

# Enforced Apostasy: *Zaheeruddin v. State* and the Official Persecution of the Ahmadiyya Community in Pakistan

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Nothing is more certain than the fact that the restriction of the right of freedom of expression to those holding certain beliefs, and its denial to those holding other beliefs, would sooner or later destroy the right for those holding any belief. The very essence of the right is that it should be effective against majorities and that it should protect the most unpopular opinions.<sup>1</sup>

## Introduction

Four young men ran through the streets of Gujranwala, Pakistan, trying to escape the mob rioters chasing them and reach the house of their friends.<sup>2</sup> Their friends, two brothers, had already arranged to move all the women of their house and others to a nearby neighbor's home for safety. The four men reached the house of the two brothers with a trail of stone-throwing rioters behind them. The six of them climbed to the roof of the house. The stone throwers, however, had already reached the roofs of adjoining houses and began pelting the men. They were forced to come back down. The men found themselves surrounded and trapped. The rioters proceeded to beat the men with sticks and clubs and continued to stone them. While beating the men, the rioters shouted and demanded the men denounce their Ahmadi faith and "Mirza Sahib."<sup>3</sup> The six men refused. The rioters then stoned the six men to death. The women of the household fought their tears and mourned quietly afterwards for fear of being heard by outsiders. The six men lay buried beneath the pile of stones for a day. No one dared approach the site of the killing out of fear of the militant perpetrators. The next day, members of the six men's religious community uncovered the

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ther. Special dedication to beloved Hazrat Mirza Tahir Ahmad, the Head of the Ahmadiyya Community, for his spiritual guidance and inspiration.

1. ARCHIBALD MACLEISH, *Freedom To End Freedom*, in *A TIME TO SPEAK*, 131, 136 (1940).

2. This paragraph relates the murders of Ahmad Ali Qureshi, Manzoor Ahmad, Syed Ahmad, Mahmood Ahmad and the two brothers Bashir and Munir Ahmad during religious riots against Ahmadis in Pakistan in 1974. See *infra* notes 44-46 and accompanying text (explaining the 1974 riots). The men were in their twenties to early thirties. The story was relayed in a letter written in Urdu from Aisha Bibi Sahiba, the mother of the two brothers, to the Head of the Ahmadiyya Muslim Community, Hazrat Mirza Tahir Ahmad. Hazrat Mirza Tahir Ahmad retold this story in Urdu via television satellite on the occasion of the Annual Convention of the Ahmadiyya Muslim Community in Tilford, United Kingdom on July 30, 1994. The story was translated and paraphrased by the author. Any errors in the translation are the author's alone.

3. "Mirza Sahib" refers to Mirza Ghulam Ahmad, the Founder of the Ahmadiyya Community, who claimed to be the Promised Messiah and Mahdi (the Rightly Guided One) foretold by the Prophet Muhammad, to revive the true message and practice of the Islamic faith. See *infra* Part I (providing background of Mirza Ghulam Ahmad and the Ahmadiyya Community).

bodies and discreetly buried them. Reports were filed but no charges were made by police.

The persecution of Ahmadis continues to the present day. In *Zaheeruddin v. State*,<sup>4</sup> the Pakistan Supreme Court legitimized such persecution by upholding as constitutional a law which forbids Ahmadis from practicing their faith as Muslims and calling their faith Islam.<sup>5</sup> The Pakistan Court asserted that Ahmadis are non-Muslims and any representation by Ahmadis as Muslims is necessarily fraud and deception upon the public.<sup>6</sup> Because Muslims have exclusive use of their Islamic epithets and practices under the company and trademark laws of various countries, including England and the U.S., the Court held the Ahmadi use of Islamic epithets and practices may be prohibited.<sup>7</sup> The Pakistan Court asserted that representation by Ahmadis as Muslims offends and outrages the

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4. 1993 S.C.M.R. 1718 (1993) (Pak.). The petition for review of *Zaheeruddin* to the Pakistan Supreme Court is currently pending. Interview with Mujeeb-ur-Rahman, Pakistan Supreme Court Advocate, at the Bait-ur-Rahman Mosque, in Laurel, Md. (Oct. 14, 1994) [hereinafter Rahman Interview]. A Supreme Court Advocate is a lawyer specially licensed to argue before the Pakistan Supreme Court. The Pakistan Supreme Court has limited discretion to grant review and may do so in this case at any time. *Id.* There are over 2300 cases pending, however, involving charges pursuant to Ordinance XX, at issue in *Zaheeruddin*. *Id.* Mujeeb-ur-Rahman, one of the counsels for the Ahmadis' brief, is confident that the issue of Ordinance XX's constitutionality will re-emerge before the Pakistan Supreme Court. *Id.*

*Zaheeruddin* incorporates two other cases, *Mujib-ur-Rehman Dard v. Pakistan* and *Khurshid Ahmad v. Punjab Province*. *Zaheeruddin*, 1993 S.C.M.R. at 1718. *Mujib-ur-Rehman Dard* consists of two constitutional challenges to Ordinance XX. *Id.* at 1718, 1734. *Khurshid Ahmad* is a case concerning the challenge of a law, made pursuant to Ordinance XX, barring Ahmadis from celebrating the centenary of the establishment of their Community in 1989. *Id.* at 1718; see *infra* note 141 for the full text of the law barring the celebrations.

5. *Zaheeruddin*, 1993 S.C.M.R. at 1779. The Supreme Court voted four to one in favor of declaring Ordinance XX constitutional. *Id.* Justice Abdul Qadeer Chaudhry wrote the majority opinion. *Id.* Justices Muhammad Afzal Lone, Saleem Akhtar and Wali Muhammad Khan joined the majority. Justice Saleem Akhtar wrote a concurring opinion. *Id.* at 1779-80. Justice Shafiur Rahman, the Court's Senior Justice, dissented from the majority opinion. *Id.* at 1733-49. The dissent came in the form of a draft judgment that the majority Justices did not join. See *id.* Justice Rahman's opinion declaring portions of Ordinance XX unconstitutional preceded the majority opinion.

Three out of the four Justices who were in the majority no longer sit on the Court, including the author of the decision. Rahman Interview, *supra* note 4. Therefore, if review of *Zaheeruddin* is granted, or if one of the over 2300 pending Ordinance XX or 125 Blasphemy cases reaches the Court, Ahmadis will argue before a different group of Justices. *Id.*

Fourteen Justices sit on the Pakistan Court, nine of whom declined to sit for *Zaheeruddin*. *Id.* Why so many Justices declined to sit on the case is not fully known. *Id.*

6. *Zaheeruddin*, 1993 S.C.M.R. at 1752-58.

7. *Id.* at 1775-78.

religious feelings of Pakistan's Sunni Muslim majority.<sup>8</sup> The Pakistan Court used falsified and erroneous statements allegedly made by the Founder of the Ahmadiyya Community to illustrate how Ahmadi beliefs offend Pakistan's Sunni Muslims.<sup>9</sup> To prevent violence and to maintain law and order, Ahmadis are not allowed to offend the masses by practicing their faith.<sup>10</sup> The Pakistan Court primarily applied United States case law regarding the free exercise of religion to justify its suppression of Ahmadi practices.<sup>11</sup> Accordingly, the Pakistan Court held that Ordinance XX was constitutional and did not violate the principle of freedom of religion.

Part I of this Article introduces the tenets and practice of the Ahmadi Muslim faith and explains the tension between their beliefs and those of Pakistan's majority Sunni Muslims. Part II discusses the reasoning and holding of the Pakistan Court in *Zaheeruddin* and demonstrates that the Pakistan Court erred in its application of United States and Islamic law. Part III provides a brief overview of the relevant international laws relating to human rights standards and demonstrates Pakistan's non-observance of them. This Article concludes that the Pakistan Supreme Court erroneously upheld the constitutionality of Ordinance XX by misapplying and misinterpreting the Pakistan Constitution, Islamic Law and United States case law.

## I. The Ahmadiyya Community in Islam

Ahmadis are a religious people who view themselves as members of a Muslim Community within the pale of Islam.<sup>12</sup> Ahmadi

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8. *Id.* at 1765, 1777.

9. *Id.* at 1765-68, 1775-77.

10. *Id.* at 1758-65.

11. *Id.*

12. See *infra* note 92 and accompanying text.

According to Muslims:

Islam is the last of the great religions and contains in itself the essential principles of all earlier religions. Islam is a strongly monotheistic religion with the worship of One God as its central theme. Islam was founded by the Prophet [Hazrat (Respected)] Muhammad [570-632] . . . and establishes the continuity of God's revelation which had descended upon earlier prophets . . . and Scriptures. According to Islam all the great religions that preceded it were revealed by God to His chosen messengers. . . .

. . . The word Islam in the Arabic language is derived from the word SLM and means "peace" and "obedience." The religion is called Islam because it offers peace and requires complete submission to the will of God. According to the Quran [the holy book of Islam], there is only one religion acceptable to God and that is complete submission to His Will. In the broader sense of the word Islam was also the religion of the earlier prophets like Abraham, Moses and Jesus, because they also sub-

Muslims are members of the Ahmadiyya Community.<sup>13</sup> Approximately 3.5 million Ahmadis live in Pakistan.<sup>14</sup>

The fundamental difference between Ahmadis and the Sunni Muslim majority in Pakistan concerns the identity of the Promised Messiah.<sup>15</sup> The different beliefs in who the Promised Messiah, foretold by the Prophet Muhammad<sup>16</sup> to appear in the Latter Days, will turn out to be come from varying interpretations of the "finality" of the Prophet Muhammad's prophethood and Jesus Christ's "ascen-

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mitted themselves to the will and obedience of God. This element of universality is unique to Islam and goes beyond the traditional barriers set up between religions. Islam . . . endorses the bonafide status of all earlier prophets and revealed books. . . . Thus Islam is not a religion of an ethnic group or a nation, but the religion of [humankind].

WAHEED AHMAD, *A BOOK OF RELIGIOUS KNOWLEDGE* 14 (1988).

13. The Ahmadiyya Movement in Islam was founded by Mirza Ghulam Ahmad [1835-1908] of Qadian, India in 1889. The followers of Mirza Ghulam Ahmad believe that he is the same Messiah and Mahdi whose coming was foretold by Prophet Muhammad and was eagerly awaited by all Muslims. His followers call themselves Ahmadi Muslims. As far as the fundamental beliefs or acts of worship are concerned, the Ahmadi Muslims have neither taken anything out nor added anything new to the religion of Islam. The Ahmadi Muslims make their declaration of faith by reciting the same *kalima* which was recited by the Prophet Muhammad himself [There is no God but Allah and Muhammad is the Messenger/Prophet of Allah]; they say their Prayers and Fast in the same manner as the Holy Prophet of Islam [Muhammad] did; and their Qiblah [where they face when they say their prayers], their Ka'aba [holy building in Mecca, Saudi Arabia], their Azan [call to prayer] and their Quran are all exactly the same as that of the other [Sunni] Muslims.

AHMAD, *supra* note 12, at 169.

Ahmadiyyat is a sect of Islam and not a new religion. Ahmadiyyat is a movement, entirely within the fold of Islam, meant to revive its true spirit and philosophy, to cleanse Islam of all superstitions and unnecessary beliefs and customs which . . . crept in over the past fourteen centuries, and, finally, to preach the religion of Islam to non-Muslims with the enthusiasm and zeal of the early Muslims.

*Id.*

See also MUHAMMAD ZAFRULLA KHAN, *AHMADIYYAT: THE RENAISSANCE OF ISLAM* (1978) (providing more information on the Ahmadiyya Community); LOUIS J. HAMMANN, *AHMADIYYAT: AN INTRODUCTION* (1985) (providing a short introduction to the Ahmadiyya Community and their beliefs).

14. See H. R. Con. Res. 370, 99th Cong., 2d Sess. (1986) (*see infra* Appendix V for complete text of resolution); Implementation of the Declaration on the Elimination of All Forms of Intolerance Based On Religion and Belief, U.N. ESCOR, 49th Sess., Agenda Item 22 at 81, U.N.Doc.E/CN.4/62 (1993) [hereinafter Implementation of the Declaration].

15. AHMAD, *supra* note 12, at 169.

16. To follow the mention of the Prophet Muhammad's name by the benediction "may peace be upon him" is a cherished custom among Muslims. This practice was adopted in writing but not strictly adhered to until two centuries after the Prophet's death. See JEFFREY LANG, *STRUGGLING TO SURRENDER* ix (1994). Prophets' names, the names of their family members, companions and other religious personalities also are preceded by the benediction. For convenience, the author did not include the benediction but requests the reader to imply it whenever the Prophet Muhammad's name or the names of other religious personalities appear.

sion to heaven."<sup>17</sup> This difference in belief forms the basis for

17. AHMAD, *supra* note 12, at 169; MUHAMMAD ZAFRULLA KHAN, *DELIVERANCE FROM THE CROSS* (1978) (illustrating the Ahmadi belief that Jesus Christ survived crucifixion and travelled to Kashmir, India, where he lies buried in Srinagar. Ahmadis believe the second coming or advent of Jesus was fulfilled by Mirza Ghulam Ahmad, who came in Jesus' "spirit and power," as John the Baptist did in fulfilling the Prophet Elijah's second advent. See *Luke* 1:17).

The Prophet Muhammad's "finality" is derived from the following verse of the Holy Quran: "Muhammad is not the father of any of your men, but he is the Messenger of Allah, and the Seal of the Prophets. And Allah has full knowledge of all things." HOLY QURAN 33:40 (Abdullah Yusuf Ali trans., n.d.) [hereinafter HOLY QURAN (Ali)] (emphasis added) (some capitalization omitted).

The Prophet Muhammad is the 'Seal of the Prophets' or *Khatam-an-Nabiyyeen* (in Arabic). Sunnis believe that the word 'Seal' signifies that the Prophet Muhammad was the last prophet of God chronologically. YVONNE Y. HADDAD & JANE I. SMITH, *MISSION TO AMERICA: FIVE ISLAMIC SECTARIAN COMMUNITIES IN NORTH AMERICA* 52 (1993). Ahmadis believe "there will be no prophet after Muhammad who will bring a new law or who will not be completely obedient to [Muhammad]." *Id.* According to Ahmadis, other prophets can appear, but only "through allegiance to [Muhammad], by receiving light from [Muhammad's] light and as his shadow and reflection." *Id.* (quoting Alhaj Ataullah Khallam, *Holy Prophet as Khataman Nabiyyeen*, MUSLIM SUNRISE 56, no.4:36 (1990)).

The Ahmadi explanation of their interpretation of the word 'Seal' is as follows:

*Khātam* is [a word] derived from *Khātama* which means, he sealed, stamped, impressed or imprinted the thing. This is the primary signification of this word. The secondary meaning is he reached the end of the thing; or covered the thing; or protected what is in writing by marking or stamping a piece of clay upon it, or by means of a seal of any kind. *Khātām* means, a signet-ring; a seal or stamp and a mark; the end of the last part or portion and result or issue of a thing. The word also signifies embellishment or ornament; the best and most perfect. The words *Khātim* and *Khātm* and *Khātām* are almost synonymous. . . . So the expression *Khātām-al-Nabiyyīn* would mean, the Seal of the Prophets; the best and most perfect of the Prophets; the embellishment and ornament of all the Prophets. Secondly it means, the last [chronologically] of the Prophets.

HOLY QURAN 911, n.2359 (M. G. Farid ed., 1981) (1969) [hereinafter HOLY QURAN (Farid)] (emphasis added) (some capitalization omitted) (quoting commentary written by Mirza Bashiruddin Mahmud Ahmad, the Ahmadiyya Community's Second Caliph and son of Mirza Ghulam Ahmad).

According to Ahmadis, the belief that Prophet Muhammad is the last prophet chronologically does not exalt his spiritual status as much as does him being the most perfect prophet and the "last word" on prophets. Ahmadis believe 'lastness' chronologically is a worldly concept, whereby 'lastness' in a metaphoric sense carries much more spiritual significance. *Id.*

*Khātām-al-Nabiyyīn* can have four possible meanings: (1) The Holy Prophet [Muhammad] was the Seal of the Prophets, . . . no Prophet can be regarded as true unless his Prophethood bears the seal of the Holy Prophet. The Prophethood of every past Prophet must be confirmed and testified to by the Holy Prophet, and also nobody can attain to Prophethood after him except by being his follower. (2) The Holy Prophet was the best, the noblest and the most perfect of all the Prophets and he was also a source of embellishment for them. . . . (3) The Holy Prophet was the last of the law-bearing Prophets. . . . (4) The Holy Prophet was the last of the Prophets only in this sense that all the qualities and attributes of Prophethood found their most perfect and complete consummation and expression in him; *Khātām* in the sense of being the last word in excellence and perfection is of common use.

# Sunni persecution of the Ahmadiyya Community in Pakistan.<sup>18</sup>

*Id.*

Ahmadis believe in all four of the aforementioned interpretations. See *id.* Ahmadis find support for their belief in the 'spiritual' lastness of Muhammad as opposed to his chronological lastness in the Holy Quran where it states, "O ye Children of Adam! Whenever there come to you Messengers from amongst you, rehearsing My Signs unto you, - those who are righteous and mend (their lives), - on them shall be no fear, nor shall they grieve." HOLY QURAN (Ali), at 7:35. The preceding verses of the Holy Quran are addressing the people of Muhammad's time and the further generations, and not all people since the Prophet Adam. HOLY QURAN (Farid), at 7:36 n.970. "[F]rom amongst you" therefore indicates the Holy Quran is speaking of prophets that supercede Muhammad and that a later prophet must be from among the Muslim community — the Prophet must be a Muslim, and thus bearing Muhammad's "seal." *Id.*

The Ahmadi interpretation of "Khātām" finds support in some recorded traditions of Muhammad and a tradition of his wife, Hazrat Aisha, the "Ummul Momineen" ("Mother of the Faithful"). See NAEEM OSMAN MEMON, AHMADIYYAT OR QADIANISM: ISLAM OR APOSTASY? 301-05 (1989) (citing the traditions and providing explanations for their authenticity). Ahmadis also find support from the writings of various eminent Islamic scholars. See *id.* at 289-301 (citing renowned sages and scholars, Abul Hasan Sharif, Abu Abdullah Muhammad Ali Hussain al Hakim of Tirmidhi, Maulana Muhammad Qasim of Nanauta (founder of the Deoband Seminary), Abu Saeed Mubarak (revered preceptor of Sayyed Abdul Qadir Jilani, founder of the Qadriyya school of Islamic mysticism), Imam Muhammad bin Abdul Baqee, Ibnī 'Asakar, Sayyed Abdul Karim Jilani, Qari Abdul Tayyab, Shah Wali Ullah (patron saint of Delhi, India and revered as "Mujaddid" or Reformer of the twelfth century of the Muslim lunar calendar), Sheikh Ahmad Farooqi of Sarhind, Maulana Faranghi Mahal, Maulana Abul Hasanat Abul Hayee, Imam Ja'far Sadiq (sixth Imam of the Shia sect), Mullah Ali bin Muhammad Sultan al Qari, Abdul Wahab Sherani, Sheikh Nausha Ganj, Hafiz Barkhurdar and Nawab Siddique Hasan Khan of Bhopal (leader of the Ahle Hadith in India)). Most importantly, Imam Mohiyyiud Din Ibnī Arabi (1165-1240), "the Greatest Shaykh," also believed that nonlaw-bearing prophets could appear after Muhammad when he stated:

From the study and contemplation of the Darud [prayer asking for the blessings and bounties that were granted to Abraham and his people to be bestowed on Muhammad and his people as well] we have arrived at the definite conclusion that there shall, from among the Muslims, certainly be persons whose status, in the matter of prophethood, shall advance to the level of prophets, if Allah pleases. But they shall not be given any book of law.

