Kashmir.
- ix) Khilafat is a permanent institution of Ahmadiat. God himself appoints and guides Khalifa.

- x) Door of revelation (Wahi) are open and the Mirza's Wahi is binding on all mankind.

25. After partition, in the last quarter of 1948, Mirza Mehmud, the Khalifa of Ahmedis, after migration from Qadian (India), set up a Zilli Qadian at Rabwah, District Jhang (Punjab) by acquiring a land of 1034 acres. Rabwah remained more or less independent Ahmadi state. The Rabwah administration ran a parallel Governemnt in early decades. No official in local government, public agencies or even a deputy commissioner in the area could have been appointed without the consent of self assumed Rabwah administration. No one was allowed to sell/purchase property or to raise construction or to carry out any business in the area without the permission of Rabwah administration. No one could have dared to defy Ahmadi authority. The dissidents had to face a tough time including social boycott, maltreatment, assaults and humiliation. Even the Justice Munir report could not restrain itself from noting that:-

“When the possibility of a separate homeland for Muslims by partition began faintly to appear on horizon, Ahmedis began to concern themselves with the shadow of coming events. They must have found themselves on the horns of a dilemma because they could neither elect for India, a Hindu secular state, nor for Pakistan where schism was not expected to be encouraged. Some of their writings show that they were opposed to Partition and if partition came, they could strive for reunion.”

26. The fifty years old debate between Muslims and Qadianis gained a fresh heat on the demise of the Father of the nation, when Pakistanis came to know that Zafarullah did not participate in the funeral prayers of the Quaid on the plea that he (the Quaid-e-Azam) was a non-muslim. Qadianis openly called 900 million Muslims confirmed heretics and Quaid was no exception. This sparked a heated controversy throughout Pakistan and qadianis cared a little for it. The imperialist powers fully backed them achieve them their evil design directed to undermine the integrity of Pakistan. Qadianis had held the belief during the British rule in India (and even still maintain) that *they could prosper and propagate their ideas only*

under the shield of the British and they could work properly neither in Mecca, nor in Syria, nor in Kabul, except under the British Government for whose progress and prosperity., they founder of the community used to pray. Under the leadership of Zafarullah and his prominent and influential position in Government as Foreign Minister, they now found Pakistan situation too more prospective. During his political tours, Mirza Mehmud exhorted the followers to concentrate on and to convert the large and thinly populated Baluchistan and be in a position to call at least one province as their own. He asked them not to flock like sheep in one or two departments but to spread out in all key sectors. And as for the military, if one assumed there were 10,000 Ahmadis, then 9,000 should go to the military. Military preparation is very important thing. How could you do your work until you have not learnt the military science? He asked. The subsequent devaluation and corruption of Pakistan's democracy, the sabotage of the democratic process, hindrances created in the enforcement of the Islamic laws and the emergence, first of the burreacracy and later the military's ruling class should have been seen in the background of such deeprooted Qadiani intrigues. Broadly speaking the post partition Qadianiat policy towards Pakistan rested on the following points:

- i) Setting up of a base in Pakistan. Mirza Mehmud had eyes on Kashmir and Baluchistan.
- ii) Penetration into Armed Forces.
- iii) Return to Qadian by undoing partition.opening up of new missions, especially in Afro-Arab countries with the support of Sir Zafarullah.

[*The Ahmadiya Movement* by Bashir Ahmed M.A.]

27. Within a span of four years Mr. Liaqat Ali Khan came to know of the Qadianis prophecies and utterances regarding creation of an Ahmadiyya state in Kashmir and Baluchistan. In the wake of their policy and aspirations for a united India, he ordered the creation of Special Intelligence Cell to prepare list of Qadianis in sensitive postions and to keep an eye on their activities.

28. As stated earlier, the Qadianis shifted their power base from Qadian to Rabwah near Sargodha. Rabwah, under the changed circumstances enjoyed a special status like the Vatican. It was a "state" within the state, with strong links with Imperialism and special links with Zionist Israel. All planning, coordination and controlling of Qadiani activities was done from Rabwah. No government ever checked their political activities in a serious manner due to their influence in Administration. As a part of their doctrine, Qadianis penetrated the Muslim rank and file by confusing innocent minds through an anti-Islamic exploitation of human weaknesses. When Pakistan, in her initial days of independence was striving hard for her existence and survival, Qadianis, with the help of the "invisible hands" of Imperialism and neocolonialism were making deep thrusts into the bureaucracy, Armed Forces and other official and semi-official institutions. After having captured a number of key posts in these institutions, they converted or attempted to convert their "subordinates" to Qadianism. It was not a purely religious matter between God and man and certainly not in line with Quaid-e-Azam's policy framework. It was a planned, collective "shudhi"-like move, an aggression, exploitation and a religious assimilation. The advocates of secularism or "broadminded democratic regimes" did not take any notice of such aggressive designs. As a result, Qadianis got a free hand to indoctrinate the general masses through extensive use of "carrot and stick" methods. They enjoyed tremendous political influence to defeat any move and punished any person or organization that worked against their wishes and designs.

29. Dissatisfaction prevailed among the people of Pakistan at the role Mirza Mehmud had been playing in the newly created state of Pakistan. They came to know that the qadianis are palying the imperialists' game in order to undermine the integrity of the state. Qadianis intrigues in Kashmir and Baluchistan and their alleged role in the assassination plot of Liaqat Ali Kahn helped to know their future palns. People did not like Sir Zafaruulah at all for his past role as a servant of the British Imperialists and his perspective on foreign policy. The people

believed that he did not plead Pakistan's case before the boundary commission and the Kashmir issue at UN. The anti-Ahmadiyya movement took shape in mid-1948 and reached its peak in 1953. Within a few months time, the ulema of all shades of opinion launched a movement. The main theme of the movement was that Mirza Ghulam Ahmed was a British agent who had been created to disrupt Islamic solidarity. The activities of the qadianis should be checked. Before the partition, Mirza Mehmud had told his followers that Pakistan was not going to come into existence and that if any such state was created it would be undone. Sir Zafarullah was disloyal to the state and should be removed; all Ahmadis should be removed from key posts. Qadianis should be declared a non-muslim minority. In the backdrop of 1951 elections in Punjab, Ahmadis announced to hold a public meeting at Karachi. Mr. Zafarullah was the main speaker. The Prime Minister Khawaja Nazimuddin expressed his disapproval of the Zafarullah's attending such gathering. But Mr. Zafarullah was so committed that he told the Prime Minister that he would either resign or attend the meeting. Sir Zafarullah's controversial speech resulted in eruption of demonstrations in Punjab and Karachi and intensified the anti-Qadiani movement. All Parties Muslim Conference was held in Karachi in condemnation and four demands were formulated:

- i) Ahmadis be declared as non-muslim minority.
- ii) Sir Zafarullah be removed from the office of Foreign Minister
- iii) Ahmadis be removed from key posts and
- iv) To achieve these objectives All Pakistan Muslim Parties Convention be held.

To explain the rationale and need of Muslim demands, Maulana Maudoodi wrote a pamphlet: "The Qadiani Problem". He exposed religio-political aims of Ahmadya movement in a lucid way. It was widely upheld for its well-reasoned and cogent arguments. Lahore chapter of Qadiani Jamat made an absurd attempt to answer the

vital issues discussed in it which back-fired. Maulana Maudoodi explained that the Qadiani problem had arisen not because the Muslims in some fit of orthodoxy or fanaticism wanted to 'excommunicate' any group of people. Its origin, on the other hand, was traced to the claims of Mirza Ghulam Ahmad of messiahship and prophethood, and as a consequence branding those who did not believe in him to be Kafir and outside the pale of his Islam. On the basis of writings of Mirza Ghulam Ahmad and his followers he proved that Ahmadism is a separate religion and Ahmadis are Imperialist stooges and spies commissioned to defuse Muslim resistance to infidel over rule. Through out its existence its main object has been to promote Imperialist interests. Now they have been working to promote Imperialist power in Pakistan. Dr. Allama Muhammad Iqbal rightly asked the British to declare Qadianis as separate community in 1935. They 'while pursuing a policy of separation in religious and social matters were, however, anxious to remain politically within the fold of Islam' because of 'the political advantages in the spheres of Government services which accrue to them by remaining within the fold.' Maulana added: 'The demand for Sir Zafarullah Khan's removal from office not only originates from the doctrine that no non-Muslim should hold the office of a Minister in an Islamic state, but is also based on the fact that Sir Zafarullah Khan had always misused his official position to promote and strengthen the Qadiani movement. Before the partition of India and after the establishment of Pakistan he has even more actively engaged in taking undue advantage of his position as State Minister to promote the interests of Qadianism. His official position is, therefore, a permanent cause of complaint for the Muslims. We are told that but for the position of Zafarullah Khan in the State Cabinet, America would not have given Pakistan a grain of wheat. I say if it is really so, the matter becomes even more serious. This clearly implies that an American agent presides over Foreign Affairs Department and our foreign policy has been pawned for ten lakh tons of grain.'

30. By early March, 1953 the mass movement spread rapidly rendering the Civil Government almost unworkable in Lahore. All leading ulema were arrested and put behind the bars. It was at this crucial time that Punjab Chief Minister Mumtaz Daultana issued a statement virtually capitulating to the main demands that the Qadiani Community should be declared *a non-Muslim minority and Qadiani leader like Zafarullah should be dismissed*. It proved a bombshell for Qadianis.' The same day 6 March, 1953 Martial Law was imposed in the Punjab and the army was called in to crush the movement. It remained in force until May, 1953. Sikandar Mirza gave orders to GOC, General Azam to impose Martial Law. The Martial Law Administration clearly overstepped its authority. The press was muzzled. Strict pre-censorship was imposed and several papers were banned and their editors jailed. It was not still clear why Martial Law extended its dragent to include every thing from character building, social and educational reforms to everyday hygiene and sanitation? The Military for the first time had the 'sweet' taste of civil administration. It also came to know its importance in case of a national crisis and felt eager to play their 'role' in the national politics and affairs.

31. After the declaration of Martial Law, Military Courts were set up and the city was placed under military administration. Many leaders were arrested including Maulana Maudoodi, who and Maulana Abdul Sattar Khan Niazi were tried before Military Court and sentenced to death. Here again the Martial Law authorities over-stepped their charter which was the restoration of law and order only. The whole nation condemned it. The action was also resented by the Prime Minister. It also brought a sharp reaction from the Islamic World. The Governor General of Pakistan was constrained to commute the sentences to imprisonment for life. However, later on both of them were released.

32. Later on, the coup was staged by General Ayub. From 27 October, 1958 to June, 1962 Pakistan was ruled by the military under the martial law regulations that could not be challenged in any Court of Law. Political parties banned, leaders

were put behind the bars, severe restrictions on the liberty of the press were imposed and the public opinion was stifled. Qadianis found the military dictatorship a boon in disguise. It provided them an opportunity to organize themselves further and establish new missions abroad as they had been doing under the protection of British Imperialism in the past. They collaborated both with the military rulers and the bureaucracy to get key posts in fast expanding economic institutions and public organizations. They enjoyed the full support of Imperialism and world Zionism in their ventures in Pakistan and abroad. Ayub harped on the theme of better ties with the United States. A year after his military coup, he signed a bilateral Mutual Defence Agreement with the US. Military bases were provided to America and it was allowed to use Pakistan territory for surveillance activities of the Soviet Union. Ayub relied on Qadiani community in all important matters. In critical sector of economic planning and international field he encouraged them to get important positions. In view of a tilt towards the US in foreign policy, the economic assistance from America which was less than \$10 million in 1952 rose to \$380 million in 1963. Pakistan responded with 'acts of friendship.' *Mirza Muzaffar Ahmad (M.MAhmad), the grandson of Mirza Ghulam Ahmad, a notorious bureaucrat became Finance Secretary and afterwards the Deputy Chairman of the Planning Commission of Pakistan.* He was deemed to be responsible for creating regional imbalances in Pakistan economy in collaboration with the Zionist backed economic groups like Ford Foundation and Harvard Advisory Group. These Groups transmitted a stream of economists to the Planning Commission and Provincial Planning Departments to prepare Five Year Plans of Pakistan. The defective planning resulted in East-West disparity and consequently loss of Eastern Wing of the country. [*The Ahmadiya Movement* by Bashir Ahmed M.A.]

33. The Martial Law Administration had a source of inspiration in the person of the then Chief of General Staff, Major General Ahyia uddin, a diehard Qadiani. He

was in favour of the use of naked force to crush the movement. He wanted to clear the agitators from Masjid Wazir Khan, Lahore where they had shut them up, with a suitable military action. The plan was, subsequently dropped due to its wider political repercussions. Major General Ahyauddin had a very narrow outlook in national affairs. His main concern was to serve the designs of Ahmadya community at all costs. The Ayubian dictatorship gave protection to Qadianis and encouraged them to safeguard their interests in Pakistan and abroad. The feelings ran high against them and the ulema raised voice against their increasing interference in Pakistan politics. Qadianis wielded so much influence that they simply brushed aside public reaction and criticism levelled against them by ascribing it to the traditional bigotry and short sightedness of 'mullah.' Repressive Martial law Ordinances and the Defence of Pakistan Rules provided sufficient protection to them from the 'onslaught' of ulema.' Many religious leaders who opposed Qadianyat were arrested on the charges of fanning 'sectarian feelings.' The anti-Qadiani press was muzzled and the editors and publishers of many papers arrested. The credit also goes to the weekly Chattan, Lahore for its bold criticism and exposition of Qadiani intrigues despite stern warning of the Home Department and arrest of its valiant editor, Agha Shorish Kashmiri. He boldly faced all hardships and courageously fought for the sublime cause of Khatam-i-Nabuwat. The religious organizations and political parties rendered yeoman services to expose Qadiani intrigues and painted this Imperialist political agency in its true colours. Qadianis approached Gen Musa Khan, Governor, West Pakistan and succeeded in issuing a circular on 1st April, 1966 from Home Secretary of West Pakistan under Defence of Pakistan Rules to all editors, printers, and publishers advising them not to publish 'any matter casting reflection on the origin, prophecies, revelations or beliefs of any sect.' It was followed by another order meant to appease Qadiani community. On 27 July, 1967 the Governor of West Pakistan served an order on the editor of the Chattan, Lahore restraining him from indulging in and publishing provocative sectarian writings prejudicial to the

maintenance of public order, and stopping him "publishing any matter casting reflection on the origin, prophecies, revelations or beliefs of any sect which may create feeling of enmity, ill will, or hatred between different sects. Censor was imposed on publishing any matter touching on the origin, prophecies, revelations, beliefs of sect or on their comparative merits or status, by way of news, views, comments or in any other form what-so-ever." The paper had already published 8 pages (including an article of the scribe) on Qadiani movement, which had to be destroyed. The Chattan upheld the cause of Khatam-e-Nabuwat against all odds and numerous government pressures exercised at the behest of Rabwah. At last on 21 April, 1968 the declaration of the weekly Chattan was cancelled and its press was confiscated. It was the result of a sinister collaboration among the notorious trio of Ayub regime i.e. Governor West Pakistan Gen.Musa, Information Minister Ahmad Saeed Kirmani and Ayub's blue-eyed boy Altaf Gauhar. They took every possible step to suppress anti-Ahmadya elements in Pakistan. Qadiani enjoyed immense facilities during the Yahya regime. M. M. Ahmad, Deputy Chairman, Planning Division became advisor to President Yahya on Economic Affairs and also served as an important member of his inner Cabinet. Sir Zafarullah continued to serve as an important link between coterie of Yahya and the State Department officials. Qadiani bureaucrats looked to the newly emerging leadership of Pakistan for playing their role in the future political set up of the country. M. M. Ahmad was closely associated with the advisors of the Jewish-backed Ford Foundation which was based in Islamabad. These so-called advisors left Pakistan during early years of Yahya regime when their activities came under attack in the national press. The role of the US in creating regional imbalance and economic disparity between East and West Pakistan has been widely discussed. [*The Ahmadiya Movement* by Bashir Ahmed M.A.]

34. Later on, the democratic era of Mr. Zulfikar Ali Bhutto, the relations between Qadianis and the PPP underwent a change in April, 1973 when the

Government announced the arrest of three Qadiani military officers involved in a coup attempt. The PPP leadership questioned the loyalty of Qadiani sect and thought it expedient to withdraw their support. The Government arrested some persons under the Pakistan Army Act and Defence of Pakistan Rules (DPR) for seducing Armed Forces personnel from their duty or allegiance to the Government. Among the plotters three were Qadianis viz Maj. Farooq Adam Khan, Sq. Ldr. Muhammad Ghaus and Maj. Saeed Akhtar Malik. Maj. Saeed was the son of Akhtar Hussain Malik and nephew of Lt. Gen. Abdul Ali Malik who ranked third in seniority to the then Army Chief. The involvement of three Qadianis in the plot created feelings of ill-will among top leadership of Rabwah who aspired for power and plotted to over-throw the Bhutto regime through a coup. They also collaborated with the bureaucracy and some officials of the Foreign office. It is also said that they were disgusted with some aspects of forthcoming permanent Constitution of Pakistan. Bhutto disclosed in April, 1973 that Israel played a leading role in the dismemberment of Pakistan. To elaborate it further Shorish Kashmiri wrote an open letter to Mr. Z.A. Bhutto highlighting the following points regarding Qadian-Israel alliance:

- i) Qadianis have been playing the same role in Pakistan as Zionists in Britain and America.
- ii) An inquiry be made on the following lines to know the nature of Qadiani-Israel relations: How and in what way Israel interfered in Pakistan politics? Who were Israel's agents and which political party was used to carry out their nefarious designs?
- iii) It is the duty of Pakistan Intelligence to give the details of operation of Qadian Mission in Israel which is a political Department in the garb of a missionary centre. What purpose does it serve? To whom Qadianis preach? Israel does not allow Christian missionaries to propagate their belief why does it permit Qadianis to openly propagate their creed? How many Jews had embraced Ahmadism? Is it not evident that Qadianis are agents of Imperialist powers and have been working against the solidarity of Islamic World?

- iv) The secular minded members of the PPP are not fully aware of the Qadiani problem. They had been getting high posts in bureaucracy and are not loyal to Pakistan. They are conspiring to get political power in one way or other.

35. By July, 1973 Shorish Kashmiri compiled a pamphlet *Ajmi Israel* to prove that Qadianism was not only religious but a political issue. Qadianis were plotting to undermine the solidarity of the country and an Akali Sikh-Qadiani conspiracy to dismember the Punjab was underway. On the suggestion of leading Scholars, ***Shorish then addressed the following letter to the heads of the Arab States*** which throws light on the *genesis of Qadiani problem and its implication for the Muslim world:*

I wish to draw your kind attention to a very important problem, which, perhaps, has not received your due consideration before and, that is why, I would request you to please devote personal attention to the following lines in order to understand the real significance or, rather the crux of the problem.

1. The Qadiani sect came into being about forty years after the establishment of the British Rule in India as a basic requirement of the British Imperialism in this subcontinent. The British Government, despite its persistent efforts could not succeed to extinguish the sensitiveness of the Muslim population towards their faith in their National integrity and devotion to the Quranic education of Jihad. It was Mirza Ghulam Ahmad, who did complete that mission on the religious grounds by declaring every one a Kafir who did not believe in his "Prophethood". At the same time he came forward with a complete negation of the concept of Jihad on the plea that Jihad had lost its significance in presence of the British Rule's blessing.
2. The N.W.F.P. was the centre of Jihad activities in those days and Punjab being its next door neighbour a territory which later on proved to be the main supply line of the most loyal and valiant soldiers and unbreakable and expedient spies for the British Kingdom. It is obvious that such a soil as Punjab could be the best

suites for the creation of a Prophet like Mirza Ghulam Ahmad who as a very loyal henchman of his benefactors never betrayed their cause of disintegrating the National Unity of the Muslims throughout his life.

3. Upto the creation of Pakistan the small Qadiani sect had emerged into a powerful political element as a result of the generous and patronising attitude of the British Rulers and that was obviously meant for achieving their own sinister ends.
4. After creation of Pakistan the Qadianis as a forceful political faction within the Muslim nation started their journey under a well-planned programme to snatch political power in Pakistan and that is a matter of really grave concern for the dominant Muslim population of Pakistan.
5. Qadianis have set up their political mission (and they name it, a preaching mission) at Tel Aviv in Israel and working as an agent of the Imperialist block both in Pakistan and the Arab world. Their fifth columnist activities for furtherance of the sinister political strategies of their masters have earned them so much admiration that they have now started contemplating creation of another Israel for themselves in this part of the world. For this purpose they have been supporting the forces responsible for the separation of East Pakistan, and further with their negative political attitude they are lending their patronage to the so-called secessionist movements in Baluchistan and NWFP. This is because their only target is to isolate Punjab from the other provinces of Pakistan. In that event the Sikhs of East Punjab, seeing that the Muslim Punjab has been left all alone and deserted, shall come forward with a demand of their repatriation to this land of their holy shrines. In response the Qadianis shall readily support the acceptance of this demand and ask for the restoration of their Madina-tun-Nabi (Qadian, where Ghulam Ahmad is buried). You can well imagine that this is possible only if both the parts of former Punjab get reunited and that too, under the joint political control of the Sikhs and the Qadianis. Please just see how this 'Ummah' of the Victorian brand 'Prophethood' is trying to sabotage the basic ideology of the creation of this great Muslim country. The knowledgeable and well informed circles of Pakistan are very much

perturbed over this undesirable state of affairs. The Qadianis are betraying the Pakistan Government on the one hand and keeping the world conscience in complete darkness on the other by their tactful propaganda system. Qadianiyat is not a religion but a political party of very reactionary designs. With their sheer cleverness they are trying to remain a part of the Muslim nation and thus avail of political facilities and dividends thereby, but religiously and socially they have set up an altogether different cult. They are just trying to follow the footsteps of Mutazilla by capturing political sovereignty over the 90% of the Muslim population of Pakistan. Dr Iqbal (the poet of East) in his letter dated 21 June, 1936, addressed to Pandit Jawahar La) Nehru had described the Qadianis as traitors both to Islam and to India. He had also strongly opposed and condemned those sections of the Indian population who stood for hospitality or religious tolerance in the case of Qadianis. For him the defence of the ideological borders of one's religion or integrity of one's nation was not opposed to the ethics of hospitality or morality. From the above furnished detail it is quite clear that:

- i) The Qadiani problem is not a sectarian one in its nature but a political one to its entirety.
- ii) Qadianis with the blessing of their Imperialist supporters are trying to form a government of their own pattern in Pakistan. But they detest every effort of the Muslims of this country to take them to task, by giving them name of religious or sectarian controversy. The Qadianis have dug into different important positions in the Defence, Finance and Broadcasting departments of Pakistan Government and are busy in paving the way for their political domination. At the same time the international Imperialist forces who have since long staged a power politics drama are being served by the espionage rackets formulated in the guise of Engineers, Doctors and Nurses belonging to their community and trained in their own way for such activities.'

36. In a bid to show their muscles to their opponents, Qadiani belligerents attacked the students of Nishter Medical College, Multan when they came back

from an excursion trip and passed through Rabwah on 29 May 1974. Qadianis carried sticks and light arms. Fifty students were badly injured with 13 in critical conditions. It was a pre-planned affairs and Mirza Nasir, the then Khalifa, was behind the game. The Qadiani goondaism unleashed a violent reaction all over Pakistan. Although Hanif Ramay, the Chief Minister of the Punjab issued stern warnings to law breakers yet the demonstrators paid no heed to it. Mr. Justice KA.Samadni, Honourable Judge of the Lahore High Court was appointed to hold an inquiry into the Rabwah incident. In the Punjab Assembly the leaders of the Opposition Party moved adjournment motion but the Speaker disallowed it on the ground that the matter was subjudice. Prime Minister Bhutto appealed to the people to wait the results of the Tribunal but the movement continued unabated. The Opposition leaders in the National Assembly made stern efforts to move an adjournment motion on the Rabwah incident without success. The Assembly devoted most of the time to procedural debate on the admissibility of such a motion. To check the rising movement, many religious, political and student leaders were arrested under the DPR and the public meetings declared unlawful. The Government used repressive measures to find an excuse to revive 1953 drama to shelve the issue. People bore all hardships with fortitude to carry out the movement in a peaceful manner. Every one knew that the man behind the Qadiani goondaism was Mirza Nasir Ahmad. The Government was, however, reluctant to arrest him. He filed a petition for bail before arrest in the Lahore High Court. He was associated with the investigation into Rabwah incident. Chief Justice Mr. Justice Muhammad Iqbal issued notice to Advocate General Punjab who made a statement that there was no Government intention to arrest him at that stage and that if at any time any case was made out against him during the course of the investigation and there was an intention to arrest him, before taking that step the High Court would be informed. The petition was disposed of accordingly.

37. Markazi Majlis-i-Amal for Majlis Tahaffuz-i-khatum-e-Nabuwat composed of 18 politico-religious parties waged a relentless struggle for the sublime cause of Khatum-e-Nabuwat under the Presidentship of Allama Muhammad Yousaf Binori, an eminent scholar of Islam. The demands of the Majlis included the declaration of Rabwah as an open city, the removal of Ahmadis from key posts, a ban on their para military organizations, the arrests of persons responsible for the Rabwah railway station incident on 29 May, including Mirza Nasir Ahmad, and the trial of Chowdhry Zafarullah Khan for making anti-Pakistan propaganda as well as the impounding of his passport. The Majlis, in a bid to intensify the movement launched a boycott campaign. The correspondent of the Far Eastern Economic Review tells how the social boycott movement went on:

'Public transport was plastered with stickers demanding the Ahmadis be ostracised. Shops display signs refusing service to Ahmadis. All over the country, crudely painted wall signs are using the vilest language attack on Ahmadis. Newspapers carried advertisements from firms declaring that their boards of directors did not include any Ahmadi. Faced with the ugly mood around them, some members of the sect announced 'penitence' for their 'erroneous beliefs in the past and renunciation of their former religions.'

38. In the hay days of the movement, the NWFP Assembly took lead and passed a resolution declaring Qadianis, a non Muslim minority in June 1974. The decision was widely hailed. However, Ahmadis called it a move meant to negate Quaid-e-Azam's principles and might endanger the integrity of the country. Pressed hard by the anti-Ahmadya movement, Prime Minister Bhutto was forced to tackle the issue in a democratic way. On 30 June, 1974 the Government announced to place the entire matter before the National Assembly of Pakistan in the form of two resolutions. One of the resolutions was sponsored by the Government and tabled by the then Law Minister Abdul Hafeez Pirzada. The other resolution was sponsored by the opposition and moved by Maulana Shah Ahmad

Noorani, Secretary Parliamentary group of the Opposition. The resolution of the Opposition was signed by 37 members of Opposition. The Government resolution related to the determination of the Constitutional position of Qadianis while the resolution of the opposition was specific in nature over the position of Qadianis. It said:

'Whereas it is an accepted fact that Mirza Ghulam Ahmad of Qadian proclaimed himself be prophet after Prophet Muhammad (May Peace be upon him) and whereas his false proclamation of being a prophet and his attempt to falsify many of the verses of Quran and to end the conception of Jihad was a treachery against the fundamental concept of Islam. And whereas the followers of his religion may have any name given to them, intermix with the Muslims, pretending to be a sect of Islam. Thus they are busy insubversive activities inwardly and outwardly. And whereas the World Muslim Organization in its meeting held between 6 and 10 April, 1974 at Mecca in which about 140 Muslim organizations of the Muslim world took part, decided unitedly that Qadianism which calls itself a sect of Islam is a subversive movement against Islam and the Islamic world. Now, therefore, this Assembly should declare that the followers of Mirza Ghulam Ahmad, may they be given any name, are non Muslims and that a Government bill may be introduced to make necessary amendments in the Constitution of the Islamic Republic of Pakistan so that this declaration of this non Muslim minority maybe safeguarded-'

Both the Government and the Opposition's resolutions were referred by the National Assembly to a Whole House Special Committee (WHSC) for discussing them in detail and finally to submit its report to the National Assembly. The Whole House Special Committee set up a Select Committee comprising leaders of various groups in the Assembly. Maulana Shah Ahmad Noorani (JUP), Prof. Ghafbor Ahmad (JI), Maulana Mufti Mahmud (JUI), Ch. Zahoor Illahi (ML) and

Maula Bux Soomro (Independent group) represented the Opposition in the Special Committee while the Government nominated, Law Minister Abdul Hafeez Pirzada and Maulana Kausar Niazi, Minister for Information and Religious Affairs to represent the Government point of view. Both the House Committee and the Select Committee began their work with devotion. Mirza Nasir Ahmad, head of the Qadiani group and Sadaruddin, Amir of Lahore group requested the Committee to hear them in defence. The Committee accepted their request and asked them to explain fully their point of view. Mirza Nasir submitted a written explanation of about 200 pages and was examined and cross-examined by Yahya Bakhtar, the then Attorney General of Pakistan. Sadaruddin designated Abdul Manan Omer, a senior member of the community and son of Hakim Nuruddin to represent the Lahore section. He gave his Jamat's stand in a 14-page memorandum and was cross examined two days. The special committee of the National Assembly underwent 28 sessions and 96 meetings to discuss the issue. Mirza Nasir Ahmed was cross examined for 42 hours in eleven days, while Sadruddin and his team (the Lahori group) were examined for 7 hours. Movers of the resolution distributed a book named (ملت اسلاميه کا موقف) , whereas, the Qadiyanis (both groups) distributed their literature. Muslim point of view on Qadiani issue was presented to the Assembly by 37 members of the National Assembly. Maulana Sami-ul-Haque, editor the monthly At Haq Akora Khattak and Maulana Muhammad Taqi Usmani, Karachi, under the guidance of Maulana Binori compiled the paper. It was read out by Maulana Mufti Mahmud in the Assembly. After that the members of the house delivered speeches including Federal Minister for Law, Mr. Abdul Hafeez Pirzada, whereas, Mr. Yahya Bukhtiar, Attorney General gave following historical comments on 5 & 6th September. 1974:-

“I will try to present the evidence present in record briefly; but being the Attorney General, I am not a member of the House. Therefore I cannot act as a judge nor can I give my personal opinion. I feel that my duty is to facilitate the house in a non--prejudiced way. We all realize that I do not represent one group or oppose another. Your status is that of a judge. My

duty is to put up in front of you both aspects of the issue so that no one can say that it was a biased hearing and that the Attorney General tried to use justified or unjustified influence to affect the outcome. I believe that when I present the point of view of both groups or the point of view of the other group also, it should be understood in the real context.

Sir, as far as the decision is concerned, that is to be done by the worthy members and I have firm belief that it will be a very justified decision, the right decision according to the will and wishes of the people of the country. We must keep in mind the interests of Islam and our country and I have no confusion regarding the feelings of love for Islam and the country present among the worthy members. So this leaves no confusion that the members will make the best possible decision. I have the honor of discussing the issue with the Prime Minister. The Prime Minister is very concerned about this as this decision has great impact. The Prime Minister thinks like any other Muslim and his feelings are likewise, but at the same time he is also the Prime Minister. It is his responsibility that no one is deprived of his rights and that no one may be deprived unlawfully from his life, freedom, respect and fame. Sir, I expect and I am sure that the leaders present in the House have had enough contemplation into the matter and will try their level best to come to a right decision. Sir, You might be remembering that while interrogating the Ameer of Ahmadia Jama'at, Rabwah, I made it clear upon him that the House has neither the intention to damage anyone nor to hurt anyone's feelings. This House wants a justified decision. Keeping these things in mind, I proceed with my comments and will present all facts and happenings briefly.

Sir, there is one resolution and one movement in front of the House. The movement was presented by the worthy Minister of Law which read as follows:

“According to the Rule No. 205 of the Rules of Business, I hereby give the notice for the following movement.

“That the House may form a special committee consisting of the whole House. This committee should comprise of all those members who have the right to speak to the House. Moreover they also have the right to take part in the proceeding of the House. Worthy Mr. Speaker will be the

Chairman of this special committee and this committee may perform the following responsibilities:

- 1. To discuss the position or status of a person within the frame of Islam who does not believe in the Khatm e Nubuwwat (finality of prophet hood) of Hazrat Muhammad (SAW).*
- 2. To receive suggestions from the members, to receive resolutions and to explore them within the time period fixed by the committee.*
- 3. After taking evidence regarding the above mentioned disputed issues and going through the concerned documents, to put up recommendations. The corum required for the working of the committee will consist of 40 members, out of which 10 members will be from those parties who are against the government within the National Assembly that is they belong to the opposition.”*

Sir there is another resolution presented by 37 worthy members of the House which reads as follows:

"We hereby present the following declaration:

That it is a well known fact that Mirza Ghulam Ahmad Qadiyani claimed to be a prophet after Khaatim ul Anbiyaa Hazrat Muhammad (SAW) And that Mirza Ghulam Ahmad's false claim of prophet hood, his efforts to misinterpret many of the Quranic verses, and his efforts to refute Jihad (religious warfare), all these acts fit in as treachery and dishonesty to the basics of Islam.

And that he (Mirza) was totally brought to existence by the imperialistic forces, the purpose being to shatter the Islamic unity and to bring disgrace to Islam.

And that the whole of the Muslim Ummah has given the collective verdict that the followers of Mirza Ghulam Ahmad, whether they accept him as a prophet or a religious reformer in any form are all expelled from the sphere of Islam.

And that his followers, whatever name they might have adopted, present themselves to be a sect within Islam and are involved in mischievous activities within and outside the country.

And that from 6 to 10 April 1974, the conference of World Muslim Organization was held in Makkah al Mukarrama under the supervision of Raabta Aalam e Islaami and in which 140 organizations participated, unanimously declared that Qadiyaniyyat is a mischievous movement against Islam and the Muslim world and that it falsely claims to be a sect of Islam.

Therefore, this assembly declares that the followers of Mirza Ghulam Ahmad, whatever name they might be bearing, are not Muslims and that a Legal document should be presented in the assembly so that this declaration may be made a law after necessary amendments in the constitution, and that their legal rights be protected as a non Muslim Minority".

Sir, these are the two motions, one resolution and one movement. In addition to these there are a few more resolutions, which are under consideration by the House, but they are mostly concerned with the constitutional amendments. There are two reasons, why I need to discuss them here. Number one, only these two documents were released by the press and the Ahmadi groups presented their point of views and declarations on the basis of these documents. They were asked to record their opinion on the basis of these two documents. Therefore it would not be justified to comment on other resolutions. The committee has full authority to take necessary action on these, use them at any stage of the proceeding, but I will limit my comments to only these two documents and will discuss them briefly. Before I comment on the procedure adopted to review these documents, I expect that if I openly present my assessment, I will not be misunderstood. In the beginning, the motion presented by the Honorable Minister for Law. Sir, it reads as follows:

"To discuss the position or status of a person within the frame of Islam who does not believe in the Khatm e Nubuwwat (finality of prophethood) of Hazrat Muhammad (SAW)".

Let us first analyze the sentence "the position or status of a person within the frame of Islam. "If the House is of the opinion that those people who do not believe in the Khatm e Nubuwwat of Hazrat Muhammad (SAW) are not

Muslims, then such people have nothing to do with Islam. The motion is in itself conflicting. Had it been said "To discuss within Islam or in relation to Islam" then it would have been more understandable. But to say "Position or status within the frame of Islam" it gives the impression that they are Muslims. I think that this is a conflict which may not be very important, but it was my duty to present this conflict before the House. You cannot say that what is their status in Islam, but you can say that what is their status in relation to Islam. Sir, the resolution (37) presented by the members, I would say with utmost respect, that it also has some conflict. I would not go in details but the Honorable members kindly note that at one place, it is mentioned "And that he (Mirza) was totally brought to existence by the imperialistic forces, the purpose being to shatter the Islamic unity and to bring disgrace to Islam". Further on, it is mentioned "And that the whole of the Muslim Ummah has given the collective verdict that the followers of Mirza Ghulam Ahmad, whether they accept him as a prophet or a religious reformer in any form are all expelled from the sphere of Islam". Then it reads "And that his followers, whatever name they might have adopted, present themselves to be a sect within Islam and are involved in mischievous activities within and outside the country". This is all correct. But this is followed by the demand to declare them as a non Muslim minority; that is a non Muslim religious minority and amend the constitution and protect their justified legal rights. Do you want the mischief to prosper? Do you want to protect those things which have been mentioned in the context? This is a conflict to which I wanted you to keep in mind. On one side you demand to declare them a minority, a separate entity and when you do this, you have to take care of their rights. There is no way out, and this is a very important part of the resolution; I acknowledge its significance. When you demand to protect their legal rights, I appreciate it. On one side they say that it (Ahmadia Jama'at) is a mischievous movement, it is involved in atrocities inside and outside the country. What are those mischievous activities? The preaching of their own religion or beliefs? Their practice according to their faith and religion? You also want to protect their rights and at the same time you also condemn them. These two things cannot go together. This is very clear; I am not criticizing. I don't have the right to criticize. But it is my duty to make it clear to the worthy members that if you declare a portion of your citizen population a separate religious group, then not only your constitution but also your religion demands you to safeguard their rights; to give them their

right to preach and practice their religion. I would not like to comment any further as I am very sure that there is very little time available. So, keeping in view these two documents, the worthy House has to decide some conflicting issues, which are as follows:

1. Did Mirza Qadiyani declare prophet hood?
2. What are the side effects of this declaration within Islam or in relation to Islam?
3. What is the meaning or concept of Khatm e Nubuwwat? When we say Khaatam un Nubiyyeen, what do we actually mean?
4. Is there a consensus among the Muslim Ummah that the followers of Mirza Ghulam Ahmad, who believe in him either to be a prophet or the Promised Christ or believe in him in both contexts, are expelled from the sphere of Islam?
5. Do the followers of Mirza Ghulam Ahmad consider those Muslims, who do not believe in him either to be a prophet or the Promised Christ, as Kaafir (infidels) and ousted from the sphere of Islam?
6. Did Mirza Ghulam Ahmad found a separate religious group which is ousted from the sphere of Islam or did he found a new sect within Islam?
7. If he had founded a separate religious group, then what is its status or position in relation to Islam and what are the constitutional rights of such a group?