*Id.* at 293 (quoting MOHIYYIUD DIN IBINI ARABI, FATUHAṬI MAKIYYAH VOL.1, 545 (year omitted)). See also IAN R. NETTON, A POPULAR DICTIONARY OF ISLAM 110 (1992) (referring to "Ibn al-'Arabi" as the "The Greatest Shaykh" and providing the years of his birth and death); see *infra* note 206 (quoting Mirza Ghulam Ahmad regarding his status as a prophet).

18. A second reason for persecution of Ahmadis is the allegation of collaboration with British rule. This allegation is unfounded. When Indian Muslims lived under Sikh rule, the Sikhs denied Muslims the right to call the *azan* (call to prayer) and confiscated their mosques. MEMON, *supra* note 17, at 41-48. The British annexation of the Province of Punjab relieved the Muslims of this tyranny. *Id.* The British restored the Muslims' right to practice, profess and propagate their faith. *Id.* British tolerance was praised by Mirza Ghulam Ahmad. *Id.* Because Mirza Ghulam Ahmad expressed his gratitude to the British Raj in his writings, Ahmad's opponents quickly accused him of British collaboration and sponsorship. *Id.* The Ahmadiyya Community is therefore said to owe its existence and great success to the British Government. *Id.* Charges of British collaboration, however, are wholly unsubstantiated. *Id.* For example, opponents charge that the British granted Ahmadis high

Mirza Ghulam Ahmad's (the Founder of the Ahmadiyya Community) claim to prophethood, albeit a prophethood subordinate to Prophet Muhammad, is deemed blasphemous by the Sunni Muslim *ummah* (clergy).<sup>19</sup> This claim to prophethood by Mirza Ghulam Ahmad is the primary basis for anti-Ahmadi sentiment in Pakistan.<sup>20</sup>

## II. History of Ahmadis in Pakistan

The Islamic Republic of Pakistan was founded in 1947 by *Quaid-Azam* (Great Leader) Muhammad Ali Jinnah.<sup>21</sup> It was created to meet the demands and concerns of the Muslims of the Indian Subcontinent.<sup>22</sup> Pakistan was formed as a Muslim State but not as an Islamic theocracy *per se*.<sup>23</sup> Pakistan was intended to function as a secular state accommodating other faiths but existing primarily to allow the free practice of Islam.<sup>24</sup> The current consti-

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public offices. *Id.* However, from the time of the inception of the Ahmadiyya Community in 1889 until the Dominion of India received independence in 1947, only one Ahmadi reached an office of any public concern. *Id.* Sir Muhammad Zafrulla Khan was a member of the Governor-General's Legislative Council and a Justice of the Supreme Court of India. Sir Zafrulla Khan later became President of the International Court of Justice. See MUHAMMAD ZAFRULLA KHAN, *SERVANT OF GOD: A PERSONAL NARRATIVE* (1983). Sir Zafrulla Khan's career, however, was launched by a renowned Muslim leader, Sir Mian Fazli-Husain of the Punjab Unionist Party, and not by anyone from the British Government. MEMON, *supra* note 17, at 47-48. See also *id.* at 48-58 (answering more unfounded allegations of British collaboration with Ahmadis); IMAM B.A. RAFIQ, *TRUTH ABOUT AHMADIYYAT 12-20* (1978) (providing further explanation regarding Mirza Ahulam Ahmad's views on the British).

19. ANTONIO R. GUALTIERI, *CONSCIENCE AND COERCION: AHMADI MUSLIMS AND ORTHODOXY IN PAKISTAN 19-20* (1989).

20. Ahmadis and Sunnis have differing interpretations of some Islamic doctrines, but the only real difference between Ahmadis and Sunnis is the identity of the Promised Messiah. *Id.* at 19. Once the difference between Ahmadis and Sunnis is seen as one based on this identity, the difference between the two becomes one of differing interpretations of the same doctrines. The beliefs of Ahmadis no longer seem like fundamental abrogations from Islamic teachings, but rather, perfectly valid interpretations of them.

21. See generally STANLEY WOLPERT, *JINNAH OF PAKISTAN* (1984). Ahmadis were instrumental in the creation of Pakistan. *Id.*; see also IAIN ADAMSON, *A MAN OF GOD: THE LIFE OF KHALIFATUL MASIHI IV 71-73*, 76 (1990).

22. JUDGE GUSTAF PETREN ET AL., *PAKISTAN: HUMAN RIGHTS AFTER MARTIAL LAW 10* (1987). Prior to 1947, what is now Pakistan was part of India and under British rule. Richard Belder & Makdoo Ali Khan, *Legal Aspects of Doing Business in Pakistan*, 20 INT'L L. 535, 536 (1986).

23. David F. Forte, *Apostasy and Blasphemy in Pakistan*, 10 CONN. J. INT'L L. 27, 30 (1994).

24. PETREN ET AL., *supra* note 22, at 10. See also Forte, *supra* note 23, at 30 (citing NORMAN ANDERSON, *LAW REFORM IN THE MUSLIM WORLD 174* (1976) (stating Islam was "the very *raison d'être* of Pakistan")).

At the creation of Pakistan, Muhammad Ali Jinnah stated:

" . . . [Y]ou are free to go to your temples, you are free to go to your mosques or to any other places of worship in this State of Pakistan.



tution was adopted in April 1973, following the secession of East Pakistan into Bangladesh in 1971.<sup>25</sup> In 1977, a military coup made General Muhammad Zia-ul-Haq the President of Pakistan.<sup>26</sup> General Zia instituted a martial law regime.<sup>27</sup> Following Zia's death in 1988, Benazir Bhutto was elected Prime Minister and presently Pakistan exists as a democracy under her Prime Ministership.<sup>28</sup> Pakistan has a population of about 130 million,<sup>29</sup> of which approximately 3.5 to 4 million are Ahmadis.<sup>30</sup>

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You may belong to any religion or caste or creed—that has nothing to do with the business of the State (Hear, hear) . . . We are starting in the days when there is no discrimination, no distinction between one community and another. We are starting with this fundamental principle that we are all citizens and equal citizens of one State (Loud applause) . . . Now, I think we should keep that in front of us as our ideal, and you will find that in the course of time Hindus would cease to be Hindus and Muslims would cease to be Muslims, not in the religious sense, because that is the personal faith of each individual, but in the political sense as citizens of the State."

REPORT OF THE COURT OF INQUIRY CONSTITUTED UNDER PUNJAB ACT II OF 1954 TO ENQUIRE INTO THE PUNJAB DISTURBANCES OF 1953 202 [hereinafter REPORT OF THE COURT OF INQUIRY] (quoting Muhammad Ali Jinnah, Address at the Karachi Club, Karachi, Pakistan (Aug. 11, 1947) in SPEECHES OF QUAD-AZAM MUHAMMAD ALI JINNAH AS GOVERNOR-GENERAL OF PAKISTAN 10 (1948)).

Muhammad Ali Jinnah's objective was to found a State based on nationalism with the embryo of an Islamic State. REPORT OF THE COURT OF INQUIRY, at 203.

25. PETREN ET AL., *supra* note 22, at 10.

26. *Id.* at 13.

27. *Id.*

28. In 1990 Nawaz Sharif became Prime Minister by appointment of then-President Ghulam Ishaq Khan. In April 1993, President Khan dismissed Sharif. The Pakistan Supreme Court reinstated Sharif a month later. In July 1993, both President Khan and Prime Minister Sharif resigned and Sharif called for elections. In October 1993, Benazir Bhutto was re-elected. See Edward Gargan, *Pakistan Government Collapses; Elections are Called*, N.Y. TIMES, July 19, 1993, at A1; Edward Gargan, *After a Year of Tumult, Pakistanis Will Vote*, N.Y. TIMES, Oct. 6, 1993, at A1; Benazir Bhutto's Long Road Back, N.Y. TIMES, Oct. 9, 1993, at A1.

29. Charles M. Sennott, *Bhutto's Pakistan: A Nation in Despair*, THE BOSTON GLOBE, Apr. 10, 1995, at National/Foreign.

30. See *supra* note 14 and accompanying text. Ahmadis emphasize education as part of their faith and thus are nearly 100 percent literate in a country which has a high illiteracy rate. GUALTIERI, *supra* note 19, at 89. Reports of the illiteracy rate range between 70 percent to 90 percent. *Feuding, violence in Pakistan create sense of Chaos*, MINN. DAILY, Feb. 14, 1995, at 2 (citing the Associated Press in stating Pakistan's adult literacy rate to be 30 percent). Telephone Interview with Mujeeb-ur-Rahman, Pakistan Supreme Court Advocate (Sept. 12, 1994). The high rate of literacy among Ahmadis may be cited as one of the motives for Sunni hostility toward Ahmadis. *Id.*

An estimated fifteen to twenty percent of Pakistan's literate population is Ahmadi. Rahman Interview, *supra* note 4. Ahmadis, therefore, are more likely to obtain employment and come to public office. *Id.* Further, Ahmadis are viewed as honest people by those who know them and would probably receive public support and confidence but for the government propaganda against them. *Id.* Corrupt government officials see Ahmadis as a threat to the status quo and so suppress them. *Id.* Corruption pervades Pakistan's governmental institutions. Paula Newberg, *The Two Benazir Bhuttos*, N.Y. TIMES, Feb. 11, 1995, at L19.

Despite Pakistan's inception as a secular state, Muslim fundamentalist groups mounted increasing pressure to make it an Islamic theocracy.<sup>31</sup> The leading proponent of this pressure was Maulana Maududi, the then-Head of the *Jamaat-i-Islami* (Party of Islam).<sup>32</sup> Maududi amplified negative religious sentiment against Ahmadi beliefs to unify various religious parties.<sup>33</sup> Maududi felt that by creating anti-Ahmadi sentiment in Pakistan, the nation would be unified under a common cause, namely, the excommunication of the Ahmadis.<sup>34</sup>

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To illustrate the high opinion of Ahmadis by Pakistanis, when General Zia-ul-Haq, the military dictator who passed the oppressive Ordinance XX, was to have eye surgery, he insisted his Ahmadi surgeon perform it. General Zia felt he would be free of an assassination risk while under an Ahmadi's care. GUALTIERI, *supra* note 19, at 38; Rahman Interview, *supra* note 4.

31. RAFIZ ZAKARIA, *THE STRUGGLE WITHIN ISLAM: THE CONFLICT BETWEEN RELIGION AND POLITICS* 229 (1988). The word "fundamentalist" is largely used to describe one who holds inflexible conservative views of Islamic doctrine. The word "fundamentalism" comes from the name given to the school of thought emanating from Protestant religious movements that believed in the literal truth of the Bible. The word characterizes a rigid adherence to fundamental or basic religious principles. See *THE AMERICAN HERITAGE DICTIONARY* 539 (2d. Co. ed. 1982); *WEBSTER'S II NEW RIVERSIDE DICTIONARY* 512 (1988). In this article, the word "fundamentalist," when attributed to Islamic fundamentalists or *mullahs*, will refer to those who place primary importance on the "letter" or literal meaning of the Holy Quran as opposed to the "spirit" or contextual and purposivist interpretation of religious text. *Mullahs* seek to enforce Islamic law in its most rigid and strict form, as proposed by the Hanbali school of Islamic legal thought. ZAKARIA, at 305. Ahmad ibn Hanbal's (780-855) school of thought is described as follows: "This school stresses the puritanical aspects of Islam and is uncompromising in its adherence to orthodoxy. Its followers go by the letter of the [Quran] and assert that theological truths cannot be reached by aql or reasoning. . . ." *Id.*

32. Maududi originally opposed the creation of the State of Pakistan. ZAKARIA, *supra* note 31, at 229; GUALTIERI, *supra* note 19, at 35; REPORT OF THE COURT OF INQUIRY, *supra* note 24, at 243. The *Jamaat-i-Islami* is an Islamic revivalist fundamentalist movement. NETTON, *supra* note 17, at 134. Once Pakistan was created, Maududi wanted it to become the model Islamic state. ZAKARIA, *supra* note 31, at 229. For more information on Maududi and his *Jamaat-i-Islami* see REPORT OF THE COURT OF INQUIRY, *supra* note 24, at 243-54; Adam Muhammad Ajiri, *Some Aspects of Maududi's Contributions to Modern Islamic Thought*, 12 MUSLIM EDUC. Q. 52 (1995).

33. See REPORT OF THE COURT OF INQUIRY, *supra* note 24.

34. Maududi unleashed a wave of religious frenzy throughout his Jamā'at-i-Islāmī and attacked the framers of the [Pakistan] Constitution . . . [Soon his followers] found an explosive issue in the matter of the Amadiyyahs . . . who revered their founder . . . as a prophet. The Jamā'at and their collaborators demanded that the Amadiyyahs be declared non-Muslims as they did not accept Muhammad as the last [chronological] Prophet.

ZAKARIA, *supra* note 31, at 229.

Anti-Amadiyya sentiment was not a new phenomena at the time of Maududi, but dates back to the lifetime of Mirza Ghulam Ahmad, and thus resulted in Ahmadis organizing themselves as a distinct community. MEMON, *supra* note 17, at 326-29. Mirza Ghulam Ahmad and the Ahmadis were aggressively excommunicated from the rest of the Muslim Community. *Id.* Muslims were told not to buy from or

The ruling Muslim League Party, believing that Pakistan should not become a theocracy, refused to comply with Maududi's demand to have Ahmadis constitutionally declared non-Muslim.<sup>35</sup> The *Jamaat-i-Islami* in 1953:

then took to the streets, killing the Ahmadiyyahs and looting and burning their property; riots broke out in many places; many lives were lost and much damage was done to property. The authorities came down with a heavy hand on the rioters and jailed the ulama [religious clerics] who had instigated these riots.<sup>36</sup>

Before 1953, Ahmadis were safe in Pakistan. Because there was no agreement amongst the *ulama*<sup>37</sup> on fundamental questions of what a Muslim or an Islamic State was, "[the] government [in 1953] used this lack of unanimity to curb the activities of the fundamentalists."<sup>38</sup> Anti-Ahmadi sentiment, however, would linger in the hearts of many of Pakistan's *ulama*.<sup>39</sup>

The *ulama* or *mullahs* (clerics) of Pakistan continued to instigate anti-Ahmadi sentiment throughout the next twenty years.<sup>40</sup> For example, *mullahs* would put up posters all over the cities that

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sell to Ahmadis. *Id.* Ahmadi marriages were declared void and instructions were given by religious intellectuals not to acknowledge Ahmadis in the streets. *Id.*

As a result of these edicts by the anti-Amadiyya *mullahs* [clerics] and the subsequent course of action adopted by the average masses, Ahmadi Muslims found themselves isolated through no fault of their own. And hence, they had no other option but to organize themselves as a distinct entity within the broader spectrum of Islam, which they did quite successfully.

*Id.* at 329. See *infra* note 206 and accompanying text for a refutation of the Pakistan Court's criticism of Ahmadis for organizing themselves as a separate group.

35. ZAKARIA, *supra* note 31, at 228-29.

36. *Id.* at 229.

An enquiry commission under the chairmanship of Muhammad Munir, Chief Justice of the Supreme Court of Pakistan, was appointed. After months of labour and investigation, the commission presented its report. The document, which is [a] classic exposition of the conflict between religion and politics in Islam, points out that even on the fundamental question of who is a Muslim, there was no agreement among the *ulama*.

*Id.* (citing REPORT OF THE COURT OF INQUIRY, *supra* note 24).

37. The *ulama* composes the intellectual Islamic elite and a class of *mullahs* or Muslim clerics. See Forte, *supra* note 23, at 31-32.

38. ZAKARIA, *supra* note 31, at 229; see also JOHN L. ESPOSITO, ISLAM AND POLITICS 112-13 (1984).

Keeping in view the several definitions of a Muslim given by the *ulama*, need we make any comment except that no two learned divines are agreed on this fundamental [question] . . . [I]f we adopt the definition given by any one of the *ulama*, we remain Muslims according to the view of [one] *alim* (religious scholar) and *kafirs* (unbelievers) according to the definition of [the others].

REPORT OF THE COURT OF INQUIRY, *supra* note 24, at 218.

39. See *infra* notes 40-46 and accompanying text.

40. *Id.*

insulted Ahmadis and exhorted faithful Sunni Muslims to ostracize Ahmadis.<sup>41</sup> The posters boldly pronounced "Don't buy from or sell to Ahmadis."<sup>42</sup> At the direction of Khalifa-tul-Masih, the Head of the Ahmadiyya Community, the Ahmadi response remained non-retaliatory.<sup>43</sup>

This persistent victimization of Ahmadis by *mullahs* led to the events of 1974. According to Professor Gualtieri, "[d]uring 1974, some non-Ahmadi young men had exposed themselves to Ahmadi girls. In protection of the girls' honour, Ahmadi youth had retaliated<sup>44</sup> against the perpetrators of this indecency. The result was the 1974 anti-Ahmadi disturbances that spread throughout Pakistan with such calamitous consequences for Ahmadis."<sup>45</sup> Prime Minister Zulfikar Ali Bhutto yielded to *ulama* pressure, altered the Pakistan Constitution, and pronounced the Ahmadis a non-Muslim minority.<sup>46</sup>

President Zia-ul-Haq made life much worse for Ahmadis. Beginning in 1978, Ahmadis were excluded from participating in political activity.<sup>47</sup> Ahmadis became effectively disenfranchised and

41. See GUALTIERI, *supra* note 19, at 47.

42. *Id.*

43. "In the face of this victimization, the Ahmadi policy remains—on explicit direction from Khalifatul Masih IV [the Head of the Ahmadiyya Community and the fourth Caliph or Successor to Mirza Ghulam Ahmad]—nonretaliation. . . [as t]he Ahmadi political philosophy is typically conservative and quietistic." GUALTIERI, *supra* note 19, at 47, 69.

One of the non-theological factors that generated hostility towards the Ahmadis, even in the lifetime of the founder, was precisely this respect for and submission to the political powers that be . . . The Ahmadis . . . may be doctrinally and socially radical [but] they have never been political revolutionaries and, from the beginning, have [disliked] a violent interpretation of jihad or holy warfare.

*Id.* at 69.

The Ahmadi principle of nonretaliation comes from the Movement's nonviolent interpretation of jihad (holy war) "and partly on prudential calculations." *Id.* at 47.

44. Professor Gualtieri does not give detail as to the form of the retaliation. GUALTIERI, *supra* note 19.

45. *Id.* at 47.

46. ESPOSITO, *supra* note 38, at 163. See *infra* note 84 and accompanying text for the full text of Article 260(3) of the Pakistan Constitution. "In 1974 there was renewed anti-Ahmadiyya violence, and under . . . Zulfikar Ali Bhutto the legislature for the first time declared Ahmadis 'not Muslims for the sake of Law and Constitution.'" HADDAD & SMITH, *supra* note 17, at 66-67.