Now I will briefly go through the events that occurred since the presentation of the resolution and the motion. These were presented on 30th June 1974. After their publication, the two groups of the followers of Mirza Ghulam Ahmad submitted their declarations individually. After this the representatives of both the groups were invited to declare on oath and read their comments and declarations. I remember that they had expressed their desire to comment verbally so that they could present their view point in a much better way. The documents that they submitted totally negated the charges put against them in the resolution. The House committee

decided to constitute a Steering Committee, so that it could accept questions and analyze them. For this purpose, I was instructed by the committee to remain available in Islamabad on 21st July, 1974. I was available in Islamabad on 21st July as instructed. The Steering Committee completed the scrutiny of the questions in one week, although there were hundreds of questions. The declaration of Ahmadia Jama'at Rabwah headed by Mirza Nasir Ahmad was recorded from 5th to 10th of August. Then there was a gap of 10 days. Mirza Nasir was further questioned between 20th and 24th of August. The total duration was 11 days. The other sect of Ahmadiis gave their declaration later; Maulana Sadaruddin heads the sect, but being very old and hard of hearing, he was represented by Mian Abdul Mannan Omar. He completed his declaration in two days. It is not because the house was biased against any of the groups, but it was because most of the relevant documents and Mirza's writings had already been brought on record earlier, and as far as the second group was concerned, no further details were needed.

As far as the first disputed issue is concerned, that is whether Mirza claimed prophet hood or not, it is better if we briefly comment on the life of Mirza Ghulam Ahmad, his books and the Ahmadia movement. Initially I will address the disputed issue. Mirza Nasir has briefly described the events of Mirza Ghulam Ahmad's life as follows:

"He was born on 13th of February 1835 in Qadiyan. His father's name was Ghulam Murtaza. He was initially educated at home by many teachers. His teachers were Fazal Ilahi, Fazal Ahmad and Gul Muhammad, who taught him the basics of Persian, Arabic and Religion. He was taught medicine by his father. He was very sensitive regarding the well being of Islam from the very beginning and did not indulge in worldly affairs. One of his verses reads:

دگر استاد رانامے ندانم

کہ خواندم در دبستان محمد

ترجمہ: کہ میں تو کسی دوسرے استاد کا نام تک نہیں جانتا کہ میں تو ساری تعلیم نبی محترم محمد کے در دولت سے حاصل کی ہے۔

He had religious dialogues and debates with Aryans and Christians representing Islam around 1876 and published his famous book "Braheen e Ahmadia" in 1884 which is considered to be an exemplary publication in

favor of the Quran, Hazrat Muhammad (SAW) and Islam. He started taking the oath of allegiance in 1889 as he was ordered by God and in 1891 declared himself to be the Promised Christ after receiving the Ilham (spiritual instruction) from God. His whole life was spent in the service of Islam and he wrote 80 books in Arabic, Persian and Urdu and also said verses in all these languages. The one and only aim in front of him and his Jama'at was the preaching of Islam and it still is the same. He died on 26th of May 1908 and was paid tribute regarding the services he rendered for Islam by the newspapers and magazines of his time. He was succeeded by 4 sons and 2 daughters and now his family members are around 200."

Sir, I would like to add some detail to what I just read, and it has been derived from the documents I was provided.

"Mirza Ghulam Ahmad belonged to the prominent and respected Mughal family of Punjab which had migrated from Qandhar in the times of Babar, the Mughal emperor. The first ancestor of Mirza Ghulam Ahmad who migrated to India was Mirza Hadi Baig. Laqual Griffin mentions in his book named "The Punjab Chiefs"

"Mirza Hadi Baig was appointed as the magistrate on 70 villages around Qadiyan. Qadiyan was built by Mirza Hadi Baig who named it 'Islam Pur Qazi' which gradually modified to Qadiyan. This family remained appointed on government post for many generations. When the Sikhs annexed to power, the family was pushed into poverty."

After this I will read out a portion of the report of Justice Munir Ahmad Enquiry Committee presented in 1953-54. The report gives the following comments regarding Mirza Ghulam Ahmad:

"...The grandson of Mirza Ghulam Murtaza who was a General in the Sikh army. He got educated at home in Persian and Arabic but did not receive any Western education. In 1864, he got a petty job in the District Court, Sialkot and remained employed for four years. After the death of his father he devoted himself to religious literature and during 1880-84 published the world renowned 'Braheen e Ahmadiya' in four volumes. He then wrote multiple other books. Those were the times of harsh religious debates and arguments. Islam was not only being attacked by the Christians but also by the Arya Samaj. The Arya Samaj was a Hindu movement and was gaining popularity in those days."

I don't think that Justice Munir is right when he says Mirza Ghulam Ahmad, the grandson of Mirza Ghulam Murtaza... It is because Mirza Nasir Ahmad has said that Mirza Ghulam Murtaza was his father (not grandfather). According to the declaration of Mirza Nasir in front of the House, the British brought an army of missionaries along with them during 1860- 80, who were around 70 in number. They were responsible for flaring up religious debate and argument. Those missionaries had announced that they had come to convert all Muslims of India to Christianity. Mirza Nasir commented on their attacks on Islam and Hazrat Muhammad (SAW) saying:

"They started it on the direction of the government and they were doing it" According to Mirza Nasir a few of the Ulema and Islam loving leaders came forward to obstruct the attacks of Christians on Islam. They included Nawab Sadiq Hassan Khan, Molvi Aal e Hassan, Molvi Rehmat Ullah Muhajir Dehlevi, Ahmad Raza Sahib and Mirza Ghulam Ahmad. Mirza Nasir says that I don't know all of them, but I believe in all of them including Mirza Ghulam Ahmad. "Allah had given farsightedness, love for Islam"

And this was the reason why he jumped into this field to bring an end to the attacks of Christians on Islam and Hazrat Muhammad (SAW). These very debates and arguments made Mirza popular amongst the Muslims. He became a hero of the Muslims and it seems that the role played by him in rectifying the attacks against Islam was the number one cause of his popularity. Though as the evidence points out, many of the methods adopted to rectify these attacks were not appropriate rather objectionable. For example the way Jesus Christ was subjected to insolence, it is not only objectionable to the Muslims of today, rather the Muslims of those times also criticized it. In those times also Mirza Ghulam Ahmad had to clarify his position repeatedly. I don't want to go into details; probably the same popularity made him take oath from his followers in 1889 when he was 54 years old. It is evident that Mirza had already announced in 'Braheen en Ahmadia' that he has connections with God and receives Ilham (spiritual instructions). Everybody knew this. He founded the movement in December 1889 according to his son, the second Khalifah of Jama'at Ahmadia, Qadiyan or Rabwah. Actually this movement was founded in March 1885. In the beginning, it is not clear whether he claimed to be a prophet or the Promised Christ. However, it is mentioned that he started

taking oath from his followers. There is no confusion in it that he attracted followers. He was very fluent in Arabic, Persian and Urdu. And kindly keep in mind that there is some confusion regarding 1889. At one place it is mentioned that in December 1889, Mirza got an Ilham (spiritual instruction from God) that he was the Promised Christ. But he did not announce it and went to Ludhiana from Qadiyan and started taking the oath from his followers. Why did he not announce it in Qadiyan, this you people have to decide. This book 'Ahmediyyat and true Islam' is written by Mirza Mehmood. I have come to know that he went to Ludhiana to take oath. Somewhere else in Islamic literature, I have read that the Promised Christ will announce himself at a place named Ludd. Probably, this was the reason why Mirza Ghulam Ahmad decided to go to Ludhiana to take oath. That is why he did not start it from Qadiyan. This is what I want to point out to you specifically. I will comment on the debates with the Christians later. It is my duty to highlight the point that one of the strong objections raised against Mirza Ghulam Ahmad and the Ahmadi movement is that it was conceived and brought into existence by the British. This has not only been mentioned in the resolution but also in other literature that this issue was created when Jihad was announced against imperialistic occupant forces from Sudan to Sumatra. This was planned by the British to curb Jihad and Mirza Ghulam Ahmad's services were hired for the purpose. This point also needs your attention. This has also been pointed out that it is obligatory for the followers of Mirza Ghulam Ahmad to have complete loyalty and devotion for the British as a part and parcel of their faith. They have to make this promise when they take the oath. This is extremely important because the Muslims were very much against the obligation to be loyal to the British and wanted to get rid of the occupant imperialism, which had forcefully deprived them of their rule and powers. By making them take the oath on the loyalty to the British, the Ahmadis or the followers of Mirza Ghulam Ahmad proved to be excellent spies for the English. It is documented that in 1925, two Mirzais/ Ahmadis were executed in Afghanistan, not only for the reason that they were Murtadd (apostates) but they were found to have custody of such documents which proved that they were British spies and wanted to overthrow the Afghan Government. I am just highlighting the facts; I do not address their authenticity. As far as the religious and Quranic ideology of Mirza is concerned, I think it is nearly the same as that of Sir Syed Ahmad Khan except for a difference on few verses which are related to Jesus Christ or which can be linked to the claim

of prophet hood of Mirza himself. He had understanding of the Quran. In order to terrify his opponents he made use of two types of his foretelling through which he used to claim of his opponent's death or humiliation within a specified period of time. In 1891, Mirza first claimed to be the Promised Christ and later announced to be a prophet. What type of prophet hood he claimed, I would comment on it later. Mirza Mehmood, the son of Mirza Ghulam Ahmad, writes in his book 'Ahmediyyat and true Islam'

"His job was to correct those mistakes and wrong interpretations that had penetrated the religion over time, rather he had to achieve an even higher target. He had to explore for the limitless treasures, pure truth and hidden powers."

"Declaring this miracle of the Quran, the Promised Christ brought up a spiritual revolution. Muslims for sure had the belief that Quran is a complete code of conduct. But in the last thirteen hundred years no one had thought that Quran not only is a complete code of conduct but it also hosts the treasures depicting the needs of the future, which when discovered will expose new avenues of spiritualism. The founder of the Ahmadiya faith brought this miracle of Quran to limelight and opened the path to research and investigation into spiritualism. This in comparison to the worldly science is a great achievement. Mirza Ghulam Ahmad not only removed all fallacies from Islam but also put light on the Quran in a way that led to satisfy the human mind and thought. Rather he provided a way to sort out all problems in coming future."

Sir, I will just say a few words about it. That Mirza was able to discover those treasures which remained hidden from the eyes of the Muslims for the last thirteen hundred years. There is no confusion about it that Quran is a collection of treasures. It is the origin of thought and intellect. With time as man progress further and continues to have deep contemplation in Quran, new avenues of knowledge and intellect will be uncovered to him. I asked Mirza Nasir specifically as to what were those discoveries made by Mirza Ghulam Ahmad which were never ever thought of by any other Muslim in the last thirteen hundred years, leaving alone the meaning of Khatm e Nubuwwat (the finality of prophet hood) or the matter of life or death of Jesus Christ. In answer to my question, Mirza Nasir said Mirza Ghulam Ahmad's Tafseer (description) of Surah Fateha. 70 percent of this Tafseer (description) is new; it is up to the Ulema in the committee to comment on

this; I have nothing else to say on this issue. I only remember what Allama Iqbal has said:

عصر من پیغمبرے ہم آفرید
 آنکہ در قرآن بغیر از خود ندید
 ترجمہ: کہ میرے عہد نے ایسے پیغمبر کو بھی پیدا کیا ہے۔
 جس نے قرآن میں اپنے سوا کسی کو نہیں دیکھا۔

It means, that in our times a prophet has been born, who cannot find anything in Quran except his own self. I think this is a very balanced commentary on the situation. What I could make out is that Mirza Ghulam Ahmad discussed only those parts of Quran in which he was personally interested.”

39. On 7th September, 1974, the then Prime Minister of Pakistan, Mr. Zulfikar Ali Bhutto, on completion of a marathon exercise carried out by the Special Committee of the Parliament comprising of forty honourable members of the National Assembly which culminated in the passage of the Constitution (Second Amendment) Act, 1974, delivered a historic speech at the floor of National Assembly, which is of immense historical value and significance with regard to issue subject matter of these proceedings, therefore, the same is being produced here-in-below:-

Mr. Speaker:

When I say that the decision of today is the decision of the whole house, it is not my intention to gain some political points out of it. We have discussed it with different members of the house and all schools are represented in the house. This is a National decision; it is the decision of the people of Pakistan. This decision reflects the ideas, and intentions of the people of Pakistan. I don't want any one group or individual take credit for it. I am trying to say that it was a difficult decision for a number of reasons; rather a very difficult decision and it couldn't have been reached without being in a democratic country with democratic institutions.

This is an old problem, a ninety year old problem and it became complex with the passage of time. The bitterness in our

society increased because of it as solution was presented or adopted. We are told that this problem was invented in the past and not once but many times. In the past attempts were made to solve this problem, I don't know what measures were taken but I remember what was done in 1953, absolute power was used to crush the people. The advisors at the time advocated the use of brute and barbaric force to crush the will of the people, and when power is used the problem goes in the background when never gets solved.

Our intention was to find a permanent solution to this problem, and I can assure you that we have left no stone unturned in trying to find "the correct" solution. People's feelings were hurt, law and order was compromised, we had riots, speeches were made in the streets and the mosques, and the whole nation has been in frenzy for the past three months. I don't have to repeat what happened between the 22nd and the 29th of May, and I don't want to go into details either but I would like to direct the attention of the house to my address to the Nation on the 13th of June.

In my address I told the Nation that this was a religious problem and because Pakistan was created on religious grounds for Muslims thus any decision made which would hurt the feelings of the majority would be detrimental to the interests of the country. Because it was a purely religious problem it wasn't befitting for an individual in my government to issue a verdict on the 13th of June.

I met many people in Lahore who were agitated and wanted me to announce right then and there what the majority of the people of Pakistan wanted. They also told me that it's golden opportunity to gain popularity and I will be remembered forever for announcing such a decision. But I told them this is a ninety year old problem and it has caused anxiety amongst the Muslims before and after the creation of Pakistan. It wasn't right for me to take advantage of the situation, so I told them that we have restored democracy in Pakistan and we have a National Assembly, which is the place to hold debates and according to my humble opinion the house is the place to debate this issue.

As the member of the majority in the house I will not put any kind of pressure on the members and leave the decision on the conscious of the members. The members of the people's party will confirm that I have not tried to affect their judgment except for the time when there was an open debate on this subject.

Mr. Speaker! I wouldn't like to tell you that I was perplexed by this problem and couldn't sleep at night. I am aware of the repercussions of this decision and its political and social fallouts. It could even have an impact on the defence of the country. This is not a trivial matter, Pakistan is an Islamic state founded on the principles of Islam and inhabited by a majority of Muslims, and I have not been in breach of any principles while imposing this decision.

The first principle of people's party is that Islam is our religion, and to serve Islam is our first priority. The second principle of people's party is our policy of democracy, thus for our party it was suitable to present this issue in the house, and I am proud to say that we have also followed the tradition of the party of being socialist. Thus we haven't breached any of the principles of our party.

This is a religious as well as a secular decision. Religious in the sense that it affects Muslims who are a majority in Pakistan and secular in the sense that we live in modern times and our constitution should not target any sect, or religion, and every Pakistani should have the right to view his opinion about his religion without fear. It is very important for my Government to guarantee the safety of all citizens of Pakistan and it is our moral obligation.

Mr. Speaker! I will like to assure you that and tell everyone outside of this house that we have fulfilled our obligation and no one should any doubts in their mind that disturbance of any sort will not be tolerated and the dishonour of any citizen of Pakistan will be allowed.

Mr. Speaker! The last three months have seen a lot of agitation and disturbances. Several arrests have been made and

people have been sent to Jail. It was our responsibility to stop anarchy in this country. Now that the house has unanimously reached an agreement I would like to assure you that immediate actions will be taken and softer measures will be taken in regards to the people arrested and some of them may be released (if they don't agitate the people again or use violence again).

Mr. Speaker! As I have stated that we should hope that we have countered this problem, and it is not my success but the success of the people of Pakistan. I congratulate the house and realise that this unanimous decision wouldn't have been reached if all parties hadn't cooperated. Constitution is the life and soul of our country and it has taken 27 years to complete it and it was momentous occasion in the history of Pakistan when all parties accepted it.

Mr. Speaker! Who knows what decisions we will have to make in the future. But in my humble opinion this was the most complex and difficult problem that we have encountered since the creation of Pakistan. When I scan the past I reiterate that this was the most complex and difficult problem that we have ever encountered, it affected every house, every village and every individual of this country and became complex with the passage of time.

We had to face the bitter truth, we could have sent to the Islamic ideological council or the High Court (thus delaying it). But we had the courage to present it in the house and a special committee secretly met regarding this issue. Why secretly? Because do you think that the decision could have been reached if it wasn't deliberated behind closed doors?

If the members would have to deliberate openly and in front of the media then it would have been difficult. We have assured the members that their opinions will be held confidential and not presented in a twisted manner to gain political points. I think it was essential of the house not to reveal the proceedings of these secret meetings, but as time goes by maybe it would be possible for us to reveal the recordings.

I would also like to say that in order to reach new heights, and make new decisions for the benefit of the country we would have to keep the proceedings secret. This decision is ominous for us and we should move forward from here with the same spirit and attempt to solve other problem affecting our Nation.

Some people will not be happy with this decision, and it is difficult to make everyone happy. Some people think that this problem was solved in 1953 (by the use of excessive force), but these people have failed to analyse the situation. I know some people will be very unhappy about this decision, it is not possible for me to represent such people but if they think about it is better for them and their rights have been protected.

I remember that Maulana Shah Ahmad Noorani (in the opposition) presented this petition he talked about guaranteeing the safety of the people who will be affected by this decision, the house is committed to this guarantee.

This is the moral obligation of this house, this party, the opposition and the Government to protect all citizens of Pakistan. It is the teaching of Islam and a hallmark of an Islamic society. It should be noted that the Jews took refuge in the Ottoman Empire when they were persecuted in Europe, so when the Jews can find protection amongst the Turks and the Arabs then we are Pakistani and it is our moral obligation to provide protection to all sects and all citizens of Pakistan.

Mr. Speaker! I end my speech with these words.

Thank you very much.

40. As as result of a marathon exercise, at last on 7th September 1974 both group of the Qadianis were declared non-Muslims with the following amendment in the Constitution:-

“1. Short title and commencement

- (1) This act may be called the Constitution (Second Amendment) Act, 1974.

(2) It shall come into force at once.

2. Amendment of Article 106 of the Constitution.

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

3. Amendment of Article 260 of the Constitution.

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 religious reformer, is not a Muslim for the purposes of the Constitution or law.”

Afterwards, during General Zia-ul-Uaq regime, from 6-8 July, 1978 Pakistan hosted the First Asian Islamic Conference at Karachi. It was *attended by about 200 delegates from 27 countries and was sponsored by Rabeta-e-Alam-i-Islami, an international non-government and non-partisan body representing Muslims of the world*. Besides the delegates, a number of scholars from the United States and the Soviet Union came to attend the Conference. It was the fifth regional conference in Pakistan, four such conferences were held in Mauritania (1976), the USA (1977), Australia (1975) and Trinidad (1977). The Conference discussed the Qadiani issue in the context of anti-Islamic forces working in collaboration with foreign powers to undermine the unity of Islamic World. It adopted the following text on the issue:

'Qadianism is a destructive religious doctrine which hides under the guise of Islam in order to conceal its mischievous and malicious ends. Its most un-Islamic allegations are:

- a) *Its leader's baseless claim to prophethood.*
- b) *Distortion of Quranic texts*
- c) *Falsification of Jihad (Fight in the cause of Islam)*

Qadianism is the step-daughter of British Imperialism; it survives only under its guardianship and protection. Qadianism does not faithfully serve the cause of the Muslim Ummah; it is blindly devoted to Imperialism and Zionism, and wholeheartedly supports anti-Muslim powers and policies. It even utilizes the anti-Muslim powers in order to pull down and disintegrate basic principles of Islamic belief. Qadianism persistently endeavours to attain such malicious and mischievous ends....'

After a series of public meetings and demonstrations in early 1984, Majlis Amal of the Tehrik-i-Khatam-i-Nabuwat Conference decided to meet in Rawalpindi on 27 April, 1984 to press for the following demands:

- i) *Removal of Qadianis from key posts.*
- ii) *Effective enforcement of Second Amendment.*
- iii) *Imposition of ban on Ahmadya tabligh.*
- iv) *Implementation of recommendation of the Council of Islamic Ideology regarding Qadianis. (The Council proposed death penalty for an apostate).*
- v) *Arrest of Mirza Tahir Ahmad and some of his colleagues in connection with the disappearance of Maulana Aslam Qureshi and immediate recovery of Maulana Qureshi.*
- vi) *Maintenance of a close check on political and espionage activities of Ahmadis and their collaboration with the Zionists.*
- vii) *Ban on paramilitary forces of Rabwah like Khudamul Ahmadya etc.*
- viii) *Identification of Ahmadis as non-Muslim on Identity cards and passports.*

A large number of eminent ulema and office bearer of the Tehrik were arrested under 16 MPO and 153 PPC for delivering objectional speeches in order to stop their participation in the Conference. Despite severe restrictions imposed by the

Administration including the arrest of ulema, ban on the use of loud speakers, imposition of Section 144 in and around Rawalpindi city, people poured in from all the four Provinces of Pakistan and Azad Kashmir to make the Conference a success. The Tehrik threatened to take direct action if their demands were not conceded. Raja Zafarul Haque, then Minister for Information and Broadcasting played an active and appreciable role in bringing the representatives of the Tehrik and the Government at a round table conference. The Government had to yield to popular movement which could otherwise have culminated in political agitation against the Martial Law regime. A day before the Conference (26 April 1984) the President of Pakistan issued an Ordinance XX of 1984 called AntiIslamicActivities ofthe Qadiani Group, Lahoregroup and Ahmadis (Prohibition and Punishment) Ordinance 1984. It prohibited the Qadianis, Lahoris and Ahmadis from indulging in anti Islamic activities. A new Section 298 B was inserted in Pakistan Penal Code to provide a punishment of three years imprisonment and fine for a person of these groups who by words either spoken or written, or by visible representation refers to the successors ofMirza Ghulam Ahmad as an Amir-ul-Mominin, or his companions Sahaba, or the members of his family as Ahle Bait, or calls his place or worship as Masjid. The Section provides the same punishment for any such person who refers to the form of call to prayers followed by his faith as Azan or recites Azan as used by the Muslims. The new section inserted in the Pakistan Penal Code provides the same penalty for any such person who, directly or indirectly, poses as a Muslim or refers to his faith as Islam, or preaches or propagates his faith, or invites others to accept his faith, or in any manner whatsoever outrages the religious feelings of Muslims. The Ordinance also amended Section 99A of the Code of Criminal Procedure 1898, so as to empower the Provincial Government to forfeit any newspapers, book or other document, primed in violation of the new provisions inserted in the Pakistan Penal Code. The amendment made by the Ordinance in the Section 24 of the West Pakistan Press and Publication Ordinance 1963 empowered the provincial

Government to close down a press used for the printing and publication of any book or paper in contravention of the new provisions inserted in the Pakistan Penal Code, to annul the declaration of a newspaper which violates the said provisions and to forfeit any book or paper containing any matter the printing or publication of which is prohibited by the said provisions. The anti-Qadianis Ordinance was widely hailed by religious, social and political organizations professing different view points and the Muslims of world at large. The leading papers of the country called it a 'timely step' and appreciated the Government's efforts in checking the anti-Islamic activities of Qadianis. All leading dailies of Pakistan welcomed the Ordinance and demanded its enforcement in letter and spirit. Ahmadis were advised to live in Pakistan like other peaceful citizens and stop their anti-Islamic activities.

41. On April 26, 1984, under the Martial Law Regime of President Zia-ul-Haq, Pakistan added Ordinance XX to the Pakistan Penal Code. Ordinance XX is a law which prohibits Ahmadiyya Muslims from publicly practicing their religion.

“To amend the law to prohibit the Qadiani group, Lahori group and Ahmadis from indulging in anti-Islamic activities:

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 the 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 298B and 298C, Act XLV of 1860.** In the Pakistan Penal Code (Act XLV of 1860), in Chapter XV, after section 298A, the following new sections shall be added, namely:

“298B. 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) refers to, or addresses, any person, other than a Caliph or companion of the Holy Prophet Muhammad (peace be upon him), as ‘*Ameerul Mumineen*’, ‘*Khalifa-tui-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) (c) refers to, or addresses, any person, other than a member of the family (Ahle-bait) of the Holy Prophet Muhammad (peace be upon him), as ‘*Ahle-bait*’; or

(d) refers to, or names, or calls, his place of worship as ‘*Masjid*’;

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

- (2) Any person of the Quadiani 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.

- (3) **298C. 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 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.”

PROCEDURE 1898 (ACT V OF 1898)

4. Amendment of section 99A, Act V of 1898. In the Code of Criminal Procedure, 1898 (Act V of 1898), hereinafter referred to as the said Code, in section 99A, in sub-section (I):

- (a) after the words and comma “of that class”, the words, figures, brackets, letter and commas “or any matter of the nature referred to in clause (ii) of sub-section (1) of section 24 of the West Pakistan Press and Publications Ordinance, 1963,” shall be inserted; and
- (b) after the figure and letter “295A”, the words, figures and letters “or section 298A or section 298B or section 298C” shall be inserted.

5. Amendment of Schedule II. Act V of 1898. In the said Code, in Schedule II, after the entries relating to section 298A, the following entries shall be inserted, namely:

1	2	3	4	5	6	7	8
298B	Misuse of epithets, descriptions and titles, etc, reserved for certain holy personages or places	Ditto	Ditto	Not bailable	Ditto	Imprisonment of either description for three years, and fine.	Ditto
298C	Person of Qadiani group, etc. calling himself a Muslim or preaching or propagating his faith.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto

PART IV AMENDMENT OF THE WEST PAKISTAN PRESS AND PUBLICATIONS ORDINANCE 1963 (W.P. ORDINANCE NO. XXX OF 1963)

6. Amendment of section 24, West Pakistan Ordinance No. XXX of 1963.

In the West Pakistan Press and Publications Ordinance, 1963 (W.P. Ordinance No. XXX of 1963), in section 24, in sub-section (1) after clause

(i), the following new clause shall be inserted, namely;

“(ii) are of the nature referred to in section 298A, section 298B. or section 298C of the Pakistan Penal Code (Act XLV of 1860), or”,

General, M. Zia-Ul-Haq,
President”.

42. In accordance with Mirza Tahir's instructions, the Qadianis quietly but reluctantly accepted the Ordinance. The word 'Masjid' was removed from the worship places and the words like Bait-ul-Hamad, Bait-ul-Zikr etc. were written in its place. The call to prayer was stopped and the Ahmadya literature lying in the Khilafat Library, Rabwah and other open places was removed. Many Qadianis went underground. Some left Pakistan to seek asylum in countries like Sweden, West Germany, Holland, Denmark, Britain, Canada and the USA. The Ordinance provided them an excuse to settle abroad and win the support of some anti-Islamic organizations working in those countries under different covers. By raising the false slogan of 'Persecution of Ahmadis in Pakistan*' and exploiting the non-representative character of the Zia regime they gained a lot in financial and political terms.

43. All Pakistan Majh's-i-Tuhafaz-i-Khatam-i-Nabuwat put forth the following demands in numerous public meetings in late 1985:

The Ordinance on Qadianism be passed by the Assembly in the form of a Bill, so that it becomes a real part of the Constitution (1973). Qaditanis from all key posts in the Foreign, Defence and Home Ministries as well as from Kahuta Atomic Plant be removed because they had close relations with Israel. Separate column in identity card and passport for Qadianis be made indicating them as non-Muslims. Qadiani organizations are infact, engaged in subversion under religious mask! They Should be declared illegal and their assets be confiscated forfeit antiPakistan activities and violation of the Constitution.of- Pakistan.

44. On 15 July, 1984 Mujib-ur-Rehman, Advocate, Amir Jamat Ahmadya Rawalpindi, on the instructions of Mirza Tahir Ahmad, filed a petition in the Federal Shariat Court against the Ordinance. A full bench of the Federal Shariat Court comprising Chief Justice Mr Aftab Hussain, Mr Justice Fakhre Alam, Mr Justice Chaudhry Mohammed Sadiq, Mr Justice Maulana Malik Ghulam Ali and Mr Justice Maulana Abdul Qaddus Qasami heard the petition; Lahori Jamat also presented their view point in detail. The Court continued hearing for 21 days and passed a short order on 12 August, 1984 dismissing the two petitions as having no force. The Court held that the allegations in the petitions as elaborated at the bar that the impugned ordinance violates the freedom of faith of Qadianis of either persuasion or restrains them from practicing their religion or affects their right of worship is not correct. The said Ordinance does not interfere with the right of the petitioners or other Qadianis to profess and practice their religion in accordance with the provisions of the constitution and the injunctions of the Holy Quran and the Sunnah. They are at liberty to profess Qadianism or Ahmadism as their religion and to profess their faith in Mirza Ghulam Ahmad as a prophet or the Promised Messiah or the Promised Mahdi. They are also at liberty to practice their religion and worship, inter alia, in their places of worship according to the tenets of their religion. The Judgement says the impugned ordinance is consequential to the constitutional Amendment of 1974 by which the Qadianis and Lahori Group were declared non Muslims in accordance with the dictates of Islamic Sharia. In implementation of the constitutional fiat which was disregarded with impunity by the Qadianis, they have been restrained by the impugned ordinance from directly or indirectly calling or posing themselves as Muslims or calling their faith as Islam. To call their places of worship by the name of Masjid and to call people to prayers by calling Azan which are exclusive for Muslims. By the said name and the said call to prayers, the unwary among the Muslims are likely to be deceived and to be drawn to offer their prayers behind a non Muslim Imam in a non Muslim place of worship. Qadianis can call their place of worship by other name and call

the adherent of their religion to prayer by use of any other method. The use of epithets like Ummul Mominin, Sahaba, Ahle-Bait etc by the Ahmadis not only outrages the feelings of the Muslims but also amounts to their posing indirectly as Muslims. The prohibition does not interfere with the right of Ahmadis to profess and practice their religion. The prohibition against propagation of the religion of Ahmadis is not contrary to the Quran and the Sunnah of the Holy Prophet (P.B.U.H). This prohibition is also consequential to the declaration of Ahmadis or Qadianis as non Muslims and restraint against their posing as Muslims. Their entire strategy in preaching is to satisfy the Muslim to whom they preach that by conversion to Ahmadism he shall remain a Muslim. This would be contrary to the constitution. In the detailed judgement spreading over 224 typed pages the Court called Mirza Ghulam Ahmad an infidel. His life history shows, says the judgement, that he was a cheat and unscrupulous man who step by step and with a design manoeuvred by his writings and sayings to establish himself as 'Mohadis' and 'Messiah'. His predictions and prophecies were found false but in order to avoid the ridicule of his opponents, he on occasions interpreted his writings to say that he never claimed prophethood or apostleship. There was no covenant by the Quaid-i-Azam or Pakistan with Qadianis to treat them as Muslims or let them preach their faith in the name of Islam. Few paras from the above celebrated judgment of the Federal Shariat Court in the case titled ***“Mujib-ur-Rehman and 3 others vs Federal Government of Pakistan, etc”*** reported as (PLD 1985 FSC 8) are worth to reproduce to highlight the situation prevalent at that time:-

“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 uneasiness 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 Qadiani 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 quieting the Muslims' demand as voiced by the Ulema in their 22 points program for incorporating in the Constitution the non-Muslim and minority status of the Qadianis.

The agitation continued despite the imposition of Martial Law till the representatives of the Muslim public in the Parliament and the National Assembly passed the Constitution (Second Amendment) Act of 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 an 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.”

45. Restriction imposed in the light of the above said Ordinance were also challenged before the Hon’ble Lahore High Court and the Hon’ble Court and the

Court in the case of *Mirza Khurshid Ahmad and another Vs. Government of Punjab, Etc. (PLD 1992 Lahore 1)* held that:-

“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, Parsics 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 Kalima 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 hijack Islam. They are welcomed to have any faith but why should they insist to impurify 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.”

The Qadianis (both groups) challenged the decision of the Federal Shariat Court in the Supreme Court (Shariat Bench) under Article 203F of the Constitution. The petitioners-Mujib-ur-Rehman, Mirza Naseer Ahmad, Mubashir Lateef Ahmad and Muzaffar Ahmad represented Qadiani Jamat and Captain (retired) Abdul Wajid presented the point of view of Lahore Jamat. Qadiani petitioners submitted that the impugned ordinance encroached upon the basic rights of the belief and worship of the Ahmadis and was in conflict with letter and spirit of the Quran and Sunnah. They submitted: "this memorandum of appeal with short grounds is therefore submitted based on the short order. The appellants will submit detailed ground for

appeal as and when the detailed judgement is made available." Their short grounds for the appeal were that the Federal Shariat Court held in its short order that: "The impugned ordinance was consequential to the constitutional amendment of 1974 by which the Qadianis, whether belonging to the Lahore Group or the other group were declared non-Muslims" and that the Ordinance was the implementation of the constitutional fiat, the Federal Shariat Court failed to appreciate whether or not the Ordinance was consequential to the constitutional amendment was totally irrelevant for the purposes of the petition (Article 203 D of the Constitution). All that the Federal Court was required to determine was whether the Ordinance was or was not repugnant to the injunctions of the Holy Quran and Sunnah? The dictates of the Constitution were not relevant. The Supreme Court of Pakistan heard both the Shariat Appeals on 10th and 11th of January, 1988. These were dismissed as withdrawn.

46. It was on 23rd March, 1889 that Mirza Ghulam Ahmad had formally launched the Ahmadya movement by accepting bayat at Ludhiana, Punjab. Qadianis were making preparations for quite some time to celebrate the year 1989 as the centenary year of the Community. A detailed programme of Centenary Celebrations was chalked out by the Ahmadis of Rabwah to celebrate the occasion in a befitting manner. The Punjab Government, however, imposed a ban on these celebrations at Rabwah in March. The resentment against Ahmadis was mounting after their ruthless mobahila campaign and it was rightly apprehended that these celebrations would have provoked the Muslims to react vehemently against them. Despite the government restrictions Ahmadis living in Rabwah and other parts of the country celebrated the occasion properly. Embarrassed by the Punjab Government ban on the celebrations, Rabwah elders subsequently moved a constitutional petition in the Lahore High Court praying the Court to declare illegal the orders of the Provincial Home Secretary dated 20 March, 1989 banning these celebrations in the province of Punjab as well as orders of the District

Magistrate Jhang and Residential Magistrate Rabwah to remove ceremonial gates, banners, illuminations, besides ensuring that no further writings would be inscribed on the walls. The Court justified the ban on the centenary celebrations imposed by the Punjab Government. Mr. Justice Khalil-ur-Rehman, in his judgement observed that Qadianis continue to profess and practice their faith and enjoy all the freedom like Hindus, Sikhs, Parsis and other religious minorities but a difficult situation is created by presenting themselves Muslims and using Shaar-i-Islam or Kalima Tayyaba, one of the fundamentals of Islam. The Court held that no untoward situation or incident would arise in case the constitutional mandate was adhered to by Qadianis and they treat themselves as a Community different and distinct from Muslims which is their own case. The Court observed that the role of substituting themselves for Muslims and of excluding general body of Muslim from the fold of Islam was 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 be allowed to hijack Islam? They are welcome to have any faith but why should they insist on impurifying 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.