When Ahmadis were declared non-Muslims in 1974, the then-Head of the Ahmadiyya Community, Mirza Nasir Ahmad decided not to challenge the constitutional amendment in the courts. Rahman Interview, *supra* note 4. Ahmadis take their faith as a personal matter and so, despite the emotional trauma, they did not care how they were characterized by the law and Constitution. *Id.* Although Ahmadis do not like the label of non-Muslim they would not react publicly provided they could worship Allah and practice their faith as Islam without restriction.

47. In 1978, a further amendment to the Pakistan Constitution provided for separate electorates for non-Muslims in the National and Provincial Assemblies. PE-

deprived of their right to partake in public life.<sup>48</sup> "Pakistan's Zia ul-Haqq regime, which fostered Islamic revivalism and the Islamization of Pakistani society, cracked down on Ahmadis through Martial Law Ordinance XX,<sup>49</sup> issued on April 26, 1984, in an effort to regain Islamic 'purity'."<sup>50</sup>

TREN ET AL., *supra* note 22, at 105. Non-Muslims, in order to participate in elections as candidates or voters, have to register on the electoral rolls as non-Muslims and for non-Muslims only. *Id.* Ahmadis, pursuant to Article 260(3) of the Pakistan Constitution, are therefore required to register as non-Muslims in order to vote or run for public office. *Id.* Such registration by Ahmadis amounts to a denial of their faith and compromises their religious and ethical beliefs. *Id.*; see also Barbara Crosette, *Pakistan's Minorities Face Voting Restrictions*, N.Y. TIMES, Oct. 23, 1990, at A5.

48. PETREN ET AL., *supra* note 22, at 105; see also Crosette, *supra* note 47, at A5.

49. See *infra* Appendix I for the text of Ordinance XX of 1984. Ordinance XX comprises Pakistan Penal Code Sections 298B and C. Ordinance XXI changed the punishment for Ahmadis from "up to three years" to up to ten for anyone who outrages "the religious feelings of any citizens of Pakistan." Ordinance XXI of 1991, in AMNESTY INTERNATIONAL, PAKISTAN: VIOLATIONS OF HUMAN RIGHTS OF AHMADIS, at 5, ASA/33/15/91 (1991), cited in Forte, *supra* note 23, at 42.

In Ordinance XX, Ahmadis are pejoratively referred to as Qadianis. See HAZRAT HAJI MIRZA BASHIR-UD-DIN MAHMUD AHMAD, INVITATION TO AHMADIYYAT, 3-4 (1980). To name people after their town or city of origin is customary in the Muslim world. For example, al-Razi, al-Kindi and al-Rumi is not pejorative. *Id.* To refer to the founder of the Ahmadiyya Community as Mirza Ghulam Ahmad Qadiani is not pejorative as he was from Qadian. *Id.* However, city names are given to the individuals who actually hail from those cities and not to their followers, who may be diverse in origin. *Id.* To deny a group their chosen name is to deny them their self-definition. *Id.* Ahmadis refer to their interpretation of Islam as Ahmadiyyat, derived from "Ahmad" (one of the Prophet Muhammad's names), to distinguish their interpretation from others and to signify the arrival of the age of the Promised Messiah and Mahdi which would take the same name. *Id.* The period prior to the advent of the Prophet Muhammad's Promised Messiah is referred to as the Muhammadiyyat period and the period of his advent is the Ahmadiyyat period. *Id.* To refer to Ahmadis, who are of diverse origin, as Qadianis denies them their self-definition and its Islamic significance.

Lahori Ahmadis are a dissident, much smaller, group of Ahmadis, who deny the prophethood of Mirza Ghulam Ahmad. Lahoris believe Ahmad was merely a *Mujadid* or Reformer. They derive their name from the city of their headquarters, Lahore, Pakistan, by choice. See CAESAR E. FARAH, ISLAM 243-44 (5th ed. 1994) (providing some information about a minority break-away group amongst Ahmadis); HAZRAT MIRZA BASHIR-UD-DIN MAHMUD AHMAD OF QADIAN, THE TRUTH ABOUT THE SPLIT: A REPLY TO A PAMPHLET ENTITLED 'THE SPLIT' BY M. MUHAMMAD ALI M.A., OF LAHORE (1924) (providing an explanation of the Second Caliph's view of the reasons Lahoris formed their own group in defiance of his leadership).

50. HADDAD & SMITH, *supra* note 17, at 67.

"We will . . . persevere in our effort to ensure that the cancer of Qadianism is exterminated." Message from General M. Zia-ul-Haq, President of the Islamic Republic of Pakistan, to International Khatm-E-Nabuwat Conference, London, 4-6 August 1985, reported in Question of the Violations of Human Rights and Fundamental Freedoms in Any Part of the World, With Particular Reference to Colonial and Other Dependent Countries and Territories, U.N. ESCOR, 42d Sess., Agenda Item 12 at 2, U.N. Doc.E/CN.4/1986/NGO/30 (1986) [hereinafter Question of the Violations of Human Rights (1986)].

S. N. Ahmad, [in] *The Anti-Ahmadiyya Stance*, quotes a 1984 sermon by the Imam [leader] of the Shaki Mosque in Lahore [Pakistan] in

After this ordinance took effect, Ahmadis no longer possessed the right to profess, practice, or propagate their beliefs either verbally or in writing for fear of being subject to fines or imprisonment.<sup>51</sup> Ahmadi publications were banned and copies of Ahmadi translations of the Holy Quran were destroyed.<sup>52</sup> The Ahmadis were "considered a germ in the body of the Islamic *umma* [community]."<sup>53</sup> Ahmadis were accused of "masquerading as Muslims" and thus deceiving the general public.<sup>54</sup> In order to safeguard the public from subversion, the government policy was to stop Ahmadis from identifying themselves as Muslims.<sup>55</sup>

Under Ordinance XX, Ahmadis "pose as Muslims" and are punished.<sup>56</sup> Ahmadis cannot use the greeting *Asalaam-o-Alaikum* (peace be unto you); write any Islamic terminology on invitation cards for ceremonies; use the term *Bismillah* (In the name of God) on their stationery; display a Quranic verse on a sign or a calendar; recite the Quran aloud; offer *Janaza* (Funeral Prayers); or in any way display the *Kalima* (declaration that "There is no God but Allah and Muhammad is the Messenger of Allah") on their persons or on gravestones.<sup>57</sup> Moreover, according to Ordinance XX, Ahmadis

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which the Imam supported the martial law ordinance: "1. The domes of all the Ahmadi places of worship should be demolished forthwith. 2. The direction of their places of worship should be so changed that they no longer face Mecca. 3. Ahmadis should be prevented from offering their prayers in congregation. 4. They should be stoned to death one and all." Ahmad wonders what logic there is in the remaining demands if the demand of stoning to death is implemented.

HADDAD & SMITH, *supra* note 17, at 190 (n. 81) (quoting S. N. AHMAD, THE ANTI-AHMADIYYA STANCE 19 (published by the author, n.d.)).

*Mullahs* are obeyed when it comes to enacting anti-Ahmadi legislation because *mullahs* hold a sort of excommunicatory power. GUALTIERI, *supra* note 19, at 37. *Mullahs* can also threaten to annul people's marriages. *Id.* In addition, General Zia's father was a *mullah* and so Zia's compliance with *mullah* demands necessarily raised his social status as well as the social status of the *mullahs*. *Id.* at 36. General Zia's cooperation with *mullahs* allowed them to directly affect and aid in the "Islamization" of Pakistan. *Id.* at 37.

After the restoration of democracy in Pakistan subsequent to General Zia's death in 1989, subsequent governments have existed either by slim majorities or by coalition with other political parties. Rahman Interview, *supra* note 4. The religious clergy, although they do not hold many seats in the Legislative Assembly because of their political unpopularity, tend to hold the seven or eight seats that are vital to government power. *Id.* *Mullahs* therefore exert great influence on Pakistan public policy. *Id.* The government retains power by appeasing the *mullahs*. *Id.*

51. Ordinance XX, *infra* Appendix I.

52. HADDAD & SMITH, *supra* note 17, at 67.

53. *Id.* (quoting the Muslim World League).

54. Message from General Zia-ul-Haq to International Khatmi-Nabuwwat [Finality of Prophethood] Conference, reported in Question of the Violations of Human Rights (1986), *supra* note 50, at 2; H. R. Con. Res. 370, *supra* note 14.

55. HADDAD & SMITH, *supra* note 17, at 67.

56. Ordinance XX, *infra* Appendix I.

57. Implementation of the Declaration, *supra* note 14.

praying, using the call to prayer (*Azan*), calling their places of worship mosques (*Masjid*), or practicing any other tenet of Muslim faith is offensive to the religious sentiments of Pakistan's Sunni Muslims and is therefore a criminal offense.<sup>58</sup>

Ahmadi mosques have been desecrated and destroyed "without the prosecution of those . . . responsible for such acts."<sup>59</sup> Ahmadis have been harassed and had their homes burned.<sup>60</sup> More seriously, Ahmadis have been murdered<sup>61</sup> because they are considered "apostates and as such deserv[ing of] the death penalty."<sup>62</sup>

The Pakistan Government considers the Ahmadi belief in the prophethood of Mirza Ghulam Ahmad blasphemous because this belief allegedly defiles the name of the Prophet Muhammad.<sup>63</sup> In light of such blasphemy, the Pakistan Government introduced the Criminal Law (Amendment) Act of 1986, known as the "Blasphemy Law" of Section 295C of the Pakistan Penal Code.<sup>64</sup> Section 295C makes blasphemy punishable by death alone.<sup>65</sup> Ahmadis allegedly blaspheme by professing to be Muslims and have thus been repeatedly charged pursuant to Section 295C.<sup>66</sup> Furthermore, Ahmadi ci-

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58. *Id.* at 81, 83. Ahmadis of various income levels have been prosecuted pursuant to Ordinance XX. Rahman Interview, *supra* note 4. Over 2,300 Ahmadis face prosecution. *Id.* The authorities, however, point a "loaded gun" at the remaining four million Ahmadis. *Id.*

59. Implementation of the Declaration, *supra* note 14, at 82.

60. *Id.*

61. See PAKISTAN: ATTACKS AGAINST MEMBERS OF THE AHMADIYYA COMMUNITY IN LAHORE, AMNESTY INTERNATIONAL, Index: ASA 33/01/94 Distr: UA/SC, Mar. 11, 1994. See *infra* note 164 (discussing the murder of Dr. Naseem Babar).

62. Implementation of the Declaration, *supra* note 14, at 82.

63. *Id.* at 81.

64. See Question of the Violation of Human Rights and Fundamental Freedoms In Any Part of the World, With Particular Reference to Colonial and Other Dependant Countries and Territories, U.N. ESCOR, 43rd Sess., Agenda Item 12 at 2, U.N.Doc.E/CN.4/1987/NGO/63 (1987) (illustrating the Pakistan Government's intent to target Ahmadis pursuant to the 'Blasphemy Law.') [hereinafter Question of the Violation of Human Rights (1987)]. For information on the enactment of § 295C see Forte, *supra* note 23. See *infra* note 65 (providing the text of PAKISTAN PENAL CODE § 295C.)

65. "Whoever by words, either spoken or written, or by visible representation, or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Muhammad (peace be upon him) shall be punished with death." PAKISTAN PENAL CODE § 295C, *quoted in* Question of the Violation of Human Rights (1987), *supra* note 64, at 2; see also MUJEEBUR RAHMAN, PERSECUTION OF AHMADIS IN PAKISTAN: AN OBJECTIVE STUDY 1 (1993) (providing notification of the amendment to Section 295C which provides the death sentence as the sole punishment for blasphemy). Amnesty International has expressed concern regarding § 295C's mandatory death sentence. See Ordinance XXI of 1991, in AMNESTY INTERNATIONAL, PAKISTAN: VIOLATIONS OF HUMAN RIGHTS OF AHMADIS, at 5, ASA/33/15/91 (1991), *cited in* Forte, *supra* note 23 at 42.

66. PAKISTAN HUMAN RIGHTS PRACTICES, 1993: 1993 HUMAN RIGHTS REPORT 61-62 (U.S. Dept. of State Dec. 27, 1993). "One report states that 107 Ahmadis have been charged with blasphemy, but the informal persecution let loose by the law has

vilians are tried in military courts for violations under both Ordinance XX and Section 295C.<sup>67</sup>

The democratically elected government of Prime Minister Benazir Bhutto has not changed the plight of Ahmadis.<sup>68</sup> Government officials continuously deny that Ahmadis are persecuted for their beliefs, leaving Ahmadi lives and property in danger.<sup>69</sup> The Pakistan Government declares that Ahmadi lives and property are protected in Pakistan.<sup>70</sup> Pakistani authorities allow trespasses against Ahmadis to go uninvestigated, unprosecuted, and unpunished.<sup>71</sup> Pakistani officials' denial of the violations against Ahmadis condones the persecution since there are no sanctions against the torment if the government refuses to recognize its existence. In fact, this willful blindness to the plight of Ahmadis turns

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been much greater." Forte, *supra* note 23, at 57 (citing Country Reports on Human Rights Practices 1993, 1377-78 (1994)). Another report indicates over 2,000 Ahmadis were charged pursuant to § 295C. *Id.* (citing Nafiza Shah, Victims of Zealotry, NEWSLINE (Karachi), Nov./Dec. 1993 at 33, 36 & 36b). Blasphemy is technically a non-bailable offense. *Id.* at 58.

67. H. R. Con. Res. 370, *supra* note 14. Prosecuting civilians in military courts violates international standards of human rights. *Id.*

68. It is depressing to note that the trials of Ahmadis under General Zia have not ended with the accession to power of [present Prime Minister] Benazir Bhutto. The process of persecution seems to have a life of its own independent of changes in the political leadership of Pakistan. This . . . need not be marvelled at inasmuch as the anti-Ahmadi policy is now entrenched in law.

GUALTIERI, *supra* note 19, at 23. Prime Minister Benazir Bhutto is not likely to change the laws targeting Ahmadis because her father's government was responsible for declaring Ahmadis non-Muslims. She stated: "Qadianis were declared non-Muslim in my father's rule. How could I undo the great service my father did for Islam? My Government will not give any concession to Qadianis. They will remain as non-Muslims." THE SITUATION OF AHMADIS AFTER THE DAWN OF DEMOCRACY IN PAKISTAN 16 (n.d.) (quoting statement made by Prime Minister Benazir Bhutto reported in DAILY JASARAT (Karachi) Jan. 9, 1989).

[The] Government is well aware of the activities of Qadianis outside Pakistan and will do everything in its power to negate its propaganda. The Federal Minister for Religious and Minority Affairs, Khan Bahadur Khan told [the Daily] Jang the Government will send deputations of Ulema to Africa, East and West Europe and America to neutralize their influence.

*Id.* (quoting DAILY JANG (Lahore) Jan. 18, 1989).

69. Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, U.N. Doc. E/CN.4/5 at 102 (1986) (indicating initial recognition by the U.N. Sub-Commission of the dangers Ahmadis face).

70. Zuhair Kashmeri, *Banished for Blasphemy*, NOW, Mar. 17-23, 1994, at 15 (quoting Pakistani High Commission in Ottawa, Canada, Vice-Counsel Shazia Jaffery, "there is no persecution of Ahmadis;" indicating that the present Bhutto Government persists in denying the persecution of Ahmadis and therefore perpetuating the danger to Ahmadis).

71. The murdering and torturing of Ahmadis and the looting and destruction of Ahmadi property are implicitly approved of by the Pakistan Government because perpetrators go unprosecuted and unpunished. GUALTIERI, *supra* note 19, at 37-42, 44-72. See also PETREN ET. AL, *supra* note 22, at 112.



the persecution into an official stance of the Pakistan government.<sup>72</sup>

### III. The Decision in *Zaheeruddin v. State*

*Zaheeruddin* was the first Pakistan Court case to consider the constitutionality of Ordinance XX. In *Zaheeruddin*, the Pakistan Court, on July 3, 1993, dismissed eight appeals brought by members of the Ahmadiyya Community.<sup>73</sup> The five Ahmadi criminal defendants, charged for wearing the "Kalima" on their persons and claiming to be Muslims, were returned to jail for the remainder of their sentences.<sup>74</sup>

The Pakistan Court, in *Zaheeruddin*, held that laws restricting the religious practices of Ahmadis are constitutional.<sup>75</sup> The Court ruled that because Ahmadis are non-Muslims, any Ahmadi representation as a Muslim is fraud and deception upon the public.<sup>76</sup> According to the Pakistan Court, because Muslims have exclusive use of their Islamic epithets and practices under the company and trademark laws of various countries, including England and the United States, the Ahmadi use of Islamic epithets and practices are constitutionally prohibited.<sup>77</sup> The Court made this statement although these epithets and practices are not actually registered. The Pakistan Court found that Ahmadi representations as Muslims offend and outrage the religious feelings of Pakistan's Muslim majority.<sup>78</sup> The Pakistan Court also gave examples of statements allegedly made by the founder of the Ahmadiyya Com-

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72. Implementation of the Declaration, *supra* note 14, at 81-85 (illustrating that violations against Ahmadis indeed exist and are officially sanctioned).

73. *Zaheeruddin*, 1993 S.C.M.R. at 1734-36, 1749-50, 1779. There were five criminal appeals, Criminal Appeals Nos. 31K-35K of 1988 (Judgement of High Court of Baluchistan, Dec. 22, 1987), and three civil appeals, Civil Appeals Nos. 149/89 and 150/89 (Judgement of High Court Lahore, Sept. 25, 1984) and Civil Appeal No. 412 (Judgement of High Court Lahore, Sept. 17, 1991).

74. *Zaheeruddin*, 1993 S.C.M.R. at 1734-36, 1749-50, 1779. Four Ahmadis, Zaheeruddin, Abdur Rehman, Majid and Rafi Ahmad were charged pursuant to Section 298C of the Pakistan Penal Code (Ordinance XX). The four men were charged for wearing badges bearing the "Kalima" while claiming to be Muslims. They were each sentenced to one year of rigorous imprisonment and fined one thousand *rupees* (Pakistani currency) or an additional one month of rigorous imprisonment. *Id.* at 1735-36.

Muhammad Hayat was also charged pursuant to Section 298C (Ordinance XX) for the same offense as the four men. Hayat was convicted and "sentenced to imprisonment till the rising of the Court" and fined three thousand *rupees* or three months simple imprisonment. *Id.* at 1735. All five criminal defendants were charged in the city of Quetta, Pakistan. *Id.* at 1735-36.

75. *Id.* at 1779.

76. *Id.* at 1752-58.

77. *Id.* at 1775-78.