47. On the instructions of Mirza Tahir Ahmad, Qadianis appealed against this order in the Supreme Court of Pakistan. They also challenged the Prohibition of Qadianyat Ordinance on the ground that it was violative of Article 20 of the Constitution which ensures freedom to every citizen to profess, propagate and practice his/her religion. In July 1993, the Full Bench comprising five Judges of the Supreme Court of Pakistan headed by Mr. Justice-Shafi-ur-Rehman by majority dismissed the Ahmadya appeal challenging various sections of the Ordinance XX. The full Bench comprised Mr. Justice Shafi-ur-Rehman, Mr. Justice Abdul Qadeer Chaudhry, Mr. Justice Mohammad Afzal Lone, Mr. Justice Saleem Akhtar and Mr. Justice Wali Muhammad Khan. Many of the Ahmadya

appeals pertained to conviction under section 298-B of PPC for using a badge of Kalma Tayyaba and saying Azan. Mr. Justice Abdul Qadeer Chaudhry whose judgement was accepted by majority of the judges stated that it is not only in Pakistan but throughout the world that laws, protect the use of words, names and epithets which have special connotations and meanings. Dealing with the contention of Ahmadis that many of them were convicted on the charge of placing badges inscribed with Kalma, Mr. Justice Chaudhry cited section 20 of Indian Company Law which prohibits any other registration on the same name. The learned Judge stated that the Indian Constitution has similar fundamental rights as ours but there is not a single decision of any Indian Courts declaring the registration violative of fundamental rights. Using trade mark or description of others in order to make believe others that they belong to the user amounts to an offence and perpetrator can be imprisoned and fined. Mr. Justice Abdul Qadeer stated that in this case the appellants who are non-muslim want to pose their faith as Islam. **"It must be appreciated that in this part of the world, faith is still the most precious thing to a believer and he will not tolerate a government which is not prepared to save him from such deceptions and forgeries"**. The learned Judge stated that insistence on the part of Qadiani Community to use the prohibited epithets and "Shaa'ire-e-Islam" leave no doubt in the mind even of a common man that the appellants (Qadiani) want to do so intentionally and it amounts to defiling those pious personages and deceiving others. The learned Judge quoted an American Jurist saying the cloak of religion or religious belief does not protect anybody in committing fraud upon the public. "If the Ahmadi Community has no design to deceive why do not they coin their own epithets? Why do not they realise that relying on the exclusive sign, marks, practices of other religions will betray the hollowness of their own religion, and added that there is no law in Pakistan which forbids Ahmadis to coin their own epithets and use them exclusively. Coming to the point that the impugned Ordinance is violative of religious freedom Mr. Justice Abdul Qadeer Chaudhry observed that freedom to

profess religion is subject to law, public order and morality. The learned Judge stated that Courts of other countries have held freedom to act. Freedom to act is subject to law and can not be absolute. The learned Judge quoted John Stuart Mill from his essay on 'Liberty' and observed that liberty did not mean licence to individual to do just what they pleased such liberty would mean the absence of law and order and ultimately the destruction of liberty. Mr. Justice Abdul Qadeer observed that appellants (Ahmedis) have not explained that epithets in question are essential part of their religion. It is well established principle throughout the world that state will not permit anyone to violate or take away the fundamental rights of other in the enjoyment of his rights. " 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". The learned Judge quoted profusely from the writings of Mirza Ghulam Ahmed and his so-called caliphs to show that they (Ahqtedis) are religiously and socially a Community separate and different from the Muslims. Ahmedis have no right to use the epithets etc and the 'Shaa'r-e-Islam' which are exclusive to Muslims and they have been rightly denied their use by law. The learned Judge observed that it is cardinal faith of every Muslim to believe in every prophet and praise him and therefore, if anything is said against the Prophet (PBUH) it will injure the feelings of the Muslims. "Giving permission of assembly or procession to Ahmedis on the street of public places is like permitting civil war", the learned Judge observed. The Hon'ble apex Court passed a unanimous judgment on major issues, whereas, his lordship Mr. Justice Abdul Qadeer Chaudhry submitted his dissenting note on some points. Some extracts from his verdict are being made part of this judgment and are reproduced hereinbelow:-

“Again, if the appellants or their community have no designs to deceive, why do not they coin their own epithets etc.? Do not they realise that relying on the `Shaairs' and other exclusive signs, marks and practices of other religions will betray the hollowness of their own religion. It may

mean in that event that their new religion cannot progress or expand on its own strength, worth and merit but has to rely on deception. After all there are many other religions in the world and none of them ever usurped the epithets etc., of Muslims or others. Rather, they profess and present their own beliefs proudly and eulogies 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.

The Muslims think that the birth of this Ahmadia community during the English rule, in the sub-Continent, among the Muslim society, was a serious and organised attack on its ideological frontiers. They consider it a permanent threat to their integrity and solidarity, because the socio-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 tranquillity 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.

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 fulfils its intent and object. In that event, claiming, propounding, pretending or holding out for a 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 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 situation 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.”

At this juncture two decisions from the lower judiciary of historical importance are worth to find mention in this judgment. One of these decisions was made in pre-partition era during the colonial rule while the other was passed within the first decade after the partition, but almost two decades prior to the second constitutional amendment and other legislation and decisions of the superior courts. Both these decisions are the torch bearers in the judicial history of sub-continent, wherein the learned judges clearly expounded the law on the subject in the light of the personal law of the parties involved. Both these decisions also make it clear that the legal position and status of the Qadianis was quite clear in the light of the injunctions of Holy Quran and Sunnah, even before the passage of amendment. On July 24, 1926, Maulvi Ilahi Bux, a resident of the village Mahanad, in the Tahsil of Ahmadpur Sharqia, Bahawalpur State, filed a suit, on behalf of his daughter, Ghulam Aisha, against Abdur Razzaq Qadiani, in the lower Court of Ahmadpur Sharqia. In the case, it was alleged, by the plaintiff, which Abdur Razzaq to whom she was given in wedlock before her age of puberty, was no longer her lawful husband, since, in consequence of his conversion to Qadianifaith, he had become renegade from Islam and that apostasy, in accordance with the Law of Shariat, renders wedlock null and void. The defendant stated in reply that the Qadianis are only a sect of Islam and that, on the basis of their article of faith, they can not be declared infidel (Kafir) or apostate (Murtad). Hence, there is no ground for dissolution of marriage. This case, having passed through several stages, came up for hearing before Munshi Muhammad Akbar Khan, B.A., LL.B., District Judge, Bahawalnagar. The learned Judge, after several years of full discussion, in which renowned scholars of both the party took part, gave his verdict on February 7, 1935. The verdict reads as follows:

“Judgment: On behalf of the plaintiff, it has been proved that Mirza Sahib (Mirza Ghulam Ahmad of Qadian) is a false claimant of prophethood and hence the defendant who accepts Mirza Sahib as Prophet shall also be deemed an apostate. Therefore, the preliminary issues framed by the Munsif of Ahmadpur Sharqia on November 4, 1926 having been established in favor of the plaintiff, it is hereby declared that the defendant by reason of his conversion to the Qadiani faith has become an apostate and therefore his marriage stands dissolved since the date of his apostasy. Even if the articles of the defendant's faith are considered in the light of the concluded discussions, the plaintiff has successfully established vis-a-vis the allegation of the defendant, that there shall not arise an 'ummati' prophet after Muhammad (peace be upon him). Besides this, the other articles of faith, which the defendant has ascribed to himself may correspond to the general view of the principles in Islamic faith, he shall be deemed to act on them in the sense and import which Mirza Sahib has put upon them. And because this is in conflict with the one which the Muslim Ummah, as a whole, has attributed to them (articles of faith), he can not therefore be called a Muslim. And, in both the cases he is an apostate. And apostate's marriage stands resolved by the reason of his apostasy. **It is, therefore, decreed in favor of the plaintiff that the plaintiff ceased to be the wife of the defendant from the date of the defendant's apostasy and that she will be entitled to the costs incurred in the case.”**

48. Another judgment on the issue came from the Court of Additional Sessions Judge, Rawalpindi which is as under:-

(۲)

فیصلہ شیخ محمد اکبر صاحب۔ ایڈیشنل سیشن جج راولپنڈی

فیصلہ

نقل فیصلہ از عدالت شیخ محمد اکبر صاحب پی سی ایس ایڈیشنل سیشن جج راولپنڈی، مورخہ ۳ جون ۱۹۵۵ء درجیل ہائے دیوانی نمبر ۳۳۳، ۳۳۳، ۳۳۳، ۱۹۵۵ء از مسماۃ امتہ الکریمہ بنام لیٹیننٹ وزیر الدین ملک و از لیٹیننٹ وزیر الدین بنام مسماۃ امتہ الکریمہ مقدمہ ہائی کورٹ نمبر آ ر۔ ایس۔ اے ۱۹۵۵، ۳۰۸ء مسماۃ امتہ الکریمہ دختر کرم الہی (قوم لوہارا زروئے بیان میاں عطاء اللہ وکیل ایجیل کنندہ) ۲۵ ستمبر ۱۹۳۹ء کو بطور مبلغ دو ہزار روپیہ بطور مہر ایک میٹریکولیٹ مسمی وزیر الدین (قوم بڑھئی مطابق بیان میاں عطاء اللہ) کے ساتھ بیانی گئی تھی۔ یہ نکاح سینہ طور پر ایک حنفی مولوی سے پڑھوایا گیا تھا۔ ایجیل کنندہ کے دوسرے وکیل خواجہ محمد اقبال کے بیان کی رو سے مسمی وزیر الدین نے ایک بڑھئی اور میٹریکولیٹ ہوتے ہوئے بھی جب اپنی خوش بختی کے باعث افواج پاکستان میں کمیشن حاصل کر لیا تو اس نے سوچا کہ آئندہ جب افسران اعلیٰ کے ساتھ اس کے مراسم بڑھیں گے تو ایک لوہار کی بیٹی کا شوہر ہونے کے باعث اس کی تذلیل ہوگی اور افسران کی نگاہ میں اسے ”سوشل“ نہ سمجھا جائے گا۔ چنانچہ اس نے مورخہ ۱۶ جولائی ۱۹۵۱ء کو ایک باقاعدہ طلاق نامہ کے ذریعے سے اپنی بیوی کو طلاق دے ڈالی۔ اس پر مسماۃ امتہ الکریمہ نے اپنے سابقہ شوہر لیٹیننٹ وزیر الدین ملک کے خلاف مبلغ دو ہزار روپیہ ہر کی وصولیابی کے لیے مقدمہ دائر کر دیا۔ اس کے علاوہ اس نے ایک اور دعویٰ مبلغ ۳۳۰۳ روپے مالیت کے اس سامان جہیز کے بارے میں بھی کیا جو شادی کے موقع پر اس کو اپنے باپ سے ملا تھا اور جو اس کے سابقہ شوہر نے اپنے قبضہ میں رکھا تھا۔ یہ مقدمہ (pauper suit) تھا۔ لیٹیننٹ وزیر الدین ملک نے مسماۃ امتہ الکریمہ کے عائد کردہ الزامات کو بے بنیاد قرار دیا اور جہیز کے بارے میں بیان کیا کہ اول تو سامان مذکورہ اس کے قبضہ ہی میں نہیں ہے۔ دوسرے مدعیہ نے اس کی

قیمت بھی غلط لگائی ہے۔ مدعیہ کے مطالبہ مہر کے جواب میں یہ دلیل پیش کی گئی کہ اس نکاح کی انجام دہی چونکہ دھوکے اور فریب کے ذریعے سے ہوئی لہذا یہ نکاح سرے سے باطل تھا۔ اس امر کا سبب یہ بیان کیا گیا کہ شادی کے موقع پر مدعیہ کو مسلک حنفی کا بیروہ ظاہر کیا گیا تھا حالانکہ دراصل وہ مرزا غلام احمد صاحب قادیانی کی بیروہ تھی اور یہ کہ اگر شادی کے طے پانے میں دھوکے اور فریب دہندگی کا ثبوت نہ بھی ملے تب بھی یہ شادی ایک مسلمان اور غیر مسلم کے درمیان ہونے کے باعث باطل تھی اس طرح عدز پیش کیا گیا کہ ان واقعات کی بنا پر مدعیہ حق مہر کے حصول کا دعویٰ نہیں کر سکتی۔ اس مقدمہ میں یہ ایک متفق علیا مہر تھا کہ فریقین کی شادی واقعی عمل میں آئی اور دونوں کے ملاپ کا ثمرہ پانچ سال کے لگ بھگ عمر کی ایک بچی کی صورت میں ظاہر ہے۔ مسماۃ المتاکریم نے مدعا علیہ کی طرف سے عائد کردہ اہرام فریب دہندگی کی تردید کی اور عدالت سماعت میں اس نے اپنے حنفی عقیدہ ہونے کا اظہار کیا۔ اس کے والد اکرم الہی نے بھی عدالت سماعت میں اپنے حنفی مسلمان ہونے کا اظہار کیا تاہم ساتھ ہی یہ بات بھی گئی کہ ایک مسلمان مرد اور احمدی عورت کا نکاح بالکل ہی باطل نہیں ہوتا البتہ زیادہ سے زیادہ اس کو ناجائز کہا جاسکتا ہے اور یہ کہ قانون کی نگاہ میں نکاح باطل کوئی حیثیت نہیں رکھتا لیکن بطور خود ناجائز شادیوں کی ایسی مثالیں موجود ہیں جن میں خاوند کوہر کی واجبی یا مصرح رقم کی ادائیگی کرنی پڑتی ہے جب کہ شادی واقع ہو چکی ہو۔

لیفٹیننٹ زیر الدین نے یہ بھی بیان کیا کہ مدعیہ اپنے مہر کے حق سے دست بردار ہو چکی ہے۔ کچھ اور حنفی نکات بھی اٹھائے گئے تھے چنانچہ فریقین کے دلائل سن کر عدالت سماعت نے مندرجہ ذیل امور برائے بحث واضح کیے:

۱۔ آیا مدعیہ اور مدعا علیہ کی شادی فریب اور دھوکہ دہی کے ذریعے سے عمل میں آئی کہ جس کے باعث مدعا علیہ مدعیہ کوہر کی ادائیگی کا ذمہ دار نہیں رہا؟

۱۔ (الف) کیا سبب دھوکہ دہی کے عدم ثبوت کی صورت میں نکاح باطل ہی تھا نیز اس کا اثر دعویٰ مہر پر کیا پڑا؟

۲۔ کیا مدعیہ اپنے مطالبہ مہر سے دست بردار ہو چکی ہے؟

۳۔ کیا مدعیہ کے جہیز کا کوئی سامان مدعا علیہ کے قبضہ میں موجود ہے۔ اگر ہے تو کتنی مالیت کا؟

۴۔ ایسا ہونے کی صورت میں مدعیہ کس قسم کی لدا اور رعایت کی مستحق ہے؟

مقدمہ کی سماعت اور کارروائی کے اختتام پر میاں محمد سلیم صاحب سینئر سول جج راولپنڈی نے اپنے فیصلہ مورخہ ۲۵ مارچ ۱۹۵۴ء کے ذریعے سے مقدمہ طے کیا اور دیگر باتوں کے حسب ذیل نتائج اخذ کیے:

۱۔ فریقین کی شادی کسی قسم کے فریب یا دھوکہ دہی کے ذریعے سے طے نہیں پائی۔

۲۔ مدعیہ اپنے حق مہر سے کبھی دست بردار نہیں ہوئی۔

۳۔ مدعیہ کا سامان جہیز مالیتی مبلغ ۲۳۰۰۳ روپے مدعا علیہ کے قبضہ میں ہے۔

میں نے مدعیہ مسماۃ المتاکریم کی جانب سے میاں عطاء اللہ ڈوکیٹ اور مدعا علیہ لیفٹیننٹ زیر الدین ملک کی جانب سے مسز ظفر محمود ایڈووکیٹ کی بحث اور دلائل سنے ہیں۔ مگر ان میں سے کسی نے میرے روبرو رجولہ بالائنتائج کی صحت کے خلاف ایک لفظ بھی نہیں کہا۔ عدالت سماعت کے اخذ کردہ دیگر نتائج یہ ہیں:

(الف) قادیانیوں کو اہل کتاب تصور نہیں کیا جاسکتا۔

(ب) مدعا علیہ کے ساتھ شادی کے وقت مدعیہ مسماۃ المتاکریم قادیانی ہونے کے سبب غیر مسلم تھی۔

(ج) فریقین کا نکاح مطلقاً ناجائز اور باطل تھا اور ازواجی تعلقات کے بعد بھی اسے ناجائز نہیں ٹھرایا جاسکتا۔

(د) مہر قانوناً قابل بازیابی ہے۔

اوپر دیئے گئے نتائج اور معلومات کی بنا پر میاں محمد سلیم صاحب نے مسماۃ المتاکریم کے حق میں اس کے سابقہ شوہر سے مبلغ ۲۳۰۰۳ روپے بابت مالیت سامان جہیز کے حصول کی، جو اس کے قبضہ میں تھا، ڈگری دے دی مگر اس کے دعویٰ حق مہر کو خارج کر دیا۔ اس فیصلہ ڈگری کے خلاف یہ دوا اپیلیں داخل کی گئی ہیں۔ مسماۃ المتاکریم نے تو اپنے مہر مبلغ ۲۰۰۰ روپے کی وصولی کے لیے اپیل کی ہے اور لیفٹیننٹ زیر الدین ملک کی اپیل سامان جہیز کی مالیت سے متعلق ڈگری سے چھٹکارا پانے کے لیے ہے۔ مختلف شہادتوں اور خصوصاً مسماۃ المتاکریم کے خطوط سے یہی ظاہر ہوتا ہے کہ وہ نکاح کے وقت قادیانی تھی لہذا میں عدالت سماعت کے اخذ کردہ اس نتیجے کی توثیق کرتا ہوں۔

اپنی بحث کے آغاز میں اپیل کنندہ کے فاضل وکیل میاں عطاء اللہ نے بشمولہ اور باتوں کے درج ذیل امور پیش کیے:

۱۔ مسلمانوں کا اس امر پر کوئی اجماع نہیں ہے کہ بیغیر اسلام محمد اللہ کے آخری نبی تھے اور آپ کے بعد کوئی نبی مبعوث نہیں ہوگا۔

۲۔ مسلمانوں کا اس بات پر بھی اجماع نہیں ہے کہ جو شخص حضرت محمدؐ کی ختم نبوت پر ایمان نہ رکھے وہ مسلمان نہیں۔

۳۔ اور نہ ہی ان کا اس بات پر اجماع ہے کہ قادیانی احمدی غیر مسلم ہیں۔

عدالت سماعت کے فاضل جج مسئلہ زیر بحث نمبر (الف) پر بحث سننے کے بعد اس نتیجے پر پہنچے تھے کہ یہ مسلمانوں کا بنیادی عقیدہ ہے کہ حضرت محمد ﷺ سلسلہ انبیاء کے آخری نبی تھے اور آپ کے بعد کوئی اور نبی نہیں ہوگا۔ ان کے اس عقیدے کی خاص بنیاد ”خاتم النبیین“ کے وہ الفاظ ہیں جنہیں قرآن حکیم نے ہمارے نبی اکرمؐ کی ذات اقدس کے لیے استعمال کیا ہے۔ لیکن قادیانی حضرات ان الفاظ کو ”خاتم النبیین“ پڑھ کر ان کے معانی ”نبیوں کے ہر کنندہ“ کے کرتے ہیں۔ ان کے ہاں ان الفاظ کی تعبیر اپنے اندر نبیوں کے ایک ایسے سلسلے کے جاری رہنے کی گنجائش رکھتی ہے جو آپ کے بعد آپ کی مہر لگ کر آتے رہیں گے۔ ان کے عقیدے کے مطابق مرزا غلام احمد صاحب بھی اسی نوع کے انبیاء تھے اور قرآن حکیم سے علیحدہ کوئی کتاب لے کر مبعوث نہیں ہوئے بلکہ ان کے ذمہ یہ فرض تھا کہ اللہ تعالیٰ کی طرف سے ملنے والے معزید الہامات کی روشنی میں اس کتاب کی تشریح و توضیح کریں۔ قادیانی اس

طرح کے نبی کو ظلی“ یا ”غیر تشریحی“ نبی کہتے ہیں جو کہ ”تشریحی نبی“ یعنی نبی شریعت کے حامل نبی سے مختلف ہوتا ہے۔ اس موقع پر عدالت سماعت نے یہ ضروری خیال کیا کہ خود مرزا صاحب کے مصنف ایک کتابچہ سے حوالے دے کر یہ دکھایا جائے کہ مرزا صاحب کا دعویٰ اصل میں کیا تھا؟

”پہلے میرا عقیدہ بھی یہی تھا کہ مجھے عیسیٰ ابن مریم علیہ السلام سے کوئی نسبت نہیں ہو سکتی، آپ رسول تھے اور آپ مقررین خداوندی میں سے ہیں اور جب کبھی میری فوقیت جتانے کی خاطر مجھ پر کوئی نشانی ظاہر کی گئی تو میں نے اسے محض جزوی فوقیت ہی پر محمول کیا مگر جس وقت میرے اور وحی الہی بارش کی طرح آنا شروع ہوئی تو میں اپنے سابقہ عقیدے پر قائم نہ رہ سکا آخر کار مجھے صاف طور پر اعزاز نبوت بخش دیا گیا۔“ (حقیقہ الوحی ص، ۱۳۹، اور ص، ۱۵۰)

اس باب میں مرزا صاحب کے تعین کے نظریہ کو واضح کرنے کے لیے دوسرے قادیانی خلیفہ مرزا بشیر الدین محمود کے مندرجہ ذیل اقتباس کو پیش کرنا ضروری سمجھا گیا:

”ہمارا یہ فرض ہے ہم غیر احمدیوں کو مسلمان نہ سمجھیں اور نہ ان کی اقتداء میں نمازیں پڑھیں کیونکہ ہمارے نزدیک وہ اللہ کے ایک نبی کے منکر ہیں۔“ (انوار خلافت ص، ۹۰)

عدالت سماعت مزید اس نتیجہ پر پہنچی کہ نبوت کے بارے میں قادیانی نظریہ دوسرے مسلمانوں کے عقیدہ کے ہر اس خلاف ہے۔

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مدعیہ کے فاضل وکیل نے عدالت سماعت کے سامنے مقدمہ نمبر اے۔ آئی۔ آر۔ ۱۹۲۳ء مدراس کی نظیر بھی پیش کی ہے جس میں قادیانیوں کو مسلمانوں ہی کا ایک فرقہ قرار دیا گیا ہے۔ لیکن اس نظریہ کی بنا یہ تھی کہ مرزا غلام احمد صاحب کے اعلان نبوت کو ناقابلِ عمل قرار دیا گیا کہ یہ کہنا ممکن نہیں تھا کہ مسلمانوں کی رائے عام قادیانیوں کو مسلمان کہنے کے خلاف ہے۔ عدالت سماعت اس بات پر بحث سے اس ہی نتیجہ پر پہنچی تھی کہ یہ بات بلا خوف و ترديد کہی جاسکتی ہے کہ احمدیوں کے علاوہ مسلمانوں کے ہر طبقہ خیال کے علمائے کسی نہ کسی موقع پر قادیانیوں کو غیر مسلم قرار دیا ہے نہ کہ مسلمانوں میں ہی کا ایک فرقہ۔ عدالت کے خیال میں یہ حقیقت ”تشیخ نکاح مرزائیاں“ نامی اس پمفلٹ سے اچھی طرح واضح ہو جاتی ہے جو ۱۹۲۵ء میں ”اہل حدیث“ امرتسر کے دفتر سے شائع ہوا تھا اور جو اسلام کے مختلف فرقوں کے جید علماء کے فتوؤں پر مشتمل تھا۔ اس مسئلہ کی اس سے بھی زیادہ وضاحت ۱۹۳۵ء کے مشہور مقدمہ مسماۃ عائشہ بنام عبدالرزاق میں فاضل ڈسٹرکٹ جج بہاولپور کے فیصلہ سے ہو جاتی ہے۔ یہ فیصلہ کتابی شکل میں بھی شائع ہوا تھا۔ اس میں قادیانیوں اور مسلمانوں کے متعدد اختلافات پر فریقین اور فریقین کی جانب سے پیش کردہ مذہبی رہنماؤں کے بے شمار دلائل اور فتوؤں کی روشنی میں حیرت انگیز بحث کی گئی تھی۔ اس ضمن میں عدالت سماعت نے اس حقیقت کا عدالتی نوٹس لینا ضروری سمجھا کہ قادیانیوں کے خلاف حالیہ ملک گیر ایجنسی ٹینشن کے دوران احمدیوں کے سوا مسلمانوں کے ہر طبقہ فکر کے علماء کی ایک کانفرنس منعقد ہوئی جس میں انھوں نے متفقہ طور پر اعلان کیا کہ عرف عام (in the accepted sense) میں قادیانی مسلمان نہیں ہیں۔ کیونکہ وہ ایک بالکل ہی جدا گانہ دین کے پیرو ہیں۔ لہذا اس موقع پر یہ بات بلا تامل کہی جاسکتی ہے کہ مسلمانوں کا کامل اتفاق رائے کی رو سے قادیانی غیر مسلم ہیں۔ ایک اور بحث جو مدعیہ کے فاضل وکیل نے چھیڑی، وہ تھی کہ احمدی کم از کم قرآن مجید پر تو ایمان رکھتے ہیں لہذا انہیں اہل کتاب یا تعین قرآن پاک کے زمرہ میں شامل کیا جاسکتا ہے اور شریعت اسلامیہ میں مسلمان اور اہل کتاب کی شادی ناجائز نہیں ہے اور ایسی شادی کو ازدواجی تعلقات ہو جانے کی صورت میں ”قانوناً“ تسلیم کیا جاتا ہے اور شوہر پر مہر کی ادائیگی واجب ہو جاتی ہے۔

یہ کتاب (قرآن) ان لوگوں کے لیے ہدایت کا کوئی سامان نہیں رکھتی جو آنحضرتؐ کی وفات کے بعد بھی کسی وحی کے آنے پر اعتقاد رکھتے ہوں۔ اس کتاب پر قادیانیوں کا ایمان چونکہ مرزا غلام احمد صاحب کے مجموعہ الہامات کے مطابق ہے لہذا عدالت کی نگاہ میں مدعیہ کے فاضل وکیل کے دلائل میں کوئی وزن نہیں اور قادیانی اہل کتاب بھی نہیں سمجھے جاسکتے۔ مدعیہ علیہ کے ساتھ شادی کے وقت غیر مسلم تھی اس لیے فریقین کی شادی قطعاً باطل تھی اور ازدواجی تعلقات کا ہونا بھی اس کو جائز نہیں سمجھا جاسکتا، لہذا مہر، قانونی لحاظ سے ناقابلِ زانیہ ہے۔ یاد رہے کہ احمدیوں کی لاہوری شاخ مرزا صاحب کو نبی نہیں مانتی بلکہ صرف مجددی مانتی ہے۔

اس مقدمہ میں پیش آمدہ سوالات بڑے دور رس نتائج کے حامل ہیں اور زمرہ کے واقعات سے تعلق رکھتے ہیں۔ ہماری محرز عدالت عالیہ لاہور کی طرف سے ابھی تک کوئی ایسی قانونی سند یا نظیر موجود نہیں جس میں اس نکتہ پر مستند فیصلہ کیا گیا ہو۔ مدعیہ کے فاضل وکیل میاں عطاء اللہ نے فسادات کی جس تحقیقاتی رپورٹ کا حوالہ دیا ہے اور جس پر انحصار کیا ہے اس سے ظاہر ہوتا ہے کہ مرزا غلام احمد صاحب ضلع کورواں پور کے قادیان نامی ایک گاؤں کے رہنے والے تھے۔ انھوں نے فارسی اور عربی کی تعلیم گھر پر ہی حاصل کی اور ان کے مغربی تعلیم حاصل کرنے کا کوئی ثبوت نہیں ملتا۔ وہ ۱۸۶۳ء میں سیالکوٹ کی ضلع کچہری میں محرر مقرر ہوئے جہاں انھوں نے چار سال ملازمت کی۔ مارچ ۱۸۸۲ء میں انھوں نے دہلی گیا کہ انہیں ایک ”الہام“ کے ذریعے بتایا گیا ہے کہ وہ اللہ کی طرف سے ایک خاص مشن پر مقرر کیے گئے ہیں۔ بالفاظ دیگر وہ ”مامور من اللہ“ ہیں۔ ۱۸۸۸ء میں ایک اور الہام کے تحت اپنے وابستگان سے بیعت کا مطالبہ کیا اور ۱۸۹۰ء کے اختتام کے قریب پھر ایک ”الہام“ ہوا جس میں بتایا گیا کہ مسیح ناصری یعنی عیسیٰ ابن مریم علیہ السلام نے نلو صلیب پر وفات پائی اور نہ ہی انہیں آسمان پر اٹھایا گیا تھا بلکہ ان کے حواریوں نے زنی حالت میں صلیب پر سے اتار لیا تھا اور پھر ان کے زخم اچھے ہو گئے۔ اس کے بعد آپ چھپ کر کشمیر چلے گئے جہاں آپ طبعی موت مرے اور یہ عقیدہ کہ وہ قیامت کے قریب اپنی اصل جسمانی حالت میں دوبارہ نزول فرمائیں گے، غلط ہے۔ آپ کے ظہور ثانی کے وعدہ کا مطلب محض یہ ہے کہ ایک شخص عیسیٰ ابن مریم کی صفات کا حامل ہوگا۔ پیغمبر اسلام ہی کی امت میں سے ظاہر ہو

گا، سواپ اس وعدہ کی تکمیل خود مرزا صاحب کی بعثت کی صورت میں ہو چکی ہے جو شعل عیسیٰ ہونے کے سبب مسیح موعود ہیں۔ اس عقیدہ کی تشہیر سے مسلمان بھڑک اٹھے کیونکہ یہ ان کے اس مسلمہ عقیدے، کہ عیسیٰ ابن مریم اپنی اصل جسمانی حالت میں آسمان سے دوبارہ ظہور فرمائیں گے، کے خلاف تھا۔ چنانچہ مسلمان علماء میں اس نظریہ کے خلاف شدید مخالفت پیدا ہو گئی۔ پھر اس کے بعد مرزا صاحب نے مہدی موعود ہونے کا دعویٰ بھی کر دیا۔ وہ مہدی نہیں جو جنگ و قتال کرے گا بلکہ ایک ایسا مہدی جو اپنے دلائل سے مخالفین کو ختم کر دے گا۔ ۱۹۰۰ء میں مرزا صاحب نے ایک مزید عقیدہ لوگوں کے سامنے پیش کیا کہ اب جہاد باسیف باقی نہیں بلکہ اب جہاد صرف مخالفین کو دلائل سے قائل کرنے کی کوششوں تک محدود ہو گا۔ ۱۹۰۱ء میں مرزا صاحب نے ”غلطی“ نبوت کا دعویٰ کیا اور ”اک غلطی کا ازالہ“ نامی اشتہار کے ذریعے عقیدہ ختم نبوت کی تشریح یوں کی کہ پیغمبر اسلام کے بعد کوئی نبی ایسا نہیں ہو گا جو نبی شریعت لے کر آئے لہذا کسی غیر تشریح نبی کی آمد ختم رسالت کے عقیدہ کے منافی نہیں ہے۔ نومبر ۱۹۰۳ء میں سیالکوٹ کے ایک عام جلسے میں مرزا صاحب نے مثیل کرشن ہونے کا دعویٰ بھی کیا۔

جماعت احمدیہ کی تاسیس ۱۹۰۱ء میں عمل میں آئی اور اس وقت مرزا صاحب ہی کی درخواست پر مردم شماری کے کاغذات میں اس جماعت کو مسلمانوں کے ایک علیحدہ فرقہ کی حیثیت سے ظاہر کیا گیا۔

مرزا غلام احمد صاحب کے متبعین کے محلولہ بالا چند مخصوص عقائد اور نظریات نے مسلمانوں اور قادیانیوں کے درمیان شدید مذہبی اختلافات کھڑے کر دیئے۔ تحقیقاتی عدالت کے معزز ججوں نے اپنی رپورٹ میں مزید یہ کہا کہ مہدی فرقہ کے بانی مرزا غلام احمد صاحب کے دعویٰ نبوت نے امت مسلمہ میں ایک ہیجان برپا کر دیا اور مسلمانوں کی رائے میں ان کے اس عقیدے نے انہیں دائرہ اسلام سے قطعی خارج کر دیا۔ ایک عام طور پر تسلیم شدہ حدیث کے مطابق اللہ تعالیٰ نے بنی نوع انسان کی ہدایت اور رہنمائی کی خاطر جو انبیاء مامور فرمائے ان کی تعداد ایک لاکھ چوبیس ہزار ہے اور مسلمان آنحضرت ﷺ کو انبیاء کے اس سلسلے کا آخری نبی مانتے ہیں۔ ان انبیاء میں سے بعض کے نام خاص طور پر قرآن حکیم اور انجیل میں بیان کیے گئے ہیں۔ عقیدہ ختم نبوت کے یہ معانی کہ نبوت آنحضرت ﷺ کی وفات پر ختم ہو گئی اور آپ کے بعد کوئی نبی نہیں ہو گا۔ قرآن مجید کی مندرجہ ذیل آیات سے اخذ کیے جاسکتے ہیں۔

لو کوا محمدؐ تمہارے مردوں میں سے کسی کے باپ نہیں مگر وہ اللہ کے رسول اور خاتم النبیین ہیں اور اللہ ہر چیز کا علم رکھنے والا ہے۔ الاحزاب

40:33

یاد کرو اللہ نے پیغمبروں سے عہد لیا تھا کہ ”آج ہم نے تمہیں کتاب اور حکمت و دانش سے نوازا ہے کل اگر کوئی دوسرا رسول تمہارے پاس اس تعلیم کی تصدیق کرنا ہوا آئے جو پہلے سے تمہارے پاس موجود ہے تو تم کو اس پر ایمان لانا ہو گا اور اس کی مدد کرنی ہو گی“ ارشاد فرما کر اللہ تعالیٰ نے پوچھا ”کیا تم اس کا اقرار کرتے ہو اور اس پر پیر کی طرف سے عہد کی بھاری ذمہ داری اٹھاتے ہو؟ انھوں نے کہا ہاں ہم اقرار کرتے ہیں۔ اللہ نے فرمایا ”اچھا تو گواہ رہو اور میں بھی تمہارے ساتھ گواہ ہوں۔ آل عمران 81:3

آج کافروں کو تمہارے دین کی طرف سے پوری مایوسی ہو چکی ہے لہذا تم ان سے نہ ڈرو، بلکہ مجھ سے ڈرو، آج میں نے تمہارے دین کو تمہارے لیے مکمل کر دیا ہے اور اپنی نعمت تم پر تمام کر دی ہے اور تمہارے لیے اسلام کو تمہارا دین چن لیا ہے۔ المائدہ 3:5

اس کے علاوہ متعدد احادیث اور قرون اولیٰ کی جن میں مستند تفسیر سے استدلال کیا گیا ہے، وہ سب اس مطلب کی ہیں کہ ہمارے نبی اکرم کے بعد کوئی نبی نہ آئے والا نہیں۔

لیفٹیننٹ زیر الدین کے فاضل وکیل شیخ ظفر محمود نے اپنی بحث میں رسالہ طلوع اسلام جولائی ۱۹۵۳ء پمفلٹ ”کاخ مرزایاں“ رسالہ ”ترجمان القرآن“ نومبر ۱۹۵۳ء اور ”قادیانی مسئلہ“ از مولانا ابوالاعلیٰ مودودی سے استدلال کیا ہے۔

میاں عطاء اللہ نے رسالہ ”طلوع اسلام“ جولائی ۱۹۵۳ء ”ختم نبوت کی حقیقت“ از مرزا بشیر احمد ایم۔ اے (برخود مرزا بشیر الدین محمود خلیفہ ثانی مرزا غلام احمد صاحب) ”الحق“ ”عرف مباحثہ لدھیانہ“ از بانی فرقہ احمدیہ ”” ”ہیچینہ الوہی“ از بانی سلسلہ احمدیہ، فسادات پنجاب ۱۹۵۳ء پر تحقیقاتی عدالت کی رپورٹ، مولانا ابوالاعلیٰ مودودی کے قادیانی مسئلہ کا قادیانیوں کی طرف سے جواب ”تحقیقاتی عدالت میں مرزا بشیر الدین محمود کا بیان“، ”مقدمہ بہاد پور“ از جلال الدین شمس احمد ”تصدیق احمدیہ“ از بشارت احمد وکیل حیدرآباد دکن ”ہیچینہ الوہی“ چوتھا ایڈیشن ۱۹۵۰ء تحقیقاتی عدالت کی رپورٹ پر ایک نظر، از جلال الدین شمس صدر انجمن احمدیہ پاکستان کے مفصل حوالے پیش کیے ہیں انھوں نے میری توجہ خاص طور پر قادیانیوں کے اس نقطہ نظر کی جانب مبذول کرائی ہے جس کا اظہار احمدیہ کمیٹی کے فاضل وکیل مسٹر عبدالرحمن خادم نے تحقیقاتی عدالت کے روبرو کیا تھا۔ وہاں خادم صاحب نے قرآن مجید کی حسب ذیل آیات سے استدلال کیا تھا۔

جو اللہ اور رسول کی اطاعت کریں گے وہ ان لوگوں کے ساتھ ہوں گے، جن پر اللہ نے انعام فرمایا ہے یعنی انبیاء (جو تعلیم دیتے ہیں) اور صدیقین (جو صداقت کے شہدائی ہیں) اور شہداء (جو کواہی دیتے ہیں) اور صالحین (جو نیک کام کرتے ہیں) کیسے پیچھے ہیں یہ رفیق جو کسی کو میسر آئیں۔

النساء: 89

اور جو لوگ اللہ پر اور اس کے رسولوں پر ایمان رکھتے ہیں ایسے ہی لوگ اپنے رب کے نزدیک صدیق اور شہید ہیں ان کے لیے ان کا اجر اور ان کا نور ہو گا اور جو لوگ کافر ہوئے اور ہماری آیتوں کو بھٹلایا یہی لوگ دوزخی ہیں۔ الحدید 19:57

اے بنی آدم! درکھو اگر تمہارے پاس خود تم ہی میں سے ایسے رسول آئیں جو تمہیں آیات سنائیں! تو جو کوئی نافرمانی سے بچے گا اور اپنی اصلاح کر لے گا اس کے لیے کسی خوف اور رنج کا موقع نہیں ہے۔ الاعراب 37:7

لے گا اس کے لیے کسی خوف اور رنج کا موقع نہیں ہے۔ الاعراب 37:7

انے نبیو! تمام پاکیزہ اور اچھی چیزوں سے مستفید ہو۔ نیک کام کرو کیونکہ جو کچھ تم کرتے ہو میں اس سے پوری طرح باخبر ہوں۔