78. *Id.* at 1765, 1777.

munity to illustrate how Ahmadi beliefs offend Pakistan's Muslims.<sup>79</sup> Supposedly to prevent violence and to maintain law and order, Ahmadis are not allowed to offend the masses by practicing their faith.<sup>80</sup> The Pakistan Court misapplied United States case law regarding the free exercise of religion to justify its suppression of Ahmadi practices.<sup>81</sup> Accordingly, the Pakistan Court held that Ordinance XX was constitutional and did not violate the principle of freedom of religion.<sup>82</sup>

### A. *The Pakistan Court Considers Ahmadis Non-Muslims*

Article 260(3) of the Pakistan Constitution provides that Ahmadis are non-Muslims.<sup>83</sup> Article 260(3)(a) of the Pakistan Constitution defines Muslim:

Muslim means a person who believes in the unity and oneness of Almighty Allah, in the absolute and unqualified Prophethood of Muhammad (peace be upon him), the last of the prophets *and does not believe or recognize as a prophet or religious reformer, any person who claimed or claims to be a prophet, in any sense of the word or any description whatsoever, after Muhammad (peace be upon him).* . . .<sup>84</sup>

Ahmadis believe in the oneness of Allah and that the Prophet Muhammad was the last of the prophets — the most perfect of all the prophets and the last law-bearing prophet.<sup>85</sup> Support for the latter portion of the definition of Muslim cannot be found in the Holy Quran or in the traditions of the Prophet Muhammad. The latter portion of the constitutional definition of a Muslim was cre-

79. *Id.* at 1765-68, 1775-77.

80. *Id.* at 1758-65.

81. *Id.*

82. *Id.* at 1779.

83. PAK CONST., art. 260(3)(b). "The Ahmadis have been declared non-Muslims by Article 260(3)(b) of the Constitution." *Zaheeruddin*, 1993 S.C.M.R. at 1755. See *supra* notes 46-48 and accompanying text. See *infra* note 206 (indicating the Pakistan Court's non-usage of this definition of Muslim in the *Zaheeruddin* opinion).

84. PAK CONST., art. 260(3)(a) (emphasis added). Article 260(3)(b) goes on to explicitly state that Ahmadis, and other religious groups are non-Muslims. PAK CONST., art. 260(3)(b). Furthermore,

"non-Muslim" means a person who is not a Muslim and includes a person belonging to the Christians, Hindus, Sikh, Budhist or parsi community, a person of the Qadiani Group or Lahori Group (who call themselves 'Ahmadis' or by any other name) or a Bahai, and a person belonging to any of the Scheduled Castes.

PAK. CONST., art. 260(3)(b) (emphasis added). Since Ahmadis are non-Muslims in Pakistan, the Saudi Arabian government does not permit them to perform the Hajj (holy pilgrimage to Mecca), one of the five essential tenets of Islam. ADAMSON, *supra* note 21, at 87.

85. See *supra* Part I (explaining Ahmadi beliefs).

ated by the Pakistan Government to exclude Ahmadis and appease *mullahs*.<sup>86</sup>

According to the Holy Quran, "only those are Believers who have believed in Allah and His Messenger, and have never since doubted, but have striven with their belongings and their persons in the cause of Allah: Such are the sincere ones."<sup>87</sup> The Holy

86. Maulana Maududi's definition of a Muslim given at the Court of Inquiry in 1953 is interesting to note:

Q. Please define a Muslim?

A. [Maududi]- A person is a Muslim if he believes (1) in *tauheed* [Oneness of God], (2) in all the prophets [*ambiya*], (3) all the books revealed by God, (4) in *mala'ika* [angels], and (5) *yaum-ul-akhira* [the Day of Judgement].

Q. Is a mere profession of belief in these articles sufficient to entitle a man to call himself a Musalman [Muslim] and to be treated as a Musalman in an Islamic State?

A. Yes.

Q. If a person says that he believes in all these things, does anyone have a right to question the existence of his belief?

A. The five requisites that I have mentioned above are fundamental and any alteration in any one of these articles will take him out of the pale of Islam.

REPORT OF THE COURT OF INQUIRY, *supra* note 24, at 215-16. See *supra* note 32 and accompanying text for a discussion of Maulana Maududi's beliefs.

Ahmadis do not disagree with Maududi's definition of a Muslim. See AHMAD, *supra* note 49, at 6-11.

The summary and essence of our faith is that there is none worthy of worship except Allah and Muhammed is the messenger of Allah. Our belief that we possess in this life and with which, through the favour of God Almighty, we shall pass on to the next life, is that our lord and master, Muhammed, the chosen one, peace be upon him, is the Khatamal Anbiyya [Seal of the Prophets] and the best of Messengers, at whose hands the faith was perfected and the bounty was completed through which by treading the straight path, a person can reach God Almighty.

MIRZA GHULAM AHMAD, *IZALAH A UHAM* 69 (1891), cited in MEMON, *supra* note 17, at 266. Mirza Ghulam Ahmad instructed his followers to "have firm faith in all Messengers of Allah and revealed Books which have been authenticated by the Holy Quran." MIRZA GHULAM AHMAD, *AYYAMUS SULH* 88 (*Zia-ul-Islam* 1899), cited in MEMON, *supra* note 17, at 267. Ahmad further asserted "[w]e believe that angels [*mala'ika*] are a reality, that Resurrection is a reality and that the Day of Judgement, [*yaum-ul-akhira*] is a reality. . . ." *Id.*

As Ahmadi beliefs satisfy the definition given by Maulana Maududi, in order to exclude them, the Government added an aberration to the definition of Muslim. See *supra* note 84 (providing the constitutional definition of Muslim and referring to the italicized portion).

87. HOLY QURAN (Ali), *supra* note 17, at 49:15 (some capitalization omitted).

For, Believers [Muslims or Momins] are those who, when Allah is mentioned, [feel] a tremor in their hearts, and when they hear His revelations rehearsed, find their faith strengthened, and put (all) their trust in their Lord; Who establish regular prayers and spend (freely) out of the gifts We have given them for sustenance: Such in truth are the Believers: They have grades of dignity with their Lord, and forgiveness, and generous sustenance. . . .

*Id.* at 8:2-4. "And say not to any one who offers you a salutation [of peace]: 'Thou art none of a Believer!'" *Id.* at 4:94 (some capitalization omitted).

Quran's definition of a Muslim applies to Ahmadis and their confidence in Allah.<sup>88</sup> The Pakistan Government wrongly defined Muslim without referring to the Holy Quran, from which Islamic law is principally derived.<sup>89</sup>

The conviction that Ahmadis are non-Muslims pervades the Pakistan Court's decision in *Zaheeruddin*.<sup>90</sup> Therefore, any Ahmadis representing themselves as Muslims or practicing their faith as Islam constitutes fraud and misrepresentation.<sup>91</sup> Ahmadis regard themselves as true Muslims who are responsible for the revival of the Islamic faith.<sup>92</sup> The Pakistan Court found an Ahmadi intent to deceive despite the fact that Ahmadis have historically and consistently represented themselves as Muslims. The Pakistan Court imputed a negative intent to acts which are not per se anti-social, thereby focusing the attention not on the act, but on the actor.<sup>93</sup> Ahmadis are criminals because they are Ahmadis, not be-

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88. "The Ahmadis . . . have a remarkable confidence in the reality and providence of God. They take it for granted that God intervenes, even in their everyday affairs, to bring good issue out of their dilemmas in response to their trust and fidelity in Him." GUALTIERI, *supra* note 19, at 84. "The starkness of Ahmadi confidence in God's active guidance is evident in all strata of their membership." *Id.* at 86.

89. *See infra* Part III, Section F (demonstrating the nonapplicability of Islamic law).

90. *See Zaheeruddin*, 1993 S.C.M.R. at 1760-61, 1771.

91. *Id.* at 1752-58, 1775-79.

92. *See supra* Part I.

The Ahmadis . . . regard their movement as a reformation that repristates the tradition of the Prophet Muhammad and brings about true Islam. They would hardly understand themselves as heterodox in any normative sense. . . . [O]n the evidence of Ahmadi self-definition . . . the presentation of themselves to the world as Muslims is an integral expression of their faith, that is, their most basic perceptions, values, and commitments.

GUALTIERI, *supra* note 19, at 22, 32.

[Pakistan's laws against Ahmadis amounts], in effect, to enforced apostasy, to the denial of their self-identity, and the violation of the particular tenets and practices of their religious tradition. The Ahmadis cannot deny their Muslim identity because they live under God's revelation in the Qur'an which explicitly calls the name of their revealed religion, Islam [HOLY QURAN, 3:20]. This they are not prepared to do on pain of suffering and death.

*Id.* at 34.

Mirza Ghulam Ahmad saw himself as having been appointed by God for the revival and support of the true faith of Islam and his followers continue to worship Allah in the same way as other Muslims, with the faithful being summoned to prayer five times a day and the same rites and rituals being followed. However, despite seeing themselves as part of the broader Islamic movement and having been treated as such under Pakistan's constitutions since independence, other Muslims have repeatedly declared the Ahmadis to be heretics.

PETREN ET. AL., *supra* note 22, at 103.

93. Such an imputation is problematic because one cannot rebut it. Ahmadis, when they practice their faith and behave to the best of their intentions as Muslims, cannot rebut any finding of negative intent. *See Zaheeruddin*, 1993 S.C.M.R. at

cause they commit any acts which, by themselves, pose any danger to society.

*B. Company and Trademark Laws Do Not Prohibit Ahmadis from Muslim Practices*

Pakistani Courts frequently cite the laws of other common law jurisdictions, particularly the United States, Great Britain, Canada and Australia.<sup>94</sup> Given Pakistan's "Anglo-Islamic" and post-colonial common law heritage, the Pakistan Supreme Court's respect for Anglo-American law is not surprising.<sup>95</sup> The Pakistan Court relied on the company laws of Britain, India and Pakistan and trademark law from the United States, to justify prohibiting Ahmadis from using Islamic epithets or practices in the exercise of their faith.<sup>96</sup> According to the Pakistan Court,

[i]ntentionally using trade names, trade marks, property marks or description of others in order to make [third parties believe] that they belong to the user thereof amounts to an offence and

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1746-47 (Justice Rahman dissenting) (recognizing the sincerity and conviction of Ahmadi beliefs). When a Sunni or other type of Muslim engages in the same acts, no negative intent is read into their actions, even though the actions are the same. For example, for the Ahmadi, the calling of the *azan* (call to prayer) is a state offense, but for a Sunni or any other type of Muslim, it is not. What becomes at issue is the actor, not the act.

The crucial charge of posing as a Muslim is a curious one indeed. It shifts the focus from external acts upon which restraining laws normally concentrate onto inward motives so that the judicial authority presumes to know whether the same external acts are prompted by genuine Islamic allegiance or by another loyalty which is defined as *posing*. For example, a Sunni Muslim gives the *azan*, the call to prayer, and so does the Ahmadi Muslim. In the first case, the *azan* is judged to be legally appropriate and socially correct; in the second case, the *azan* is judged to be inauthentic, condemning the perpetrator to the charge of *posing*.

GUALTIERI, *supra* note 19, at 28.

The most sinister feature of Section 298C is that . . . [p]ersons are to be charged and tried not on the basis of alleged anti-social acts, offensive even as the definition of these acts might be, such as calling one's place of worship a mosque. Rather, one is to be tried on the basis of one's inner state of mind or intentions, whether one deliberately intends to mislead or deceive other people with respect to his/her identity as a Muslim.

*Id.* See *United States v. Ballard*, 322 U.S. 78 (1944) (holding that inquiries into the truth or falsity of asserted religious beliefs are prohibited under the free exercise clause of the United States Constitution).

94. Rahman Interview, *supra* note 4. The law reviews and journals of U.S. law schools are often read by Pakistani judges and lawyers. *Id.*

95. Belder & Khan, *supra* note 22, at 536. English is one of Pakistan's official languages. Rahman Interview, *supra* note 4. Pakistan's other official language is Urdu, but all court documentation and litigation are recorded and conducted in English and the Pakistan Constitution is written in English. *Id.* The *Zaheeruddin* decision is written in English.

96. *Zaheeruddin*, 1993 S.C.M.R. at 1752-58.

not only the perpetrator can be imprisoned and fined but damages can be recovered and [an] injunction to restrain him issued. . . . For example, the Coca Cola Company will not permit anyone to sell, even a few ounces of his own product in his own bottles or other receptacles, marked Coca Cola, even though its price may be a few cents. . . . The principles involved are: do not deceive and do not violate the property rights of others. . . . However, in this ideological State, the [Ahmadis], who are non-Muslims want to pass off their faith as Islam? . . . [A] Muslim believer . . . will not tolerate a Government which is not prepared to save him of such deceptions and forgeries.<sup>97</sup>

The Court urged Ahmadis to "coin their own epithets."<sup>98</sup>

The Court proceeded on the erroneous assumption that there is a legal parallel between religion and trade. The Court assumed that there can be a copyright on God and that religion can be treated as merchandise, ignoring the obvious differences between religion and trade.<sup>99</sup>

United States case law belies the fallacy of the Pakistan Court's reasoning, because it supports the position that religious

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97. *Id.* at 1753-54. See *infra* Appendix I (providing the Islamic epithets enumerated in Section 298B of the Pakistan Penal Code).

98. *Zaheeruddin*, 1993 S.C.M.R. at 1779. Ahmadis cannot "coin their own epithets" because traditional Islamic epithets are crucial for the sanctity of Ahmadi faith. Islamic epithets are the only epithets in which Ahmadis believe and to which they adhere. See *supra* Part I and note 86 and accompanying text. The Pakistan Court effectively told a religious community devoted to particular practices and epithets to abandon them and construct new ones. The ability of a court to instruct and dictate the actions and beliefs of a religious group is indeed questionable. See *infra* Part II, Section C (analyzing United States case law regarding government and court involvement with religious practices).

99. The differences between the two are akin to the differences between the spiritual and the mundane, the conceptual and the tangible, the sublime and profane, the worldly and the other worldly. Crim. App. No. 150 of 1989, In the Supreme Court of Pakistan (Civil Review Jurisdiction), 9-10, Aug. 8, 1993 [hereinafter Criminal Appeal 150].

No jurisdiction cited in the 'Ahmadi case' treats restrictions on commercial speech in the same way as restrictions relating to freedom of religion. None of these jurisdictions, as indicated above, would allow the restrictions on religious speech allowed by Ordinance XX. Citing these commercial speech limitations appears to be an attempt by the majority to appear learned. The result is the opposite—the justices have regrettably but severely jeopardized their credibility in a way that would be comic if the potential outcome in Pakistan were not so tragic.

KAREN PARKER, RELIGIOUS PERSECUTION IN PAKISTAN: THE AHMADI CASE AT THE SUPREME COURT 10 (1993).

The Pakistan Court has not . . . kept in view that:

- (i) religion is not a commercially valuable property nor is Islam a registered company.
- (ii) Goods and material objects have been considered at par with religion, faith, belief and 'Shaa'ir' [Islamic custom] which is a universal heritage and a part of beneficent Divine dispensation. Reference to trade mark and Company law is entirely misplaced.

Criminal Appeal 150, at 9.

prayers and names cannot be trademarked. In *McDaniel v. Mirza Ahmad Sohrab*,<sup>100</sup> the plaintiffs asserted that the defendants did not have the right to represent the Baha'i faith through their publishing, their meetings, or through their commercial enterprises without authorization from the recognized religious leadership, namely, the National Spiritual Assembly.<sup>101</sup> The plaintiffs alleged that any representation or solicitation in the name of the Baha'i faith by defendants was a misrepresentation to the public that such use was officially authorized and sanctioned.<sup>102</sup> The *McDaniel* court held that plaintiffs had no cause of action against defendants and stated, "[t]he plaintiffs have no right to a monopoly of the name of a religion. The defendants, who purport to be members of the same religion, have an equal right to use the name of the religion in connection with their own meetings, lectures, classes and other activities."<sup>103</sup> Defendants were thus permitted the "absolute right" to practice their faith and conduct their religious meetings.<sup>104</sup> The *McDaniel* court also held the Baha'i defendants did not intend to deceive the public into believing their acts were affiliated with those of the plaintiffs.<sup>105</sup>

According to *Christian Science Board of Directors of First Church of Christ v. Evans*,<sup>106</sup> religious names and terms are "generic" and thus not subject to trademark law.<sup>107</sup> Determining the generic nature of terms is a matter of common sense.<sup>108</sup> In *Christian Science Board*, where Christian Science is purported to be practiced in a church, as a matter of common sense, that church will call itself a "Christian Science Church" and those who practice therein are Christian Scientists.<sup>109</sup>

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100. 27 N.Y.S.2d 525 (1941). In *McDaniel*, members of the National Spiritual Assembly and Trustees of the Baha'is, an organization which claimed to be the authorized representatives of members of the Baha'i faith living in the United States and Canada, alleged defendants created the erroneous impression they were connected with and were authorized to represent the Baha'i religion. *Id.* at 526. Defendants published Baha'i books and conducted Baha'i meetings, social gatherings and lectures without authorization from the National Spiritual Assembly. *Id.* In addition, defendants opened a bookstore named "Baha'i Book Shop." *Id.* at 527.

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. 520 A.2d 1347 (N.J. 1987). In *Christian Science Board*, the New Jersey Supreme Court held that a New Jersey church, not affiliated with the Christian Science Church based in Boston, but also bearing the name "Christian Science Church," was free to name themselves as such. *Id.* at 1349-52.

107. According to the New Jersey Court, the term "Christian Science" is "generic" and thus cannot be trademarked. *Id.* at 1353.

108. *Id.* at 1352.

109. *Id.*

Ahmadis purport to be Muslims and publish literature and conduct meetings in the name of the religion of Islam. The state of Pakistan claims Ahmadis have no right to represent themselves as Muslims, as they have not received authorization to do so from either the government or the *ulema*. Like the defendants in *McDaniel*, Ahmadis are charged with misleading and defrauding the public through their representations and solicitations in the name of Islam. According to *McDaniel*, Ahmadis, who purport to be members of the same religion (Islam) as the Pakistani majority have an equal right to use the name of their religion, to call themselves Muslims and to conduct their meetings and gatherings in their religion's name.

Ahmadis are also charged with deceiving the public through their representation as Muslims. However, *McDaniel* shows that acts of faith or religious representations do not per se require official sanctioning by an organization. Therefore, one may freely purport to be Muslim or represent himself or herself as Islamic without need for sanction by some religious authority. Ahmadis may thus represent themselves as Muslims and purport to be Islamic and not be charged with deception upon the public.

In addition, under *Christian Science Board*, the terms "Islam," "Muslim" and other Islamic terms and prayers are generic. Therefore, logic dictates that a place where Islam is purportedly practiced is a "Mosque" and those praying therein are "Muslims." According to *Christian Science Board*, Ahmadis are free to use the name of Islam and Islamic terms and to call themselves Muslims because such names and terms are generic and thus not subject to trademark law.<sup>110</sup>

United States law does not support the proposition that religion and religious terms can be trademarked. Religions are not corporations and do not register their prayers as trade names or trademarks. Therefore, the Pakistan Court erred in analogizing between company and trademark law on the one hand, and religion

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110. Other U.S. cases support the Ahmadi position that Islam and Islamic terms and prayers cannot be trademarked. See, e.g., *General Conference Corp. of Seventh-Day Adventists v. Seventh-Day Adventist Congregational Church*, 887 F.2d 228 (9th Cir. 1989) (holding "Seventh-Day Adventist" is a generic term whereby unauthorized use of the term could not deceive or confuse the public); *Board of Provincial Elders of Southern Province of Moravian Church v. Jones*, 159 S.E.2d 545 (N.C. 1968) (holding defendant was free to use the name "Moravian" in connection with any religious or church activity despite non-affiliation with plaintiffs); *New Thought Church v. Chapin*, 144 N.Y.S. 1026 (N.Y. App. Div. 1913) (holding that the "New Thought Church" could not enjoin defendants from conducting services under the name "New Thought Services").



on the other.<sup>111</sup> In addition, the Pakistan Court's use of United States case law regarding religious free exercise is, at best, misguided.