المومنون 91:32

بحث اور دلائل کے عمل سے مندرجہ بالا آیات سے یہ ثابت کرنے کی سعی کی گئی ہے کہ مستقبل میں یعنی آنحضرتؐ کے بعد بھی ایسی ہستیاں پیدا ہوتی رہیں گی جن پر ”نبی“ اور ”رسول“ کے الفاظ کا اطلاق ہو سکے گا اور ان دلائل کو مزید مضبوط بنانے کی کچھ احادیث، کچھ تفاسیر اور کچھ قابل احترام روحانی مرتبہ کے بزرگوں کے اقوال سے بھی استدلال کیا گیا ہے۔ اگرچہ اس بات کو تو نہیں جھٹلایا گیا کہ مرزا غلام احمد صاحب نے اپنے لیے نبی کا لفظ استعمال کیا تھا تاہم یہ بحث کی گئی ہے کہ انھوں نے اس لفظ کو ایک مخصوص مفہوم میں استعمال کیا تھا نہ کہ اس کے اصطلاحی مفہوم میں اور وہ کوئی ایسے شخص نہیں تھے جو اللہ تعالیٰ کی طرف سے کوئی نازہ پیغام لے کر آئے ہوں جو پہلے سے نازل شدہ کسی حکم کی ترمیم و تنسیخ کرنا ہو نیز ان کا دعویٰ ”ظلمی“ اور ”بروزی“ نبوت کا تھا نہ کہ تشریحی نبوت کا۔ فریق مخالف نے اس بات پر زور دیا کہ ”بروزی“ اور ”ظلمی“ جن کا ترجمہ ”جسمانی ظہور“ کیا جاسکتا ہے اسلامی عقائد کے لیے اچھی ہیں اور ہر وہ شخص جو ایک ایسی چیز کے حامل ہونے کا دعویٰ کرے جس کو ”وحی نبوت“ سے تعبیر کیا جاسکے بہر حال ایک نئی امت کی تشکیل کرتا ہے اور آپ سے آپ دائرہ اسلام سے خارج ہو جاتا ہے۔ چنانچہ مرزا غلام احمد صاحب، ان کے فرقہ کے موجودہ سربراہ اور اس فرقہ کے نمائندہ مصنفین کی متعدد تحریروں کی مدد سے یہ بات ثابت کرنے کی کوشش کی گئی ہے کہ مرزا صاحب نے ایسے الہامات یا وحی پانے کا دعویٰ کیا تھا جو اللہ تعالیٰ کی طرف حضرات انبیاء کرام علیہم السلام کے لیے خاص ہے۔ لہذا اب ساری بحث سمٹ کر اس سوال پر آ جاتی ہے کہ آیا مرزا صاحب نے کبھی ایسی وحی کی پابندی کا دعویٰ کیا جسے وحی نبوت سے موسوم کیا جاسکے؟ ماضی میں جب بھی کوئی نبی آیا اس نے لوگوں پر جن کے درمیان اس کی بعثت ہوئی ایک ذمہ داری عائد کی (جس طرح ہمارے نبی اکرم ﷺ نے ساری انسانیت پر آپ کے دعوے کو پرکھنے اور اس پر ایمان لانے کی ذمہ داری ڈالی) اور اپنی نبوت کا انکار کرنے پر انہیں آخرت کے مواخذہ کے مستحق ٹھہرایا۔ لہذا وہ لوگ اپنے آپ کو مجبور پاتے ہیں کہ یا تو وہ اس کے دعوے نبوت کو تسلیم کریں یا پھر کھلے بندوں سے رد کر دیں۔ ایسے کسی دعوے کو قبول کرنے والوں پر مشتمل ایک نئی مذہبی برادری معرض وجود میں آ جاتی تھی جسے پچھلے عقیدہ کے حامل لوگ اپنے سے خارج سمجھتے تھے اور نئی جماعت ان لوگوں کو اپنی برادری سے باہر تصور کرنے لگتی تھی جو اس کے نبی پر ایمان نہیں لاتے تھے۔ مرزا صاحب نے بھی لوگوں کی طرف اسی ہدایت کے ساتھ اپنا ہاتھ بڑھایا کہ وہ اسے قبول کریں مگر مسلمانوں نے مرزا غلام احمد کے دعوے نبوت کو مسلمہ کذاب کی مانند سمجھا اپنی اولین تحریروں میں مرزا صاحب نے صاف صاف الفاظ میں تسلیم کیا تھا کہ مسلمان ہونے کے لیے اسلام کے بنیادی عقائد پر ایمان لانا ضروری ہے۔ اپنی کتاب ”ایام صلح“ میں احمد یہ فرقہ کے بانی نے خود یہ تحریر کیا کہ اہل سنت کے بنیادی عقائد جن پر عام مسلمانوں کا اجماع ہے، اسلام ہے جس پر ایمان لانے کے مسلمان پابند ہیں۔ ایک دوسری کتاب ”انجام آتھم“ میں انھوں نے لکھا کہ جو شخص شریعت سے سر مو بھی تجاوز کرے اور ان اصولوں کو اپنانے سے انکار کرے جن پر امت کا اجماع ہے تو وہ اللہ، اس کے فرشتوں اور تمام انسانوں کی لعنت کا مستحق ہے۔ اور ان کا اسی بات پر پختہ عقیدہ تھا کہ کتاب ”ازالہ اوہام“ کے صفحہ ۲۳ پر لکھتے ہیں کہ تو اترا (جو لوگوں کا مسلسل عقیدہ رہا ہو) کبھی غلط نہیں ہو سکتا۔ اس کے تھوڑے عرصہ بعد ہی مرزا صاحب نے خود اپنی ہی نبوت کا دعویٰ کھڑا کر دیا۔ ان کی اس ”نبوت“ کی نوعیت خود ان کے اپنے اور ان کے جانشینوں اور پیروکاروں کے اعلانات، ہدایات اور تحریرات کی روشنی میں حسب ذیل ہے۔

۱۔ ”ہیبتہ الوحی“ کے ایک الہام میں دعویٰ کیا کہ خدا نے انہیں ”محمد“ اور رسول کے الفاظ سے خطاب فرمایا ہے۔

۲۔ اللہ تعالیٰ نے انہیں بتایا کہ قرآن وحدیث کی پیشین گوئیاں انہیں کے بارے میں ہیں اور آیت ”ھوالذی ارسل رسولہ بالحدی“ انہیں کے متعلق

ہے۔ (اعجاز احمدی، ص ۷۱)

۳۔ ”ضمیمہ براہین احمدیہ“ کے صفحہ ۱۳۹ پر اعلان کیا کہ لفظ ”نبی“ کے معانی پر آج تک کسی نے غور نہیں کیا اور یہ کہ اس لفظ سے مراد صرف ایسا ہی شخص ہے جو اپنے ساتھ مکالمہ کرنے والے خدا کی بھیجی ہوئی وحی کے ذریعے اس کی خبریں لوگوں تک پہنچائے۔ ایسے شخص کے لیے ضروری نہیں کہ وہ صاحب شریعت ہو اور نہ اس پر یہ لازم ہے کہ وہ کسی صاحب شریعت نبی کا پیرو ہو نیز روز حشر تک تمام انسانوں کو مرتبہ نبوت کے حصول سے محروم کر دیئے جانے کی کوئی تک نہیں۔ جو دین لوگوں کا اس قسم کی باتیں سکھائے وہ لائق مذمت ہے اور جو انسان اس طرح کی چیزوں کا ڈھنڈورا پیٹتا پھرے وہ اللہ کا نبی نہیں ہو سکتا البتہ شیطان کا بیجا مبر ضرور ہو سکتا ہے۔ یہ باتیں اسلام اور رسول مقبول ﷺ کی کھلی توہین ہیں۔

۴۔ ”دافع البلاء“ کے صفحہ ۱۱ پر لکھا کہ سچا خدا وہی ہے جس نے قادیان میں اپنا رسول بھیجا۔

۵۔ ”ہیبتہ الوحی“ کے صفحہ ۱۳۹-۱۵۰ پر لکھا ہے کہ پہلے میرا عقیدہ یہ تھا کہ میں حضرت عیسیٰ علیہ السلام کا ہمسر نہیں ہو سکتا کیونکہ وہ رسول تھے مگر بعد ازاں جب مجھ پر وحی کی بارش ہوئی مجھے اپنے سابقہ عقیدے کو ترک کرنا پڑا۔ اب اللہ مجھے رسول کہہ کر پکارتا ہے اور مجھے اس نے واضح طور پر اپنا رسول مقرر کیا ہے۔

۶۔ ”ازالہ اوہام“ کے پہلے ایڈیشن کے صفحہ ۶۳۳ پر خود کو رسول احمد کہا ہے اور اپنا مرتبہ قرآن سے جتانے کی سعی کی ہے۔ اسی کتاب کے صفحہ ۶۶ پر اپنے آپ کو مسیح موعود بتایا ہے اور ”معیا رالاخیرا“ کے صفحہ ۱۱ پر خود کو متعدد انبیاء کرام سے افضل کہا ہے۔ ”خطبہ الہامیہ“ کے صفحات ۱۹/۳۵ پر اپنے آپ کو انسانیت کے بلند ترین مقام کا حامل بتایا ہے۔ اپنی تقریر سیا لکھوت کے صفحہ ۳۳ پر مسلمانوں کے لیے مسیح و مہدی اور ہندوؤں کے لیے کرشن مہاراج ہونے کا دعویٰ کیا ہے۔ ”دافع البلاء“ کے صفحہ ۱۳ پر یہ لکھ کر حضرت امام حسینؑ پر اپنی فوقیت کا دعویٰ کیا ہے کہ حسین علیہ السلام اپنے دشمنوں کے ہاتھوں مارے گئے مگر وہ (یعنی مرزا صاحب) شہید محبت (خدا کی محبت) ہیں۔ پھر حضرت عیسیٰ کے اہل خاندان کی بے حرمتی ان الفاظ میں کی ہے کہ آپ علیہ السلام کی تین دادیاں اور تین نانیاں بدکار عورتیں تھیں نیز آپ علیہ السلام عادی کذاب اور دروغ گو تھے اور آپ علیہ السلام کے پاس دجل و فریب اور سریریم کے سوا کچھ نہیں تھا۔

۷۔ غیر مبہم اور واضح انداز میں اپنی نبوت کا دعویٰ کیا اور کہا کہ میں نبی ہوں اور اس امت میں نبی کا لفظ صرف میرے ہی لیے خاص ہے۔ (حقیقۃ الوحی ص ۳۹۱)

مجھے وحی آئی ہے۔ اور مجھے اللہ نے رسول بنا کر بھیجا ہے۔ (ایضاً)

میں وحی کے بغیر کچھ نہیں کہتا (اربعین جلد ۳)

اللہ نے مجھے بتایا ہے کہ بلاشبہ میں اس کا رسول ہوں۔ (ایضاً ص ۱۰۷)

اللہ نے اور کسی انسان کو وہ عزت نہیں بخشی جو مجھے بخشی ہے۔ (ایضاً ص ۱۰۶)

اللہ نے مجھے کوڑ عطا فرمایا ہے۔ (ضمیمہ انجام آختم ص ۳۵)

اپنے آپ کو سچا اور اصل خدا کہہ کر اللہ تعالیٰ کا دجہ دیا اور کہا میں یقین کے ساتھ کہتا ہوں کہ میں ہی خدا ہوں اور میں نے ہی زمین و آسمان پیدا کیے ہیں۔ (آئینہ کمالات ص ۵۶۳، ۵۶۵)

ہر وہ شخص جو ان پر ان کی اپنی بیان کردہ حیثیت میں ایمان نہیں لاتا وہ کافر ہے۔ (حقیقۃ الوحی ص ۱۶۳)

ان کے یقین کے لیے ان کا انکار کرنے والوں کی اقتدا میں نماز پڑھنا ممنوع ہے۔ (فتاویٰ احمدیہ جلد نمبر ۱، ص ۱۸)

خدا نے انہیں اپنا بیٹا کہہ کر مخاطب کیا۔ (البشارۃ ص ۳۹)

اللہ نے بتایا کہ اگر وہ انہیں پیدا نہ کرتا تو اس کا نکاح ہی کو پیدا نہ کرتا۔ (حقیقۃ الوحی ص ۹۹)

مرزا صاحب کے ان دعوائی کی بنا پر ۱۹۲۵ء میں تمام فرقوں کے علماء سے ایک فتویٰ حاصل کیا گیا جس پر عدالت سماعت نے اعتماد کیا ہے۔

۸۔ مرزا غلام احمد کے مذکورہ بالا اعلانات سے نبوت کو ان کے جانشین اور احمدیہ فرقہ کے موجودہ سربراہ مرزا بشیر الدین محمود کی طرف سے مسلسل دہرایا جاتا رہا ہے۔ اپنی کتاب ”حقیقت نبوت“ کے صفحہ ۲۲۸ پر مرزا محمود نے لکھا ہے کہ یہ امر روز روشن کی طرح ایک مسلمہ حقیقت کا روپ دھار چکا ہے کہ پیغمبر اسلام کے بعد نبوت کا دروازہ بند نہیں ہوا۔ ”انوار خلافت“ میں انہوں نے کہا ہے کہ مسلمانوں نے غلط طور پر یہ سمجھ رکھا ہے کہ خدا کے خزانے خالی ہو چکے ہیں۔ انہیں اللہ کی قدرت کا اندازہ نہیں ورنہ ایک تو کیا میں یقین سے کہتا ہوں کہ ہزاروں انبیاء اور آئیں گے۔ اپنی اسی کتاب کے صفحہ ۶۵ پر احمدیوں کے موجودہ سربراہ نے لکھا ہے کہ اگر اس کی گردن کے دونوں جانب تلواریں رکھ کر اس سے یہ بیان کرنے کو کہا جائے کہ پیغمبر اسلام ﷺ کے بعد کوئی نبی نہیں ہوگا تو وہ یہی کہے گا (کیا ایسے بیان کا مطالبہ کرنے والا) شخص جھوٹا ہے کیونکہ کے نبی کریم ﷺ کے بعد انبیاء کی بعثت ہو سکتی ہے اور بالیقین نبی مبعوث ہوئے ہیں۔ اس طرح مرزا غلام احمد صاحب نے نئے نئے نبیوں کے ظہور کا دروازہ کھولا اور قادیانی جماعت نے مرزا غلام احمد صاحب کو سچا نبی مانا۔ اس مسئلہ پر حسب ذیل مثالیں پیش کی ہیں:

الف۔ ۵ مارچ ۱۹۰۸ء کے ”بدر“ میں مرزا غلام احمد صاحب نے لکھا کہ انہیں اللہ کے حکم سے نبی بنایا گیا ہے۔

ب۔ مرزا بشیر الدین نے ”حقیقت نبوت“ کے صفحہ ۷۲ پر لکھا ہے کہ مرزا غلام احمد صاحب ”نبی“ کی اصطلاح کی معروف تعبیر اور شریعت کے مطابق نبی تھے، وہ مجازی نہیں بلکہ حقیقی نبی تھے۔

اس نوع کی نبوت کے دعوے کا یہ لازمی تقاضا ہے کہ جو کوئی مدعی کے اعلان کردہ مرتبہ کو تسلیم کرنے سے انکار کرے وہ کافر قرار پائے۔ بیان بھی یہی کیا گیا ہے کہ قادیانی ان سارے مسلمانوں کو کافر قرار دیتے ہیں جو مرزا غلام احمد صاحب کی حقیقی نبوت پر ایمان نہیں لاتے۔ اس نکتہ کی وضاحت میں مندرجہ ذیل مثالیں پیش کی ہیں:

۱۔ ”کل مسلمان جو حضرت مسیح موعود کی بیعت میں شامل نہیں ہوئے خواہ انہوں نے حضرت مسیح موعود کا نام بھی نہیں سنا، وہ کافر ہیں اور دائرہ اسلام سے خارج ہیں“ (مرزا بشیر الدین محمود، آئینہ صداقت ص ۳۵)

۲۔ ”ہر وہ شخص جو موسیٰ پر تو ایمان رکھتا ہے مگر عیسیٰ پر ایمان نہیں لاتا یا عیسیٰ پر تو ایمان رکھتا ہے مگر محمد ﷺ پر ایمان نہیں لاتا یا پیغمبر اسلام ﷺ پر تو ایمان رکھتا ہے لیکن مرزا غلام احمد صاحب پر ایمان نہیں لاتا وہ کافر ہے اور دائرہ اسلام سے خارج ہے۔“ (ریویو آف ریڈیو، ص ۱۱۰)

۳۔ سب حج کورد اسپور کی عدالت میں مرزا بشیر الدین محمود نے حسب ذیل بیان دیا جو ”الفضل“ نمبر ۲۶-۲۹ جون ۱۹۲۲ء میں یوں شائع ہوا۔ ہم مرزا صاحب پر ایمان رکھتے ہیں جب کہ غیر احمدی ان پر ایمان نہیں رکھتے اور قرآن کی تعلیمات کی رو سے کسی نبی کا انکار کفر ہے لہذا تمام غیر احمدی کافر ہیں۔

۹۔ مرزا صاحب نے درج ذیل اشعار کہے ہیں:

(الف) ”مسیح زماں ومنم کلیم خدا

منم محمد و احمد کہ محبتی ہا شد!

(ب) میں کبھی موسیٰ کبھی عیسیٰ کبھی یعقوب ہوں

نیز ابراہیم ہوں نسلیں ہیں میری بے شمار

یہ ہے وہ مرتبہ و منصب جس کے مرزا صاحب دعوے دار ہیں اور اس مرتبہ کا انکار کرنے والوں کو کافر قرار دیتے ہیں۔ انہوں نے مسلمانوں کے اس عقیدہ کو اپنی نبوت کی تائید کا ذریعہ بنانے کی سوچی کہ حضرت عیسیٰ کی صلیب پر وفات نہیں ہوئی بلکہ وہ چوتھے آسمان پر زندہ ہیں جہاں سے یوم حشر سے قبل آپ کا زمین پر نزول ثانی ہوگا اور یہ نزول قرب قیامت کی علامات میں سے ہے۔ چنانچہ انہوں نے مسیح علیہ السلام کا مرتبہ اپنے لیے مختص کیا اور مسیح موعود ہونے کا لقب اختیار کیا۔ یہ ان کے سلسلہ الہامات کے دوسرے مرحلہ کا ذکر ہے۔ مسلمانوں کا ایک ایک اور عقیدہ یہ بھی ہے کہ قیامت سے قبل حضرت امام

اور تم اللہ کی راہ میں ان لوگوں سے لڑو، جو تم سے لڑتے ہیں مگر اللہ زیادتی کرنے والوں کو پسند نہیں کرتا۔ ان سے لڑو جہاں بھی تمہارا ان سے مقابلہ پیش آئے اور انہیں نکالو جہاں سے انہوں نے تم کو نکالا ہے۔ اس لیے کہ قتل اگرچہ برا ہے مگر قتل سے بھی زیادہ برا ہے اور مسجد حرام کے قریب جب تک وہ تم سے لڑیں، تم بھی لڑو، مگر جب وہ وہاں لڑنے سے نہ چوکیں تو تم بھی بے تکلف انہیں مار دو کہ ایسے کافروں کی یہی سزا ہے پھر اگر وہ بازا جائیں تو جان لو کہ اللہ معاف کرنے والا اور رحم فرمانے والا ہے۔

وَقَاتِلُوهُمْ حَتَّى لَا تَكُونَ فِئْتَةً وَيُكُونَ الْمَدِينُ لِلَّهِ فَإِنْ انْتَهَوْا فَلَا عُدْوَانَ إِلَّا عَلَى الظَّالِمِينَ ۝ البقرہ 2:193

تم ان سے لڑتے رہو یہاں تک کہ فتنہ باقی نہ رہے اور دین اللہ کے لیے ہو جائے پھر اگر وہ بازا جائیں تو سمجھ لو کہ ظالموں کے سوا اور کسی پر دست درازی روا نہیں۔

الشَّهْرُ الْحَرَامُ بِالشَّهْرِ الْحَرَامِ وَالْحُرُمَاتُ قِصَاصٌ فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ مَعَ الْمُتَّقِينَ ۝ البقرہ 2:194

ماہ حرام کا بدلہ ماہ حرام ہی ہے اور تمام حرمتوں کا لحاظ برابری کے ساتھ ہوگا۔ لہذا جو تم پر دست درازی کرے تم بھی اس پر دست درازی کرو۔ البتہ اللہ سے ڈرتے رہو اور جان رکھو کہ اللہ انہیں لوگوں کے ساتھ ہے، جو اس کی حدود توڑنے سے پرہیز کرتے ہیں۔

لَا يُنْفَاكُمُ اللَّهُ عَنِ الْمَدِينِ لَمْ يُقَاتِلُواكُمْ فِي الْمَدِينِ وَلَمْ يُحِرِّجُواكُمْ مِنْ دِيَارِكُمْ أَنْ تَبَرُّوهُمْ وَتُقْسِبُوا إِلَيْهِمْ إِنَّ اللَّهَ يُحِبُّ الْمُقْسِبِينَ ۝ الممتحنہ 8:60

اللہ تعالیٰ تم کو ان لوگوں کے ساتھ احسان اور انصاف کا برتاؤ کرنے سے منع نہیں کرتا جو تم سے دین کے بارے میں نہیں لڑے اور تم کو تمہارے گھروں سے نہیں نکالا۔ اللہ تعالیٰ انصاف کا برتاؤ کرنے والوں سے محبت رکھتا ہے۔

فَلْيُقَاتِلْ فِي سَبِيلِ اللَّهِ الَّذِينَ يَشْرُونَ الْحَيَاةَ الدُّنْيَا بِالْآخِرَةِ وَمَنْ يُقَاتِلْ فِي سَبِيلِ اللَّهِ فَيُقْتَلْ أَوْ يَغْلِبْ فَسَوْفَ نُؤْتِيهِ أَجْرًا عَظِيمًا ۝ وَمَا لَكُمْ لَا تُقَاتِلُونَ فِي سَبِيلِ اللَّهِ وَالْمُسْتَضْعَفِينَ مِنَ الرِّجَالِ وَالنِّسَاءِ وَالْوِلْدَانِ الَّذِينَ يَقُولُونَ رَبَّنَا أَخْرِجْنَا مِنْ هَذِهِ الْقَرْيَةِ الظَّالِمِ أُهْلُهَا وَاجْعَل لَنَا مِنَ لَدُنْكَ وَلِيًّا وَاجْعَل لَنَا مِنَ لَدُنْكَ نَصِيرًا ۝ النساء 4:74-75

پھر جو اللہ کی راہ میں لڑے گا اور مارا جائے گا یا غالب رہے گا، اسے ضرور ہم اجر عظیم عطا کریں گے۔ آخر کیا وجہ ہے کہ تم اللہ کی راہ میں ان بے بس مردوں، عورتوں اور بچوں کی خاطر نہ لڑو جو کمزور یا کر دیا لیے گئے ہیں اور فریاد کر رہے ہیں کہ خدایا ہم کو اس ہستی سے نکال جس کے باشندے ظالم ہیں اور اپنی طرف سے ہمارا کوئی حامی و مددگار پیدا کر دے۔

فَإِذَا انسَلَخَ الْأَشْهُرُ الْحُرُمُ فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ وَخُذُواهُمْ وَاحْضَرُوهُمْ وَأَقْمِدُوا إِلَيْهِمْ كُلَّ مَرْصِدٍ فَإِن تَابُوا وَأَقَامُوا الصَّلَاةَ وَآتَوُا الزَّكَاةَ فَخَلُّوا سَبِيلَهُمْ إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ ۝ التوبہ 9:5

پس جب حرام (حرمت والے) مہینے گزر جائیں تو مشرکوں کو قتل کرو جہاں پاؤ اور انہیں پکڑو اور گھیرو اور ہر گھات میں ان کی خیر لینے کے لیے بیٹھو۔ پھر وہ اگر توبہ کر لیں اور نماز قائم کریں اور زکوٰۃ دیں تو انہیں چھوڑو۔ اللہ درگزر کرنے والا اور رحم فرمانے والا ہے۔

فَلَا تَطْعَمُ الْكُافِرِينَ وَجَاهِدْهُمْ بِهِ جِهَادًا كَبِيرًا ۝ الفرقان 25:52

پس اسے نبی ﷺ کافروں کی بات ہرگز نہ مانو اور اس قرآن کو لے کر ان کے ساتھ جہاد کبیر کرو۔

لیکن جہاد کے بارے میں احمدی نظریہ یہ ہے کہ جہاد باسیف کی اجازت صرف اپنے دفاع کی خاطر دی گئی ہے اور اس مسئلہ پر اپنا نظریہ پیش کرتے ہوئے مرزا غلام احمد صاحب نے محض اس عقیدہ کی تشریح و توضیح کی ہے جس کی بنیاد براہ راست متعدد قرآنی آیات پر رکھی کیونکہ انہوں نے کسی قرآنی حکم یا ہدایت کی تفسیح کا دعویٰ نہیں کیا لیکن فریق مخالف کی دلیل یہ ہے کہ مرزا صاحب نے اس مسئلہ پر اظہار رائے کے لیے جو الفاظ استعمال کیے ہیں ان سے صاف طور پر یہ ظاہر ہوتا ہے کہ وہ قرآنی حکم کی محض تشریح و توضیح ہی نہیں کر رہے ہیں بلکہ ایک موجود قرآنی قانون کی صریحاً تفسیح کر رہے ہیں۔ اس سلسلہ میں حسب ذیل عبارتوں پر اخصار کیا گیا ہے:

”میں ایک حکم لے کر آپ لوگوں کے پاس آیا ہوں وہ یہ ہے کہ اب سے تلوار کے جہاد کا خاتمہ ہے۔“

”اب جہاد دین کے لیے حرام ہے۔“

”دین کی تمام جنگوں کا اب اختتام ہے۔“

”مسیح کے آنے کا یہ نشان ہے کہ وہ دین کی لڑائیاں ختم کر دے گا۔“

”میں نے جہاد کی مخالفت کے بارے میں نہایت موثر تقریریں کیں۔“

”میں نے جہاد کے خلاف صد ہا کتابیں تحریر کیں اور عرب مصر اور بلاویشام اور افغانستان میں کورنمنٹ کی تائید میں شائع کی ہیں۔“

”مسیح موعود کے وقت قطعاً جہاد کے حکم منسوخ کر دیے گئے۔“

”اب زمین کے فساد بند کیے گئے۔“

”اب جو دین کے لیے تلوار اٹھاتا ہے اور غازی نام رکھ کر کافروں کو قتل کرتا ہے وہ خداوند تعالیٰ اور اس کے رسول کا نافرمان ہے۔“

”میرے فرقے میں، جس کا خدا نے مجھے امام اور رہبر مقرر فرمایا ہے، تلوار کا جہاد بالکل نہیں۔ یہ فرقہ اس بات کو قطعاً حرام جانتا ہے کہ دین کے

لیے لڑائیاں کی جائیں۔“

”اسلام میں جہاد کا مسئلہ ہے میری نگاہ میں اس سے بدتر اسلام کو بدنام کرنے والا اور کوئی مسئلہ نہیں۔“

”مجھے مسیح اور مہدی مان لینا ہی مسئلہ جہاد کا انکار کرنا ہے۔“

مرزا صاحب اور ان کے جانشینوں کی تحریروں میں پائے جانے والے ان فقروں اور ”اربعین“ جلد چہارم کے صفحہ ۷ کی عبارت ”میری وحی میں امر بھی ہے اور نہی بھی“ کی بنیاد پر یہ بات بڑے پر زور انداز میں پیش کی گئی ہے کہ ان عبارتوں میں مندرجہ اعلانات ایک قرآنی قانون کی ترمیم و تفسیح ہی کرتے ہیں۔ اپیل کنندہ کی جانب سے اس بات کا جواب دیا گیا ہے کہ ان تحریروں میں جو الفاظ اور مطالب اختیار کیے گئے ہیں ان سے تفسیح کا کوئی پہلو نہیں نکلتا بلکہ وہ تو ایک ایسے قرآنی حکم کی تشریح کرتے ہیں جس کو تیرہ سو سال سے غلط سمجھا جاتا رہا ہے اور بہر حال دوسرے لوگ مرزا صاحب کے اقوال کی تعبیرات خواہ کچھ بھی کریں احمدیوں نے تو ان کا مطلب ہمیشہ یہی لیا ہے کہ قرآن میں کوئی نیا حکم نہیں نکلتا اور مرزا صاحب کے سارے کام کی اصل غرض و غایت قرآن کے حقیقی احکامات پر سے کھٹ اور میل کو دور کرنا تھی۔ اس بارے میں احمدی فریق نے ”وضع الحرب“ والی روایت کے حوالے سے یہ دلیل فراہم کی ہے کہ مرزا صاحب نے جیسا کہ ان کی کچھ تحریروں سے ثابت ہے جو کچھ کیا، وہ محض یہ تھا کہ انھوں نے مذکورہ روایت کے مصداق جنگ کو معطل کر دیا اور کسی قانون کی تفسیح ہرگز نہیں کی۔ یہاں یہ نکتہ بڑی اہمیت کا حامل ہے کیونکہ یہ اگر مان لیا جائے کہ مرزا صاحب کے ان خیالات کا مقصد قرآنی قانون کی تفسیح سے ایک نئے حکم کا اجراء یا اس میں جزوی ترمیم تھا (ان کے پیروؤں کے نزدیک انھوں نے یہی کچھ کیا) تو پھر ان کی حیثیت تشریحی نبی کی ہوتی ہے۔ مگر یہ بات آیت ”خاتم النبیین“ کی احمدیوں کی خود کردہ تفسیر کے خلاف پڑتی ہے اور یہ نتیجہ خاص طور پر اس صورت تو لازماً نکلے گا جب کہ اس نئے حکم کی بنیاد ”وحی“ و ”الہام“ پر رکھی گئی ہو۔ غیر احمدی طریق نے اس دلیل کو یوں آگے بڑھایا ہے کہ ان تحریروں پر مبنی نظریات کی نوعیت اگر محض تشریحی یا تصدیقی بھی ہو تب بھی اصولی طور پر مرزا صاحب کی حیثیت تشریحی نبی کی ہی رہتی ہے کیونکہ اگر شارح کسی قانون کی تعبیر کے بجائے اپنے لیے اس کے استقراء (declaratory legislation) کے حق کا بھی مدعی ہو تو اس کی، کی ہوئی تفسیرات و توضیحات بجائے خود قانون سازی کے ضمن میں آجاتی ہیں۔ احمدی حضرات مندرجہ بالا آیات میں سے متعلقہ آیات کے حوالے سے اور آیت السیف یعنی نویں سورت کی پانچویں، مدینہ میں نازل شدہ آیت کے متعلق اس مرحلہ نظر یہ کی صحت کو مشتبہ قرار دے کر کہ اس آیت کے نزول سے مکہ میں نازل شدہ وہ آیات منسوخ ہو گئی تھیں (جن کا تعلق اپنے دفاع یا اس زمانہ میں عرب میں کفار کے زیر اثر علاقوں میں آباد مسلمانوں کو ظلم و استبداد سے نجات دلانے کی خاطر کفار کے ساتھ جنگ کرنے سے تھا)۔ مرزا صاحب کی ان تحریروں کے اصل مفہوم کو ظاہر کرنے کی کوشش کرتے ہیں۔ یہاں اس امر کی نشان دہی بھی کر دی گئی ہے کہ یہ احمدیوں کا ایک بنیادی عقیدہ ہے کہ قرآن کی کوئی آیت ما بعد کسی آیت کو منسوخ نہیں کرتی اور آیت السیف سے کلی آیات کا کوئی تضاد یا تناقض ظاہر نہیں ہوتا۔ نیز نسخ و منسوخ کے پورے نظریہ کی تردید کی گئی ہے۔ اس فریق نے نظریہ نسخ و منسوخ پر دلالت کرنے والی درج ذیل آیات کی تفسیح دنا ویل کسی اور انداز سے کی ہے:

مَا نَنْسَخُ مِنْ آيَةٍ أَوْ نُنسِخُهَا نَأْتِ بِخَيْرٍ مِّنْهَا أَوْ مِثْلَهَا أَلَمْ تَعْلَمْ أَنَّ اللَّهَ عَلِيمٌ كُلِّ شَيْءٍ قَدِيرٌ ۝۲ البقرہ 2:106

ہم اپنی جس آیت کو منسوخ کر دیتے ہیں یا بھلا دیتے ہیں، اس کی جگہ اس سے بہتر لاتے ہیں یا کم از کم ویسی ہی۔ کیا تم جانتے ہو کہ اللہ ہر چیز پر قدرت رکھتا ہے۔

جب ہم ایک آیت کی جگہ دوسری آیت نازل کرتے ہیں..... اور اللہ بہتر جانتا ہے کہ وہ کیا نازل کرے..... تو یہ لوگ کہتے ہیں کہ تم یہ قرآن خود گھڑتے ہو۔ اہل 16:101

چنانچہ مسلمان قادیانیوں کو مندرجہ ذیل وجوہات کی بنا پر کافر اور دائرہ اسلام سے خارج سمجھتے ہیں۔

۱۔ آنحضرت ﷺ کے ختم نبوت سے انکار، الفاظ قرآنی کی غلط تاویلات اور اس دین کو لعنتی اور شیطانی قرار دینا جس کے پیروکار حضور اکرم ﷺ کے ختم پر نبوت ایمان رکھتے ہیں۔

۲۔ مرزا غلام احمد صاحب کا تشریحی نبوت کا قطعی دعویٰ۔

۳۔ یہ دعویٰ کہ حضرت جبرائیل ان (مرزا غلام صاحب) پر وحی لاتے ہیں اور وہ وحی قرآن کے برابر ہے۔

۴۔ حضرت عیسیٰ علیہ السلام اور حضرت حسینؑ کی مختلف طریقوں سے توہین۔

۵۔ نبی اکرم ﷺ اور آپ کے دین کا اہانت آمیز طور پر ذکر۔

۶۔ قادیانیوں کے سوا تمام دوسرے مسلمانوں کو کافر قرار دینا۔

۱۹۵۳ء کے فسادات کے دوران اور ۱۹۵۴ء کی تحقیقات سے پہلے قادیانیوں نے اپنے کئی عقائد سے پلٹنا شروع کر دیا ہے۔ تحقیقاتی عدالت کے روبرو انھوں نے جو موقف اختیار کیا، اس سے صاف طور پر مترشح ہوتا ہے کہ وہ اپنے مذہب کے بانی اور اس کے جانشینوں کے وضع کردہ اصولوں اور عقائد کے معانی کو تبدیل کرنے کے لیے کوشاں رہے مگر ہمارے پاس احمدیہ فرقہ کے بانی اور اس کے جانشینوں کی تصنیف کردہ وہ کتب موجود ہیں جن سے میاں عطا اللہ نے استدلال کیا ہے کہ یہ اس طرح ہمارے سامنے کفر سے وہ ذرائع موجود ہیں جن کی مدد سے ہم اس فرقہ کے فلسفہ کی حقیقت جان سکیں۔

اوپر کی ساری بحث سے میں نے مندرجہ ذیل نتائج اخذ کیے ہیں:

۱۔ مسلمانوں کا اس امر پر بھی اجماع ہے کہ جو شخص آنحضرت ﷺ کے ختم نبوت پر ایمان نہیں رکھتا، وہ مسلمان نہیں۔

۲۔ مسلمانوں کا اس امر پر بھی اجماع ہے کہ قادیانی غیر مسلم ہیں۔

۳۔ مرزا غلام احمد صاحب قادیانی اپنے دعویٰ تفسیرات و تاویلات کی روشنی میں ایک ایسی وحی پانے کے مدعی تھے جسے وحی نبوت سے تعبیر کیا جاتا ہے۔

۴۔ اپنی اولین تصانیف میں مرزا صاحب کے خود اپنے قائم کردہ معیار ان کے اس دعویٰ نبوت کو جھٹلاتے ہیں۔

۵۔ انہوں نے واقعتاً دنیا بھر کے مانے ہوئے انبیا کرام علیہم السلام کی طرح نبی کامل ہونے کا دعویٰ کیا اور ”ظلم“ و ”تبروز“ کی اصطلاحوں کی حقیقت ایک فریب کے سوا کچھ نہیں۔

۶۔ نبی اکرم ﷺ کے بعد وحی نبوت نہیں آسکتی اور جو کوئی ایسی وحی کا دعویٰ کرے، وہ دائرہ اسلام سے خارج ہے۔
 میں سمجھتا ہوں کہ اس بحث اور اس سے اخذ کردہ نتائج کی بنا پر یہ بات بڑی آسانی کے ساتھ کہی جاسکتی ہے کہ عدالت سماعت نے جو نتائج اخذ کیے
 ہیں وہ درست ہیں، چنانچہ میں ان سب کی توثیق کرتا ہوں۔ مسماۃ امتہ الکریم کی اپیل میں کوئی جان نہیں ہے لہذا میں اسے خارج کرتا ہوں۔
 جہاں تک لیفٹیننٹ زیر الدین کی اپیل کا تعلق ہے مسز ظفر محمود ایڈووکیٹ نے اس کے بارے میں مجھ سے کچھ نہیں کہا۔ مسماۃ امتہ الکریم کے سامان
 جہیز پر نذر الدین کا قبضہ ثابت ہو چکا ہے اور اس کی قیمت کا تخمینہ بھی مناسب لگایا گیا ہے لہذا میں ان کی اپیل میں بھی کوئی وزن محسوس نہیں کرتا اور میں ان کی
 اپیل کو بھی خارج کرتا ہوں۔

چونکہ دونوں فریق اپنی اپنی اپیلوں میں ناکام رہے ہیں لہذا میں اخراجات کے متعلق کوئی فیصلہ نہ دینے ہی کو ترجیح دیتا ہوں۔
 کورٹ فیس کی وصول یابی کے اقدامات کے واسطے گلکٹر راولپنڈی کو اطلاع دی جائے۔

دستخط محمد اکبر
 ایڈیشنل ڈسٹرکٹ کورٹ

اعلان فیصلہ بتاریخ
 ۳ جون ۱۹۵۵ء

49. An excellent expose of Qadianyat came from Dr Muhammad Iqbal. His convincing statements and cogent arguments explicitly exposed this religio-political agency of Imperialism in the public eyes. What prompted Dr. Iqbal to launch this crusade against Qadianyat is not difficult to comprehend. Dr Iqbal knew Qadianyat very well since its inception and had been a keen observer of its development and growth that took place in the last half of century in India. He, however, had some kind of soft feelings for the movement in early years when its real character was not established. In early 30s he had fully come to know about the role Qadianis had been playing in India particularly in Kashmir movement in which he himself was closely associated. He had been a prime mover to secure president-ship for Mirza Mahmud in Kashmir Committee for a better deal with Maharaja of Kashmir through suitable intervention. In a few months' time he realized that Qadianyat had a very ugly face which it had been concealing under the mask of altruism. He found that the movement had dangerous political implications not only for the Muslims of India but also for the whole world of Islam. He, on the basis of past 50 years (1880-1935) record of the movement observed the metamorphosis it underwent and as a student of history visualized its future role as an anti-Islam, reactionary and pro-Imperialist body operating under the thin veneer of so-called religious revivalism. On 2nd May, 1935 Dr Muhammad Iqbal sent his historic statement to the press on social and political implications of the Qadiani issue. He explained that the community of Islam in

India based its existence to religious idea alone. That is why any religious society, historically arising from the bosom of Islam when claims a new Prophethood for its basis and declares all Muslims who do not recognize the truth of its alleged revelations as Kafir must, therefore, be regarded by every Muslim as a serious danger to the solidarity of Islam. This must necessarily be so, since the integrity of Muslim society is secured by the idea of the finality of Prophethood alone. The excerpts from his statement are reproduced herein below for below:

“...Any religious society historically arising from the bosom of Islam, which claims a new prophet-hood for its basis, and declares all Muslims who do not recognize the truth of its alleged revelation as Kafirs, must, therefore, be regarded by every Muslim as a serious danger to the solidarity of Islam. This must necessarily be so; since the integrity of Muslim society is secured by the idea of the Finality of Prophethood alone...”

“.....The intensity of feeling which the Indian Muslims have manifested in opposition to the Qadiani movement is, therefore, perfectly intelligible to the student of modern sociology. The average Muslim, who was the other day described as “Mulla-ridden” by a writer in the Civil and Military Gazette, is inspired in his opposition to the movement more by his instinct of self-preservation than by a fuller grasp of the meaning of the idea of Finality in his faith. The so-called "enlightened" Muslim has seldom made an attempt to understand the real cultural significance of the idea of Finality in Islam, and a process of slow and imperceptible Westernization has further deprived him even of the instinct of self-preservation- Some of these so-called enlightened Muslims have gone to the extent of preaching “tolerance” to their brethren-in-faith. I can easily excuse Sir Herbert Emerson for preaching toleration to Muslims; for a modern European who is born and brought up in an entirely different culture does not, and perhaps cannot, develop the insight which makes it possible for one to understand an issue vital to the very structure of a community with an entirely different cultural outlook. The Government must seriously consider the present situation and try, if possible, to understand the mentality of the average Muslim in regard to this issue which he regards as absolutely vital to the integrity of his community. 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 refutations 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? If a group, rebellious from the point of view of the parent community, happens to be of some special service to Government, the latter are at liberty to reward their services as best as they can. Other communities will not grudge it. But it is too much to expect that a community should calmly ignore the forces which tend seriously to affect its collective life. Collective life is as sensitive to the danger of dissolution as individual life. It is hardly necessary to add in this connection that the mutual theological bickering of Muslim sects do not affect vital principles on which all these sects agree with all their differences in spite of their mutual accusations of heresy....”

“.....There is one further point which demands Government’s special consideration. The encouragement in India of religious adventurers on the ground of modern liberalism tends to make people more and more indifferent to religion and will eventually completely eliminate the important factor of religion from the life of Indian communities. The Indian mind will then seek some other substitute for religion, which is likely to be nothing less than the form of atheistic materialism which has appeared in Russia....”

“.....I understand that this statement has caused some misunderstanding in some quarters. It is thought that I have made a subtle suggestion to the Government to suppress the Qadiani movement by force. Nothing of the kind. I have made it clear that the policy of non-interference in religion is the only policy which can be adopted by the rulers of India. No other policy is possible. I confess, however, that to my mind this policy is harmful to the interests of religious communities; but there is no escape from it and those who suffer will have to safeguard their interests by suitable, means. The best course for the rulers of India is in my opinion, to declare the Qadianis a separate community. This will be perfectly consistent with the policy of the

Qadianis themselves and the Indian Muslim will tolerate them just as he tolerates the other religions.....”

50. Dr. Muhammad Iqbal termed Bahatism far more honest than Qadianism *for the former openly departs from Islam whereas the latter apparently retains some of more honest externals to Islam with inwardness wholly inimical to the spirit and aspiration of Islam.* The Statesman published Dr. Iqbal's statement on “Qadianis and Orthodox Muslims” along with a criticism of it in the first leader. The following letter was in reply addressed to the Statesman and was published on June 10, 1935:

“I am very thankful to you for your critical leader on my statement which was published in your issue of the 14th May. The question which you have raised in your leader is a very important one, and I am really very glad that you have raised it. I did not raise it in my statement because I felt that, considering the separatist policy of the Qadianis, which they have consistently pursued in religious and social matters ever since the birth of the idea of building a new community on the foundations of a rival prophethood and the intensity of the Muslim feeling against this move, it was rather the duty of the Government to take administrative cognizance of such a fundamental difference between the Qadianis and the Muslims without waiting for a formal representation on behalf of the Muslim community of India. I was encouraged in this feeling by the Government's attitude in the matter of the Sikh community which till 1919 was not administratively regarded as a separate political unit but which was later treated as such without any formal representation on the part of the Sikhs, in spite of the Lahore High Court's finding that the Sikhs were Hindus. However, now that you have raised this question I should like to offer a few observations on a matter which I regard as of the highest importance both from the British and the Muslim points of view. You want me ‘to make it perfectly clear whether, when or where I can tolerate official cognizance of any one community's religious differences Let me point out:

First, that Islam is essentially a religious community with perfectly defined boundaries belief in the Unity of God, belief in all the Prophets and belief in the Finality of Muhammad's Prophethood. The last mentioned belief is really the factor which accurately draws

the line of demarcation between Muslims and non-Muslims and enables one to decide whether a certain individual or group is a part of the community or not. For example, the Brahmos believe in God, they also regard Muhammad (for whom be peace) as one of the Prophets of God, yet they cannot be regarded as part and parcel of Islam because they, like the Qadianis, believe in the theory of perpetual revelation through prophets and do not believe in the Finality of Prophethood in Muhammad. No Islamic sect, as far as I know, has ever ventured to cross this line of demarcation. The Bahais in Iran have openly rejected the principle of Finality but have at the same time frankly admitted that they are a new community and not Muslims in the technical sense of the word. According to our belief, Islam as a religion was revealed by God, but the existence of Islam as a society or nation depends entirely on the personality of the Holy Prophet. In my opinion, only two courses are open to the Qadianis, either frankly to follow the Bahais or to eschew their interpretations of the idea of Finality in Islam and to accept the idea with all its implications. Their diplomatic interpretations are dictated merely by a desire to remain within the fold of Islam for obvious political advantages.

Second: we must not forget the Qadianis' own policy and their attitude towards the world of Islam. The founder of the movement described the parent community as "rotten milk" and his own followers as "fresh milk", warning the latter against mixing with the former. Further, their denial of fundamentals, their giving themselves a new name (Ahmadis) as a community, their non-participation in the congregational prayers of Islam, their social boycott of Muslims in the matter of matrimony, etc. and above all their declaration that the entire world of Islam is Kafir — all these things constitute an unmistakable declaration of separation by the Qadianis themselves. Indeed the facts mentioned above clearly show that they are far more distant from Islam than Sikhs from Hinduism, for the Sikhs at least intermarry with the Hindus, even though they do not worship in the Hindu temples.

Third: it does not require any special intelligence to see why the Qadianis, while pursuing a policy of separation in religious and social matters, are anxious to remain politically within the fold of

Islam. Apart from the political advantages in the sphere of Government service which accrue to them by remaining within the fold of Islam, it is obvious that in view of their present population, which according to the last census, is fifty-six thousand only, they are not entitled even to a single seat in any legislature of the country and cannot, therefore, be regarded as a political minority in the sense in which you seem to be using the expression. The fact that the Qadianis have not so far asked for separation as a distinct political unit shows that in their present position they do not find themselves entitled to any representation in legislative bodies. The new constitution is not without provisions for the protection of such minorities. To my mind, it is clear that in the matter of approaching the Government for separation the Qadianis will never take the initiative. The Muslim community is perfectly justified in demanding their immediate separation from the parent community. If the Government does not immediately agree to this demand, the Indian Muslims will be driven to the suspicion that the British Government is keeping the new religion in store, as it were, and delaying the separation because in view of the small number of its adherents, it is, for the present, incapable of functioning as a fourth community in the province which may effectively damage the already marginal majority of Punjab Muslims in the local legislature. The Government did not wait for a formal representation for separation by the Sikhs in 1919: why should they wait for a formal representation by the Qadianis.”

51. It is a strange event of history that Ahmadyat found a queer sympathizer in India, a nationalist, secularist and socialist leader of the Congress i.e. Pandit Jawahar Lai Nehru. He read Dr Iqbal's articles when he was languishing in Almora jail. He wrote short notes on these articles obviously to axe his grind in Indian politics. Pandit Nehru fully realized that Qadianism was a byproduct of Imperialism and it had always professed pro-British stance in politics. It had also been responsible to sabotage numerous movements launched by the Congress, yet the political expediency impelled him to support Qadianis to malign Ismailis and tarnish the image of Sir Agha Khan and the Muslim league. In his short articles Pandit Nehru expressed his interest in the writings of Dr. Iqbal as they gave him

'an insight into a world which he found difficult to understand.' He called Dr. Iqbal an authority on Islam worthy of respect and held that he represented the orthodox viewpoint correctly. He referred to Dr Iqbal's article *Qadianis and Orthodox Muslim* which he stated to have read with keen interest in Almora jail that dealt with the solidarity of Islam in the context of Ahmadyat issue. It provoked him to send his views to Modem Review, Calcutta on 20 August, 1935 which appeared in November, 1935 edition of the paper. Pandit Nehru briefly described the emerging wave of nationalism going on in the Arab World at the expense of the pure orthodox religious outlook. He thought that nations had fallen away from the ideal of Islamic solidarity after adoption of nationalist ideas. He contended that the question of the Qadianis sank into relative insignificance before these world happenings. Dr Iqbal stresses the need of a real leader to rise in the Punjab apparently to combat Qadiani menace. But what lead does he give in regard to the wider menace. The Agha Khan, we are told, is the leader of Indian Muslims. Does he stand for this solidarity of Islam as defined by Sir Muhammad Iqbal? Pandit Nehru remarked. In another note written on 21 August 1935 he singled out H.H.Sir Agha Khan for his attack and questioned whether his sect was a partner in the solidarity of religious belief. Pandit Nehru's third note captioned 'Orthodox of All Religions Unite' was written in the last week of August, 1935 and published in December 1935 issue of Modem Review, Calcutta. It transpired from these short articles that Pandit Nehru wanted to convey the impression to the Muslims that the anti-Qadian movement launched by Majlis-i-Ahrar, so-called pro-Congress organization, had not got any blessings of the Congress. He also wanted to weaken the constitutional and financial position of Muslim League through alienation of Sir Agha Khan by bracketing Ismailis with Ahmadis as a non-Muslim-entity. Pandit Nehru received a rebuff from different political quarters for writing on Ahmadyat issue. J. D. Jenkins, in his letters which appeared in the Times of India dated 18 and 24 July, 1936 respectively characterized Pandit Nehru's first article as 'most dangerous', 'improper', 'most offensive', 'disgraceful', 'amazing' 'full of

falsehoods' and 'an absurd effusion.' He charged Pandit Nehru with deliberately going out of his way to wound Muslim feelings and thereby creating extreme bitterness between one community and another. He also invited the British Government to take action against him.' Dr Iqbal received a number of letters from Muslims of different shades of religious and political opinion urging him to give a suitable reply to Pandit's articles. Some of them wanted him to further elucidate and justify the attitude of the Indian Muslims towards the Ahmadis. In January, 1936, Dr. Allama Muhammad Iqbal, wrote a historic note on Qadianiat in reply to the assertions made by Nehru in his articles. The response of Dr. Iqbal, in the shape of an Article, "ISLAM AND AHMADISM", is worth to be incorporated in toto, however, a part of it would sufficiently elucidate the purpose:

"On the appearance of Pandit Jawahar Lal Nehru's three articles in the Modern Review of Calcutta I received a number of letters from Muslims of different shades of religious and political opinion. Some writers of these letters want me to further elucidate and justify the attitude of the Indian Muslims towards the Ahmadis. Others ask me what exactly I regard as the issue involved in Ahmadism. In this statement I purpose first to meet these demands which I regard as perfectly legitimate, and then to answer the questions raised by Pandit Jawahar Lal Nehru. I fear, however, that parts of this statement may not interest the Pandit, and to save his time I suggest that he may skip over such parts.

It is hardly necessary for me to say that I welcome the Pandit's interest in what I regard as one of the greatest problems of the East and perhaps of the whole world. He is, I believe, the first Nationalist Indian leader who has expressed a desire to understand the present spiritual unrest in the world of Islam. In view of the many aspects and possible reactions of this unrest it is highly desirable that thoughtful Indian political leaders should open their mind to the real meaning of what is at the present moment agitating the heart of Islam.

I do not wish, however, to conceal the fact either from the Pandit or from any other reader of this statement that the Pandit's articles have for the moment given my mind rather a painful conflict of feelings. Knowing him to be a man of wide cultural sympathies my mind cannot but incline to the

view that his desire to understand the questions he has raised is perfectly genuine; yet the way in which he has expressed himself betrays a psychology which I find difficult to attribute to him. I am inclined to think that my statement on Qadianism, no more than a mere exposition of a religious doctrine on modern lines has embarrassed both the Pandit and the Qadianis, perhaps because both inwardly resent, for different reasons, the prospects of Muslim political and religious solidarity, particularly in India. It is obvious that the Indian nationalist whose political idealism has practically killed his sense for fact, is intolerant of the birth of a desire for self-determination in the heart of North-West Indian Islam. He thinks, wrongly in my opinion, that the only way to Indian nationalism lies in a total suppression of the cultural entities of the country though the interaction of which alone India can evolve a rich and enduring culture. A nationalism achieved by such methods can mean nothing but mutual bitterness and even oppression. It is equally obvious that the Qadianis, too, feel nervous by the political awakening of the Indian Muslims, because they feel that the rise in political prestige of the Indian Muslims is sure to defeat their designs to carve out from the ummat of the Arabian Prophet a new ummat for the Indian prophet. It is no small surprise to me that my effort to impress on the Indian Muslims the extreme necessity of internal cohesion in the present critical moment of their history in India, and my warning them against the forces of disintegration, masquerading as reformist movements, should have given the Pandit an occasion to sympathize with such forces.

However, I do not wish to pursue the unpleasant task of analyzing the Pandit's motives. For the benefit of those who want further elucidation of the general Muslim attitude towards the Qadianis, I would quote a passage, from Durant's story of Philosophy which I hope will give the reader clearer idea of the issue involved in the Qadianism. Durant has in a few sentences summed up the Jewish point of view in the excommunication of the great philosopher Spinoza. The reader must not think that in quoting this passage I mean to insinuate some sort of comparison between Spinoza and the founder of Ahmadism. The distance between them, both in point of intellect and character, is simply tremendous. The "God-intoxicated" Spinoza never claimed that he was the center of of a new organization and that all the Jews who did not believe in him were outside the pale of Judaism. Durant's passage, therefore, applies with much greater force to the attitude of

Muslims towards Qadianism than to the attitude of the Jews towards the excommunication of the Spinoza. The passage is as follows:

Furthermore, religious unanimity seemed to the elders their sole means of preserving the little Jewish group in Amsterdam from disintegration, and almost the last means of preserving the unity, and so ensuring the survival, of the scattered Jews of the world. If they had had their own state, their own civil law, their own establishments of secular force and peer, to compel internal cohesion and external respect, they might have been more tolerant; but their religion was to them their patriotism as well as their faith; the synagogue was their centre of social and political life as well as of ritual and worship; and the Bible whose veracity Spinoza had impugned was the "Portable Fatherland" of their people; under the circumstances they thought heresy was treason, and toleration suicide.

Situated as the Jews were – a minority community in Amsterdam – they were perfectly justified in regarding Spinoza as a disintegrating factor threatening the dissolution of their community. Similarly the Indian Muslims are right in regarding the Qadiani movement, which declares the entire world of Islam as Kafir and socially boycotts them, to be far more dangerous to the collective life of Islam in India than the metaphysics of Spinoza to the collective life of the Jews. The Indian Muslim, I believe, instinctively realizes the peculiar nature of the circumstances in which he is placed in India and is naturally much more sensitive to the forces of disintegration than the Muslims of any other country. This instinctive perception of the average Muslim is in my opinion absolutely correct and has, I have no doubt, a much deeper foundation in the conscience of Indian Islam. Those who talk of toleration in a matter like this are extremely careless in using the word "toleration" which I fear they do not understand at all. The spirit of toleration may arise from very different attitudes of the mind of man. As Gibbon would say: "There is the toleration of the philosopher to whom all religions are equally true; of the historian to whom all are equally false; and of the politician to whom all are equally useful. There is the toleration of the man who tolerates other modes of thought and behaviour because he has himself grown absolutely indifferent to all modes of thought and behaviour. There is the toleration of the weak man who, on

account of sheer weakness, must pocket all kinds of insults heaped on things or persons whom he holds dear.”

It is obvious that these types of tolerance have no ethical value. On the other hand they unmistakably reveal the spiritual impoverishment of the man who practices them. True toleration is begotten of intellectual breadth and spiritual expansion. It is the toleration of the spiritually powerful man who, while jealous of the frontiers of his own faith, can tolerate and even appreciate all forms of faith other than his own. Of this type of toleration the true Muslim alone is capable. His own faith is synthetic and for this reason he can easily find grounds of sympathy and appreciation in other faiths. Our great Indian poet, Amir Khusro, beautifully brings out the essence of this type of toleration in the story of an idol worshipper. After giving an account of his intense attachment to his idols the poet addresses his Muslim readers as follows:

اے کہ زیت طعنہ بہ ہندو بری
 ہم زوے آموز پرستش گری
 ترجمہ: اے کہ تم جو ہندو کو طعنہ دیتے
 تو کم سے کم اسی سے پوجا کا ہنر تو سیکھ لو

Only a true lover of God can appreciate the value of devotion even though it is directed to gods in which he himself does not believe. The folly of our preachers of toleration consists in describing the attitude of the man who is jealous of the boundaries of his own faith as one of intolerance. They wrongly consider this attitude as a sign of moral inferiority. They do not understand that the value of his attitude is essentially biological, where the members of a group feel, either instinctively or on the basis of rational argument, that the corporate life of the social organism to which they belong is in danger, their defensive attitude must be appraised in reference mainly to a biological criterion. Every thought or deed in this connection must be judged by the life value that it may possess. The question in this case is not whether the attitude of an individual or community towards the man who is declared to be a heretic is morally good or bad. The question is whether it is life-giving or life-destroying.”

Pandit Jawahar Lal Nehru seems to think that a society founded on religious principles necessitates the institution of Inquisition. This is indeed true of the history of Christianity; but the history of Islam, contrary to the Pandit's logic, shows that during the last thirteen hundred years of the life of Islam, the institution of Inquisition has been absolutely unknown in Muslim countries. The Quran expressly prohibits such an institution. “Do not seek out the shortcomings of

others and carry not tales against your brethren." Indeed the Pandit will find from the history of Islam that the Jews and Christians, fleeing from religious persecution in their own lands, always found shelter in the lands of Islam. The two propositions on which the conceptual structure of Islam is based are so simple that it makes heresy in the sense of turning the heretic outside the fold of Islam almost impossible. It is true that when a person declared to be holding heretical doctrines threatens the existing social order, an independent Muslim State will certainly take action; but in such a case the action of the State will be determined more by political considerations than by purely religious ones. I can very well realize that a man like the Pandit, who is born and brought up in a society which has no well-defined boundaries and consequently no internal cohesion, finds it difficult to conceive that a religious society can live and prosper without State-appointed commissions of enquiry into the beliefs of the people. This is quite clear from the passage which he quotes from Cardinal Newman and wonders how far I would accept the application of the Cardinal's dictum to Islam. Let me tell him that there is a tremendous difference between the inner structure of Islam and Catholicism wherein the complexity, the ultra-rational character and the number of dogmas has, as the history of Christianity shows, always fostered possibilities of fresh heretical interpretations. The simple faith of Muhammad is based on two propositions — that God is One, and that Muhammad is the last of the line of those holy men who have appeared from time to time in all countries and in all ages to guide mankind to the right ways of living. If, as some Christian writers think, a dogma must be defined as an ultra rational proposition which for the purpose of securing religious solidarity must be assented to without any understanding of its metaphysical import, then these two simple propositions of Islam cannot be described even as dogmas : for both of them are supported by the experience of mankind and are fairly amenable to rational argument. The question of a heresy, which needs the verdict, whether the author of it is within or without the fold, can arise, in the case of a religious society founded on such simple propositions, only when the heretic rejects both or either of these propositions. Such heresy must be and has been rare in the history of Islam which, while jealous of its frontiers, permits freedom of interpretation within these frontiers. And since the phenomenon of the kind of heresy which affects the boundaries of Islam has been rare in the history of Islam, the feeling of the average Muslim is naturally intense when a revolt of this kind arises. That is why the feeling of Muslim Persia was so intense against the Bahais that is why the feeling of the Indian Muslims is so intense against the Qadianis.

It is true that mutual accusations of heresy for differences in minor points of law and theology among Muslim religious sects have been rather common. In this indiscriminate use of the word *kufr* both for minor theological points of difference as well as for the extreme cases of heresy which involve the excommunication of the heretic, some present-day educated Muslims who possess practically no knowledge of the history of Muslim theological disputes, see a sign of social and political disintegration of the Muslim community. This, however, is an entirely wrong notion. The history of Muslim theology shows that natural accusation of heresy on minor points of difference has, far from working as a disruptive forces, actually given an impetus to synthetic theological thought " When we read the history of development of Mohammedan law," says Prof. Hurgrounje, " we find that, on the one hand, the doctors of every age, on the slightest stimulus, condemn one another to the point of mutual accusations of heresy ; and, on the other hand, the very same people with greater and greater unity of purpose try to reconcile the similar quarrels of their predecessors.' The student of Muslim theology knows that among Muslim legists this kind of heresy is technically known as " heresy below heresy,' i.e. the kind or heresy which does not involve the excommunication of the culprit It may be admitted, however, that in the hands of mullas whose intellectual laziness takes all oppositions of theological thought as absolute and is consequently blind to the unity in difference, this minor heresy may become a source of great mischief This mischief can be remedied only by giving to the students of our theological schools a clearer vision of the synthetic spirit of Islam, and by reinitiating them into the function of logical contradiction as a principle of movement in theological dialectic The question of what may be called major heresy arises only when the teaching of a thinker or a reformer effects the frontiers of the faith of Islam. Unfortunately this question does arise in connection with the teachings of Qadianism. It must be pointed out here that the Ahmadi movement is divided into two camps, known as the Qadianis and the Lahoris. The former openly declare the founder to be a full prophet; the latter, either by conviction or policy, have found it advisable to preach an apparently toned down Qadianism. However, the question whether the founder of Ahmadism was a prophet, the denial of whose mission entails what I call the " major heresy " is a matter of dispute between the two sections. It is unnecessary for my purposes to judge the merits of this domestic controversy of the Ahmadis. I believe, for reasons to be explained presently, that the idea of a

full prophet whose denial entails the denier's excommunication from Islam is essential to Ahmadism; and that the present head of the Qadianis is far more consistent with the spirit of the movement than the Imam of the Lahoris.

The cultural value of the idea of Finality in Islam I have fully explained elsewhere. Its meaning is simple: No spiritual surrender to any human being after Muhammad who emancipated his followers by giving them a law which is realizable as arising from the very core of human conscience. Theologically the doctrine is that the socio-political organization called "Islam" is perfect and eternal. No revelation, the denial of which entails heresy, is possible after Muhammad. He who claims such a revelation is a traitor to Islam. Since the Qadianis believe the founder of the Ahmadiyya movement to be the bearer of such a revelation, they declare that the entire world of Islam is infidel. 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 (بروز) of the Holy Prophet of Islam insinuating thereby that being a buruz of him, his ' finality ' is virtually the Finality of Muhammad ; and that this view of the matter, therefore, 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 must always remain the other side of its original. Only in the sense of reincarnation a buruz becomes identical with the original. Thus if we take the word buruz to mean " like in spiritual qualities " 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 is further claimed on the authority of the great Muslim mystic, Muhyuddin Ibn-i-Arabi of Spain, that it is possible for a Muslim saint to attain, in his spiritual evolution, to the kind of experience characteristic of the Prophetic consciousness. I personally believe this view of Sheikh Muhyuddin Ibn-i-Arabi to be psychologically unsound; but assuming it to be correct, the Qadiani argument is based on a complete misunderstanding of his exact position. The Sheikh regards it as a purely private achievement which does not, and in the nature of things cannot, entitle such a saint to declare that all those who do not believe in him are outside the pale of Islam. Indeed, from the Sheikh's point of view, there may be more than one saint, living in the same age or country, who may attain to Prophetic consciousness. The point to be seized is that while it is psychologically possible for a saint to attain to Prophetic experience his experience will have no socio-political significance making him the centre of a new organization and entitling him to declare this organization to be the criterion of the faith or disbelief of the followers of Muhammad.

Leaving his mystical psychology aside I am convinced from a careful study of the relevant passages of the Futuhat that the great Spanish mystic is as firm a believer in the Finality of Muhammad as any orthodox Muslim. And if he had seen in his mystical vision that one day in the East some Indian amateur in Sufism would seek to destroy the Holy Prophet's Finality under the cover of his mystical psychology, he would have certainly anticipated the Indian Ulma in warning the Muslims of the world against such traitors to Islam.

Coming now to the essence of Ahmadism. A discussion of its sources and of the way in which pre-Islamic Magian ideas have, through the channels of Islamic mysticism, worked on the mind of its author would be extremely interesting from the standpoint of comparative religion. It is, however, impossible for me to undertake this discussion here. Suffice it to say that

the real nature of Ahmadism is hidden behind the mist of mediaeval mysticism and theology. The Indian Ulma, therefore, took it to be a purely theological movement and came out with theological weapons to deal with it. I believe, however, that this was not the proper method of dealing with the movement: and that the success of the Ulma was, therefore, only partial. A careful psychological analysis of the revelations of the founder would perhaps be an effective method of dissecting the inner life of his personality. In this connection I may mention Maulvi Manzoor Elahi's collection of the founder's revelations which offers rich and varied material for psychological research. In my opinion the book provides a key to the character and personality of the founder; and I do hope that one day some young student of modern psychology will take it up for serious study. If he takes the Quran for his criterion, as he must for reasons which cannot be explained here, and extends his study to a comparative examination of the experiences of the founder of the Ahmadiyya movement and contemporary non-Muslim mystics, such as Ram Krishna of Bengal, he is sure to meet more than one surprise as to the essential character of the experience on the basis of which prophethood is claimed for the originator of Ahmadism.

Another equally effective and more fruitful method, from the standpoint of the plain man, is to understand the real content of Ahmadism in the light of the history of Muslim theological thought in India, at least from the year 1799. The year 1799 is, extremely important in the history of the world of Islam. In this year fell Tippu and his fall meant the extinguishment of Muslim hopes for political prestige in India. In the same year was fought the battle of Navarino which saw the destruction of the Turkish fleet. Prophetic were the words of the author of the chronogram of Tippu's fall which visitors of Serangapatam find engraved on the wall of Tippu's mausoleum: "Gone is the glory of Ind as well as of Roum." Thus in the year 1799 the political decay of Islam in Asia reached its climax. But just as out of the humiliation of Germany on the day of Jena arose the modern German nation, it may be said with equal truth that out of the political humiliation of Islam in the year 1799 arose modern Islam and her problems. This point I shall explain in the sequel. For the present I want to draw the reader's attention to some of the questions which have arisen in Muslim India since the fall of Tippu and the development of European imperialism in Asia.

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 jihad-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 tradition 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 Ulma 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 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 greatest service rendered by them to British imperialism. The prophetic claim to a revelational basis for theological views of a political significance amounts to declaring that those who do not accept the claimant’s views are infidels of the first water and destined for the flames of Hell. As I understand the signification of the movement, the Ahmadis belief that Christ died the death of an ordinary mortal, and that his second advent means only the advent of a person who is spiritually, ‘like unto him,’ give the movement some sort of a rational appearance ; but they are not really essential to the spirit of the movement. In my opinion they are only preliminary steps towards the idea of full Prophethood which alone can serve the purposes of the movement eventually brought into being by new political forces. In primitive countries it is not logic but authority that appeals. Given a sufficient amount of ignorance, credulity which strangely enough sometimes co-exists with good intelligence, and a person

sufficiently audacious to declare himself a recipients of Divine revelation whose denial would entail eternal damnation, it is easy, in a subject. Muslim country, to invent a political theology and to build a community whose creed is political servility. And in the Punjab even an ill-woven net of vague theological expressions can easily capture the innocent peasant who has been for centuries exposed, to all kind of exploitation. Pandit Jawahar Lal Nehru advises the orthodox of all religions to unite and thus to delay the coming of what he conceives to be Indian Nationalism. This ironical advice assumes that Ahmadism is a reform movement ; he does not know that as far as Islam in India is concerned Ahmadism involves both religious and political issues of the highest importance. 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. Leaving aside the purely religious issues, on the ground political issues alone it does not lie in the mouth of a man like Pandit Jawahar Lal Nehru to accuse Indian Muslims of reactionary conservatism. I have no doubt that if he had grasped the real nature of Ahmadism he would have very much appreciated the attitude of Indian Muslims towards of a religious Movement which claims Divine authority for the woes of India.

Thus the reader will see that the pallor of Ahmadism which we find on the cheeks of Indian Islam today is not an abrupt phenomenon in the history of Muslim religious thought in India. The ideas which eventually shaped themselves in the form of this movement became prominent in theological discussions long before the founder of Ahmadism was born. Nor do I mean to insinuate that the founder of Ahmadism and his companions deliberately planned their programme. I dare say the founder of the Ahmadiyya movement did hear a voice; but whether this voice came from the God of Life and Power or arose out of the spiritual impoverishment of the people must depend upon the nature of the movement which it has created and the kind of thought and emotion which it has given to those who have listened to it. The reader must not think that I am using metaphorical language. The life-history of nations shows that when the tide of life in a people begins to ebb, decadence itself becomes a source of inspiration, inspiring their poets, philosophers, saints, statesmen, and turning them into a class of apostles whose sole ministry is to glorify, by the force of a seductive art of logic, all that is ignoble and ugly in the life of their people. These apostles unconsciously clothe despair in the glittering garment of hope, undermine the traditional values of conduct and thus destroy the spiritual virility of

those who happen to be their victims. One can only imagine the rotten state of a people's will who are, on the basis of divine authority, made to accept their political environment as final. Thus all the actors who participated in the drama of Ahmadism were, I think, only innocent instruments in the hands to decadence. A similar drama had already been acted in Persia ; but it did not lead, and could not have led, to the religious and political issues which Ahmadism has created for Islam in India. Russia offered tolerance to Babism and allowed the Babis to open their first missionary centre in Ishqabad. England showed Ahmadis the same tolerance in allowing them to open their first missionary centre in Woking. Whether Russia and England showed this tolerance on the ground of imperial expediency or pure broad-mindedness is difficult for us to decide. This much is absolutely clear that this tolerance has created difficult problems for Islam in Asia. In view of the structure of Islam, as I understand it, I have not the least doubt in my mind that Islam will emerge purer out of the difficulties thus created for her. Times are changing. Things in India have already taken a new turn. The new spirit of democracy which is coming to India is sure to disillusion the Ahmadis and to convince them of the absolute futility of their theological invention. Nor will Islam tolerate any revival of mediaeval mysticism which has already robbed its followers of their healthy instincts and given them only obscure thinking in return. It has, during the course of the past centuries, absorbed the best minds of Islam leaving the affairs of the State to mere mediocrities. Modern Islam cannot afford to repeat the experiment. Nor can it tolerate a repetition of the Punjab experiment of keeping Muslims occupied for half a century in theological problems which had absolutely no bearing on life. Islam has already passed into the broad daylight of fresh thought and experience ; and no saint or prophet can bring it back to the fogs of mediaeval mysticism.....”

In the end he contradicted Pandit Nehru's assertion that Qadianis and Ismailis fell under the same category. Unlike Qadianis, Ismailis believed in basic principles of Islam, he explained.

“The above paragraphs briefly sum up the exact situation in the world of Islam today. If this is properly understood it will become clear that the fundamentals of Islamic solidarity are not in any way shaken by any external or internal forces. The solidarity of Islam, as I have explained before, consists in a uniform belief in the two structural principles of Islam supplemented by the five well-known “practices of the faith.” These are the

first essentials of Islamic solidarity which has, in this sense, existed ever since the days of the Holy Prophet until it was recently disturbed by the Bahais in Persis and the Qadianis in India. It is a guarantee for a practically uniform spiritual atmosphere in the world of Islam. It facilitates the political combination of Muslim States, which combination may either assume the form of a world State (ideal) or of a league of Muslim States, or of a number of independent States whose pacts and alliances are determined by purely economic and political considerations. That is how the conceptual structure of this simple faith is related to the process of time. The profundity of this relation can be understood only in the light of certain verses of the Quran which it is not possible to explain here without drifting away from the point immediately before us. Politically, then, the solidarity of Islam is shaken only when Muslim States war on one another; religiously it is shaken only when Muslims rebel against any of the basic beliefs and practices of the Faith. It is in the interest of this eternal solidarity that Islam cannot tolerate any rebellious group within its fold. Outside the fold such a group is entitled to as much toleration as the followers of any other faith. It appears to me that at the present moment Islam is passing through a period of transition. It is shifting from one form of political solidarity to some other form which the forces of history have yet to determine. Events are so rapidly moving in the modern world that it is almost impossible to make a prediction. As to what will be the attitude towards non-Muslims of a politically united Islam, if such a thing ever comes, is a question which history alone can answer. All that I can say is that, lying midway between Asia and Europe and being a synthesis of Eastern and Western outlooks on life, Islam ought to act as a kind of intermediary between the East and the West. But what if the follies of Europe create an irreconcilable Islam? As things are developing in Europe from day to day they demand a radical transformation of Europe's attitude towards Islam. We can only hope that political vision will not allow itself to be obscured by the dictates of imperial ambition or economic exploitation. In so far as India is concerned I can say with perfect confidence that the Muslims of India will not submit to any kind of political idealism which would seek to annihilate their cultural entity. Sure of this they may be trusted to know how to reconcile the claims of religion and patriotism. One word about His Highness the Agha Khan. What has led Pandit Jawahar Lai Nehru to attack the Agha Khan it is difficult for me to discover. Perhaps he thinks that the Qadianis and the Ismailis fall under the same category. He is obviously not aware

that however the theological interpretation of the Ismailis may err, they believe in the basic principles of Islam. It is true that they believe in a perpetual Imamate; but the Imam according to them is not a recipient of divine revelation. He is only an expounder of the law. It is only the other day (vide the Star of Allahabad, March 12, 1934) that His Highness the Agha Khan addressed his followers as follows:

“Bear witness that Allah is One. Muhammad is the Prophet of Allah. Quran is the Book of Allah. Kaaba is the Qibla of all. You are Muslims and should live with Muslims. Greet Muslims with Assalam-o-Alaikum. Give your children Islamic names. Pray with Muslim congregations in mosques. Keep fast regularly. Solemnize your marriages according to Islamic rules of nikah. Treat all Muslims as your brothers.”

It is for the Pandit now to decide whether the Agha Khan represents the solidarity of Islam or not?”

In a letter written to Pandit Jawahar Lai Nehru on 21 June, 1936 Dr Iqbal stated that Ahmadis are traitors both to India and Islam.