*C. The Pakistan Court Misused United States Freedom of Religion Precedent*

The Pakistan Constitution does not contain a provision similar to the United States Constitution's Establishment Clause. The Pakistan Constitution, however, does include a Free Exercise component. Article 20 of the Pakistan Constitution guarantees the "[f]reedom to profess religion and to manage religious institutions" only "[s]ubject to law, public order and morality."<sup>112</sup> The Pakistan Court referred to the United States, where "fundamental rights are given top priority," as a country with "similar fundamental rights."<sup>113</sup> In interpreting their own Constitution, the Pakistan Court used United States Supreme Court precedent to define the permissible limits on state infringements of an individual's religious practices.

In *Zaheeruddin*, the Pakistan Court relied on United States case law to illustrate how religious practices may be restricted for public order and safety requirements.<sup>114</sup> The Pakistan Court used *Cantwell v. Connecticut*<sup>115</sup> as authority for the proposition that the

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111. The Pakistan Supreme Court asserted Ahmadis may not usurp Islamic beliefs for adoption into their faith, failing to realize that by their own logic, Muslims could be accused of usurpation of the monotheistic belief held by other religions. For example, the idea that "There is no god but Allah (God)" is a monotheistic notion that precedes Islam in both the Christian and Jewish faiths. The author wonders if the Pakistan Court Justices would assert that the Prophet Muhammad usurped the monotheistic beliefs of Christianity and Judaism and if Christian and Jewish dominated countries could legitimately forbid Muslims from making monotheistic declarations pursuant to a copyright or trademark law.

112. PAK. CONST., art. 20. The full text of Article 20 is:

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

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

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

*Id.*

113. *Zaheeruddin*, 1993 S.C.M.R. at 1758, 1778.

114. *Id.* at 1758-65. While the Pakistan Court also referred to cases from Australia, the United Kingdom and India to support its holding, this article will confine itself to the erroneous application of United States case law.

115. 310 U.S. 296 (1939). In *Cantwell*, Jehovah's Witnesses were arrested for publicly soliciting funds pursuant to a statute enacted to protect the public against fraud and imposition in the solicitation of funds for what purported to be religious, charitable or philanthropic causes. *Cantwell*, 310 U.S. at 300-02. Jehovah's Witnesses were soliciting contributions to be used for the publication of their religious literature. *Id.* at 301. The statute required that any public solicitation of funds

"freedom to act" on one's beliefs can be regulated for the protection of society.<sup>116</sup> According to *Cantwell*, the freedom to profess religion involves two concepts, the freedom to believe and the freedom to act.<sup>117</sup> Freedom of belief is absolute.<sup>118</sup> The freedom to act, however, may be restricted by law.<sup>119</sup> Conduct is regulable for the protection of society.<sup>120</sup> The state has an interest in regulating action for the protection of society.<sup>121</sup> The legislature, however, does not have plenary power to restrict or take away fundamental rights.<sup>122</sup> When considering the particular circumstances of a case, a reasonable balance must be struck between religious practices and regulations necessary to protect society.<sup>123</sup>

The Pakistan Court quoted the following passages from *Reynolds v. United States*<sup>124</sup> to support its contention that a legislature may curtail certain religious behavior: "Congress was deprived of all legislative power over mere opinion, but was left free to reach actions which were in violation of social duties or subversive of good order,"<sup>125</sup> and "[l]aws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices."<sup>126</sup>

The Pakistan Supreme Court also cited *Jones v. Opelika*,<sup>127</sup> *Hamilton v. Regents*<sup>128</sup> and *Cox v. New Hampshire*.<sup>129</sup> The Pakistan Court used *Jones v. Opelika* to show that the constitutional

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must first be approved by the secretary of the public welfare council. *Id.* at 301-02. The secretary's approval, however, was only granted if the applicant was not a religious organization. *Id.*

[The secretary's] decision to issue or refuse [such approval] involves [an] appraisal of facts, the exercise of judgement, and the formation of an opinion. He is authorized to withhold his approval if he determines that the cause is not a religious one. Such a censorship of religion as the means of determining its right to survive is a denial of liberty protected by the First Amendment and included in the liberty which is within the protection of the Fourteenth [Amendment].

*Id.* at 305.

116. *Zaheeruddin*, 1993 S.C.M.R. at 1758.

117. *Cantwell*, 310 U.S. at 303, cited in *Zaheeruddin*, 1993 S.C.M.R. at 1758.

118. *Id.*

119. *Cantwell*, 310 U.S. at 303-04.

120. *Id.* at 304.

121. *Id.*, cited in *Zaheeruddin*, 1993 S.C.M.R. at 1758.

122. *Cantwell*, 310 U.S. at 303.

123. *Id.* at 303-04, cited in *Zaheeruddin*, 1993 S.C.M.R. at 1758.

124. 98 U.S. 145 (1878).

125. *Id.* at 164, quoted in *Zaheeruddin*, 1993 S.C.M.R. at 1758.

126. *Reynolds*, 98 U.S. at 166, quoted in *Zaheeruddin*, 1993 S.C.M.R. at 1758. In *Reynolds*, a Mormon, according to the dictates of his faith, practiced polygamy and was charged pursuant to statute. *Reynolds*, 98 U.S. at 161.

127. 316 U.S. 584 (1942).

128. 293 U.S. 245 (1934).

129. 312 U.S. 569 (1941).

guarantee of freedom of religion is not an absolute "to be exercised independently of other cherished privileges, protected by the same organic instrument."<sup>130</sup> Freedom of religion must be reconciled with the right of a State to employ the sovereign power to ensure orderly living "without which Constitutional guarantees of civil liberties would be a mockery."<sup>131</sup>

The Pakistan Court quoted from *Hamilton v. Regents*, stating that, "Government owes a duty to the people within its jurisdiction to preserve itself in adequate strength to maintain peace and order and assure the enforcement of law. And every citizen owes the reciprocal duty, according to his capacity, to support and defend the Government against all enemies."<sup>132</sup>

Finally, the Pakistan Court incorrectly quoted the United States Supreme Court as stating in *Cox v. New Hampshire* that

[a] statute requiring persons using public streets for a parade or procession to procure a special license therefor[e] from the local authorities, does not constitute an unconstitutional interference with religious worship or the practice of religion, as applied to a group marching along a sidewalk in single file carrying signs and placards advertising their religious beliefs.<sup>133</sup>

The Pakistan Court stated that Ahmadi rights are restricted in order to maintain peace and order in society, including the prohibitions on their centenary celebrations made by the Jhang District Magistrate in *Khurshid Ahmad* (this case was joined with *Zaheeruddin*). The Court asserted that Ahmadi practices and centenary celebrations threaten Pakistani society by disturbing public peace, order and tranquility.<sup>134</sup> The Court found such acts injure the feelings of the Muslim majority and therefore elicit violent reactions.<sup>135</sup> Since violence results from Ahmadi practices, the Pakistan Court asserted that the Pakistan legislature has the authority to restrict these religious practices and that Ordinance XX was enacted pursuant to such authority.<sup>136</sup>

The Pakistan Court disingenuously applied United States case law that is over half a century old. The Court's reliance on old cases as precedent was hasty and self-serving. However, even if an

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130. *Jones*, 316 U.S. at 593, quoted in *Zaheeruddin*, 1993 S.C.M.R. at 1759.

131. *Id.*

132. *Zaheeruddin*, 1993 S.C.M.R. at 1764. The quote in *Zaheeruddin* omits the word "just" before "enforcement of law." See *Hamilton*, 293 U.S. at 262-63.

133. *Zaheeruddin*, 1993 S.C.M.R. at 1764 (citing the above as an alleged direct quotation from *Cox*). The quotation does not, in fact, appear anywhere in the *Cox* opinion.

134. *Id.* at 1749-50, 1777-78.

135. *Id.* at 1777.

136. See *id.* at 1758.

analysis of *Zaheeruddin* is limited to these cases, Ordinance XX should still be found unconstitutional. The Pakistan Court took judicial statements out of context and misinterpreted United States law. A closer examination of these cases in their full context reveals that the U.S. decisions contradict the basic premises of *Zaheeruddin*. The United States decisions reveal that a constitutional statute must be neutral from its inception and thereafter applied equitably.

The Pakistan Court failed to recognize that in *Cantwell* the state could not completely ban certain religious practices and that a statute is unconstitutional if it forbids religious, charitable or philanthropic solicitation.<sup>137</sup> In *Cantwell*, the United States Supreme Court stated, "[f]reedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law."<sup>138</sup> The First and Fourteenth Amendments of the U.S. Constitution safeguard "the free exercise of the chosen form of religion."<sup>139</sup> Therefore, a court may not interfere with a person's religious choice.

In formulating its balancing test as to what conduct may be regulated, the *Cantwell* Court held that "breach of peace" embraces a great variety of conduct destroying or menacing public order and tranquillity."<sup>140</sup> A "breach of peace" is limited to violent acts or words directed at and likely to produce violence in others and not by the mere communication of undesirable views.<sup>141</sup>

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137. *Cantwell*, 310 U.S. at 296. Solicitation of funds without a license is allowed only for a religious, charitable or philanthropic cause. *Id.* Solicitation may be given time and manner regulation but not via a license, the grant of which rests in the exercise of a determination by state authority as to what is a religious cause." *Id.* at 306-07. Such a determination constitutes a "forbidden burden upon the exercise of liberty" and is unconstitutional. *Id.*

The Jehovah's Witnesses would not commit fraud according to the statute in *Cantwell* provided they were soliciting funds for religious purposes. *Cantwell* passed no judgment on the truth or falsity of the beliefs of Jehovah Witnesses or on their sincerity in holding them. Determining the propriety of a religious cause is not within the powers of the legislature or a government official. *Id.* at 303-04. Ahmadi beliefs were subjected to legislative and judicial appraisal when the accounts were referred to as "anti-Islamic" in Ordinance XX and "blasphemous" by the Court. *Zaheeruddin*, 1993 S.C.M.R. at 1765-68, 1775-78; see *infra* Appendix I for text of Ordinance XX. The Pakistan Court asserts Ahmadi's commit fraud when they allegedly falsely represent themselves as Muslims. *Zaheeruddin*, 1993 S.C.M.R. at 1754-55. The Pakistan Court therefore declared Ahmadi beliefs false and appraised their sincerity in their belief in their Muslimhood.

138. *Cantwell*, 310 U.S. at 303.

139. *Id.*

140. *Id.* at 308.

141. *Id.* According to the United States Supreme Court, statements that constitute "breach of peace" consist of "provocative language . . . consist[ing] of profane, indecent, or abusive remarks directed to the person of the hearer." *Id.* at 309. Whereas, the Pakistan Court stated Ahmadi propagation and practices "directly or

*Religious liberty [does not connote] the privilege to exhort others to physical attack upon those belonging to another sect. . . . When clear and present danger of riot, disorder, . . . or other immediate threat to public safety, peace or order, appears, the power of the State to prevent or punish is obvious. Equally obvious is it that a State may not unduly suppress free communication of views, religious or other, under the guise of conserving desirable conditions.*<sup>142</sup>

The *Reynolds* Court held that certain religious groups are not exempt from the general laws applicable to all people, even if those laws have an impact on what are arguably religious activities.<sup>143</sup> However, polygamy, the banned activity, was an act already considered "odious" when it was made criminal in the U.S.<sup>144</sup> Further, the laws banning polygamy pre-dated the religious practice at issue in *Reynolds*. The laws were of general application and did not target any specific group.<sup>145</sup>

The Pakistan Court failed to realize that in *Jones*, "[t]he sole constitutional question [was] whether a *nondiscriminatory* license fee . . . may be imposed upon" the sale of literature.<sup>146</sup> In *Jones*, a city ordinance required anyone who wished to sell religious literature to obtain a license and pay a license tax.<sup>147</sup> The challenge against the ordinance was that since the license fee, once granted,

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*indirectly incite and injure the feelings of Muslims."* *Zaheeruddin*, 1993 S.C.M.R. at 1757 (emphasis added).

In 1989, Ahmadis celebrated the centenary of their Community's existence. *Id.* The Ahmadis of the majority Ahmadi city of Rabwah, see *infra* note 162 (providing information on Rabwah), were prohibited by the Jhang District Magistrate, pursuant to Ordinance XX, from the following acts:

- (i) Illumination on buildings and premises [similar to Christmas lights in the United States];
- (ii) Erection of decorative gates;
- (iii) Holding of processions and meetings;
- (iv) Use of loudspeaker or megaphone [at all meetings];
- (v) Raising of Slogans [i.e. 'long live Islam' and 'God is the Greatest'];
- (vi) Exhibition of badges, buntings and banners etc. [which have Arabic writing on them];
- (vii) Distribution of pamphlets and pasting of posters on the walls and wall writings;
- (viii) *Distribution of sweets and service of food;*
- (ix) *Any other activity directly or indirectly which may incite and injure the religious feelings of Muslims.*

*Zaheeruddin*, 1993 S.C.M.R. at 1736, 1749-50 (emphasis added). By the Pakistan Court's reasoning, putting up lights on one's house and giving away sweets and food were determined "profane, indecent or abusive" and likely to produce violence in others.

142. *Cantwell*, 310 U.S. at 308 (emphasis added).

143. *Reynolds*, 98 U.S. at 163-66.

144. *Id.* at 146, 164.

145. *Id.*

146. *Jones*, 316 U.S. at 592-93 (emphasis added).

147. *Id.* at 586.

was subject to revocation at the discretion of the City Commission, the law was thus arbitrary and an infringement on the freedom to disseminate information.<sup>148</sup> The provision requiring the license fee was upheld because of the requirement's nondiscriminatory and neutral nature;<sup>149</sup> all book agents, regardless of religious belief, were required to obtain a license to sell books.<sup>150</sup>

In *Hamilton*, students were appealing compulsory military training imposed by the University of California.<sup>151</sup> The compulsory military training was upheld because it was applicable to all students of the University of a particular age provided they had not yet completed certain levels of their education.<sup>152</sup> Further, the United States Supreme Court in *Hamilton* stated that the liberty of worship undoubtedly includes the right to entertain the beliefs, to adhere to the principles, and to teach the doctrines which are advocated.<sup>153</sup>

The Pakistan Court did not mention that the law pertaining to the public practice of religion in *Cox* is only a time, place and manner regulation and not a prohibition. Regulations serve to "conserve the public convenience" and put authorities on notice for providing appropriate policing and "to prevent confusion by overlapping parades or processions, to secure convenient use of the streets by other travelers, and to minimize the risk of disorder."<sup>154</sup> In *Cox*,

[t]he sole charge against appellants was that they were 'taking part in a parade or procession' on public streets without a permit as the statute required. They were not prosecuted for distributing leaflets, or for conveying information by placards or otherwise, or for issuing invitations to a public meeting, or for holding a public meeting, or for maintaining or expressing religious beliefs.<sup>155</sup>

The regulation of street parades must be applied "without unfair discrimination" and, therefore, according to the principles of neutrality, equality and nondiscrimination.<sup>156</sup>

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148. *Id.* at 599. The petitioner had neither applied for nor had the license revoked. *Id.* The petitioner therefore lacked standing to raise questions regarding the discretion to revoke licenses for the sale of religious literature. *Id.*

149. *Id.* at 588.

150. *Id.* at 586.

151. *Hamilton*, 293 U.S. at 262-63.

152. *Id.* at 256.

153. *Id.* at 262.

154. *Cox*, 312 U.S. at 575-76 (citing *Cantwell*, 310 U.S. at 306-07). Parading in the streets was not banned, only regulated. *Id.* at 574-76.

155. *Id.* at 573.

156. *Id.* at 576. The Pakistan Court also cited *Commonwealth v. Plaisted*, 148 Mass. 375 (Mass. 1889) to illustrate that "the plea of fundamental right was rejected" in *Plaisted*. *Zaheeruddin*, 1993 S.C.M.R. at 1764. According to *Plaisted*, "[a]

The United States Supreme Court was guided by the principles of equality, neutrality and nondiscrimination in deciding each of these cases.<sup>157</sup> "Unlike the laws at issue in these United States cases, Ordinance XX is not neutral since it explicitly singles out the religious practices of one community, the Ahmadi[s]."<sup>158</sup>

Following the United States Supreme Court's reasoning in *Cantwell*, the suppression of Ahmadi beliefs "under the guise of conserving desirable conditions" is unconstitutional. The Pakistan Government suppresses Ahmadi religious practice for the supposed protection of society because Ahmadi beliefs offend public sentiments and allegedly subvert law and order.<sup>159</sup> Ahmadis, however, do not seek to create disorder. Ahmadis desire to peacefully practice, propagate and profess their faith. A state cannot justifiably back the refusal to tolerate the religious practices of peaceful and law-abiding citizens any more than it could "in supporting an assailant against his victim."<sup>160</sup> Ahmadis do not commit violent acts in the practice of their faith nor do they direct their religious expression at others or intend to elicit violent reactions. Ahmadis peacefully practice their faith according to the dictates of conscience.

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law [may prohibit] the use of streets for religious meetings, or the beating of drums [even] thought [sic] it is a part of religious ceremony of such organisations as the salvation army." *Id.* at 1765. The law in *Plaisted* only prohibited *unreasonable* use of the streets. *Plaisted*, 148 Mass., at 381. Religious worship was not at issue. *Id.* The legislative authority to require reasonableness was at issue, and was upheld. *Id.* at 383-87.

157. Letter from Michael H. Posner, Executive Director of Lawyer's Committee for Human Rights, to Chief Justice Saad Saod Jan, Supreme Court of Pakistan, 2 (cc: Prime Minister Benazir Bhutto) Doc#: DC1: 5004.1, DC-1324, Apr. 22, 1994.

158. *Id.*

159. The . . . views [shown by U.S. case law], as they are prevalent, in the above jurisdiction, do go to show that freedom of religion would not be allowed to interfere with the law and order or public peace and tranquillity. It is based on the principle that the State will not permit anyone to violate or take away the fundamental rights of others, in the enjoyment of his own rights and that no one can be allowed to insult, damage or defile the religion of any other class or outrage their religious feelings, so as to give rise to [a] law and order situation. So whenever or wherever the State has reasons to believe, that the peace and order will be disturbed or the religious feelings of others may be injured, so as to create [a] law and order situation, it may take such minimum preventive measures as will ensure law and order.

*Zaheeruddin*, 1993 S.C.M.R. at 1765. The Sunni Muslim majority is offended by Ahmadi beliefs and is thus likely to instigate religious riots. *Id.* at 1765. In order to prevent offended Sunni Muslims from endangering society, Ahmadi religious practices are restricted. *Id.* While intolerant citizens create the violence, Ahmadis bear the blame. *Id.* The Pakistan Court regards any violence that erupts out of intolerance towards Ahmadis as justified. *Id.*

160. PETREN ET AL., *supra* note 22, at 110-13.

Furthermore, the practices of Ahmadis are similar to those of the majority Sunni population. Ahmadi practices do not pose any more of a threat to society than do the practices of the Sunni majority. The Appellants in *Zaheeruddin* wore badges displaying the *Kalima Tayyaba*, the principle tenet of Islamic faith for all Muslims, and referred to themselves as Muslims. Ahmadis, Sunnis and other Muslims also use the greeting of "peace" or "*salaam*." Such acts do not per se pose any danger. The Appellants were not charged because their acts threatened society, but because they are Ahmadis. Ahmadis are punished and suppressed because of the manner in which others react to their peaceful practices. The danger to society is not posed by Ahmadis but by potential violence resulting from public intolerance towards them.