“My dear Pandit Jawaharlal,

Thank you so much for your letter which I received yesterday, at the time I wrote in reply to your articles I believed that you had no idea of the political attitude of the Ahmadis. Indeed the main reason why I wrote a reply was to show, especially to you, how Muslim loyalty had originated and how eventually it had found a revelational basis in Ahmadism. After the publication of my paper I discovered, to my great surprise, that even the educated Muslims had no idea of the historical causes which had shaped the teachings of Ahmadism. Moreover, your Muslim admirers in the Punjab and elsewhere felt perturbed over your articles as they thought you were in sympathy with the Ahmadiyya movement. This was mainly due to the fact that the Ahmadis were jubilant over your articles. The Ahmadi Press was mainly responsible for this misunderstanding about you. However I am glad to know that my impression was erroneous. I myself have little interest in theology, but had to dabble in it a bit in order to meet the Ahmadis on their own ground. I assure you that my Paper was written with the best of intentions for Islam and India. I have no

doubt in my mind that the Ahmadis are traitors both to Islam and India.

I was extremely sorry to miss the opportunity of meeting you in Lahore. I was very ill in those days and could not leave my rooms. For the last two years I have been living a life practically of retirement on account of continued illness. Do let me know when you come to the Punjab next. Did you receive my letter regarding your proposed Union for Civil Liberties? As you do not acknowledge it in your letter I fear it never reached you.

*Yours sincerely,
Mohammad Iqbal”*

52. Dr. Muhammad Iqbal's writings on Qadianism had a great bearing on the minds of Muslims. There developed a considerable resentment in India and the Islamic world for the Qadiani heresy. It was the result of Dr Iqbal's struggle against Qadianyatthat Anjuman-i-Hamayyat-i-Islam, Lahore passed a resolution in its annual session of 1935 against the inclusion of Sir Zafarullah in the Viceroy's Executive Council as a Muslim member. Dr Iqbal presided over the session and Maulana Zafar Aii Khan moved the resolution with the popular support. The next year (1936) members of the Ahmadya community were expelled from the Anjuman. It proved fatal for Mirza Yaqub Beg, a senior Ahmadi of Lahore Jamat and member of the Anjuman's General Council.

53. One of the most alarming issues, which had, and still has, serious repercussions for the State of Pakistan, is the non-disclosure of actual strength of the Qadianis in the Country. It has emerged on record that the actual population was never disclosed. The ‘figures in papers’ have always been kept at so minimal that the identity of majority of the community is intentionally kept hidden so as to enable them to infiltrate within the State institutions by posing themselves as Muslims. The situation was well-noticed by the members of the Special Committee of the Parliament in the year 1974. The members belonging to different parties, and most importantly the progressive members of the Committee

belonging to ruling Pakistan People's Party, raised very pertinent questions and expressed serious concerns in this regard. Extracts from reported speeches (of few of them) at the Committee are reproduced herein below to make the point illustrate:

Dr. Ghulam Hussain, a PPP leader and Parliamentarian from Jhelum, on 05th September, 1974, questioned the numerical strength as follows:

“We have asked both groups of Qadianis about their numerical strength in Pakistan? They tried to avoid telling the actual figure. They have taken different positions. Once it was told 35 lacs, on other occasion 30 lacs and even said that we have no record. You know that they have record of each and every member. Whenever a new entrant is included in the group, he provides his all details”

Sardar Moula Bakhsh Soomro, Member Parliament, belonged to Pakistan Peoples Party from Sukkur, while delivering his speech on 02nd September, 1974 stated that:

“Sir, it is now crystal clear that this (Qadianism) was a plot and the plot with all its ramifications has been discussed here and after that there can be no two opinions that according to Muslim conception they are nothing but “Kafir”. That being quite clear, then the conclusion or the step that would be taken after clarification is to have them declared not only as non-Muslims but even their publications and literature should be banned. Sir, their (Qadianis) expressions are clear; their only target is the Shann of Hazrat Muhammad (peace be upon him) and they want that “Shann” (Magnificence) and feel this the only object to be achieved. So, Sir, their publications should be banned.”

Dr. Mrs. Ashraf Khatoon Abbasi, representing women, associated with PPP from Larkana, delivered her speech on 05th September, 1974 and pointed it out that:

“Sir, after hearing the discussions and the speeches of the honorable members and the “Mahzarnamas” that have been produced in this august Special Committee, and the cross-examination of two leaders

of Ahmadi Jamaat, has crystallized and there is no doubt that these Ahmadis and Qadianis or whatever you call them are not amongst us. They are not one with us, the Muslims as we are, I want to emphasize that the women population of Pakistan are as much concerned about this issue as the male population of Pakistan.

We know, Sir, that the issue has crystallized and we are going to pass certain laws to solve this issue once for all. After this issue is solved, we will have to comb it after-effects of the solution. “

Malik Muhammad Suleiman, a PPP Parliamentarian from Narowal, while expressing his concerns on 05th September, 1974 said that:

“Our Friends have used the word “AHMADIS” FOR “QUADIANIS OR MIRZAIS”. WE HAVE A STRONG OBJECTION ON IT. THEY ARE NOT “AHMADIS”. IT SIMPLY MEANS THAT THIS WAY WE ARE BEING TAUGHT REPUGNANCE TO OUR HOLY PROPHET (PBUH). IT HAVE REMONSTRATED REPEATEDLY THAT IT IS NOT AN AHMEDI ISSUE, RATHER IT IS QUADIANI ISSUE. Mirza sahib has proclaimed that after triumph, they will go return back to Qadian (India), so it simply means they are not true Pakistanis even. Their agenda is quite similar to that of Israelis. If the whole Qadianis setup is closely observed, it becomes clear that it is a dangerous group. Their religion is only an illusion and their organization is like Zionists.”

Professor Ghafoor Ahmed, a leader and MNA from Jamat-e-Islami, highlighted the issue while commenting that:

“After amendment in the constitution, necessary legislation shall be made, and it is to be seen that which laws are to be amended. I do not want to go into details, but I can only point it out that a number of laws would be required to be amended and after amendment to the constitution such amendments in laws would be imperative. And the most urgent and crucial step, in this regard , would be to conduct census of Ahmedi Community, as both the groups of Quadinis, Lahori and Rabwah, have expressed their ignorance about their actual followers. I am unable to understand that how such an organized community is unaware of its actual number of followers?”

Moulana Zafar Ahmed Ansari, a leader of Pakistan movement and a Member of Parliament, stated on 06th of September that:

“Mirza Ghulam Ahmed had requested the Government in the year 1901 that our followers must be treated (Counted) separately in the census. That request was acceded to by the then English Government and the same was acted upon up till 1931, however, in 1941 that distinction was ignored. It is any request that we shall again act upon that request and they shall be counted separately in the census.”

Mr. Abdul Hafeez Pirzada, the Federal Minister of the Bhutto’s cabinet, on the eve of 2nd Constitutional Amendment made a crucial and historic speech on the floor of the Parliament. He specifically addressed the *issue of consequential changes in laws* and *identification of numerical strength of Qadianis*. While expressing the will of the people of Pakistan, he voiced:

“Having heard it at length, we can feel why a Muslim had such a deep and emotional reaction on this issue. One thing that emerged as a result of our deliberations and sittings and discussions is that our concept as popularly understood by Muslims of the finality of Prophethood of Muhammad (PEACE BE UPON HIM) is a fundamental article of faith of all Muslims, and no matter what happens., this fundamental article of faith of the finality of Prophethood cannot be compromised by Muslims in any sense. That is why, I said, sir, that this was not an issue of the Government, this was not an issue of the opposition; we had to treat it as a national issue, and the nation could ill afford to divide itself on such a vital issue and therefore, the effort of the Government, through the Government leader, the Prime minister of Pakistan, as also all our friends who sit across the floor, was to look and search for a consensus, so that the nation should not be divided on such a vital issue and the decision of the National Assembly should come unanimously and by consensus.

Sir, let me make it absolutely clear that Article 20 of our constitution gives fundamental right of profess, propagate and practice one’s own religion and every community shall be at liberty to do so, to profess, propagate and practice their own religion, but, as I said, Muslims’

finality of Prophethood, as would be defined in article 260 of the Constitution, is an article which is fundamental in faith. Therefore, we propose to recommend that the Pakistan Penal Code should be amended in section 295(a) by the addition of an Explanation. There is already a clause in the Pakistan Penal Code, which prohibits people from propagating religion in a manner so as to be offensive to other religious beliefs. Therefore, all Muslims because we cannot stop others from practicing or professing or propagating their own religion but if a person is a Muslim who professes, practices or propagates against the concept of Finality of Prophethood of Muhammad (peace be upon him) as set out in clause (3) of Article 260 shall be punishable under the section.

Sir, naturally, with these amendments, there will be CONSEQUENTIAL PROCEDURAL AMENDMENTS OR CHANGES IN LAW OR RULES OR FORMS OR PRACTICES, such as THE NATIONAL REGISTRATION ACT AND THE ELECTORAL RULES, and it would also be a recommendation for consideration that such consequential amendments may be made by Government at relevant time because there might be some laws where entries might have to be charged, giving ENTRIES OF PEOPLE ETC, AND OF PERSONS and so on and so forth.

But after the 2nd Constitutional Amendments, neither the consequential changes in laws could have been made, perhaps due to political crisis and breakdown of constitutional setup by the military, nor the dream of '*the entries of people etc, and of persons and so on and so forth*' could be fulfilled.

54. I have mentioned the historical events, the views of Muslim leaders, Ulemas and Scholars, Parliamentarians and the struggle of people of Pakistan against Qadianism at some length to elucidate the following points:-

- (i) The Qadianism has been viewed as a Non-Muslim entity by the Muslims, which led to their ultimate declaration as such by way of Constitutional Amendment.
- (ii) The Constitutional Amendments have even passed the test of judicial review by the superior Courts of the country.

- (iii) The Qadiani problem has political foundations and motives. In view of the matter a continuous demand has been raised to make provisions to practically dissociate Qadianis from Islam and Muslims. In this regard the Ordinance, 1984 was promulgated, which was aimed to take measures to give effect the 2nd Constitutional amendment to some extent.
- (iv) The Ordinance, 1984 has also passed the test of judicial review from the superior Courts of the country and it has been held as a valid law in consonance with the Constitutional guarantees, rights of the minorities and freedom of religion.
- (v) The Federal Government was required to make corresponding amendments in the other laws to give effect to the Constitutional mandate, but unfortunately this could not have done.
- (vi) That phenomenon of the infiltration of Qadianis by posing themselves as Muslims, in the State institutions and key posts, including the high Constitutional offices was to be addressed, effectively but no step were taken towards this direction, although the same has been the demand of the nation and mandate of 2nd Constitutional Amendment.
- (vii) The Qadiani issue has always been a core issue in the country and even before the independence which has even resulted in military interventions, toppling of government and Constitutional breakdown. The sensitivity of the issue required immediate measures but the Federal government did not take effective measures, which resulted into failure of Government machinery during recent Faizabad sit in, and this threat continues in future as well.

In view of the above, the Court was called upon by the Petitioners, more particularly, in W.P.No. 3862/2017, *to issue directions for a separate data base of individuals belonging to Qadiani group/Lahori group entering in civil service so that in future they may not be posted in offices involving sensitive matters such as raised in the instant petition and bring on record a detailed report*

showing individuals/officers belonging to Qadiani group/Lahori group currently serving in the Federal Government with their respective portfolios.

55. There can be no cavil to the proposition that this court is bound by the dictums of the Federal Shariat Court falling under its jurisdiction in terms of Article 203 GG of the Constitution and under Article 189 of the Constiution by the law enunciated by the honourable Supreme Court of Pakistan. Therefore, the matters which have attained finality, as enumerated in detail herein above, cannot be touched upon.

In reply to the questions raised by the Court from the learned *amicus curiae*, as to *whether an Islamic State can enact any law whereby a non-Muslim could, directly or indirectly, be allowed to pose or recognize himself as a Muslim? And whether an Islamic State can permit the non-Muslim citizens to pose themselves as Muslims?*, the learned *amicus curiae* belonging to different schools of thought, (i.e. Ahle Sunnah-wal-Jammat-Barelvi & Ahle Sunnah-wal-Jammat-Deoband, Ahle Hadith and Ahle Tasheeh) were in unison that no such authority is vested with an Islamic State to enact such law or to grant such permission. Similarly, they are all in agreement with respect to other queries as depicts from the detailed submissions noted earlier. With reference to the queries mentioned above, the learned *amicus curie* has also explained the concept of separate identity of the Muslims from non-Muslims in Islam, status of *Sha'a'irullah*, their significance, measures an Islamic State is required to take to maintain its separate identity and distinct charecteristics and the injunctions of Islam to stop infiltrations of non-Muslims within the Muslim community while hiding their real faith and identity. All these submissions have been dealt with herein below in detail:

A- INJUNCTIONS OF HOLY QURAN:

While relying upon the verses from the Holy Quran, it has been emphasized that the Allah has enjoined upon all Muslims to respect and venerate the *Sha'a'irullah*. This command is one of those commands in the Holy Quran which has been made repeatedly. The repetition of same in perspicuous declaration signifies its importance and essential character in Islam, from which there is no escape and the disobedience of same is sufficient to invite the Wrath of the God, not only in private rather in collective sphere as well. The Decree of the God in the matter of Sha'a'irullah is to be found in following verses:

1. **VERSE: 2: 158**

إِنَّ الصَّفَاَ وَالْمَرْوَةَ مِنْ شَعَائِرِ اللَّهِ ۚ فَمَنْ حَجَّ الْبَيْتَ أَوْ اعْتَمَرَ فَلَا جُنَاحَ عَلَيْهِ أَنْ يَطَّوَّفَ بِهِمَا ۚ وَمَنْ تَطَوَّعَ خَيْرًا فَإِنَّ اللَّهَ شَاكِرٌ عَلِيمٌ

Surely, *al-Safa* and *al-Marwah* are the symbols of Allah. Hence, whoever performs Hajj (Full Pilgrimage) to the House (of Allah) or makes Umrah (minor pilgrimage), will find that it is no sin for him to ambulate between the two. And whoever does a good work voluntarily should know that Allah is Appreciative, All-Knowing. (Surah 2: Verse 158)

2. **VERSES: 22: 30-37**

ذَلِكَ * وَمَنْ يُعْظِمِ حُرْمَتِ اللَّهِ فَهُوَ خَيْرٌ لَهُ عِنْدَ رَبِّهِ ۖ وَأُحِلَّتْ لَكُمْ الْآنْعَامُ إِلَّا مَا يُتْلَىٰ عَلَيْكُمْ فَاجْتَنِبُوا الرِّجْسَ مِنَ الْأَوْثَانِ وَاجْتَنِبُوا قَوْلَ الزُّورِ
حُنْفَاءَ اللَّهِ غَيْرَ مُشْرِكِينَ بِهِ وَمَنْ يُشْرِكْ بِاللَّهِ فَكَأَنَّمَا حَرَّمَ مِنَ السَّمَاءِ فَتَخْطَفُهُ الطَّيْرُ أَوْ تَهْوِي بِهِ الرِّيحُ فِي مَكَانٍ سَحِيقٍ ۚ
ذَلِكَ وَمَنْ يُعْظِمِ شَعَائِرَ اللَّهِ فَإِنَّهَا مِنْ تَقْوَى الْقُلُوبِ (32)
لَكُمْ فِيهَا مَنَافِعٌ إِلَىٰ أَجَلٍ مُّسَمًّى ثُمَّ مَحِلُّهَا إِلَى الْبَيْتِ الْعَتِيقِ (33)
وَلِكُلِّ أُمَّةٍ جَعَلْنَا مَنْسَكًا لِيَذْكُرُوا اسْمَ اللَّهِ عَلَىٰ مَا رَزَقَهُمْ مِنْ بَهِيمَةٍ الْأَنْعَامِ فَإِلَهُكُمْ إِلَهٌ وَاحِدٌ فَلَهُ أَسْلِمُوا (34)
وَبَشِّرِ الْمُخْبِتِينَ
الَّذِينَ إِذَا ذُكِرَ اللَّهُ وَجِلَّتْ قُلُوبُهُمْ وَالصَّابِرِينَ عَلَىٰ مَا أَصَابَهُمْ وَالْمُقِيمِي الصَّلَاةِ وَمِمَّا رَزَقْنَاهُمْ يُنْفِقُونَ (35)
وَالَّذِينَ جَعَلْنَاهَا لَكُمْ مِنْ شَعَائِرِ اللَّهِ لَكُمْ فِيهَا حَبِيرٌ فَادْكُرُوا اسْمَ اللَّهِ عَلَيْهَا صَوَافٍ فَإِذَا وَجَبَتْ جُنُوبُهَا فَكُلُوا مِنْهَا وَأَطِيعُوا الْقَانِعَ وَالْمُعْتَرَّ كَذَلِكَ سَخَّرْنَاهَا لَكُمْ لَعَلَّكُمْ تَشْكُرُونَ

[30] Such (was the purpose of building the Ka'bah) .Whosoever, then, generated Allah's sanctities will find it to be good for him in the sight of his Lord. Cattle have been made lawful for you except those mentioned to you (as unlawful). So shun the abomination of idols and shun all words of falsehood.

[31] Become exclusively devoted to Allah, ascribing Divinity to none other than Him. Whoso ascribes Divinity to aught beside Allah, it is as though he fell down from the sky whereafter either the birds will snatch him away, or the wind will sweep him to a distant place (causing him to be shattered to pieces).

[32] Such is the fact. And whoso venerates the sanctity of all that have been ordained as symbols of Allah surely does so because it is part of the true piety of the hearts.

[33] You may derived benefit (from sacrificial animals) until an appointed time. Thereafter their place (of sacrifice) is near the Ancient House.

[34] For every people We Have laid down a ritual if sacrifice (_although the purpose of the ritual is the same-) that they pronounce the name of Allah over the cattle He has provided them. Your Lord is One God; so submit yourself to Him alone. And give, (O Prophet) glad tidings to those that humble themselves (before Allah), [35] whose hearts shiver whenever Allah is mentioned, who patiently bear whatever affliction comes to them, who establish Prayer, who spend (for good purpose) out of what We have provided them.

[36] We have appointed sacrificial camels among the symbols of (devotion to) Allah. There is much good in them for you. So make them stand (at the time of sacrifice) and pronounce the name of Allah over them, and when they fall down on their sides (after they are slaughtered), eat and also feed them who do not ask and those who ask. Thus have We subjected these animals that you may give thanks. [37] Neither their flesh reaches Allah for the guidance He has bestowed upon you. Give glad tidings, (O Prophet), to those who do good. (Surah:22|Ayat:30-37)

3. VERSE: 5: 2

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَحْلُوا شَعَائِرَ اللَّهِ وَلَا الشَّهْرَ الْحَرَامَ وَلَا الْهَدْيَ وَلَا الْقَلَائِدَ وَلَا أُمِينَ الْبَيْتِ الْحَرَامِ يَبْتَغُونَ فَضْلًا مِّن رَّبِّهِمْ وَرِضْوَانًا وَإِذَا حَلَلْتُمْ فَاصْطَادُوا وَلَا يَجْرِمَنَّكُمْ شَنَا نُ قَوْمٍ أَن صَدُّوكُمْ عَنِ الْمَسْجِدِ الْحَرَامِ أَن تَعْتَدُوا وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ

O you who have believed, do not violate the rites of Allah or [the sanctity of] the sacred month or [neglect the marking of] the sacrificial animals and garlanding [them] or [violate the safety of] those coming to the Sacred House seeking bounty from their Lord and [His] approval. But when you come out of ihram, then [you may] hunt. And do not let the hatred of a people for having obstructed you from al-Masjid al-Haram lead you to transgress. And cooperate in righteousness and piety, but do not cooperate in sin and aggression. And fear Allah; indeed, Allah is severe in penalty.

(Surah:5|Ayat:2)

In the above verses of the Holy Quran, the term *Sha'a'ir*, has specific meanings and connotation. The Muslim scholars belonging to different schools of thought have explained the meaning of this expression in their respective commentaries of the Holy Qur'an. The way this term/expression has been defined and explained in different commentaries is significant to mention herein below:

Justice (R) Muhammad Taqi Usmani, has defined it:

The word sha'a'r literally means *such symbols which represent certain realities*. It implies *those manifestations of shari'ah which have been determined by Allah (SWT) as compulsory requirements*. Specially the sacred places of Hajj are included in

Sha'a'rullah which must be revered & paid respect as a requirement of faith.

(Tafseer Asaan Qur'an)

Moulana Salahuddin Yousaf has explained it in the following manner:

The word Sha'a'ir is the plural of Sha'irah which means a symbol or an identification mark that is specified in the time of war to recognize each other. Thus Sha'a'rullah are those prominent & distinctive commandments of Islam which form a distinctive identity of a Muslim differentiating him from followers of other religions.

(Tafseer Makkah)

Moulana Ishaq Madni while commenting upon its meaning has defined it as follows:

Sha'a'rullah means an act which Allah (SWT) has informed and ordered human beings to perform. So each and every commandment of Islam that is considered as its symbol is part of Sha'a'rullah.

(Tafseer Madani Kabeer)

Dr. Israr Ahmed has defined it in the following terms:

The singular of sha'a'ir is sha'irah which literally belongs to the word 'sho'ur'. In this context **everything** which **creates consciousness of Allah** (SWT), **His attributes** and **His ultimate obedience** in human beings is considered as Sha'a'irullah. For the same reason, Safa, Marwah, Baitullah and Maqam-e-Ibrahim are called Sha'a'irullah.

(Tafseer Bayanul Quran)

Mufti Muhammad Shafi' in his most celebrated commentary states that:

The word Sha'a'ir is plural of Sha'irah which means an emblem. Things that are considered as distinctive emblems for a specific religion or a community are called its sha'a'ir. Islamic sha'a'ir are those special commandments which are counted as identification signs for a Muslim.

(Tafseer Maarif al-Quran)

Hafiz Abdussalam Bhattwi defines it as:

Things which have been set up by Allah (SWT) *to remind or create consciousness of His greatness* are called Sha'a'irullah. Whoever reveres and pays respect to these has a pious heart.

(Tafseer al-Quran)

Justice (R) Pir Karam Shah Al-Azhari in his famous commentary has defined it as:

It means the *emblems to identify & recognize* something or things which **differentiate** between right and wrong are called Sha'a'irullah.

(Tafseer Ziaul Qur'an)

Moulana Hafiz Ahmed Muhammad Hassan defined it as follows:

Sha'a'ir, ***emblems and symbols are specific for every nation and person***. Sha'a'ir of Allah (SWT) are those special rituals which have been determined by Allah as distinctive signs for his obedient ones. Observance of these emblems is an act of pioussness. Non observance of national identity signs considering them as inferior is an act of disobedience of Allah. This attitude causes damage to national solidarity.

(Tafseer Ahsan-ut-tafasir)

All the above mentioned definitions of “Sha'a'ir” given by the respected Scholars have been elaborated by Syed Abu'l Alla Moudoodi in his commentary Tafheem Ul Qur'an (Toward Understanding the Quran) as follows:

“Whatever characteristically represents either a particular doctrine, creed, way of thought or conduct is recognized as its symbol.

For example, official flags, uniforms of the armed forced, coins, notes, and stamps are symbols used by governments.

Cathedrals, altars and crosses are symbols of ***Christianity***.

A special bunch of hair on the head, a special kind of bead-rosary and the temple are symbols of ***Hinduism***.

A turban, bracelet and kirpān (a special dagger kept by the Sikhs) are symbols of ***the Sikh religion***.

The bumper and sickle are the symbols of *Communism*.

The followers of those ideologies are required to treat these symbols with respect. If a person insults any symbol associated with a particular ideology it is regarded as an act of hostility and if the person concerned is himself a follower of that ideology then that insult is considered to be tantamount to abandonment of, and revolt against, it. The expression sha'ā'ir Allah refers to all those rites which, in opposition to polytheism and outright unbelief and atheism, are characteristics symbols of exclusive devotion to God."

(TAFHEEM-UL-QUR'AN)

From the above, it is quite evident that ritual symbols are *the characteristic marks, feature manifestations, and representation signs* of a particular religion or ideology. As an Islamic concept, they not only serve as *outward appearance, or apparent phenomenon, or peripheral form, or distinct peculiarity, or significant mark*, but also serve as the expression of feelings, obedience to the command of the Allah and a symbol of unity and integrity of Ummah. While discussing the religious symbols, it may be kept in mind that a religious symbol has the effect comparable to none. The difference between an object as a *religious symbol* and a *neutral and profane object* is the ritual behavior: it attracts rituals and observances which are justified and explained by religious belief.

56. One of the main examples of Ritual Symbols, says *Lennard Ryden* in his expose titled *The symbol of the centre and its religious function in Islam* (Religious Symbols and their Functions; Edited by HARALDS BIEZAIS) is *the Symbol of the Centre in Islam*, the Ka'ba-tullah, called as Bait Ullah, Bait Ul Har'am and the vicinity of Makah in which it is located attained the status of "Umm-UI-Quraa", the *Mother of Cities*. The symbol is *efficacious* it has psychological effects, it provokes and expresses emotions, spiritual experiences, feelings of fellowship, of duties towards God and fellow-believers; not only do these emotions visualize fundamental principles in Islam, but by the experience of

the Symbol these ideas are integrated in the personality of the individual (or rather: of millions of individuals!), with social and political consequences for his actions. The fact that the Centre is invariably remembered as the *kiblah*, the direction of the daily ritual behavior, creates a profound awareness of membership of a community transcending ethnic, national and political boundaries.

57. To be valid the prayers must be performed facing the *kibla*. The animal to be slaughtered stands with its head towards the *kibla*. The dead is buried with his face towards Mecca. The *kibla* determines the orientation of the mosques, and thus indirectly, town plans throughout the Muslim world. Mecca is also the goal of the Pilgrimage. Mecca's unique position and the sanctity of the Ka`ba are well evidenced in the Quran:

"Behold! The first temple (bayt) that was founded for mankind, was that in Makka, blessed, and a guidance to the worlds. In it are evident signs, the place of Abraham (makam Ibrahim), and he who enters it is safe. And it is incumbent on the humans before God to make the pilgrimage to the temple, everyone who is able to do it."
(Sura 3: 96)

The Centre, in this case, is a specific object, the Ka`ba, and, to a certain extent, the City of Mecca as a whole, in their character of *focus* in the ritual geography of Islam. In what way is the Ka`ba (and Mecca) as the Centre of the Muslim world a *symbol*? What is the value of the symbol today? In short: What is the religious function of the Symbol of the Centre in Islam?

- i. The sanctity and unique status of Mecca and of the Ka`ba is indicated by the **right of asylum**: *"He who enters it is safe"* (Surah 3: 97/91, 28: 57 and 29: 67). Al Haram is inviolable, but its right of asylum is not without limitations. It is not valid for unbelievers who attack Muslims (Surah 2: 191/187), and a criminal who seeks refuge there must not be offered food, so that he must soon surrender. The inviolability also holds good for flora and fauna. *Plants and animals (with certain exceptions) are protected within the Haram of Mecca.*

The ritual slaughter during the Pilgrimage is performed not at the Ka`ba (as the Qur'an implies: Surah 22: 33/34) but in Mina. One result of the ban on the killing of animals is the abundance of pigeons at the Mosque of Mecca.

- ii. *Mecca has become a Muslim world in miniature.* Due to the religious importance of Mecca strangers have settled there. All ethnic groups and nationalities in Islam are to be found there. The Ka' ba' s role as an object of devotion is also indicated by the fact that pictures of the temple actually serve as "devotional icons", in homes and in mosques. The Symbol of the Centre tends to become the symbol of the religion as a whole.
- iii. We may also note that the *Imam of the Kaba* is a personage of importance, leading diplomatic delegations etc.
- iv. The reverence for the symbol is indicated also by the *splendor and beauty of the Mosque*. The most important change in Mecca is the reconstruction of the Mosque around the Ka`ba—the Ka`ba itself of course remains intact.
- v. Muslims from all over the world gather in Mecca. They meet fellow-believers, all in the same clothing, performing the same rituals. It is often emphasized that *the brotherhood, the unity and the equality of Islam are there made manifest as tangible experiences* which the Muslim should apply in his daily life; and through this yearly act the whole of the Muslim community is purified.
- vi. The Ka`ba and the Haram of Mecca are *not* involved in the most important and constitutive rite of the *hajj*: *AL-WUKUF, "the standing", at 'Arafät"*, in commemoration of the meeting between Adam and Eve and of the Prophet Muhammad's (PBUH) Farewell Sermon.
- vii. An important rite in both *hajj* and *umra* is *THE TAWAF, the ritual circumambulation of the Ka`ba*. The *tawaf* is performed anti-clockwise seven times, with the corner of the Black Stone as the starting-point. Circumambulation anti-clockwise is normally

considered the more unusual form of the phenomenon in the world of religions. Insofar as any interpretation of the rite is given, it is called an act of obedience towards God. The rite, like the whole ritual of the Pilgrimage, is regarded as instituted by Abraham. The centre which is circumambulated is Abraham's temple. The *tawaf* of departure is the concluding rite in both *hajj* and *'umra*, performed immediately before the pilgrim leaves Mecca. Expressions of strong emotional involvement follow the performance of this rite.

- viii. Between the eastern corner and the door of the Ka`ba extends the part of the north-eastern wall known as *al-Multazam*, where the visitors press breast and face against the wall, their arms above their heads", beseeching "the good things of this and the other world".
- ix. *Makam Ibrahim* is a stone north-east of the Ka`ba. Tradition says that Abraham stood on this stone when building the temple.
- x. The **Zamzam** well, east of the Ka`ba, is by tradition the source which saved the life of Ismael when he and his mother Hajra searched for water in the barren valley. Its water flow is considered miraculous.
- xi. The connection between the family of Abraham and the Pilgrimage is accentuated by other ceremonies: **Sa'y, the "course" between as-Safa and al-Marwa** commemorates Hajra's search for water.
- xii. The "*Stoning of Satan*" *In Minä* recalls Abraham's rejection of Satan's temptation to disobey God's command to offer his son. The implication of the ceremony is that the pilgrim renounces evil, and is ready to fight against temptations.
- xiii. The *rite of slaughtering in Mina*—which coincides with the celebration of *'Eid al-adha* throughout the Muslim world—derives from the legend of Abraham's sacrifice and commemorates his obedience. The significance of the rite is stated to be the manifestation of willingness to renounce, to sacrifice one's property (or even one's life). It is also said to remind the pilgrim of his duty to help the needy.

- xiv. Many have testified that the Pilgrimage, nay, already the mere sight of Ka'ba, can provoke extremely strong feelings. It is described as a deep religious experience, a source of spiritual joy, a "rebirth".
- xv. The ***Black Stone***—though not mentioned in the Quran—is regarded as the remnant of Abraham's and Ismael's Ka`ba. Sometimes it is associated with the "covenant" between God and the children of Adam (cf. Sura 7: 172/171).
- xvi. The Ka'ba is regarded as "***the very symbol of monotheistic belief***", says Zaki Badawi. The Ka'ba, and Mecca, is the Centre of Islam's "topographical religiosity". The *Symbol* of the Centre in Islam is, on the one hand, the tangible object, the City and the temple, and on the other the ritual behavior concerned with the Centre, i.e. *tawaf*, *kibla* etc. (*Lennard Ryden; The symbol of the centre and its religious function in Islam* in *Religious Symbols and their Functions*; Edited by HARALDS BIEZAIS)

58. Leaving aside all other ritual symbols, I have focused on Pilgrimage to demonstrate that how much of religious belief of Muslims around the world is connected with this 'symbol' alone! If I go on to explain other 'Symbol' related to Islam, the discussion would have no end. Every ritual of Islam has its own peculiar features, its own world view, its own inner-purpose and function, which distinguishes it from other religions of the world. In these verses of the Holy Quran a great stress has been laid on the significance of the 'Ritualistic identification'. *Ritual symbols* of every religion have a distinct characteristic feature; and the *ritual performance* of a particular religion is an instrument of expression, of communication, of knowledge and of control. There is a worldview behind every ritual. Every ritual act and performance has a function and purpose. The function or purpose may be latent or manifest, but the ritual behavior of the followers transmits some religious or other message to the participants aware of their meanings, which cannot be ignored.

B- AUTHORITY OF SUNNAH:

Another aspect of the matter is that the ritual symbols of Islam have a close connection with the Prophet (PBUH). The performance of the *obligation of five times daily prayers* from call of prayer to the mandatory ablution; the concept of Iqamat; the gathering at the Mosque; the offering of *Namaz* together in the leadership of one Imam; the recitation of verses from Holy Quran; the actions symbols of sublimation by way of *Qayam, Ruku, Sajood*, everything has been taught by the Holy Prophet (PBUH) himself. The Holy Prophet (PBUH) said that '*Offer prayer as you see me praying*'. In this way, the ritual of Islam are so closely knitted with the personality of the Prophet (PBUH) of Islam that even a perception of their narrower fissure from the personality of Holy Prophet (PBUH) is considered as an incursion.

Islam has its own 'separate identity', similar to none. Apart from the entire Corpus Juris of Islam, if we only look at the concept of 'five pillars' of Islam, the uniqueness of Islamic ritual becomes evident. No other religion of the world mandates such devotional acts for the purpose of fulfilling the covenant with God. Quite naturally, Muslims are jealous to safeguard their rituals, which serve as characteristics features of their religion, from adulteration in the hands of those, whom they consider as 'traitors to their faith'. The symbols are essentially involved in social processes; a ritual symbol is a factor in social action; and a positive force to ignite that action. The exceptional character of those ritual symbols covers the entire social life of the Muslim community from the birth of a child to the death bed of burial ceremonies. Therefore, no other religious community, whom Muslims believe outside the pale of Islam, can be allowed to masquerade themselves, in the attire of Muslims. Muslims are not opposed to the practice of their religion by the Qadianis, but they cannot accord with their efforts to camouflage their religion under the costume of Islam. This rings alarms about their feelings, emotions, beliefs, protection of which is their religious obligation.

The concept of distinct Muslim identity is deep-rooted in the thought, mind and belief of Muslim community. This conception has been taught and ingrained in the Muslim community none else but by the Prophet (PBUH) himself. The message of Allah which the Messenger of Allah was assigned to communicate included the recitation of Clear Signs to them. During the days of Prophet (PBUH), the Muslims Community of the State of *Madinah* was commanded to keep its identity separate and distinct from those of Jews and Christians, the neighboring tribes of *Madinah*. So much so, the individual outlooks and appearances of a Muslim was required to be different from that of Jews and Christians, rather at some occasions following an opposite appearance was ordained. Following Ahadiths would be enough to make the point understand:-

حَدَّثَنَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا أَبُو النَّضْرِ، حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ ثَابِتٍ، حَدَّثَنَا حَسَّانُ بْنُ عَطِيَّةَ،
عَنْ أَبِي مُنَيْبِ الْجَرَشِيِّ، عَنْ ابْنِ عُمَرَ، قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: مَنْ تَشَبَّهَ بِقَوْمٍ
فَهُوَ مِنْهُمْ

Narrated Abdullah ibn Umar: The Prophet (PBUH) said: He who copies any people is one of them.

أَخْبَرَنِي عُثْمَانُ بْنُ عَبْدِ اللَّهِ، قَالَ: حَدَّثَنَا أَحْمَدُ بْنُ حَنْبَلٍ، قَالَ: حَدَّثَنَا عِيسَى بْنُ يُونُسَ، عَنْ هِشَامِ بْنِ
عُرْوَةَ، عَنْ أَبِيهِ، عَنْ ابْنِ عُمَرَ، قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: غَيَّرُوا الشَّيْبَ وَلَا تَتَّبِعُوا
بِالْيَهُودِ

It was narrated that Ibn 'Umar said: The Messenger of Allah [SAW] said: 'Change gray hair, but do not imitate the Jews.'

أَخْبَرَنِي عُثْمَانُ بْنُ عَبْدِ اللَّهِ، قَالَ: حَدَّثَنَا أَحْمَدُ بْنُ حَنْبَلٍ، قَالَ: حَدَّثَنَا عِيسَى بْنُ يُونُسَ، عَنْ هِشَامِ بْنِ
عُرْوَةَ، عَنْ أَبِيهِ، عَنْ ابْنِ عُمَرَ، قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: غَيَّرُوا الشَّيْبَ وَلَا تَتَّبِعُوا
بِالْيَهُودِ

It was narrated that Ibn 'Umar said: The Messenger of Allah [SAW] said: 'Change gray hair, but do not imitate the Jews.'

C- CONSENSUS OF UMMAH:

59. The learned amicus curiae have also submitted that the process of maintaining of separate identity by the Muslims was vigorously followed by the

Second Righteous Caliph Hazrat Umer Farooq (R.A) and the Righteous Caliphs following him. There is an overwhelming evidence that the Muslims during the period of righteous Caliphate and then during the Ummayad and the Abbasid's reigns did not allow the non-Muslims to adopt the appearance(s) which were specific to the Muslims, and mandated for them to follow a specific course in this regard. Professor Dr. Hafiz Hussain Ahmad Madni, while giving the historical importance of the Shurut-e-Umariyya has pointed out that the Pact of Umar (R.A) was acted upon during the period of *Khilafat-e-Rashida* خلافت راشدہ , Hazrat Umar Bin Abdul Aziz, Khalifa Haroon-ur-Rahid, Khalifa Jajar Bin Muhammad, Sultan-al-Nair Muhammad Bin Kalawoon and others. It has been contended that such measures were adopted both ways. On one hand the Muslims were required to maintain their separate identity while on the other hand the non-Muslims were also required to refrain from adopting Muslim's identities. The historical evidence of Muslims sensitivity ensuring to keep an independent identity different from non-Muslims is also found in the historic documents of 'The pact of Umer' also known as Covenant of Umer (شروط عمریہ), which he had made on the conquest of Syria. The conditions of the pact throw a light the extent to which *Sahabas* were concerned about their separate identity and how provisions were made to restrain even Jews and Christians from adopting Muslim ritual symbols. It may be noted here that, later on, this pact served as a model for later Governments to come to deal with non-Muslims joining the realm of Islamic State. The amicus curiae have strenuously submitted that the *Pact of Umer* (R.A) has been accepted and acted upon by the successor Caliphs as well as the rulers of Muslims States for generations. Almost every author on the subject of *Ahkaam-us-Sultaniyya* (احکام السلطانیہ) has reported it as a guiding document for Islamic State. Learned amicus curie Hafiz Hussain Ahmad Madni has submitted that almost 22 books on the subject of *Ahkaam-us-Sultaniyya* (احکام السلطانیہ) authored by great Islamic scholars have incorporated the same as a significant document.

60. Mr. Madni has demonstrated from the writings of jurists like Imam Abu Al Hassan *Mawardi* Shafai, Imam *Ibne Qadama* Hanbali, Imam *Abu Yousaf* Hanafi, Imam *Ibn Timiyya*, Imam *Ibne Qayyam* and other distinguished jurists that the document is to be considered as '*Ijma-e-Sahaba*' (اجماع صحابه) on the issue as none of them reportedly disapproved this practice/covenant, rather the adoption of same by succeeding Caliphs stamps its validity and legal importance. This agreement was executed in presence of *Sahaba Karam* from *Muhajireen* and *Ansaar* in 15 A.H. Hazrat *Khalid Bin Waleed* (R.A), Hazrat Abdur *Rehman Bin Auf* (R.A) and *Muawiyya Bin Sufiyyan* (R.A) signed as **WITNESSES** of this historic document. It is reported that the righteous Caliph Hazrat Ali (R.A) while commenting upon the sacredness of this document had said that **he cannot amend any of the covenants of the agreement set forth by Hazrat Umer (R.A) as he (Hazrat Umer R.A.) was the best in statesmanship, in opinion and in uprightness.** This is the reason that all major schools of thought have recognized the importance of enforcement of *Shurut-e-Umariyya* for the protection and safeguarding the interests of Muslim Ummah, which are reproduced herein below:

The scholars of Hadith narrated from 'Abdur-Rahman bin Ghanm Al-Ash'ari that he said, "I recorded for 'Umar bin AlKhattab', may Allah be pleased with him, the terms of the treaty of peace he conducted with the Christians of AshSham [Syria]:

'In the Name of Allah, Most Gracious, Most Merciful. This is a document to the servant of Allah 'Umar, the Leader of the faithful, from the Christians of such and such city. When you (Muslims) came to us we requested safety for ourselves, children, property and followers of our religion. We made a condition on ourselves that we will neither erect in our areas a monastery, church, or a sanctuary for a monk, nor restore any place of worship that needs restoration nor use any of them for the purpose of enmity against Muslims. We will not prevent any Muslim from resting in our churches whether they come by day or night, and we will open the doors [of our houses of worship] for the wayfarer and passerby. Those Muslims who come as guests, will enjoy boarding and food for three days. We will not allow a spy against Muslims into our churches and homes or hide deceit [or

betrayal] against Muslims. We will not teach our children the Qur'an, publicize practices of Shirk, invite anyone to Shirk or prevent any of our fellows from embracing Islam, if they choose to do so. We will respect Muslims, move from the places we sit in if they choose to sit in them. *We will not imitate their clothing, caps, turbans, sandals, hairstyles, speech, nicknames and title names, or ride on saddles, hang swords on the shoulders, collect weapons of any kind or carry these weapons. We will not encrypt our stamps in Arabic, or sell liquor.*

We will have the front of our hair cut, wear our customary clothes wherever we are, wear belts around our waist, refrain from erecting crosses on the outside of our churches and demonstrating them and our books in public in Muslim fairways and markets. We will not sound the bells in our churches, except discretely, or raise our voices while reciting our holy books inside our churches in the presence of Muslims, nor raise our voices [with prayer] at our funerals, or light torches in funeral processions in the fairways of Muslims, or their markets. We will not bury our dead next to Muslim dead, or buy servants who were captured by Muslims. We will be guides for Muslims and refrain from breaching their privacy in their homes.' When I gave this document to 'Umar, he added to it, "We will not beat any Muslim. These are the conditions that we set against ourselves and followers of our religion in return for safety and protection. If we break any of these promises that we set for your benefit against ourselves, then our Dhimmah (promise of protection) is broken and you are allowed to do with us what you are allowed of people of defiance and rebellion.'

61. **ARGUMENT BASED ON OBJECTIVES OF THE SHARIAH:**

The questions before us are closely related with the doctrine of ***OBJECTIVES OF THE SHARIAH*** or the ***Maqasid al-Shariah***. Muslim scholars had been discussing the fundamental objectives of the Shariah from the earliest days and have tried to interpret the role of Shariah in the light of its primary objectives. They have related the laws of the Islam with different objectives and then established that all the corpus juris of Islam, directly or indirectly, protects, supports or promotes one or the other objective. Some of the most prominent

exponents of the *maqasid al-Sharī'ah* are: al-Māturīdī (d.333/945), al-Shāshī (d.365/975), al-Bāqillānī (d. 403/1012), al-Juwaynī (d.478/1085), al-Ghazālī (d.505/111), Fakhr al-Dīn al-Rāzī (d.606/1209), al-Āmidī (d. 631/1234), 'Izz al-Dīn 'Abd al-Salām (d. 660/1252), Ibn Taymiyyah (d. 728/1327), al-Shātībī (d. 790/1388) and Ibn 'Āshūr (d.1393/1973)- From amongst the modern proponents the works are: Masud, 1977; al-Raysuni, 1992; Ibn al-Khojah, 2004, Vol.2, pp. 79-278; Nyazee, 1994, pp. 189-268; al-Khadimī, 2005; and 'Awdah, 2006 are significant.

62. The *maqasid al-Sharī'ah* have been either directly stated in the Qur'ān and the *Sunnah* or inferred from these by a number of scholars. All of these address the *raison d'être* of the *Sharī'ah* which, as recognized by almost all the jurists, is to serve the interests (*jalb al-masalih*) of all human beings and to save them from harm (*daf' al-mafasid*) Imām Abū Hāmid al-Ghazālī (d.505AH/1111AC), a prominent and highly respected reformer in the fifth century Hijrah, classified the *maqasid* into five major categories by stating that:

“The very objective of the *Sharī'ah* is to promote the well-being of the people, which lies in safeguarding their faith (*dīn*), their self (*nafs*), their intellect (*'aql*), their posterity (*nasl*), and their wealth (*māl*). Whatever ensures the safeguard of these five serves public interest and is desirable, and whatever hurts them is against public interest and its removal is desirable.”

These objectives have been summarized as follows: -

- i) Protection of Din;
- ii) Protection of life;
- iii) Protection of intellect;
- iv) Protection of family and honour; and
- v) Protection of wealth and property.

These are, however, not the only *maqāsid* aimed at ensuring human well-being by honouring human rights and fulfilling all human needs. There are many others indicated by the Qur'an and the *Sunnah* or inferred from these by different

scholars. Therefore, while these five may be considered as primary (*al-asliyyah*), others may be referred to as their corollaries (*tābi‘ah*). Realization of the corollary *maqasid* is also indispensable because realization of the primary *maqasid* may be difficult without this. The generally accepted *fiqhi* principle is that means (*wasa‘il*) enjoy the same legal status as that of the *maqasid*. Accordingly, a well-known legal maxim (*al-qa‘idah al-fiqhiyyah*) stipulates that “something without which an obligation cannot be fulfilled is also obligatory”. Some of these corollaries may be less important than others in the short-run. However, in the long-run they are all important and their non-fulfillment is likely to lead to serious socioeconomic and political problems, (M. Umer Chapra: *The Islamic Vision of Development in the Light of Maqāsid Al-Sharī‘ah*). Dr. Mehmood Ahmad Ghazi, in *State and Legislation in Islam*, has stated that *these five basic objectives are not only the foundation of justice but also the basis of all human rights. The Islamic elaboration of human rights only rests on these objectives. Different aspects of human life, dignity, honour and other aspects of fundamental rights are anchored in the objectives of the Shariah. The first objective, namely, protection of Din, seeks to protect, defend and promote the ideology of Islam which forms the basis of Muslim state and society. Thus, the individual life, family relations, social conduct, legal and relations. The protection of Din signifies the protection of the very raison d’être of the Muslim society and the state. If this raison d’être is compromised or diluted, the existence of Muslim society and the Muslim state will exposed to grave danger. Its integrity and solidarity will be at stake if this Grund Norm is left undefended.* The doctrine of Objectives of Shariah has been rightly invoked by the learned amicus curiae in the light of the questions raised as the “the protection of faith” or ‘the protection of religion’ is one of the basic features of the Islamic State. The Islamic State is not only the defender of its territorial boundaries, but also the defender of its ideological and foundational boundaries, for which it has been established. From what has been discussed earlier and the later part of this judgment, it is clear like day light that the majority

is threatened by the suicidal attacks on their religion committed by the minority under the guise of their religion. In this peculiar background, it is incumbent upon the State to take measures to ensure the protection of the faith of the majority from being adulterated at the hands of the minority. The equal protection of law is the right of every citizen. The right of minority to profess its religion cannot be so extended to invade the basic religious doctrines and rites of the majority.

63. **AUTHORITY OF STATE BASED ON PRINCIPLE OF SADD al-DHARIAH:**

The learned amicus curiae have also advanced the argument that the Islamic state can issue suitable orders under the principle of Dhariah (ذريعة) with its two aspects: positive and negative, that is to say, Fath al-Dhariah and Sadd al-Dhariah. The said principle of state governance in relation to passing of suitable restrictions by the state in administrative matters, based on the injunctions of holy Quran and Sunnah was first discovered by the Maliki jurists and then it was adopted by Hanbali jurists and later by Hanbali jurists as well. Literally, the word Dhariah means example Imam Qarafi, a Maliki Jurist, has used the term Wasilah instead of the term Dhariah. *Dhariah or Wasilah include anything or action which becomes a means or serves a source for the occurrence of another thing or leads to the commission of an act. If it becomes a means or serves as an instrument for the occurrence of another thing or leads to the commission of a bad or unlawful act, it will also be considered obligatory.* Explaining this principle, *Imam Qarafi* says: “An act which is a means to the (realization of the) best objective is the best means; an act which is a means to (the realization of) a medium type objective is a medium-type means”. This is briefly the meaning of the principle of Dhariah. Applying this principle, Dr. Mehmood Ahmad Ghazi, in *Sate and Legislature in Islam*, says that *the head of the state or his shura can issue administrative orders either prohibiting a lawful action which has become a means to the commission of an unlawful act or the occurrence of an unlawful thing, or requiring citizens to do thing/act which, though not compulsory and obligatory per se, has become the*

only available means to the realization of an objective of the Shariah or to the compliance of an order/commandment of the Shariah. There are a number of examples of the application of this masterpiece, *Ilam al-Muwaqiin Ibn al-Qayyim*, a leading Hanbali jurist of eighth century of Hijrah, has made a valuable discussion on the principle of Saad al Dhariah. According to him, about half of the administrative orders of legislative nature are governed by the principle of Dhariah (p.159). Of the 99 examples given by Ibn Qayyim, several examples throw sufficient light on the scope of the administrative discretion of the Imam-in-Shura. (See for example, Nos. 25,29,33,37,49,57,99). Based on this argument, it has been contended that in order to close the doors of misuse by the Qadianis the invocation of this principle is permissible for the state to make legislation in this regard.

64. **PRINCIPLE OF DAF' AL-DARAR OR DAF' AL-FASAD:**

In the backdrop of negative, harmful, disastrous and dangerous effects of the activities of Qadianis under the shield of hidden identity, the learned amicus curiae, invited the attention of the court that *principle of Daf' al-Darar or Daf' al-Fasad* can be invoked by the State to make necessary legislation, even if, no such legislation is found in earlier periods. The learned amicus curies emphasized that if there would have no clear injunction in the matter (which is not the case here), even then in situations like this, an Islamic State cannot sit as a mere spectator, rather necessary legislation and orders can be made in such a situation. Literally Darar (ضرر) means danger, harm, loss and injury and Fasad means corruption, decay, evil, scandalous action, etc. It is one of the basic principles of Islamic law that Darar and Fasad, in whatever form and whatever degree proportion may be, should be removed and eliminated as far as possible. There are a number of legal maxims which deal with various aspects of this principle. Section 19 of the *Majjallah al-Ahkam al-Adliyya* provides:

No damage, no counter damage. (لا ضرر و لا ضرار)

This legal maxim is also a *Hadith* reported by *Imam Malik* in his *Muwatta*, *Ibn Majah*, and *Imam Dar Qutni* in their respective *Sunans*, *Imam Hakim* in his *Mustadrak*, and *Imam Baihaqi* in his *al-Sunan al-Kubra*. The Hadith has been reported on the authority of *Abu Said Khurdi (R.A)*, *Ubadah ibn al-Samit(R.A)*, *‘Abdullah ibn Abbas (R.A)* and others. Darar here means to cause damage or wrong to some other person, while Darar means to counter a Darar with another Darar. The Hadith means that neither one should counter a damage with another damage and harm with harm. “This is by innumerable textual commandments from the Quran and the Sunnah. It provides the basis on which all wrongful acts and harmful deeds are prohibited. Many a punishment and financial compensation is also based on this very principle.” On the basis of this Maxum another maxim is deduced which stipulates that *Darar should be avoided as far as possible* (Mujjalah-31). This maxim necessitates that every effort should be made to avoid the occurrence of Darar with all possible means. *The principle of Hajr is based on this maxim. The jurists have allowed the preventive detention of persons known for their indecency, immorality and fasad-fil-ard without normal judicial proceedings on the basis of this principle.* Another rule is that “***Major Darar may be removed by incurring a minor Darar***” (if one of the two is inevitable) (Majallah 27). Similarly another maxim follows that “***a private Darar can be incurred to avoid a public Darar***” (Majallah 27). It is also a settled principle deduced from the above Ahadith that ***Elimination of the evils (mafasisid) has priority over the acquisition of benefits (masalih).*** It means that in case of conflict between the elimination of the evil and the acquisition of the good priority should be given to the elimination of the evil. And also that “***A Darar will not be (overlooked on account being) old and time-barred***” (Majallah). Therefore, a Darar, however old it may be, must be removed. In my view there can be no harm graver than damaging the religion of Islam and there can be no FASAD severe than attempting to devastate the very foundations of Muslims faith. On the strength of these legal maxims, the competence of Islamic State to take necessary measures cannot be questioned in

any manner, whatsoever. (Imran Ahsan Khan Niazi; *Islamic Legal Maxims*, Al-Majalla al-Ahkam al-Adaliyyah)

65. **PRINCIPLE OF MASLAHA:**

Mufti Muhammad Hussain Khalil Khel, learned amicus curiae, has also while relying upon 22 numbers of major books of *Usul-ul-Fiqh* of different schools of thought has demonstrated that the administrative orders of Islamic State can draw their validity from the principle of Maslah or public weal, public good or public welfare. It has been stated in the legal maxim: *The power to take action (namely, Tasaruf or the exercise of the administrative and other authority) by the Imam is contingent upon Maslahah.* A passage from the book, *State and Legislation in Islam*, would be relevant to explain the concept in its true perspective:

”According to the celebrated authority on Islamic law in twentieth century, Shaikh Mustafa Zarqa, “This principle defines the limits within which the rulers can exercise their administrative and political authority and can take measures affecting the rights and freedoms of the masses. It postulates that all the actions and measures taken by the Uli’l-Amr which have a binding force for the people in respect of their private and public rights must be based on the general good of the community and its welfare. Because all the state functionaries right from the caliph down to the servants in different branches of the administration are not workers for themselves. They are only agents of the Amah whose duty is to take most suitable steps to ensure the establishment of justice, eradication of injustice and oppression, protection of rights and morality, maintenance of peace and security, dissemination of knowledge, provision of public facilities, purification of the society from Fasad and the realization of everything which is good for the Amah both in its present and future through all best possible means i.e. all actions which may be considered necessary for public good and public weal. Therefore, every action or measure taken by the rulers against this Maslahah which may lead to monopolization, despotism and autocracy or which may cause Darar or Fasad shall be unlawful.

.....*So also Maslahah. It has been considered one of the secondary but important sources of Islamic law. It has been defined as follows: - "It is every good, expediency and exigency about which not clear commandment occurred in the Shariah specifically or generally". Everything which safeguards the five basic needs of human life without violating any provision of the Shariah is Maslahah. These five basic needs are Religion, Soul (i.e. life), Intellect, Progeny, and Wealth or property. The Uli'l Amr have a wide scope of authority to take necessary steps and to legislate rules and laws for the safeguard of these five needs.....The problem of developing a viable system for the expression of the popular will in the matters of national interests also belongs to the categories of 'Urf and Maslahah. As the governments of the day are authorized to devise rules for the better an equitable functioning of all other forms of contract within the limits of the Shariah, they also have power to devise fool-proof methods for this contract also, of course, in consultation with the trusted representatives of the Ummah and keeping in view the cardinal principles of the Shariah in this regard."*

On the authority of the above quoted verses from *Holy Quran, Sunnah* of the Holy Prophet (PBUH), (both are primary sources of law under the Shariah and the Constitution as well, which aspect has elaborately been dealt with in next paras of this judgement), and the secondary sources like *Ijma'*, *Maslaha Mursla*, and the principle governing conduct of State and Legislation regarding authority of state based on *Principle of Sadd Al-Dhariah* and *Principle Of Daf' Al-Darar Or Daf' Al-Fasad*, it can be safely concluded that it is the duty of the Islamic State to preserve, maintain and safeguard the *Shaairullah*, to preserve, maintain and safeguard the distinct identity of the Muslims, to take measures to eliminate and curb all hidden, concealed and secretive ways to make hideous assault on *the faith of the majority* by the element living under its jurisdiction.

There is no cavil to the proposition that the edifice of an Islamic State rests on the foundation of **Divine Sovereignty**, that the real and ultimate owner of all

authority and sovereignty is the Almighty Allah, the Creator of the Universe, *The Kingship (mulk) belongs to Him*; Quranic verses 2:107; 3:26; 5:17, 18, 40, 120; 7:158 etc; *It is He in Whose hands are the reins of all power*, Quranic verses 2; 106, 109, 148 etc; *It is He Who has the sole right to rule (Amr)*, Quranic verses 3:134; 7:54; 11:123; 30:4; 32:5 etc; *It is He Who has the sole authority to make decisions (Hukm)*, Quranic verses 6:57, 62; 12:40; 67; 28:70, 88 etc. In order to perform the function assigned by the Ultimate Sovereign, a limited authority has been extended to His faithful servants (*Iba'ad*) to enable them to follow His Commands, which has been termed as Vicegerency (*Khalifah*). Individual vicegerency was assigned to the Prophets; however, the collective vicegerency has been assigned to the Muslim Ummah. The concept of vicegerency has been pronounced in the Qura'n at numerous instances, e.g. "*It is He Who has made you the Vicegerents (Khalaa'if) of the earth and has raised you in ranks, some above others: so that he may test you in the gifts He has given you. (Quran 6:165)*". Therefore, in an Islamic State the principle of Supremacy of the Shariah is the foundational. Dr. Mahmood Ahmad Ghazi, in *State and Legislation in Islam*, while elaborating the concept has stated that "*by supremacy of the Shariah, it simply means that the Holy Quran and Sunnah should be the supreme law in the country to be equally followed by and equally applicable to all the institutions and citizens of the state. The Shariah should be the primary source of guidance for policy-making, decision-making at all levels in the state, all laws, decision, policies and administrative steps should be in pursuance of the Shariah and subject to challenge and scrutiny under the Shariah. The supremacy of the Shariah requires that any law, usage or custom, even the highest law of the land, administrative action, collection or disbursement of taxes should be null and void if it is in contravention of Shariah. The supremacy of the Shariah has always been the cardinal principle of the Islamic state. The Quran is replete with verses, which make it clear that there is no choice for any believer to take any decision in matters already decided by Allah and His Messenger. The Quran also enjoins that*

any dispute between the citizens inter se as well as between the citizens and the men-in-authority should be referred to Allah and His Messenger i.e. the Shariah. In the Ahadith (saying of the Holy Prophet) and the practice of the rightly guided Caliphs also there are express directives to the effect that the Shariah should be above everything. This cardinal principle was always upheld by Muslim rulers, masses, jurists and political thinkers. There has never been any doubt in the minds of the Muslims that the supremacy of the Shariah was the primary requirement of an Islamic state.” The Constitutional position in this regard is quite clear from the following passages of *Namoos-e-Risalat Case*, titled as *Salman Shahid versus Federation of Pakistan (PLD 2017 Islamabad 218)* which is reproduced herein below:

پاکستان کی سپریم کورٹ نے اٹھارویں ترمیم کے فیصلے (بعنوان ڈسٹرکٹ بار ایسوسی ایشن راولپنڈی بنام وفاقِ پاکستان) یہ قرار دیا ہے کہ پاکستان کے دستور پر ایک طائرانہ نظر ڈالنے سے یہ بات عیاں ہوتی ہے کہ پاکستان ایک جمہوریت ہے جہاں حتمی اقتدار اعلیٰ اللہ رب العزت کا ہے اور یہ اختیار پاکستان کے عوام کو تفویض کیا گیا ہے۔ اسی فیصلے کے پیرا نمبر 54 میں اکثریتی فیصلے کے متن میں، جسے جسٹس شیخ عظیم سعید نے تحریر کیا ہے، یہ قرار دیا ہے کہ "یہ بات بالکل واضح اور روشن ہے کہ ہمارے اصول قانون جو کہ عدالتوں کے نظائر کی روشنی میں ارتقاء پذیر ہوئے، یہ بات مسلمہ طور پر ثابت اور تسلیم کردہ ہے کہ دستور کوئی متفرق دفعات کا جتھا نہیں جنہیں باہمی گانٹھ دیا گیا ہو بلکہ دستور کی دفعات میں ایک یکسانیت اور مربوط اسکیم ہے جو دستور کی بنیادی دفعات سے واضح ہے، جو کہ دستور کی نمایاں اور واضح خصوصیات ہیں۔"

اسی بات کو جسٹس جواد ایس خواجہ نے اپنے اقلیتی نوٹ میں بیان کرتے ہوئے کہا کہ "آئین کے کسی بھی آرٹیکل کو باقی آئین سے علیحدہ کر کے، انفرادی طور پر نہیں سمجھا جا سکتا" مزید فرمایا کہ "ہمارے اصول قانون میں اب تک یہ بات طے ہو چکی ہے کہ آئین کا مطالعہ تاریخ تناظر کے طور پر کیا جائے گا۔ اگر آئین کی جزوی (Organic Whole) میں اور ایک نامیاتی کل (شقوق اور احکامات کو باقی آئین سے الگ کر کے دیکھا جائے تو یہ قاری کو گمراہ کر سکتا ہے۔ لہذا آئین کا مفہوم اور مدعا معلوم کرنے کے لیے اس کے اجزا کی میکانیکی انداز میں عقلی توجیہ کرنے کی بجائے اسے ایک مربوط کل کی طرح دیکھنا پڑے گا۔ یہ بات ہماری قدیم اور سادہ دانش کا عطر رہی ہے جو منطق کی رو سے بھی کشید ہوتی ہے اور نظائر سے استدلال کے طریقے میں بھی پوری طرح راسخ ہے۔ اس کے نتیجے میں آئین کی تعبیر و تشریح کا یہ اصول طے پاتا ہے کہ آئین کو ایک زندہ حقیقت یا نامیاتی کل کے طور پر دیکھا اور سمجھا جائے۔"

1973 کا آئین کا سرچشمہ پاکستان کے عوام ہیں۔ پاکستان کی پہلی دستور ساز اسمبلی جس نے 1949ء میں قرار داد مقاصد کو منظور کیا، ایسے ارکان پر مشتمل تھی جو جدوجہد آزادی کے سرخیل اور بلاشبہ پاکستان کے بانیان تھے۔ جن کی قیادت میں مملکت خداداد پاکستان معرض وجود میں آئی۔ پہلی دستور ساز اسمبلی نے جب سے قرارداد مقاصد منظور کی تو یہ ایک تاریخی حقیقت ہے کہ قرار داد مقاصد اس وقت سے پاکستان کے ہر آئین کا دیباچہ رہی۔ اور 1973 کے آئین کا بھی دیباچہ اور آئینی تمہید قرار داد مقاصد ہی ہے جو کہ دستور کے ساتھ بطور ضمیمہ بھی شامل ہے۔ یہ بات بھی واضح ہے کہ 1949 میں اور 1973 میں بھی قانون ساز اسمبلی کے ارکان آئینی اصولوں کے نازک اور باریک معاملات کو خوب اچھی طرح سمجھتے تھے۔ پاکستان کی عدالتی تاریخ میں قرارداد مقاصد اس حوالے سے بھی ایک اہم موضوع کے طور پر زیر بحث رہی ہے کی کہ آیا باقی دستور پر قرارداد مقاصد کو بالاتر حیثیت حاصل ہے یا نہیں؟ بہر حال قرارداد مقاصد کی باقی آئین پر بالاتر حیثیت پر اختلاف کے باوجود یہ امر متفقہ طے شدہ ہے کہ قرارداد مقاصد کو دستور کی دیگر دفعات کی طرح ایک اہم مقام حاصل ہے۔ اور عدالت عظمیٰ کے اٹھارویں ترمیم کے فیصلے کے مطابق دستور کی تشریح کا ایک بنیادی اصول یہ ہے کہ اسے ایک ہم آہنگ اور نامیاتی کل کے طور پر لیا جائے۔ اگر پاکستان کے دستور کو ایک ہم آہنگ، مربوط، منظم اور نامیاتی کل کے طور پر دیکھا

جائے تو دستور کی دینی ساخت اور اسلامی حیثیت کا تعین کرنا چنداں مشکل نہیں دستور کی متعدد دفعات اور دستور کے تحت قائم کیے گئے ادارے قیام پاکستان کے مقاصد اور مملکت کی نظریاتی اساس کی عکاسی کرتے نظر آتے ہیں۔ دستور چونکہ عوام کی خواہشات کا ترجمان، ماضی کا بیان اور مستقبل کا نشان ہو تاہے جس سے نہ صرف تمام ادارے وجود میں آتے ہیں بلکہ یہی وہ میزان اور مقیاس ہے جس سے عوامی امنگوں، قومی مقاصد اور نصب العین کو پرکھا اور جانچا جا سکتا ہے۔ دراصل دستور ہی وہ آئینہ ہے جس سے ایک طرف ملک کی تاریخ کا عکس جھلکتا ہے، حال کا ادراک ہو تاہے اور مستقبل کا نقشہ نظر آتا ہے۔ اس تناظر میں 1973ء کا آئین سب سے پہلے اپنی (میں واشگاف الفاظ میں پاکستان کی جمہور کی طرف سے یہ اعلان کرتا ہے "Preamble تمہید) جمہوریت، آزادی، مساوات، رواداری اور عدلِ عمرانی کے اصولوں پر جس طرح اسلام نے ان کی تشریح کی ہے، پوری طرح عمل کیا جائے گا۔ جس میں مسلمانوں کو انفرادی اور اجتماعی حلقہ بنانے عمل میں اس قابل بنایا جائے گا کہ وہ اپنی زندگی کو اسلامی تعلیمات و مقتضیات کے مطابق، جس طرح قرآن پاک و سنت میں ان کا تعین کیا گیا ہے، ترتیب دے سکیں "اس امر کا بھی اظہار کیا گیا ہے کہ "بنیادی حقوق کی ضمانت دی جائے گی اور ان حقوق میں قانون اور اخلاق عامہ کے تابع حیثیت اور مواقع میں مساوات، قانون کی نظر میں برابری، معاشرتی، معاشی اور سیاسی انصاف اور خیال، اظہار خیال، عقیدہ، دین، عبادت اور اجتماع کی آزادی شامل ہو گی۔" اور پھر مزید یہ اقرار کہ "لہذا، اب، ہم جمہوریہ پاکستان؛ قادر مطلق اللہ تبارک و تعالیٰ اور اس کے بندوں کے سامنے اپنی ذمہ داری کے احساس کے ساتھ، پاکستان کی خاطر عوام کی دی ہوئی قربانیوں کے اعتراف کے ساتھ؛ بانی پاکستان قائد اعظم محمد علی جناح کے اس اعلان سے وفاداری کے ساتھ کہ پاکستان عدلِ عمرانی کے اسلامی اصولوں پر مبنی ایک جمہوری مملکت ہو گی؛ اس جمہوریت کے تحفظ کے لیے وقف ہونے کے جذبے کے ساتھ جو ظلم و ستم کے خلاف عوام کی انتھک جدوجہد کے نتیجے میں حاصل ہوئی ہے۔۔۔۔۔ اسے اپنا دستور تسلیم کرتے ہیں۔" دستور کی دفعہ 2 میں اسلام کو پاکستان کا ریاستی مذہب قرار دیا گیا۔ دستور کی دفعہ 2 الف میں یہ قرار دیا گیا کہ "ضمیمہ میں نقل کردہ قرارداد مقاصد میں بیان کردہ اصول اور احکام کو بذریعہ ہذا دستور کا مستقل حصہ قرار دیا جاتا ہے بحسبہ مؤثر ہوں گے۔ ضمیمہ میں شامل قرارداد مقاصد کے متن کا ترجمہ درج ذیل ہے: اور وہ

"اللہ تعالیٰ ہی کل کائنات کا بلا شرکتِ غیرے حاکم مطلق ہے۔ اس نے جمہور کے ذریعے مملکتِ پاکستان کو جو اختیار سونپا ہے، وہ اس کی مقررہ حدود کے اندر مقدس امانت کے طور پر استعمال کیا جائے گا۔

مجلس دستور ساز نے جو جمہور پاکستان کی نمائندہ ہے، آزاد و خود مختار پاکستان کے لیے ایک دستور مرتب کرنے کا فیصلہ کیا ہے۔ جس کی رو سے مملکت اپنے اختیارات و اقتدار کو جمہور کے منتخب نمائندوں کے ذریعے استعمال کرے گی۔

جس کی رو سے اسلام کے جمہوریت، حریت، مساوات، رواداری اور عدلِ عمرانی کے اصولوں کا پورا اتباع کیا جائے گا۔

جس کی رو سے مسلمانوں کو اس قابل بنا دیا جائے گا کہ وہ انفرادی اور اجتماعی طور پر اپنی زندگی کو قرآن و سنت میں درج اسلامی تعلیمات و مقتضیات کے مطابق ترتیب دے سکیں۔

جس کی رو سے اس امر کا قرار واقعی اہتمام کیا جائے گا کہ اقلیتیں، اپنے مذاہب پر عقیدہ رکھنے، عمل کرنے اور اپنی ثقافتوں کو ترقی دینے کے لیے آزاد ہوں۔

جس کی رو سے وہ علاقے جو اب تک پاکستان میں داخل یا شامل ہو جائیں، ایک وفاق بنائیں گے * جس کے صوبوں کو مقررہ اختیارات و اقتدار کی حد تک خود مختاری حاصل ہو گی۔

جس کی رو سے بنیادی حقوق کی ضمانت دی جائے گی اور ان حقوق میں جہاں تک قانون و اخلاق اجازت دیں، مساوات، حیثیت و مواقع کی نظر میں برابری، عمرانی، اقتصادی اور سیاسی انصاف، اظہار خیال، عقیدہ، دین، عبادت اور جماعت کی آزادی شامل ہو گی۔

جس کی رو سے اقلیتوں اور پسماندہ و پست طبقات کے جائز حقوق کے تحفظ کا قرار واقعی انتظام کیا جائے گا۔

جس کی رو سے نظامِ عدل گستری کی آزادی پوری طرح محفوظ رہے گی۔

جس کی رو سے وفاق کے علاقوں کی صیانت، آزادی اور جملہ حقوق، بشمول خشکی و تری اور فضا پر صیانت کے حقوق کا تحفظ کیا جائے گا۔

تاکہ اہل پاکستان فلاح و بہبود کی منزل پا سکیں اور قوامِ عالم کی صف میں اپنا جائز و ممتاز مقام حاصل کریں اور امنِ عالم اور بنی نوع انسان کی ترقی و خوش حالی کے لیے اپنا بہرہ پور کر دار ادا کر سکیں۔"

دستور کا ایک اہم عنصر دفعہ (3) 260 میں دی گئی مسلمان اور غیر مسلم کی تعریف ہے۔ دستور میں دی گئی تعریف کی رو سے مسلمان وہ شخص ہے جو اللہ تعالیٰ کی واحدانیت و توحید اور محمد رسول ﷺ کے مطلقاً خاتم النبیین ہونے پر ایمان رکھے اور کسی ایسے شخص کو نہیں مانتا نہ ایمان رکھتا ہے جو محمد رسول ﷺ کے بعد نبی ہونے کا دعویٰ کرے خواہ کسی بھی مفہوم میں۔ غیر مسلم کی تعریف

کرتے ہوئے واشگاف الفاظ میں قادیانی گروپ اور لاہوری گروپ کو (جو اپنے آپ کو احمدی کہتے ہیں) اور بہانیوں کو ، غیر مسلموں میں شمار کیا گیا ہے جس کی بنیادی وجہ مسلمانوں کا علیحدہ تشخص اور مستقل وجود کا اظہار و اقرار ہے۔ دستور کی یہ دفعات جو مسلمان کی تعریف میں نبی مہربان حضرت محمد ﷺ کے خاتم النبیین ہونے کے اعلان سے متعلق ہے وہ انتہائی اہمیت کی حامل ہے اور نبی کریم ﷺ کی ذات کے بارے میں امت کے موقف کی ترجمان ہیں۔ یہاں یہ امر قابل ذکر ہے کہ دستور نے ایسے شخص کو غیر مسلم قرار دیا ہے جو نبی کریم ﷺ کو بطور خاتم النبیین تسلیم نہ کرتا ہو تو پھر کیا ایسے شخص کے بارے میں جو نبی کریم ﷺ کی شان اقدس میں نازیبا الفاظ استعمال کرے اس کے انجام کے تعین میں کوئی ابہام باقی رہتا ہے ؟ جس طرح نبی کریم ﷺ کی ذات کو آخری نبی تسلیم کرنے سے انکار کرنا یا پس و پیش سے کام لینا دستور و شریعت کے مطابق دائرہ اسلام سے اخراج کا سبب ہے تو نبی کریم ﷺ کی ذات پر سب و شتم بدرجہ اولیٰ انکار اور کفر ہے ۔ اسی طرح دستور پاکستان میں جمہور کی منشاء کی ترجمانی کرتے ہوئے ایک مستقل باب 10 بعنوان اسلامی دفعات کی دفعہ 227 میں قرار دیا ہے کہ پاکستان میں کوئی قانون قرآن و سنت کے منافی نہیں بنایا جائے گا بلکہ مملکت پر یہ بھی لازم کیا ہے کہ پہلے سے موجود تمام قوانین کو اسلام کی تعلیمات جو کہ قرآن اور سنت میں بیان کی گئی ہیں ، کے مطابق ڈھالا جائے گا ۔ اس مقصد کے حصول کے لیے دستور پاکستان نے اسلامی نظریاتی کونسل کا ادارہ تشکیل دیا ، دستور کی دفعات

(1)230 میں اسلامی 228،229،230،231،a اس سلسلے میں مستقل ہدایات سمونے ہوئے ہیں ۔ دفعہ) نظریاتی کونسل کے اغراض و مقاصد اور فرائض میں یہ صراحت کی گئی ہے کہ وہ قومی اور صوبائی اسمبلیوں کو اپنی تجاویز دے کہ جن کے ذریعے پاکستان کے مسلمانوں کو اپنی انفرادی اور اجتماعی زندگیوں کو تمام معاملات میں اسلام کے اصول و مقتضیات جو قرآن و سنت میں بیان ہوئے ہیں ، کے مطابق زندگی گزارنے کے قابل بنائے اور اس کی حوصلہ افزائی کرے ۔ یہاں یہ عمل قابل کا لفظ Encouraging ذکر ہے کہ دستور نے مذکورہ دفعہ میں اس ضمن میں حوصلہ افزائی کرنے (استعمال کیا ہے تاکہ اس امر کی وضاحت ہو سکے کہ ریاست کی ذمہ داری صرف قرآن و سنت کے مطابق زندگی گزارنے کے قابل بنانا ہی نہیں بلکہ اس کی حوصلہ افزائی بھی کرنا ہے ۔ دستور