The Pakistan Court erroneously applied the reasoning of *Jones*, and held that the rights of Ahmadis can be restrained to ensure orderly living in Pakistan. *Jones*, however, condemned the discriminatory suppression of unpopular views by the state for the sake of order. Regulations enacted for the purpose of imposing order must be nondiscriminatory and universal. Viewed against this reasoning, Ordinance XX is not universal and nondiscriminatory because it targets and restricts only the practices of Ahmadis.

Unlike polygamy in *Reynolds*, the practicing of Islam in Pakistan was never considered subversive of public order or "odious," nor was it ever criminal. In Pakistan, Islam is the religion of the majority and its practices are socially encouraged. Ahmadi practicing of Islam, however, is considered criminal. A perfectly moral act becomes criminal if an Ahmadi commits it. Ordinance XX therefore targets the religious practices of Ahmadis and prohibits them from performing otherwise socially encouraged acts. Ordinance XX, unlike other criminal laws, makes the actor, not the act, illegal. Ahmadis are therefore discriminated against for who they are and not what they do. Ordinance XX is a discriminatory law which names and targets a specific group and is not neutrally and generally applicable to all citizens.

The Pakistan Court relied on United States cases that refer to time, place and manner regulations of the freedom of action; to cases that involve acts which are already illegal; or to cases that uphold laws which are neutrally and generally applicable. The Pakistan Court was not regulating the streets "without unfair discrimination" when it upheld the Jhang District Magistrate's prohibition of Ahmadi centenary celebrations in Khurshid Ahmad.<sup>161</sup> The

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161. See *supra* note 141 (providing the text of the Jhang District Magistrate's law prohibiting Ahmadi celebration). In *Cantwell*, the United States Supreme Court



Court cited public safety to justify its prohibition, knowing, however, that Ahmadis would not engage in acts which would per se constitute a threat to society. Lights on buildings and Islamic inscriptions on walls, both of which were prohibited by the Jhang District Magistrate, are common sights and are not offensive in Pakistan. Further, the risk of disorder was minimal as the Ahmadi celebrations would have taken place in Rabwah, a predominantly Ahmadi village.<sup>162</sup> Ahmadis were prohibited from celebrating in a familiar and friendly setting. Any violent reaction would have to be imported from outside the village. The Jhang District Magistrate discriminated against Ahmadis pursuant to Ordinance XX. According to Cox, the prohibition of the Ahmadis' celebration of their centenary or the practicing of their faith is therefore unconstitutional.

The Pakistan Court purported to be protecting society and relieving it of the threat of violence. However, the Pakistan Court, by suppressing Ahmadis, did not relieve Pakistan's citizens of the threat of violence. Rather, its judgment further emboldens anti-Ahmadi sentiment and thus encourages more violence and criminal prosecutions of Ahmadis.<sup>163</sup> Because the Court deemed Ahmadis

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determined that the mere communication of views, whether or not the views are desirable, cannot constitute a breach of peace. *Cantwell*, 310 U.S. at 308. Jehovah's Witnesses did not impart their views in a noisy or overbearing fashion and did not intend to offend anyone. *Id.* Such is the case with Ahmadis.

Ahmadis do not intend to offend anyone by their religious beliefs. Ahmadis do not abusively direct their religious expression at others. The Ahmadi belief in Prophet Muhammad's 'lastness' as spiritual rather than merely chronological is thought to elevate Muhammad's spiritual rank. See *supra* note 17. Such a notion can hardly be considered "indecent" or "profane". Therefore, the peaceful exercise of Islam by Ahmadis cannot be prohibited according to *Cantwell*.

162. In 1947, after the partition of India and Pakistan, Ahmadis bought slightly over a thousand acres of land on the west bank of the Chenab River. ADAMSON, *supra* note 21, at 45-47. The village was completely isolated and was built entirely by Ahmadis. *Id.*

163. "The judgment has emboldened anti-Ahmadi groups and resulted in more court cases against Ahmadis." (U.S. Country Reports on Human Rights, 1995 [covering 1994]). See *infra* Part III, Section G.

On February 22, 1994, Dr. Muhammad Akhtar Majoka was charged pursuant to Ordinance XX (§ 298C) "for allegedly inviting others to watch a television program featuring the exiled head of the Ahmadiyya community." AMNESTY INTERNATIONAL REPORT 232 (1995). The charge of blasphemy pursuant to § 295C was later added by police "although there appeared to be no evidence to support the [charge]." *Id.*

On February 7, 1994, five Ahmadi journalists were detained for a month "for publishing articles in which they allegedly 'posed as Muslims' and were charged pursuant to Ordinance XX." *Id.* The charge of blasphemy was added later. *Id.* The journalists published their articles in the Ahmadi daily newspaper, *Al Fazal*. (U.S. Country Reports on Human Rights 1995 [covering 1994]).

To give an example of how the Pakistani authorities interpret alleged Ahmadi instigation of disorder, on September 15, 1994, local authorities in Rawalpindi, Pakistan "razed the structures" of an Ahmadi mosque. *Banned sect's worship site razed in Rawalpindi*, REUTERS WORLD SERVICE, Sept. 15, 1994 [hereinafter *Banned Sect*]; *Pakistanis destroy minority mosque*, PROPRIETARY TO THE UNITED PRESS INTERNA-

offensive, anti-Ahmadi perpetrators have judicial and state license to create further disorder. *Mullahs* and their followers are free to orchestrate religious riots without prosecution or restriction from government authorities.<sup>164</sup> The threat to public order and safety

TIONAL, Sept. 16, 1994 [hereinafter *Destroy Mosque*]. "The bulldozers and laborers of the Rawalpindi Development Authority began the demolition . . . after a civil court rescinded an earlier order which had prevented the demolition." *Id.* The authorities claimed that the mosque was a potential cause of religious riots. *Id.* The mosque was claimed to have been constructed illegally. *Id.* The local authorities "razed the site under pressure from fundamentalist Islamic clerics . . ." *Banned Sect.* Ahmadis filed an appeal before a higher court and the hearing was scheduled for September 19, 1994. *Id.* The authorities destroyed the mosque before the Ahmadis could defend themselves in the hearing. Rahman Interview, *supra* note 4. The mosque was destroyed on the eve of the Ahmadi *Juma* (Friday) Prayer service. *Id.* In Pakistan, the simple existence of a building where people peacefully pray is considered an instigation of public disorder and violence. A number of other Ahmadi mosques have been sealed pursuant to instructions from local officials. PETREN ET AL., *supra* note 22, at 112.

The Government does not allow deceased Ahmadis to rest in peace. The Government ordered 13 bodies to be disinterred from graveyards, because deceased Ahmadi were not allowed in Muslim cemeteries. See Implementation of the Declaration, *supra* note 14, at 78. Another 23 bodies were denied burial in municipal burial grounds. *Id.* Gravestones of Ahmadis were also defaced or damaged. *Id.*

164. PETREN ET AL., *supra* note 22, at 112.

[H]ostile remarks by private citizens in the press and on the broadcast media pass unchallenged despite the prohibitions in the Pakistan Penal Code on promoting enmity between different religious groups [§ 153A] and on outraging the religious feelings of any class by insulting its religion or religious beliefs [§ 295A]. No action was taken, for example, after a broadcast on Pakistan Television (16 November 1986) in which Dr. Mujeeb-ur-Rehman said "anyone who makes a claim of prophethood in any form and shape is a liar . . . and an Islamic Government . . . is bound to order that either he should enter the fold of Islam or he be killed." There can be little doubt that such statements only help to inflame tensions and this seems rather reckless, particularly as the number of assaults on and murders of Ahmadis where the victim's religion was a motivating factor appears to be increasing. For example, both Dr. Aqeel and Babu Abdul Ghaffar, had their throats cut while they were the head of the Ahmadiyya community in Hyderabad [Pakistan]. Furthermore the government appears to be either ignoring unprovoked attacks on Ahmadi places of worship or allowing public order to be used as a pretext for stopping acts of worship. . . . An Ahmadi mosque in Rahwali has . . . been destroyed and the mosques in Bhaker, Jhang and Sadar have been set on fire. A number of Ahmadi mosques have also been sealed up on the instructions of local officials.

*Id.* at 111-12.

On April 9, 1995, in Peshawar, Pakistan, a crowd of Muslim militants publicly stoned an Ahmadi to death and injured another. *Pakistan: Pakistani Islamic Crowd Stones Man to Death*, REUTER NEWswire, Apr. 9, 1995. The murder "occurred during a court hearing in Shabqadar town over a complaint that the two men, Rashid and Riaz (both one name), were trying to convert another resident, Daulat Khan, to [Pakistan's] banned sect." *Id.* Witnesses stated, "[a] crowd of people suddenly surrounded the men and started stoning them until Rashid died on the [scene] . . . Riaz was taken to a hospital with serious injuries." *Id.* The Reuter report did not mention whether any charges were filed against the perpetrators of the stoning.

Prior to the stoning, the crowd demanded that Rashid and Riaz (Rashid's son-in-law) denounce their heretical faith and insult Mirza Ghulam Ahmad. Friday Sermon

will persist if the state and courts continue to encourage intolerance towards Ahmadis. If the Pakistan Court was genuinely interested in public safety, it would have condemned the suppression of Ahmadis, and the intolerance and discrimination directed against them. The protection of public safety and order is best served by scrupulous enforcement of laws prohibiting assault, battery and vandalism.

Even older United States precedent demonstrates that intolerance and animosity against a religious community make that community worthy of governmental protection, not disdain.<sup>165</sup> Instead, the Pakistan Government and Court participated in the intolerance and subversion of freedom of conscience and religion by deciding against the Ahmadiyya Community.

In order to thoroughly examine Free Exercise precedent and the protection of this fundamental right, the Pakistan Court should have applied more recent case law, like *Sherbert v. Verner*<sup>166</sup> and *Employment Division v. Smith*,<sup>167</sup> rather than relying solely on

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delivered by Hazrat Mirza Tahir Ahmad at the London Mosque, London, England on May 26, 1995 (errors in the translation from Urdu are the author's alone). Rashid and Riaz answered by asserting they were Muslims and that there was no heresy to denounce. *Id.* They recited the *Kalima Tayyaba* before the crowd. *Id.* The crowd repeated its demands for Rashid and Riaz to insult Mirza Ghulam Ahmad. *Id.* Riaz replied by stating that the Islam he learned taught him to not make insulting remarks regarding anyone. *Id.* The crowd, frustrated by the refusal of their demands, proceeded to stone Rashid and Riaz. *Id.*

On October 12, 1994, in Islamabad, Pakistan, Dr. Nasim Babur, a physics professor at Quaid-i-Azam University in Islamabad, was shot and murdered by an intruder in his home. *Pakistani Ahmadis Complain of Murders by Fanatics*, REUTER NEWSWIRE, Oct. 18, 1994. Police authorities took no action to investigate Dr. Babur's murder despite written appeals to President Farooq Leghari, Prime Minister Benazir Bhutto, and other government officials. *Id.* Pakistani media reported that Dr. Babur was killed because he was an Ahmadi. Telephone Interview with Mujeeb-ur-Rahman, Pakistan Supreme Court Advocate (Oct. 31, 1994).

165. Rather than applying the same standards to everyone, Ordinance XX expressly forbids members of the Ahmadi community from engaging in practices which are legal and encouraged in the majority community. The Ordinance is therefore fundamentally discriminatory and would be unconstitutional under U.S. law. . . . In addition, the [Pakistan] Court's concern for "law and order" would not provide a sufficiently "neutral" purpose under U.S. law. Throughout the opinion, [the Pakistan] Court referred to the animosity of the majority community against the Ahmadis, maintaining that the majority considers the Ahmadi movement "a serious and organized attack on its ideological frontiers" and "a permanent threat to its integrity and solidarity." Under U.S. law, such admitted animosity, alone, would be sufficient to find Ordinance XX unconstitutional.

Letter from M.H. Posner to Chief Justice S.S. Jan, *supra* note 157.

166. 374 U.S. 398 (1963).

167. 494 U.S. 872 (1990).

This article is not addressing the issue of whether, in order to be found unconstitutional, a neutral law must infringe upon a fundamental right as well as an individual's free exercise of religion. That issue was raised by *Employment Division*. See

older case law. The more recent cases are directly applicable to the controversy in *Zaheeruddin* and are also favorable to the Ahmadi Appellants. They demonstrate that the threat posed by religious beliefs must be substantial and not merely repugnant to the majority. They also emphasize that, for a law to be constitutional, it must be neutral in nature and application.

For example, under *Sherbert*, a law or regulation which burdens the free exercise of religion is constitutional only if the burden is incidental to a justifiable compelling state interest.<sup>168</sup> A law may justifiably regulate conduct which poses "some substantial threat to public safety, peace or order."<sup>169</sup> However, "[g]overnment may neither compel affirmation of a repugnant belief . . . nor penalize or discriminate against individuals or groups because they hold religious views abhorrent to the authorities . . . nor . . . inhibit the dissemination of particular religious views."<sup>170</sup> The threat to society must be "substantial" or else the religious beliefs or principles are not "within the reach of state legislation."<sup>171</sup> Minority religious views cannot be suppressed merely because of hostility felt by the majority community.<sup>172</sup> According to Justice Douglas in his concurrence, "many people hold beliefs alien to the majority of our society—beliefs that are protected by the First Amendment but which could easily be trod upon under the guise of 'police' or 'health' regu-

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Jennifer D. Malinovsky, *Constitutional Law- Liberty or Luxury? The Free Exercise of Religion in the Aftermath of Employment Division, Department of Human Resources v. Smith*, 26 WAKE FOREST L. REV. 1297 (1991). Since Ordinance XX is not neutral, it would be found unconstitutional under either standard, therefore, to enter this debate is not necessary.

168. *Sherbert*, 374 U.S. at 403 (quoting *NAACP v. Button*, 371 U.S. 415, 438 (1963)). In *Sherbert*, the appellant, a Seventh Day Adventist, was discharged by her employer because she refused to work on the Sabbath pursuant to the dictates of her faith. *Id.* at 399. She was thereafter unable to obtain other employment because of her refusal to work on the Sabbath. *Id.* at 399, n.2. The appellant filed a claim for unemployment compensation, but was deemed ineligible for benefits because her religious beliefs allegedly did not provide her good cause to refuse suitable employment. *Id.* at 309-401. The South Carolina compensation statute, in effect, required the appellant to forego her religious convictions and work on Saturdays. *Id.* The appellant alleged that requiring her to work on Saturdays was an unconstitutional burden on the free exercise of her religious beliefs. *Id.* at 401. The United States Supreme Court held that the eligibility requirement of the South Carolina statute was an unjustifiable infringement on the appellant's religious freedom and was thus unconstitutional. *Id.* at 406-09.

169. *Id.* at 403 (citing *Reynolds v. United States*, 98 U.S. 145 (1878); *Jacobson v. Massachusetts*, 197 U.S. 11 (1905); *Prince v. Massachusetts*, 321 U.S. 158 (1944); *Cleveland v. United States*, 329 U.S. 14 (1946)).

170. *Id.* at 402 (citing *Torcaso v. Watkins*, 367 U.S. 488 (1961); *Fowler v. Rhode Island*, 345 U.S. 67 (1953); *Murdock v. Pennsylvania*, 319 U.S. 105 (1943); *Follett v. McCormick*, 321 U.S. 573 (1944); *Grosjean v. American Press Co.*, 297 U.S. 233 (1936)).

171. *Id.* at 403.

172. See *Sherbert*, 374 U.S. at 412 (Douglas, J., concurring).

lations reflecting the majority's views."<sup>173</sup> Ahmadis are penalized and discriminated against under Ordinance XX because they hold views abhorrent to the Sunni majority.

The dissent in *Zaheeruddin* recognized the sincerity and conviction of Ahmadi beliefs.<sup>174</sup> Ahmadis preach and practice the religion of Islam and assert they are Muslims. They wish to freely adhere to their own interpretations of Islamic teachings. Depriving Ahmadis of their right to assert their Muslimhood and to call their faith Islam directly attempts to undermine the Ahmadi faith.

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173. *Id.* at 411 (Douglas, J., concurring).

174. *Zaheeruddin*, 1993 S.C.M.R. at 1746-47 (Rahman, J., dissenting).

Justice Shafiur Rahman dissented from the majority judgement written by Justice Abdul Qadeer Chaudhry. *Id.* at 1733-49 (Rahman, J., dissenting). Also, Justice Saleem Akhtar called for remanding the criminal cases but said that all of the laws against Ahmadis did not violate freedom of religion. *Id.* at 1779-80.

Justice Rahman would have found that only §§ 298B(1)(c) & (2) and 298C(c) and (d) of the Pakistan Penal Code violated the fundamental right of freedom of religion. *Id.* at 1747-48. See *infra* Appendix I for the complete text of Ordinance XX and §§ 298B & C therein. He correctly found that as Ahmadi practices were adopted from Islam, were not of "recent origin or device," nor adopted "with a view to annoy or outrage the feelings and sentiments of non-Ahmadis," Ahmadis are not committing fraud upon the public nor are they inciting violence in society. *Zaheeruddin*, 1993 S.C.M.R. at 1746-47 (Rahman, J., Dissenting).

Being an essential element of [Ahmadi] faith and not being offensive per se, prohibition on the use of these by them and making it an offense punishable with imprisonment and fine violates the Fundamental Right of religious freedom of professing, practising and propagating [religion] and of [the] Fundamental Right of equality inasmuch as only Qadianis or Ahmadis are prevented from doing so and not other religious minorities. It is not the "Azan" or the naming of "Masjid" which has been made objectionable by law but doing of these by Ahmadis or Qadianis alone.

*Id.* at 1747.

However, Justice Rahman compromised by finding some parts of §§ 298B and 298C constitutional and some not. See *id.* at 1746-49. Justice Rahman asserted that the five criminal appeals should have been set aside. Justice Rahman also stated the two civil appeals in *Mujeeb-ur-Rehman Dard*, the constitutional challenges, should have been partly allowed based on the partial unconstitutionality of Ordinance XX. Justice Rahman agreed, however, with the majority, in reference to *Khurshid Ahmad*, regarding the upholding of the law barring the Ahmadi celebration of the centenary. See *id.* at 1741-42, 1749. Justice Rahman stated he would allow Ahmadis some Islamic epithets and practices and not others.

The dissenting Justice adhered to the notion that Ahmadis are constitutionally non-Muslims and, therefore, found that not all of Ordinance XX is unconstitutional. *Id.* at 1742-43. Although Justice Rahman's opinion was more just than that of the Court, it was not completely satisfactory, as all of Ordinance XX is repugnant and denies Ahmadi religious freedom. To find for Ahmadis in some sections and against them in others indicates Justice Rahman tried to reconcile religious freedom and intolerance, attempting to please both sides. His dissenting opinion was ultimately unsatisfactory because he would still have unconstitutionally restricted Ahmadi religious freedom.