مسلمانوں کو نہ صرف قرآن و سنت کے مطابق زندگی گزارنے کی ضمانت دیتا ہے بلکہ ریاست کی یہ ذمہ داری قرار دیتا ہے کہ وہ اس حوالے سے تمام ضروری اقدامات کرے اور اس عمل کی حوصلہ افزائی کرے ۔ اس مقدمے کی سماعت کے دوران یہ دستور ی تقاضا عدالت کے سامنے رہا ہے کہ جہاں اسلامی نظریاتی کونسل کو یہ فریضہ سونپا گیا ہے کہ وہ ایسی سفارشات پیش کرے جس کے ذریعے مسلمانان پاکستان قرآن و سنت کے مطابق اپنی زندگی کو انفرادی اور اجتماعی سطح پر تشکیل دے سکیں تو یقیناً دستور پاکستان میں ایک ایسا ماحول پیدا کرنا چاہتا ہے جہاں اطاعت خداوندی کی حوصلہ افزائی ہو ، سنت رسول کے اتباع کی افزائش ہو ، نیکیوں کی ترویج ہو ۔ عصمت انبیاء ، ناموس صحابہ ، حرمت امہات المؤمنین کی حفاظت ہو اور فحاشی ، بے راہ روی اور اسلام دشمنی کے تمام راستے مسدود کیے جاسکیں ۔ آرٹیکل (3)228 کی رو سے قومی اسمبلی ، صوبائی اسمبلی ، صدر یا کوئی گورنر اسلامی نظریے کی مشاورتی کونسل کو مشورے کے لیے سوال بھیج سکتے ہیں کہ آیا کوئی مجوزہ قانون قرآن و سنت میں بیان اسلامی تعلیمات کی مقتضیات کے منافی تو نہیں ۔

22 میں کہا گیا ہے کہ کوئی قانون قرآن و سنت میں بیان اسلامی تعلیمات و مقتضیات کے 7 آرٹیکل منافی نہیں بنایا جائے گا اور موجودہ تمام قوانین کو قرآن و سنت کے مطابق ڈھالا جائے گا۔ آرٹیکل 230 کے مطابق کونسل کے وظائف مندرجہ ذیل ہیں :

1- پارلیمنٹ اور صوبائی اسمبلیوں کے لیے سفارشات تیار کرنا تاکہ پاکستان کے مسلمان اپنی انفرادی اور اجتماعی زندگیوں کو ہر لحاظ سے اسلام کے اصولوں اور تصورات کے مطابق بنا سکیں ۔

2- کسی ایوان ، اسمبلی ، صدر یا گورنر کی اس بارے میں راہ نمائی کرنا کہ آیا مجوزہ قانون اسلام کے مطابق ہے یا نہیں ۔

3- موجودہ قوانین کا جائزہ لے کر ایسی سفارشات تیار کرنا تاکہ یہ قوانین احکام اسلام کے مطابق ہو جائیں ۔

4- احکام اسلام کو ایک مناسب شکل میں ترتیب دینا تاکہ پارلیمنٹ اور صوبائی اسمبلیاں ان پر قانون سازی کر سکیں ۔"

آرٹیکل 30 میں ریاست کے بنیادی اصول بیان کرتے ہوئے یہ قرار دیا گیا ہے "پاکستان کے مسلمانوں کو انفرادی اور اجتماعی طور پر اس قابل بنایا جائے کہ وہ اپنی زندگی اسلام کے بنیادی اصولوں اور اساسی تصورات کے مطابق ڈھالیں اور انہیں ایسی سہولتیں بہم پہنچائی جائیں جن کی مدد سے وہ ان اصولوں اور تصورات کے مطابق زندگی کا مفہوم سمجھنے کے قابل ہو جائیں ۔ پاکستان کے مسلمانوں کے لیے قرآن مجید اور اسلامیات کی تعلیم لازمی قرار دی جانا چاہیے ۔ باہمی اتحاد اور اسلامی اخلاقی معیار کو فروغ دیا جانا چاہیے ۔ زکا ء ، اوقاف اور مساجد کی باقاعدہ تنظیم کا اہتمام کیا جانا چاہیے ۔" دستور پاکستان قانون کو قرآن و سنت کی بنیاد پر وضع کرنے کا کس درجہ اہتمام کرتا ہے وہ اسی حقیقت سے عیاں ہے کہ جہاں ایک طرف دستور ملک کی مقننہ پر یہ پابندی عائد کرتا ہے کہ وہ قرآن و سنت کے منافی کوئی قانون سازی نہیں کرے گی تو دوسری طرف اس سلسلے میں مکمل راہنمائی اور جائزے کے لیے اسلامی نظریاتی کونسل کا ادارہ قائم کرتا ہے لیکن اگر اس

کے باوجود بھی کوئی قانون قرآن و سنت کی تعلیمات کے خلاف منشاء ظہور پر آجائے یا پہلے سے وقوع پذیر ایسا قانون باقی رہ جائے تو وفاقی شرعی عدالت اس کا جائزہ لے سکے اور اگر اس قانون 3 اس A کو قرآن و سنت کے منافی پائے تو سے کالعدم قرار دے کر ختم کر دے۔ دستور کا باب 203 تک 16 تفصیلی دفعات فیڈرل 203J سے لے کر دفعہ A حوالے سے ایک مستقل ضابطہ ہے۔ دفعہ 203 جو کہ D شریعت کورٹ کے اختیارات اور طریقہ کار سے متعلق ہیں۔ اس باب کی بنیادی دفعہ عدالت کے اختیار سماعت سے متعلق ہے، عدالت کو یہ اختیار دیا گیا ہے کہ "عدالت اپنی کسی تحریک پر، یا پاکستان کے کسی شہری، وفاقی حکومت یا کسی صوبائی حکومت کی درخواست پر کسی قانون یا اس کی کسی شق کا جائزہ لے سکتی ہے اور فیصلہ کر سکتی ہے کہ آیا یہ قانون یا اس کی کوئی شق احکام اسلام، جیسا کہ قرآن و سنت میں مذکور ہیں، کے منافی تو نہیں ہے۔"

اسلامی نظریہ ملک کی اساس ہے اور غیر مسلم عہد یدار بھی اس کے تحفظ کا حلف اٹھائے گا، دستور کے جدول دوم میں سولہ دستوری عہدوں کے حلف کی عبارتیں ملتی ہیں۔ ان میں سے پہلے بارہ عہدوں --- صدر، نائب صدر، وزراء و وزراء مملکت، اسپیکر اسمبلی، ڈپٹی اسپیکر قومی اسمبلی، رکن قومی اسمبلی، صدر قومی اسمبلی، گورنر صوبہ جات، صوبائی وزراء، صوبائی اسمبلیوں کے اسپیکر، صوبائی اسمبلیوں کے ڈپٹی اسپیکر اور رکن صوبائی اسمبلی --- کے حلف کی تمام عبارتوں میں یہ جملہ موجود ہے "کہ میں اسلامی نظریہ کو برقرار رکھنے کے لیے کوشاں رہوں گا جو قیام پاکستان کی بنیاد ہے" حالانکہ ان دستور عہدوں میں سے صدر اور نائب صدر کے سوا کسی کے لیے مسلمان ہونا شرط نہیں ہے۔ ان پر غیر مسلم بھی فائز ہو سکتے ہیں۔ لیکن حلف کی عبارت میں سیاسی اعتبار سے یہ اہتمام موجود ہے کہ اگر کوئی غیر مسلم کسی وقت ان عہدوں پر فائز ہو تو اپنے مذہب اور عقیدے پر قائم رہتے ہوئے بھی وہ پاکستان کی نظریاتی بنیاد --- اسلامی نظریہ --- کا تحفظ کرے گا۔"

یہ تو دستور کا ایک سرسری جائزہ ہے جو صرف اس امر کے اظہار کے لیے بیان کیا گیا ہے کہ پاکستان کا دستور جس کی حفاظت ہم سب پر فرض ہے۔ دفعہ 5 کے مطابق پاکستان کے ہر شہری کا فرض ہے کہ وہ دستور کی پاسداری کرے اور ریاست اسلامی جمہوریہ پاکستان کا وفادار رہے۔ اعلیٰ عدلیہ کے جج کی حیثیت سے یہ عدالت عوام کی ہدایات کی امین ہے اور اس حیثیت میں آئین کے تحفظ پر مامور ہے اور آئین کے تحت حلف کی روشنی میں اس کے فرائض منصبی میں آئین کی حفاظت اور دفاع شامل ہے۔

66. From the historic perspective given in proceeding paras, the writing of Allama Iqbal, the speeches made at the floor of the parliament and before the committee by the distinguished members, it is quite obvious that the Muslims of the sub-continent shared unanimous view that the Qadianism is reactionary, an anti-Islam, and pro-imperialist lobby, with ugly political designs, operating under the thin coating of so-called religious revivalism. The Muslims of the sub-continent regarded Qadianism as a separate religious, social and political entity, having opposed beliefs against Muslims, Islam and the ideology of Pakistan and the very independence of the country. There can be no cavil to this fact, which is quite evident from the proceedings of the Parliament itself, that the Qadianis always proclaimed unconditional, unwavering and absolute loyalty to the British imperialist, Hindu-governments; on the contrary, an independent Islamic State has always been a bitter pill for them. The most sinister attempt was to proclaim and propagate to establish a Qadiani State within the state of Pakistan. I cannot restrain myself from saying that no other community, religious group or minority in

Pakistan has ever expressed such malicious designs and provocative tendencies; therefore, the Muslims of sub-continent from the day first raised demands to declare Qadianis as Non-Muslims, and their removal from the key posts. After the passage of 2nd Constitutional Amendment in the year 1974 a continuous demand is being raised for effective enforcement of the 2nd constitution amendment. Afterwards, again on the popular demand, through promulgation of Ordinance, 1984 use of certain *epithets, descriptions and titles, etc., reserved for certain holy personages or places and posing themselves as Muslim, or calling, or referring to, their faith as Islam, or preaching or propagating their faith, or inviting others to accept their faith, by words, either spoken or written, or by visible representations, or in any manner whatsoever outraging the religious feelings of Muslims were **prohibited** for Qadianis and Lahoris*, but a vacuum was left for infiltration of Qadianis into the Muslim majority through devious means. The “vacuum” so left, by not making corresponding amendments in other laws, has enabled the Qadianis to pose themselves as Muslims, as there are no sufficient legislative measures to give adequate effect to the aspirations of people of Pakistan through corresponding amendments. From the historic account, it is clear that a continuous demand has been raised for **the identification of Ahmadis on identity cards and passports**. No doubt, by promulgation of Ordinance, 1984 important steps were taken to restrain them from using certain Islamic epithets, but what if a Qadiani conceals his real identity? What if a Qadiani by concealing his real identity reaches the high Constitutional office(s)? What if a person while deceiving the state reaches to the highest sensitive post(s)? What if a person or persons, deceiving the Constitution & law, threatens and breaches the security and integrity of the State? It is often said that for every wrong, there is a remedy. What is the remedy for the people of Pakistan against such deception and disloyalty? It is time and again held that *the laws are made to prevent the wrongs for the greater cause of public good*, but what laws have been enacted to counter such wrong? The people of Pakistan are justified in asking from their Governments that what steps have been taken to give

effect to the 2nd Constitutional Amendment, in letter and spirit. What steps have been taken to keep check upon those, miscreants' elements, who are adamant to ruin the rubric of the society? **Qadianis, who disclose their religion, accept the status of minority and enjoy the rights, privileges and liberties bestowed upon them by the Constitution and law are praiseworthy** but what steps have been taken against those who are bent upon to invade the rights of majority masquerading themselves as members of the majority Muslims, though actually they are not? What punitive laws and legal sanctions have been prescribed for those who deceive the State? What filter have been put to stop the seepage of such beguilement? What checks and balances have been adopted by the State to practically give effect to the declarations made by the people of Pakistan through their representatives in the 2nd Constitutional Amendment? The people of Pakistan through the Constitution have chosen for themselves, the right to be represents by a Muslim as a Head of the State; What if a Qadiani, by posing himself as Muslim, reaches to this sacred office by giving false particulars and identify? The answer to all these questions is ***a big disappointment!***

67. In order to give true and desired effect to the constitutional provisions, it was necessary for the state to make corresponding amendments in other laws of the country. This is the minimum respect and deference which a Constitutional provision deserves and demands. The constitutional provision is the manifestation of the will of the people and the state cannot suppress the will of the Constitution by suppressing the mandate of the Constitutional declaration. The declaration of Qadianis as non-Muslims at State level had to entail specific consequences, but those consequences could not see the light of the day, and a Constitutional provision has been reduced merely to an avowal. The life, the import and the existence which the constitution amendment deserved was not given to it through the State's apparatus, which resulted in present crisis situation, when the impugned amendments in Election Laws paved their way in the legislative

business of the most important organ of the State i.e. the Parliament and got affectively legislated; and invited a country wide agitation, outcry and instability. The situation was exploited to such a level that the governmental machinery was made ineffective, judges of court of the apex were publicly disgraced through hate speeches, the Minister was forced to resign, and even after the reversal of the amendments, the protest was continued to achieve the sinister political designs of the interested. Why this all happened? What led to this situation? Keeping aside other factors, one cannot lose sight that the penetration of Qadianis in the garb of Muslim attire at higher positions leads to such instances of instability; and such controversies have the enormous potential to even shake the Constitutional setup in the Country. The influence of Qadianis in our State can be gauged from the present legislative amendments, and the events followed thereon alone, when the entire Parliament was, deceptively, made hostage to their whims.

68. The Qadiani lobby, ever since, the passage of objectives resolution, the framing of the Constitution of Islamic Republic of Pakistan, 1973, more particularly, the 2nd Constitutional Amendment declaring them as non-Muslims and the Ordinance, 1984 has been propagating against the curbs on religious freedoms in Pakistan and repression of minorities in the country without any rational basis or cogent reasons, in order to spread misconception about the State of Pakistan. The Pakistan movement which had its genesis in the desire of the Muslims of subcontinent to have a separate homeland, therefore, the ideological basis of the separate homeland for Muslims has always remained difficult to be absorbed by certain quarters. In order to dispel such impression, the first significant statement from the Founder of the Nation, Muhammad Ali Jinnah, on minority protection came in 1941 when he said: *“Islam stands for justice, equality, fair play, toleration and even generosity to non-Muslims who may be under our protection.”*

Second in 1942 when he said their *“rights would be fully safeguarded according to the injunction from the highest authority, namely, (the) Quran, that a minority must be treated justly and fairly.”*

69. In 1943 he repeated himself while talking to a Hindu delegation, *“we will treat your minorities not only in a manner that a civilized government should treat them but better because it is an injunction in the Quran to treat the minorities so.”*

Obviously, in giving protection to minorities his context was Islam. In his July 14, 1947 press conference, while still in New Delhi, he was asked for a brief statement on the minorities’ problem. His reply was candid as well as consistent. *“At present I am only Governor-General designate,” said he. “We will assume for a moment that on August 15, I shall be really the governor-general of Pakistan. On that assumption, let me tell you that I shall not depart from what I said repeatedly with regard to the minorities. Every time I spoke about the minorities I meant said and what I said I meant. ... They will have their rights and privileges and no doubt along with it goes the obligation of citizenship.”*

For instance, in his speech of October 11, 1947, he said:

“The division of India was agreed upon with a solemn and sacred undertaking that minorities would be protected by the two Dominion Governments and that the minorities had nothing to fear so long as they remained loyal to the State. If that is still the policy of the Government of India – and I am sure it is – they should put a stop to the process of victimization of Muslims, which if persisted in, would mean ruin for both the states.”

70. Similar are his speeches of October 30, 1947 and January 25, 1948. To give protection to the minorities, he invoked even Islamic teachings: *“The tenets of Islam,”* he said, *“enjoin on every Mussalman to give his protection to his neighbors and to the minorities regardless of caste and creed.”* He repeated the

same theme in his message to the American people. *“The Constitution of Pakistan,”* said he, *“has yet to be framed by the Pakistan Constitution Assembly. I do not know what the ultimate shape of this Constitution is going to be, but I am sure that I will be of a democratic type, embodying the essential principles of Islam. Today, they are as applicable in actual life as they were 1,300 years ago. Islam and its idealism have taught us democracy. It has taught equality of man, justice and fair play to everybody. We are the inheritors of these glorious traditions and are fully alive to our responsibilities and obligations as farmers of the future constitution of Pakistan.”*

71. Quaid-e-Azam knew that the religious basis of the Pakistan movement was creating a serious problem of perception among the non-Muslims who thought the new state might turn into a theocracy. Jinnah differentiated between an Islamic state and a theocracy. *“In any case,”* said he, *“Pakistan is not going to be a theocratic state – to be ruled by priests with a divine mission. We have many non-Muslims – Hindus, Christians, and Parsis – but they are all Pakistanis. They will enjoy the same rightful part in the affairs of Pakistan.”*

72. In view of the clear assurances of the founding father, declarations made in the Objectives resolution passed by the first constituent assembly and the Constitutional guarantees there shall be no room for any misgiving. The protection of minorities and provision of their rights and privileges is deep-rooted in the Muslim belief. Had there been no such constitutional guarantees, even then the history of Muslim Ummah, more particularly, the history of Muslim rule in Sub-Continent, in itself, is a magnificent evidence of Muslims care for the minorities. The roots of this sense of responsibility are found in the teachings of Holy Quran and Sunnah enjoying upon every Muslim to do justice to all people in every situation. In his famous book, *Muslim Conduct of State*, Dr. Muhammad Hamidullah, a famous Muslim Scholar of 20th Century, has described the rights available to the non-Muslims under the Shariah, he says:

“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 2.5 per cent, on their cash, commercial goods, herds of cattle, etc., above the minimum of about Hyderabad Rs. 40 (£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 return for all this, they are required to pay annually from 12 to 48 drachmas (about two to eight rupees) per head, with several exceptions as under:

“The capitation tax is exacted only from males. Women and minors are exempted. The rich have to pay 48 drachmas, the man with average means 24, and the one practicing handicraft for livelihood, like the peasant, 12 only, which will be collected from them once a year. Instead of cash, they may pay the value ... Further the capitation tax is not exacted from the indigent who receive charities, nor from the blind who have no profession and do not work, nor from the chronically sick receiving charities, nor from the crippled—except those chronically sick and crippled and blind who are rich—nor from the monks in convents nor from the very old who can neither work nor have wealth, nor from the lunatic . . . And, O Commander of the Faithful! May God help thee! It is necessary that thou shouldst treat the people who were protected by *thy Prophet and thy cousin Muhammad* (i.e., the non-Muslim subjects) with leniency, and inquirest about their conditions so that they are neither oppressed nor given trouble nor taxed beyond their capacity, nor

anything of theirs is taken from them except with a duty encumbering them. For it is reported from the Messenger of God who said: *'Whoever oppresses a non-Muslim subject or taxeth him beyond his capacity, then I shall be a party to him.'* And the last words which the *Caliph 'Umar-ibn-al-Kha'ab uttered at his deathbed*, included the following: *I exhort my successor regarding the treatment to be meted out to the people protected by the Messenger of God (i.e., non-Muslim subjects). They should receive the fullest execution of their covenant, and their life and property should be defended even by going to war. And they should not be taxed beyond their capacity.* Once 'Umar passed along a street where somebody was asking for charity. He was old and blind. 'Umar tapped his shoulder from behind and said: From which community art thou? He replied : **A Jew**. He said : And what hath constrained thee to what I see thee in? He replied: I have to pay the capitation tax: I am **poor**; and I am **old**. At this 'Umar took him by the hand and led him to his own house and gave him something from his private coffers. Then he sent word to the cashier of the Baitul-Maal (State Treasury): Look at him and his like. *By God! we should never be doing justice if we eat out his youth and leave him deserted in the old age. 'The government taxes are meant for the poor and the indigent' (Our'an, 9: 60)*—the poor are the Muslims, and this one is an indigent from among the Scriptures. And 'Umar remitted the capitation tax from him and his like." (Imam Abu-Yusuf, Kitab-ul-Khiraj. pp. 69-72)

Again, slaves are also exempted from this tax. If the non-Muslim subjects render military service, at their will, they are exempted from it during the years of active service. There are instances when this tax was remitted during a whole lifetime for meritorious public service, as, for instance,

the Caliph ‘Umar did when a non-Muslim subject helped in selecting the site for digging a canal from Cairo to Red Sea.’

IN VIEW OF THE ABOVE, there shall not be any iota of doubt that it is the responsibility of the State *to also ensure the protection of rights of minorities in the light of teachings of “Islam” being the religion declared by the Constitution of the country.*

73. Now this Court with this historical background and perspective can easily resolve the issues highlighted as per the prayer of the writ petitions. As far as first prayer is concerned, it is for the Parliament which can explain the real intent but *prima facie* it appears that a deliberate and motivated effort was made by the draftsmen of the bill to bring Qadianis in the loop of majority in order to diminish their separate identity as non-muslims. I observe with great concern that all the members of the National Assembly as also the Senators (without distinction of parties) failed to identify the motive, lacuna and an effort to frustrate constitutional amendment through simple enactment which is not permissible under the law. Reliance is placed on *PLD 2010 SC 265 (Dr. Mubashar Hassan Vs FoP)*, *PLD 2006 SC 602 (Mubeen Ul Islam Vs FoP)*, *2004 SCMR 1903: Ghulam Mustafa Insari Vs Government of Punjab*, *2002 SCMR 312: Zaman Cement Company Vs Central Board of Revenue*, *PLD 1999 SC 504 (Liaqat Hussain Vs FoP)*, *1999 SCMR 1402: Collector of Customs Vs Sheikh Spinning Mills and PLD 1967 Lahore 227: A.M Khan Leghari Vs Government of Pakistan.*

74. In my opinion Parliamentarians either exhibited casual approach or failed to realize the sensitivity of the issue and, to this end, could not expose the plot against the Constitution. It is painful that despite pointation the majority of the parliamentarians failed to give due deference and importance to this delicate issue which is evident from proceedings of Senate’s 267th Session held on Friday, the 22nd September, 2017. As this matter requires a detailed scrutiny, therefore, it is

difficult for this Court to single out any person, party or group, however, the Zafar-ul-Haq Report is relevant which, as has been stated herein, has been appended herewith as **Annex-A** and this Court directs to make it public. For convenience, most relevant portion of the report is reproduced here-in-below:-

“9. -----

(a) -----

(b) -----

(c) -----

(d) -----

(e) *The Sub Committee in its 91st meeting, held on 24 May 2017, considered draft Election Bill, Forms XXIII, XXVII and XXVIIC as redrafted by Ms. Anusha Rehman and Mr. Shafqat Mehmood, MNAs and it was decided that the Forms may be reviewed/redrafted by Ms. Anusha Rehman MOS for consideration in the next meeting of the sub committee.*

(f) *The Sub Committee in its 92nd meeting, held on 31 May 2017, considered redrafted Forms-XXIII, XXVII and XXVIIC presented by Ms. Anusha Rehman, were approved subject to some rechecking/scrutiny by the Convenor (law minister).”*

“11. *Later on, Leaders of all Parliamentary Parties were contacted by the Speaker of the National Assembly and were made to realize the sensitivity of this issue and agreed in a meeting convened by the Speaker on October 4, 2017 and the original wording of the Declaration was reinstated vide the Election (Amendment) Act, 2017.*

12. *All the Parliamentary Political Parties initially agreed to restore the original Articles 7B and 7C of Conduct of General Elections Order, 2002. Consequently, amendment was made to restore these provisions. This was also implemented through the Elections (Amendment) Act referred to above. [Annex – G]*

13. *Later on through consensus of all Political parties the earlier Articles 7B and 7C of Conduct of General Elections Order, 2002 have been inserted in Election Act, 2017 vide Section 48A in an improved manner. The new addition of Section 48A has resulted in making the previous Articles 7B and 7C which became inoperative 15 years ago on 26.06.2002 as perpetually operative. [Annex – H]*

14. *Mr. Zahid Hamid, Federal Minister for Law and Justice, who was also member of the Parliamentary Committee on Electoral Reforms and Convenor of its Sub Committee, during a meeting held on this issue, admitted to the fact that basically it was his primary responsibility to see that the draft does not contain any thing controversial but somehow he felt that he failed to perform his duty despite his legal acumen; experience and command of language.*

15. *It has come to the knowledge of this Committee that minutes of 93rd meeting of the Sub Committee of PCER were to be circulated along with its annexures (including the new simplified nomination form) by the National Assembly Secretariat but the Convenor of the Sub Committee asked the National Assembly official NOT to circulate the same which is borne in the official record on 22 June 2017. In view of the above mentioned facts, it is obvious that it was a failure on such a sensitive and scared issue, on the part of Mr. Zahid Hamid, the Convenor of the Sub Committee, member of the PCER and Federal Minister for Law and Justice.*

16. *When the final draft was sent to the PCER for final approval in its 25th meeting, the members who represented all the parliamentary parties, did not notice any changes related to the declaration regarding Khatam e Nabuwat.”*

Since necessary amendments have already been brought in the law, therefore, it may not be appropriate for this Court to further dilate upon the matter except that the Election Commission of Pakistan’s powers to make rules and regulation need to be re-examined as there is a serious apprehension and grave concern that any rule and regulation to carryout the objects of the Act vis-à-vis declartion of religion either being muslim or non-muslim may create serious law and order situation and challenge the mandate of the constitution. It would be pertinent to observe here that steps shall be taken to ensure that every parliamenatarian is provided adequate awareness about the parliamentary debates and proceedings taken place during the course of passage of 2nd Constitutional Amendment.

75. Undoubtedly, 7th September, 1974 when the Parliament unanimously carried the 2nd Amendment Bill was a big occasion of rejoicement for every Muslim but unfortunately certain enactments could not be taken to supplement the constitution amendments. On the contrary, Qadianis through different devices and maneuvering tried their best to frustrate the objects of 2nd amendment. After declaring Qadinis (both Groups) as non-muslims there should have been some steps for their separate identity, recognition, and scrutiny, as Qadinis are not like other minorities (non-muslims) who can easily be identified through their appearance, names, beliefs and mode of prayers. On the contrary Qadianis have same names, appearance and even their prayes are like Muslims, therefore, confusion about their separate identity resolted to declare them non-muslims but the purpose could not have been achieved e.g. name “Ahmad” is somewhat specified for Qadianis and the basis of same they are also termed as Ahmadis which cannot be permitted. Name “Ahmad” refers to the Holy Prophet Hazrat Muhammad (PBUH) who besides other holy books has been addressed by the Allah Almighty in the Holy Quran with this name. Muslims are possessive about this name, and in first interaction or introduction name of an individual indicates about the religion of any person. Reference can be made to the following Verse of Holy Quran:-

وَإِذْ قَالَ عِيسَى ابْنُ مَرْيَمَ يَا بَنِي إِسْرَائِيلَ إِنِّي رَسُولُ اللَّهِ إِلَيْكُمْ مُصَدِّقًا لِمَا بَيْنَ يَدَيَّ مِنَ التَّوْرَةِ وَمُبَشِّرًا بِرَسُولٍ يَأْتِي مِنْ بَعْدِي اسْمُهُ أَحْمَدُ فَلَمَّا جَاءَهُمْ بِالْبَيِّنَاتِ قَالُوا هَذَا سِحْرٌ مُّبِينٌ

“And [mention] when Jesus, the son of Mary, said, “O children of Israel, indeed I am the messenger of Allah to you confirming that came before of the Torah and bringing good tidings of a messenger to come after me, whose name is Ahmad.” But when he came to them with clear evidences, they said, “this is obvious magic.”

[Ayat No.6 of Surah Al Saff]

76. Therefore, it is only in the fitness of things that Qadianis maybe referred to as Ghulaman-e-Mirza/Mirzai etc. but not as Ahmadis, which term/reference may confuse them with Muslims who believe in the finality of the prophethood of

Hazrat Muhammad (PBUH). Qadianis should not be allowed to conceal their identity by having similar names to those of Muslims, , therefore, they should be either stopped from using name of ordinary Muslims or in the alternative Qadiani, Ghulam-e-Mirza or Mirzai must form a part of their names and be mentioned accordingly.

77. As per data collected from the Pakistan Bureau of Statistics, the total as also the province wise population of Qadianis as per census carried out in the years 1981 & 1998 is given as under:-

ADMIN UNIT	QADIANI (AHMADI)	
	1981 CENSUS	1998 CENSUS
1	2	3
Total (PAKISTAN)	104,244	286,212
NWFP/KPK	11,360	42,162
FATA	973	6,541
PUNJAB	63,694	181,428
SINDH	21,210	43,524
BALUCHISTAN	5,824	9,800
ISLAMABAD	1,183	2,757

Whereas NADRA provided details of the persons who converted to Islam from other religions including Ahmadis/Qadianis till now which reads as under:-

Religion	Count
African ethnic	162
Atheism	120
Baha'i	11697
Buddhism	143
Chinese Folk	131
Christianity	9363
Hinduism	3072
Judaism	26
Kalasha	1
Non Religionism	25
Other	6843
Shintoism	51
Sikhism	211
Spiritism	3
Taoism	1
Zoroastrianism (Parsi)	211
Sub total	32060
Ahmedia	6428
Total	38488

Details of Muslims who changed their religion from Islam to other religions including Qadianis is as under:-

Religion	Count
African ethnic	113
Atheism	106
Baha'i	190
Buddhism	31
Chinese Folk	58
Christianity	4749
Hinduism	2097
Judaism	78
Kalasha	8
Non Religionism	54
Other	61
Shintoism	32
Sikhism	127
Spiritism	3
Taoism	5
Zoroastrianism (Parsi)	54
Sub total	7766
Ahmedia	10205
Total	17971

78. State of Pakistan, needs to reconcile these figures by adopting certain procedures and evolving scientific measures to know exact number of this minority. It becomes more essential when big number of this minority is concealing real identity and giving false impression of being Muslim. During dictorial regime of Gen. Pervez Musharaf, Qadianis access to power corridors was being felt by everyone and remained matter of concern. Mr. Tariq Aziz (a beurocarate known Qadiani) being Principal Secretary to the President Gen. Pervez Musharaf played his role and managed induction of Qadianis in different departments, including Constitutional Offices and due to his maneavouring known and declared Qadianis were made part of consultation process on different sensitive issues. Here again question arsies that how many Pakistanis knew this fact that Principal Secretary to President of the Islamic Republic of Pakistan was a Muslim or Non Muslim as per definition provided under Article 260(3)(a)(b) of the Constitution of Islamic Republic of Pakistan. Recently, Mr. Wajid Shams ul

Hassan being Qadiani disclosed his faith, by addressing annual gathering of Qadianis held in country of their patronage i.e. U.K.

79. It goes without saying that that every citizen of Pakistan irrespective of race, cast, creed or religion has a right of life and to profess their own religion within the contours of the Constitution. However, having already constitutionally declared Qadianis to be non-Muslims, it is only justified that they be treated on the same footing as other minorities who are easily identifiable by, least of all, their names and, fortunately, do not imposter themselves to be from a religion they are not.

80. This Court also notes with concern the practice of religion-hopping which seems to have been resorted to by certain individuals to hoodwink authorities and avail the benefits of a religion they are not admittedly a part of. This is true for all those individuals, regardless of religion, who have changed their religion not because of reasons of faith but perhaps to gain worldly benefits. The report of the FIA with respect to individuals who have travelled abroad after affecting a change in their religion in the records of NADRA is alarming.

81. In the larger interests of the country, the court is avoiding disclosing the names of many who held high positions in the bureaucracy, judiciary, military, naval, and air forces and other sensitive and important institutions having Qadianis beliefs while hiding their real religious identities as it would bring bad taste but this practice has to be brought to a halt. Every citizen of the country has right to know that the person(s) holding the key posts belongs to which religious community, the person(s) scheming syllabus for their children profess what religious beliefs, the person(s) formulating their policies tend to hold their beloved Prophet (PBUH) in what esteem, the person(s) believed to be the ambassadors and representitives of their Islamic ideology and interests to the rest of the world as diplomats propagate which ideology and save whose interests, and

last but not the least, the defender(s) in whose hands the the defence of Islamic Republic of Pakistan rests belongs to which religion? This was the responsibility of the State, and the Federal Government in particular, but it has badly failed to discharge it, which necessitated this court to issue directives.

82. These are the reasons of short order. All observations made and directions issued in the details shall be part of order dated 09.03.2018, reproduced here-in-below:-

1. Islam and the constitution of Islamic republic of Pakistan provides complete religious freedom, including all the basic rights of the minorities (Non-Muslims). It is the duty of the state to protect their life, wealth, property, dignity and protect their assets as citizens of Pakistan. Under Article No. 5 of the Constitution of the Islamic Republic of Pakistan (hereinafter called as Constitution) it is the basic duty of every citizen to be faithful to the state and abide by the rules of law and constitution. This rule also applies on those who are not Pakistani citizens, but living presently in Pakistan.
2. It is mandatory for every citizen of Pakistan to get their identity with authentic particulars. No Muslim is permissible to disguise his/her identity as non-Muslim and no non-Muslim has the right to appear as a Muslim. Any citizen, who does so, will betray the State resulting in exploiting the Constitution.
3. Definition of Muslims and Non-Muslims is written in Article 260(3)(a)(b) of the Constitution which is signified by nation's consensus. Unfortunately, according to this distinct standard vital legislation could not take place. Consequently, a Non-Muslim minority disguised as a Muslim Majority by hiding their real identity and betraying the State, due to which not only complications were born but also paves way to oppose extremely important Constitutional requirements. According to the report of the Establishment Division there is no data of any civil servant's record related to this, which is alarming and a major setback and also it is against the spirit and requirements of the Constitution.
4. Most of the minorities residing in Pakistan hold a separate identification in reference to their names and identity but according to the constitution one of the minorities do not hold a distinct identification due to their names and general attire which leads to crisis. Due to their names they can easily mask their belief and

become part of Muslim majority. Also they can then gain access to dignified and sensitive posts resulting in accumulation of all benefits.

5. It is significant to prevent this situation because the appointment of a non Muslim on constitutional posts is against our organic law and rituals. Similarly, non-muslims do not qualify to be elected on certain constitutional offices. For most of the institutions/departments including the membership of Parliament, there are reserved seats for the minorities. That is why when any member of the minority group conceals his/her true religion and belief through fraudulent means, and presents him/herself as a part of Muslim majority which is actually an open defiance to the words and spirit of the Constitution. To prevent this disobedience, the state needs to take immediate measures.
6. The matter of absolute and unqualified finality of prophethood of Muhammad (Peace be upon him) the last of the Prophets (ختم نبوت) is the nucleus of our religion. In History, countless attacks were made to this. It is mandatory for every Muslim to guard and protect this nucleus. The parliament being a highly prestigious institution and a representative of Pakistani nation is the guardian of this religious core. In this scenario, it is the right of Muslim majority to expect proper awareness and sensitivity. Other than the protection of the basic belief of Khatam e Nabowat (ختم نبوت), the parliament should also take measures, which can completely terminate those who scar this belief.
7. This fact is applauseable, that soon after the emergence of legal defect in the Election Act, 2017 the parliament by its collective wisdom and understanding displayed complete sensitivity towards the matter and brought it in conformity with the requirements. These matters demand such sensitivity and unity. Senator Raja Zafarulhaq is well known for his legal acumen as lawyer and experienced legislator as well who by chairing the committee made a very commendable report. Moreover, with his honesty and wisdom he handled all the points very comprehensively, which annulled all the negative impressions. Now, it is for the Parliament to further deliberate on the issue or not.
8. It is mandatory for the State to safeguard the sentiments and religious beliefs and also protect the rights of minority according to the religion of the State of Pakistan "Islam" declared by the Constitution of Pakistan.

No doubt the purpose of these measures is to save the society from chaos and also to protect the rights of minorities who have a separate religious identity according to Constitutional guarantees which they deserve being citizen of Pakistan.

In light of above discussion court declares and direct as under:-

1. In order to get CNIC, Passport, Birth certificate and entry in voter list, an affidavit must be sworn by the applicant based on the definition of Muslim and Non-Muslim provided by Article 260 (3) (a) (b) of the Constitution.
 2. An affidavit mentioned above should be a requirement for appointment in all Government and Semi-Government institutions especially Judiciary, Armed Forces and Civil Services, etc.
 3. NADRA must fix time duration for any citizen who intends to make correction/change in the already given particulars, especially religion.
 4. The Parliament, in the light of Constitutional requirements and basic legal principles laid down by the Hon'ble Supreme Court of Pakistan as well as the Lahore High Court, Lahore in the case law reported as *(1993 SCMR 1748) & (PLD 1992 Lahore 1)*, respectively, make necessary legislation and also introduce requisite amendments in the existing laws so as to ensure that all the terms which are specifically used for 'Islam' and 'Muslims' are not used by the persons belonging to any of the minorities for hiding their real identity or for any other purpose. For teaching Islamiyat /Denyat as subject, engagement of Muslim teachers by all the institutions be declared mandatory.
 5. *The Government of Pakistan shall take special measures ensuring availability of correct particulars of all the citizens so that it should not be possible for any citizen to hide his/her real identity and recognition. Government shall also take immediate steps for conducting inquiry concerning alarming and visible difference in the population record of Qadianis/Ahmadis available with the NADRA and figures collected through recent census in this regard.*
 6. *It is binding on the State to take care of the rights, feelings and religious beliefs of the Muslim Ummah and to also ensure the protection of rights of minorities in the light of teachings of "Islam" being the religion declared by the Constitution of the country.*
83. With the grace of Almighty Allah all the learned Counsel, Constitutional Experts and Religious Scholars have made valuable contribution and rendered able assistance with full devotion which is highly admired by this Court. Similarly, the contribution made by the officials of different government departments who appeared before this Court from time to time is also remarkable. Furthermore, the role of Mr. Arshad Mehmood Kiyani, learned Deputy Attorney General is also

appraisable, who with zeal and hard work, successfully fulfilled / completed all the responsibilities / assignments given to him by the Court which has helped a lot in reaching the right conclusions.

84. Besides contribution of all mentioned in the short order, I am obliged to acknowledge assistance of Mr. Imran Shafique Advocate, who with great devotion and immense responsibility played significant part in research work.

(SHAUKAT AZIZ SIDDIQUI)
JUDGE

Approved for Reporting.
Blue Slip Added

*Adnan/**