In *Employment Division v. Smith*, the U.S. Supreme Court applied *Reynolds* to uphold a prohibition against sacramental peyote use.<sup>175</sup> The Court in *Employment Division* asserted that:

[United States Supreme Court] decisions have held consistently that the right of free exercise [of religious belief] does not relieve an individual of the obligation to comply with a "valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)."<sup>176</sup>

In *Employment Division*, the prohibition against peyote use was found to be a neutral, generally applicable law that is not "an attempt to regulate religious beliefs, the communication of religious beliefs, or the raising of one's children in those beliefs. . . ."<sup>177</sup> Islamic practices, however, are not criminal acts in Pakistan, unless practiced by Ahmadis. *Employment Division* distinguished between laws that specifically target religious practices and those that are neutral and generally applicable.

According to *Employment Division*, laws that target religion are unconstitutional, but laws which are neutral and generally applicable are not.<sup>178</sup> Ordinance XX is not a neutral, generally applicable law. It exclusively targets Ahmadis and their religious practices. Ordinance XX regulates Ahmadi beliefs and their communication and the Ahmadi freedom to raise children according to such beliefs. According to *Employment Division*, Ordinance XX targets Ahmadis and should thus be unconstitutional.

Finally, *Church of Lukumi Babalu Aye v. Hialeah*<sup>179</sup> demonstrates how the Pakistan Court should have applied U.S. law in *Zaheeruddin*. Both cases were argued at the same time and involved the persecution of minority religious groups. *Hialeah* was

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175. *Employment Division*, 494 U.S. at 870-90. In *Employment Division*, respondents were fired by a private drug rehabilitation organization for ingesting peyote, a hallucinogenic drug, for sacramental purposes at a Native American ceremony. *Id.* at 872. Their applications for unemployment compensation were denied because of the disqualification for being discharged for work-related "misconduct." *Id.* The U.S. Supreme Court upheld the laws prohibiting sacramental peyote use and denied the respondents their employment benefits. *Id.* at 890. *Employment Division* was legislatively overturned by the Religious Freedom Restoration Act of 1993, 42 U.S.C.A. § 2000bb. The holding in *Employment Division*, despite the fact that it is widely viewed as an attack on free exercise, is still consistent with a finding of Ordinance XX's unconstitutionality.

176. *Id.* at 879 (quoting *United States v. Lee*, 455 U.S. 252, 263 n.3 (1982) (Stevens, J., concurring)).

177. *Id.* at 882. The U.S. Court distinguished *Sherbert* by finding that, unlike the case at hand, *Sherbert* did not deal with a religious practice that was already a criminal offense. *Id.* at 882-84.

178. *Id.* at 878-82.

179. 113 S.Ct. 2217 (1993). *Hialeah* was decided in June of 1993, while *Zaheeruddin* came down later in July.

decided one month prior to the decision in *Zaheeruddin*. However, they resulted in opposing judgments. In *Hialeah*, the U.S. Supreme Court struck down a statute banning ceremonial animal sacrifice.<sup>180</sup> The statute did not specifically mention any minority religious groups, but the statute may have been motivated by the majority community's animus against a minority group's religious practices<sup>181</sup> and was, therefore, found to be unconstitutional.<sup>182</sup> Ordinance XX refers specifically to Ahmadis *by name* and restricts only their religious practices.<sup>183</sup> A government cannot justifiably punish religious behavior on the basis of discriminatory or anticipated violent reaction against it.<sup>184</sup> According to *Hialeah*, the animosity towards Ahmadis makes them worthy of governmental protection, not persecution.<sup>185</sup> As *Hialeah* demonstrates, Ordinance XX should have been found unconstitutional under United States precedent.

The Pakistan Court's use of United States case law to support Ordinance XX's constitutionality under Article 20 of the Pakistan Constitution was flawed. Ordinance XX is a content-based, discriminatory law. The Pakistan Court misstated and misused United States case law to justify the law and perpetuate official discrimination against the Ahmadiyya Community.

180. *Id.* at 2231.

181. *Id.* "The Free Exercise Clause [of the U.S. Constitution] commits government itself to religious tolerance, and *upon even slight suspicion* that proposals for State intervention stem from animosity to religion or distrust of its practices, all officials must pause to remember their own high duty to the Constitution and to the rights it secures." *Id.* at 2234 (emphasis added).

The logic behind this principle [in *Hialeah*] is clear and universal. Legislatures are frequently urged by their constituencies to restrict the religious practices of vulnerable minority groups. Thus, it is these minorities that are most in need of constitutional protection. To deny them this protection—indeed to limit their religious practices because of their unpopularity—would, in the Court's own words, render those rights "nonexistent."

Letter from M.H. Posner to Chief Justice S.S. Jan, *supra* note 157, at 2-3.

182. *Hialeah*, 113 S.Ct. at 2233.

183. *See infra* Appendix I.

184. *Hialeah*, 113 S.Ct. at 2231.

185. [The logic of *Hialeah*] can be applied to the case of the Ahmadis. Ahmadis, as a religious minority, are in most need of Pakistan's Constitutional protection. . . . [The Pakistan] Court has an obligation to render a judgement free of religious intolerance and animosity against the Ahmadis. To offer anything less violates the Constitution of Pakistan. . . . While the Court in the Ahmadi case referred repeatedly to American legal authority, it failed to recognize that U.S. Constitutional law demands at the very minimum a right to religious freedom. This standard is universally recognized and consistently upheld. To sanction Ordinance XX and its discriminatory impact and religious restrictions is to violate a fundamental and universally recognized standard of human rights.

Letter from M.H. Posner to Chief Justice S.S. Jan, *supra* note 157, at 2-3.

*D. Ordinance XX Should Have Been Found Void For Vagueness*

According to Ordinance XX, one "who directly or indirectly, poses himself as a Muslim" has committed a criminal offense.<sup>186</sup> The offense of *posing* is vague, thus making Ordinance XX void under Pakistani and U.S. law.<sup>187</sup> The Pakistan Court stated that Ordinance XX is not vague because the Pakistan Constitution and Islamic law "seem to be precise and clear" and therefore "the law is not vague in any juristic sense."<sup>188</sup> However, the Appellants in *Zaheeruddin* were asserting the vagueness of Ordinance XX, not Islamic law or the Pakistan Constitution.<sup>189</sup> Answering Ordinance XX's vagueness by asserting the clarity of Islamic Law<sup>190</sup> and the Pakistan Constitution does not address the problems with the language of Ordinance XX.

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186. See *infra* Appendix I. Despite the word "his" in Ordinance XX, women have also been charged pursuant to the statute. Rahman Interview, *supra* note 4.

187. Pakistan has absorbed the United States vagueness doctrine. The Pakistan Court relied solely on United States definitions and cases in its discussion of vagueness. See *Zaheeruddin*, 1993 S.C.M.R. at 1770-72. In *Zaheeruddin*, the Pakistan Court quoted *Black's Law Dictionary* when it defined "vague." *Zaheeruddin*, 1993 S.C.M.R. at 1770. Vague means "indefinite; uncertain; not susceptible of being understood. Under this principle, a law which does not fairly inform a person of what is commanded or prohibited, is unconstitutional, being violative of 'due process.'" *Id.*; see BLACK'S LAW DICTIONARY 1549 (6th ed. 1990).

There may be no dispute about the proposition that if a law goes beyond the frontiers that are fixed for a legislature or where a law infringes a fundamental right, or a law, particularly, criminal is vague, uncertain or broad, it must be struck down as a void law. . .

*Zaheeruddin*, 1993 S.C.M.R. at 1770. In order for a law to be vague: the constituents of the offence, as given in the law are so indefinite that [the] line between innocent and condemned conduct cannot be drawn or there are attendant dangers of arbitrary and discriminatory enforcement or that it is so vague on the face of it that common man must necessarily guess at its meaning and differ as to its application.

*Id.* at 1771.

The Pakistan Court cited *Lanzetta v. New Jersey*, 306 U.S. 451 (1939) and *Connally v. General Construction Co.*, 269 U.S. 385 (1926). *Zaheeruddin*, 1993 S.C.M.R. at 1772. The Court applied *Lanzetta* to show "that vagueness is a Constitutional vice" and *Connally* to show that "[a]s a matter of due process, a law is void on the face of it, if it is so vague that persons 'of common intelligence must necessarily guess at its meaning and differ as to its application.'" *Id.* at 1771 (quoting *Connally*, 269 U.S. at 391; citing *Lanzetta*, 306 U.S. at 458). "Such vagueness occurs when a legislature states its proscriptions in terms so indefinite that [the] line between innocent and condemned conduct becomes a matter of guesswork. . ." *Zaheeruddin*, 1993 S.C.M.R. at 1772.

188. *Zaheeruddin*, 1993 S.C.M.R. at 1772.

189. Although Ahmadis do not agree with Article 260(3) of the Pakistan Constitution, they were not challenging it in this case.

190. The Pakistan Court stated Islamic Law was clear on the issues of the case but did not cite any support. They did not cite support because there is none. See *infra* Part III, Section F.



When the Pakistan Court did address the language of Ordinance XX, it held it to be constitutional, finding that "posing" as a Muslim is not a vague offense. The Pakistan Court defined "pose" to mean "to claim or propound."<sup>191</sup> The Court claims it found its definition of "pose" from "the dictionary" but did not name which one.<sup>192</sup> *Funk & Wagnall's Dictionary* defines "pose" in many possible ways:

To cause to assume an attitude . . . as to *pose* as a model; . . . [t]o state as a proposition; posit; lay down, affirm; . . . [t]o conduct; bear as to *pose* oneself with dignity . . . [t]o put; place; also, to suppose . . . [t]o assume a pose; . . . attitudinize; posture; . . . [t]o puzzle or confuse by propounding a question hard to answer . . . [t]o examine or question closely . . . an attitude or posture to be copied in a portrait or statue; as the *pose* of the head.<sup>193</sup>

According to some of these latter definitions, if Ahmadis assume the attitude that they are Muslims, conduct themselves like Muslims or even look like Muslims, they are criminally liable.<sup>194</sup> Ahmadis are, in fact, prosecuted pursuant to Ordinance XX, for behaving like Muslims.<sup>195</sup> If Ahmadis are to be charged with acting like Muslims, then Ahmadis can "pose" as Muslims in innumerable ways.

An Ahmadi can pose simply by following the *sunna* or traditions of the Prophet Muhammad.<sup>196</sup> The following examples indicate the wide range of possible applications and interpretations of Ordinance XX. The Prophet Muhammad kept a beard, thus providing divine blessing for a Muslim male who also keeps a beard.<sup>197</sup> If an Ahmadi follows the *sunna* and keeps a beard, he is criminally

191. *Zaheeruddin*, 1993 S.C.M.R. at 1771.

192. *Id.* at 1770.

193. FUNK & WAGNALL'S NEW STANDARD DICTIONARY OF THE ENGLISH LANGUAGE 1936 (1959).

194. The Pakistan Court gave support for this definition of "pose" by referring to the INDIA PENAL CODE §§ 140, 170, 171, 171D, 205, 229 and 416 regarding the "offense of personation . . . which is mostly the same as" Ordinance XX. *Zaheeruddin*, 1993 S.C.M.R. at 1771-72. The Indian offenses mentioned concerned the offense of impersonating soldiers, airmen, sailors, public servants, voters and jurors; assuming a false character; or "cheating by personation." *Id.* The Pakistan Court essentially stated that if an Ahmadi "wears any garb or carries any token resembling any garb or token used by a" Muslim, the Ahmadi "shall be punished." *Id.* at 1771 (citing INDIA PENAL CODE § 140).

195. Ahmadis have been charged pursuant to Ordinance XX for putting Quranic inscriptions on invitation cards; for praying in the Islamic fashion; for reciting the Holy Quran; and for simply saying the greeting of "salaam," a greeting as common and instinctive as "hello" and "good day" is in the West. Implementation of the Declaration, *supra* note 14, at 81; Rahman Interview, *supra* note 4. Ahmadis are thus charged for more than "claiming" or "propounding" to be Muslims.

196. The *sunna* are the recorded traditions of the Prophet Muhammad and are one of the sources of Islamic law. NETTON, *supra* note 17, at 238. Sunni Muslims are Muslims who claim to adhere to the *sunna*. *Id.*

197. See *supra* note 196.

liable because he looks like a Muslim. Islam prohibits Muslims from eating pork.<sup>198</sup> If an Ahmadi refrains from pork consumption, he or she is assuming the attitude of a Muslim and is thus criminally liable. Muslim women observe *purdah* (the practice of wearing veils to cover their heads and bodies).<sup>199</sup> If an Ahmadi woman wears a veil she is taking on the appearance of a Muslim and is thus posing. Any resemblance of an Ahmadi action to a tradition of the Prophet Muhammad or an Islamic teaching exposes that person to criminal penalties. Ordinance XX makes Ahmadi daily life a penal offense and thus makes all Ahmadis potentially guilty of violating this ordinance.<sup>200</sup>

Ahmadis cannot know what conduct is lawful for them because every aspect of their lives can be considered a criminal offense.<sup>201</sup> An Ahmadi is further left in the dark as to the lawfulness of his or her actions because Ordinance XX states if an Ahmadi poses as a Muslim "or in any manner whatsoever outrages the religious feelings of Muslims, [he or she] shall be punished."<sup>202</sup> Ordinance XX leaves the decision of the lawfulness of an Ahmadi's conduct to the subjective determination of the authorities and anyone Pakistan law considers Muslim.<sup>203</sup> Ahmadis are, therefore, not on notice as to which actions are lawful until an "offended" Muslim files a complaint with the authorities. Ordinance XX was worded in such a broad and vague manner that an Ahmadi cannot conduct any facet of his or her life without "guesswork" and fear of criminal prosecution.<sup>204</sup>

198. HOLY QURAN (Ali), *supra* note 17, at 2:174.

199. *Purdah* means "veil" in Arabic. NETTON, *supra* note 17, at 199-200.

200. Criminal Appeal 150, *supra* note 99, at 4-5.

201. See *supra* notes 196-200 and accompanying text. Ordinance XX is also overbroad. The Pakistan Court, however, did not fully address the question of overbreadth. Overbreadth was mentioned when the Court made reference to *Lanzetta*. *Zaheeruddin*, 1993 S.C.M.R. at 1772. The Pakistan Court stated that, according to *Lanzetta*, overbreadth is a concept distinct from vagueness "in that an overbroad law need lack neither clarity nor precision." *Id.* (citing *Lanzetta*, 306 U.S. at 457). Ordinance XX is overbroad as it covers and makes liable every facet of an Ahmadi's life.

202. See *infra* Appendix I (emphasis added). Stating that Ahmadis are criminally liable if they outrage the feelings of Muslims "in any manner whatsoever" further demonstrates Ordinance XX's overbreadth.

203. Forte, *supra* note 23, at 58.

204. See *supra* note 187.

Justice Rahman, in his dissent, found the offense of "posing" as a Muslim to be vague because ascertaining the intent to pose requires mind-reading and the ability of one "to reach the inner recesses of the mind" which is "beyond the scope of the law." *Zaheeruddin*, 1993 S.C.M.R. at 1748-49 (Rahman, J., dissenting).

[F]or an Ahmadi to wear a badge having 'Kalma Tayyaba' inscribed on it [There is no God but Allah and Muhammad is the Messenger of Allah] does not per se amount to outraging the feelings of Muslims nor does it amount to his posing as a Muslim. It was admitted and is common knowledge that those who are Muslim do not in order to prove

*E. The Pakistan Court Attributed False Statements to Mirza Ghulam Ahmad*

The Pakistan Supreme Court gave examples from the writings of Mirza Ghulam Ahmad to illustrate how (non-Ahmadi) Muslims can easily become offended by his teachings.<sup>205</sup> The Pakistan Court presented statements made by Mirza Ghulam Ahmad and his son, Mirza Bashiruddin Mahmud Ahmad, that were taken out of context, mistranslated or falsified.<sup>206</sup> Furthermore, the inclusion of

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their religion of Islam wear badges of the 'Kalma Tayyaba'. This is done by those who are Constitutionally classified as non-Muslims. Therefore, there should be no element of posing or representation by non-Muslims by wearing the 'Kalma-Tayyaba' as Muslims in the existing situation.

*Id.* at 1748 (Rahman, J., dissenting). A curious line of reasoning was taken by the dissenting Justice. Justice Rahman stated that only non-Muslims wear the *Kalima Tayyaba*. "Muslims" perhaps fear being seen as Ahmadis. The author queries if "non-Muslims" are professing the *Kalima Tayyaba* as their faith and "Muslims" are not, then who are the real Muslims? If Ahmadis are the only people in the entire State of Pakistan bearing and boldly professing the *Kalima Tayyaba*, the faith and conviction of the "Muslim" majority is to be questioned.

205. *Zaheeruddin*, 1993 S.C.M.R. at 1765-68, 1775-77. The Pakistan Court made these references to demonstrate how Ahmadi beliefs "insult, damage or defile the religion" of Islam and how such defilement would outrage the religious feelings of the majority Sunni Muslim Community and thus give rise to a "law and order situation." *Id.* at 1765. The Pakistan Court may have made these references to support its application of the "breach of peace" notion from *Cantwell*. See *supra* notes 140-42.

206. Arguments on these religious grounds were not in the briefs of either party to the dispute. Rahman Interview, *supra* note 4. The Pakistan Court made a *sua sponte* reference to Ahmadi beliefs in its opinion. *Id.* The Court did not permit Ahmadis the opportunity to defend against the allegations. *Id.*

The author is compelled to answer at least the most serious of the allegations made against Mirza Ghulam Ahmad:

The Pakistan Court took issue with why Ahmadis refuse to follow a non-Ahmadi in prayer. *Zaheeruddin*, 1993 S.C.M.R. at 1766. The Court asserted that because Ahmadis want to be separate from the majority population, the laws against Ahmadis serve to assist Ahmadis in achieving their desired isolation. *Id.* at 1768. The Pakistan Court mentioned this Ahmadi practice out of its historical context. Ahmadis were excommunicated and deemed *kafirs* (non-believers) before they decided not to follow non-Ahmadi in prayer. See *supra* note 34.

The accusation of *kufr* (unbelief) against the Ahmadis seems to have originated in the orthodox ulama's denunciation of the founder Mirza Ghulam Ahmad's . . . claim to be the Promised Messiah, the Mahdi, and especially, a prophet. Under the Ahrar (an Islamic religio-political group, initially opposed to the formation of Pakistan, marked mainly by their intense anti-Ahmadiyya orientation) the excommunication of the Ahmadis from the community of Islam continued unrelievedly. . . . In the Ahmadis' defence, their understanding of *kufr* or unbelief signified not external and eternal rejection by God but doctrinal deviancy. Bashiruddin Mahmud Ahmad [the second Caliph and son of Mirza Ghulam Ahmad] explained the distinction this way: "According to our definition of *kufr* the denial of a fundamental doctrine of Islam renders a person *kafir*. . . . We never go about calling a person *kafir*. It is only when we are compelled [to] answer to the enquiry of a person to say what we think of him that we have to give expression to our belief . . .

[and] we believe that there exists no such community whose every member is foredoomed to everlasting hell."

GUALTIERI, *supra* note 19, at 15-16 (citing SPENCER LAVAN, THE AHMADIYYAH MOVEMENT: A HISTORY AND PERSPECTIVE 178 (1974) (quoting Mirza Bashiruddin Mahmud Ahmad)). Ahmadis harbor no hostility towards others but merely reacted to hostility against them. See RAFIQ, *supra* note 18, at 88-96 (providing an explanation as to why Ahmadis do not follow non-Ahmadi imams in prayer).

The most profane allegation the Pakistan Court raised against Mirza Ghulam Ahmad is as follows:

*The 'Kalima' is a covenant, on reciting which a non-believer enters the fold of Islam. It is in Arabic form, is exclusive to Muslims who recite it, not as proof of their faith, but very often, for spiritual well-being. The 'Kalima' means there is no God but Allah and Muhammad is His Prophet. The belief of Qadianis is that Mirza Ghulam Ahmad is (God forbid) Muhammad incarnate.*

*Id.* at 1775 (emphasis added). Note the Pakistan Court utilized a different definition of Muslim than that given in Article 260(3) of the Pakistan Constitution; the Court used a definition in keeping with Islamic law and Ahmadi belief. The Pakistan Court also stated "there is general consensus among Muslims that, whenever an Ahmadi recites or displays 'Kalima', he proclaims that Mirza Ghulam Ahmad is the Prophet who should be obeyed and the one who does not do that is an infidel." *Id.* at 1776. Further, the Pakistan Court attempted to quote Ahmad as follows: "I am the last prophet incarnate and God named me in Braheen e Ahmadiya' [a book written by Hazrat Ahmad] Muhammad and Ahmad and declared me as personified Muhammad ... (See *Aik Ghalti ka Izala*, pages 10-11, published Rabwah)." *Id.* at 1776. All of the above allegations are false.

Mirza Ghulam Ahmad never claimed in his writings that he was the Prophet Muhammad incarnate. The quote presented by the Court does not exist in *Aik Ghalti ka Izala*. What does exist is the following:

Whenever and wherever I have refused to be called a Prophet or Messenger it is only in the sense that I am neither [a] bearer of new law nor an independent Prophet. But I certainly am a Prophet in the sense that having been spiritually benefited by my Great and Noble Master [Muhammad] and having been able to acquire his name, I have been endowed with the knowledge of the Unseen. But I repeat it again that I have brought or introduced no new Law and have never denied to be called a prophet of this kind. Rather in this very sense God has called me by the names of Prophet and Messenger. So even now I do not deny to be called a Prophet and Messenger in this sense of the word. My saying ... I am not a Prophet and have brought no book, have no connotation other than that I am not a law-bearing prophet. Of course this should also be remembered and never be forgotten that in spite of my being called a Prophet and Messenger, God has informed me that I have not been the recipient of all these spiritual blessings and favours independently and without the mediation of anybody. No; there dwells in heaven a holy being (the Holy Prophet Muhammad) through whose spiritual patronage all this Grace of God has descended on me. It is through his mediation and after completely merging my whole being into that of the Great Prophet and after having been known as Muhammad and Ahmad that I am a *rasul* (Messenger) and *nabi* (Prophet) ... I have been able to acquire this name only by reflecting in my person all the excellences of the great Prophet and by annihilating myself in his consuming love. ... I am the image of the *Khatam-an-Nabiyyin* [Seal of the Prophets] and his *alter-ego*. Twenty years ago as published in the *Braheen-i-Ahmadiyya*, God called me Muhammad and Ahmad and declared my advent to be the Holy Prophet's own coming. Thus my prophethood in no way clashes with the status of the Holy Prophet as *Khatamal-Anbiya* because the shadow is inseparable from the original and in an allegorical sense I am the same Muhammad.

highly religious commentary critiquing others' religious beliefs is unsuitable in a judicial opinion.<sup>207</sup> This exposition demonstrated the Pakistan Court's lack of integrity.<sup>208</sup> The Pakistan Court disregarded the constitutional arguments made by both parties, and accepted and included uncorroborated, irrelevant and false religious references.<sup>209</sup> The Court's *sua sponte* reference to alleged state-

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HAZRAT MIRZA GHULAM AHMAD, A MISUNDERSTANDING REMOVED (AIK GHALTIKA IZALA) 10-13 (Nazir Dawat-o-Tabligh 1974) (1901) (emphasis added) (Ahmad's words lose much meaning when translated from the original Urdu, which is a very expressive and metaphoric language). Ahmad makes "allegorical" reference to the Prophet and does not assert that he was the Prophet himself. Hazrat Ahmad does not refer to himself as Muhammad incarnate. In another book Mirza Ghulam Ahmad stated:

I cannot acquire any degree of honour or excellence nor any station of exaltation or nearness to God except through sincere and perfect obedience to the Holy Prophet [Muhammad]. . . . Whatever is bestowed upon me is by way of reflection of, and through, the Holy Prophet.

MIRZA GHULAM AHMAD, IAZLAH AUHAM 138 (1891), cited in RAFIQ, *supra* note 18, at 47. Ahmad asserted that the truth of his prophethood was based on his allegiance and devotion to Muhammad. See HAZRAT MIRZA GHULAM AHMAD OF QADIAN, THE ESSENCE OF ISLAM 135-226 (Muhammed Zafrulla Khan trans., 1978) (providing excerpts of Ahmad's writings regarding his love of and devotion to the Prophet Muhammad).

The Pakistan Court also attributed the following words to Mirza Ghulam Ahmad: "The Holy Prophet used to eat cheese made by Christians to which they added the pig's fat [which is forbidden to Muslims]." *Zaheeruddin*, 1993 S.C.M.R. at 1776. The Pakistan Court did not provide a citation or a reference to support this quote. Indeed, no such quote exists in the writings of Ahmad. This quote appears to be an attempt to inflame the Western and Christian world against Ahmadis. The Court placed into a judicial opinion uncorroborated and fabricated statements without allowing the Ahmadis an opportunity to defend against them. Making uncorroborated references does not befit a supreme court.

207. PARKER, *supra* note 99, at 8.

208. One of the counsels for the Ahmadi brief and Pakistan Supreme Court Advocate, Mujeeb-ur-Rahman, is currently engaged in an exhaustive exposition of all the allegations made against the Ahmadis by the Pakistan Court. Rahman Interview, *supra* note 4. The discussions of the allegations are quite involved as many of them require a superior knowledge of Arabic. *Id.* The author refers the interested reader to Mujeeb-ur-Rahman's work when it is published.

209. The lone dissenting Justice, Shafiur Rahman, indicated that the Pakistan Court was influenced by *mullahs* (orthodox religious clergy) who were not parties in *Zaheeruddin*. *Zaheeruddin*, 1993 S.C.M.R. at 1749 (Rahman, J., dissenting).

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

*Id.* (emphasis added). In Pakistan Supreme Court litigation there is no "post argument stage." Rahman interview, *supra* note 4. The Ahmadi Counsel, Mujeeb-ur-Rahman, stated there was no particularly significant "heat and controversy" during the oral argument stage of litigation outside of the typical passionate argumentation and discussion. *Id.* The heat and controversy must have been generated after the Justices retired to their chambers to decide the case. *Id.* Pakistan Supreme Court

ments made by holy Ahmadi personages and refusal to corroborate or allow the Ahmadis an opportunity to defend against them, reveals the Court's bias against the Ahmadiyya Community.

### F. Ordinance XX Violates Islamic Law

Although Pakistan has a common law tradition, it is also an Islamic theocracy. The Federal Sharia Court (Islamic Law Court) has the power to find a law in conflict with Islamic injunctions and declare the offending portions void.<sup>210</sup> Although the decisions of the Federal Sharia Court are non-binding on the Supreme Court, its decisions may be enforced by executive action and parliamentary acquiescence.<sup>211</sup> Since Islamization of the laws was a primary objective of Pakistan's 1973 Constitution, the conformity of a law to Islamic injunctions is a relevant issue in that country.<sup>212</sup> Prior to *Zaheeruddin*, Ahmadis unsuccessfully challenged Ordinance XX as un-Islamic in the Federal Sharia Court in *Mujibur Rehman v. Pakistan*.<sup>213</sup> The Pakistan Court mistakenly reaffirmed *Mujibur*

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procedure bars the submission of amicus briefs. *Id.* The "religious scholars volunteering to assist the Court" were not parties to the dispute in *Zaheeruddin* and so the "avoidable heat and controversy" must have been generated by the exertion of pressure by *mullahs* on the Justices. *Id.*

The evidence introduced by these *mullahs* consisted of the false statements which the Court cited in establishing the nature of Ahmadi beliefs. *Id.* The Pakistan Court's acceptance of and reliance on uncorroborated evidence without affording the Ahmadis an opportunity to defend against them, indicates their bias, or at least demonstrates their lack of courage and dishonesty by not deciding the case according to constitutional and nondiscriminatory legal principles. *Id.* The Court engaged in this non-legal discussion despite the fact that the State argued solely on constitutional grounds. *Id.* Justice Rahman revealed that the Court went outside the Pakistan Constitution to decide the constitutionality of Ordinance XX. *Zaheeruddin*, 1993 S.C.M.R. at 1749 (Rahman, J., dissenting). The Court's timidity to decide on constitutional grounds was therefore exposed.

The successive constitutional crises that confronted the Pakistani courts [as a result of a long history of military rule] were not of their own making. *But the doctrinally inconsistent, judicially inappropriate, and politically timid responses fashioned by these courts ultimately undermined constitutional governance.*

Tayyab Mahmud, *Praetorianism and Common Law in Post-Colonial Settings: Judicial Responses to Constitutional Breakdowns in Pakistan*, 1993 UTAH L. REV. 1225, 1230 (1993) (emphasis added). The Pakistan Supreme Court's decision in *Zaheeruddin* is one of many cases throughout Pakistan's history where constitutional principles were disregarded.

210. Forte, *supra* note 23, at 37 (citing PAK. CONST. of 1973, arts. 203C, 203D (amended 1982)). General Zia ordered the establishment of the Sharia Court. *Id.*

211. *Id.* Upon a finding by the Federal Sharia Court that a law is un-Islamic, the President is directed to take the necessary steps to assure the law is brought into conformity with Islamic law. *Id.* (citing PAK. CONST. of 1973, arts. 203C, 203D (amended 1982)).

212. See Forte, *supra* note 23, at 36-37.

213. P.L.D. 1985 F.S.C. 8 (Pak. 1985).

*Rehman* in *Zaheeruddin* by stating that Ordinance XX conforms to Islamic law.

In *Zaheeruddin*, the Pakistan Court was confident that its decision conformed to Islamic law regarding freedom of religion and conscience, yet the Court did not cite support from the Holy Quran.<sup>214</sup> Instead, the Court placed the burden of finding specific support to those who challenge a law by stating:

Unless it can be shown definitely that the body of Muslims sitting in the legislature have enacted something which is forbidden by Almighty Allah in the Holy Quran or by the Sunna of the Holy Prophet or of some principle emanating by necessary intendment therefrom no Court can declare such an enactment to be unIslamic.<sup>215</sup>

A showing that the legislature enacted a law forbidden by Islam can be demonstrated via the Holy Quran alone.<sup>216</sup>

The Holy Quran declares, "[l]et there be no compulsion in [matters of] religion."<sup>217</sup> Further, the Holy Quran recognizes, "[t]o you be your Way [Religion], and to me mine."<sup>218</sup> These verses demonstrate that Islam does not interfere with freedom of conscience and belief.<sup>219</sup> In addition, a Muslim is instructed to always approach, deal and speak to non-Muslims with wisdom and kind-

214. *Zaheeruddin*, 1993 S.C.M.R. at 1773-74.

215. *Id.* at 1773-74 (quoting *Pakistan v. Public at Large*, PLD S.C. 304, 356 (1987) (Pak.)). The Pakistan Court, absent a showing to the contrary, assumed its decision to be based on Islamic principles. The Court had no foundation for this assumption. The Court assumed consistency with Islamic law without doing the necessary research.

216. The Holy Quran is the principal source of Islamic Law. ZAKARIA, *supra* note 31, at 309 (listing the sources of Islamic law). There is no debate on the authenticity of the Holy Quran and its authority amongst Muslims. KAREN ARMSTRONG, MUHAMMAD 48 (1992). The author does not wish to engage in a discussion involving the *sunna* or *hadith* (traditions of the Prophet Muhammad). Although there are many Prophetic traditions which favor the Ahmadi viewpoint, there is much debate amongst Muslims as to the authenticity of certain traditions. See Abdullahi An-Na'im, Ph.D., *The Rights of Women and International Law in the Muslim Context*, 9 WHIT. L. REV. 491, 491 n.1 (1987). To spare the reader from a long discussion establishing the authenticity of such traditions, the author is satisfied with referring to the Holy Quran alone to establish that Ordinance XX and the Blasphemy Law of Section 295C violate Islamic law. Any prophetic traditions which are cited are derived solely from non-Ahmadi Muslim sources, in order to avoid disputes regarding authenticity.

For a brief introduction to the four schools of Sunni Muslim jurisprudence, see ZAKARIA, *supra* note 31, at 305. For a discussion on what some of the founders of the schools wrote regarding blasphemy and apostasy, see Forte, *supra* note 23, at 44-49.

217. HOLY QURAN (Ali), *supra* note 17, at 2:256.

218. *Id.* at 6:109. "Now have come to you, from your Lord proofs (to open your eyes); If any will see, it will be (for the good of) his own soul: If any will be blind, it will be to his own (harm)." *Id.* at 6:104.

219. SYED MUZAFFAR-UD-DIN NADVI, HUMAN RIGHTS AND OBLIGATIONS (IN LIGHT OF QURAN AND HADITH) 61 (1987).

ness.<sup>220</sup> The Holy Quran commands Muslims to "Let him who will, Believe, and let him who will, reject [the Truth]."<sup>221</sup> According to Islam, religion is solely a personal matter to be determined by the dictates of one's conscience.

Ordinance XX interferes with the freedom of religion and conscience established by Islam and directly infringes on the Ahmadis' right to freely practice their faith. The Holy Quran and Islamic law require the Pakistan Court to protect Ahmadis' freedom of religion and conscience. Ordinance XX, therefore, violates Islamic law.

The punishment of death for blasphemy in Section 295C of the Pakistan Penal Code also violates Islamic law.<sup>222</sup> In Islam, blasphemy is not a punishable offense.<sup>223</sup> Muslims are forbidden from

220. *Id.* "[O Prophet] Invite (all) to the Way of thy Lord with wisdom and beautiful preaching; And argue with them in ways that are best and most gracious: For thy Lord knoweth best, who have strayed from His Path, and who receive guidance." HOLY QURAN (Ali), *supra* note 17, at 16:125 (some capitalization omitted). The Holy Quran demonstrates that Muslims are only permitted to employ force if they are wronged or they are repelling oppression by stating, "And if ye punish, let your punishment be proportionate to the wrong that has been done to you: But if ye show patience, that is indeed the best (course) for those who are patient." *Id.* at 16:126 (some capitalization omitted). Islam allows only the taking up of arms against persecution. The Holy Quran, when it gave permission for Muslims to fight their enemies, stated the following:

Fight in the cause of Allah *those who fight you* but do not transgress limits; for Allah loveth not transgressors. And slay them wherever ye catch them, and turn them out from where they have turned you out; *for persecution* is worse than slaughter; but fight them not at the Sacred Mosque [the Ka'aba in Mecca, Saudi Arabia], unless they (first) fight you there; . . .

*Id.* at 2:190-91 (emphasis added) (some capitalization omitted). Muslims may therefore fight in response to persecution or in self-defense but shall not be aggressors or oppressors. The Pakistan Government's oppression of Ahmadis is thus clearly un-Islamic.

221. *Id.* at 18:29.

Say [O Prophet] " . . . Now Truth hath reached you from your Lord! Those, who receive Guidance, do so for the good of their own souls; those who stray, do so to their own loss: And I [Muhammad] am not (set) over you to arrange your affairs." Follow the inspiration sent unto thee, and be patient and constant, till Allah, do decide: for He is the Best to decide.

*Id.* at 10:108-09 (some capitalization omitted).

Verily We have the Book [the Holy Quran] to thee in Truth, for (instructing) mankind. He, then, that receives guidance benefits his own soul: But he that strays injures his own soul. Nor art thou [Muhammad] set a Custodian over them.

*Id.* at 39:41 (some capitalization omitted).

222. S.A. RAHMAN, *THE PUNISHMENT OF APOSTASY IN ISLAM* 1-8 (1972), *cited in* Forte, *supra* note 23, at 50.

223. Apostasy is mentioned thirteen times in the Holy Quran. LANG, *supra* note 16, at 208. All of the verses assure that the apostate's punishment lies with God in the Hereafter or Afterlife. *See also* HAZRAT MIRZA TAHIR AHMAD, *MURDER IN THE NAME OF ALLAH* 74-92 (1989); MUHAMMAD ZAFRULLA KHAN, *PUNISHMENT OF APOSTASY IN ISLAM* 24-33 (London Mosque n.d.) (establishing that there is no punishment



harming those who are peaceful in their religious beliefs and practices. One may say anything against the religious sentiments of Muslims and the authorities of the Islamic State are restrained from reacting against these comments.<sup>224</sup> Blasphemy is only punishable by God in the Afterlife.<sup>225</sup> Islam, therefore, places no restrictions on freedom of conscience and belief and permits no earthly punishment for apostasy or blasphemy.

According to Islamic law, Ahmadis are allowed to believe and practice their faith freely. Any restriction placed on Ahmadis is therefore un-Islamic.<sup>226</sup> The Pakistan Court, therefore, violated Islamic injunctions.

### G. *The Zaheeruddin Decision Incites Violence*

In *Zaheeruddin*, the Pakistan Court indirectly incited the murder of Ahmadis.<sup>227</sup> After misquoting and presenting false statements allegedly made by Mirza Ghulam Ahmad, the Pakistan Court legitimized violent action against Ahmadis when it asked,

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for blasphemy or apostasy according to Islam). "Let not those grieve thee who rush headlong into Unbelief: not the least harm will they do to Allah: Allah's Plan is that He will give them no portion in the Hereafter, but a severe punishment." HOLY QURAN (Ali), *supra* note 17, at 3:176 (some capitalization omitted).

A recorded tradition tells of a Christian who converted to Islam during the lifetime of the Prophet Muhammad and served for a short time as one of his scribes and who later recanted and returned to his prior faith. LANG, *supra* note 16, at 209 (citing SAHIH BUKHARI 93:48 (n.d.)). After returning to his Christian faith, the recanter was heard making the blasphemous claim, "Muhammad knew nothing except what I wrote for him." *Id.* The Christian was never killed or murdered and eventually died of natural causes. *Id.*

Pakistan has no formal law prohibiting apostasy, "but blasphemy serves as a surrogate in suppressing those who dissent from Islam by word or deed." Forte, *supra* note 23, at 49. The death sentence for blasphemy satisfies *mullahs'* demands for the death penalty for apostasy. *Id.* at 50.

The historical support cited by *mullahs* for punishing apostasy comes from the "Apostasy Wars," commissioned by the Prophet Muhammad and carried forth by his first successor, Abu Bakr Siddiq, after the death of Muhammad. See KHAN, *supra* at 41-44. See also Forte, *supra* note 23, at 44-45. Modern historians believe, however, that these wars were not launched to battle religious heresy but were directed at preventing non-Muslim tribes from repudiating their fiscal obligations to pay yearly taxes. See ELIA S. SHOUPANI, PH.D., AL-RIDDAH AND THE MUSLIM CONQUEST OF ARABIA 107-49 (1973).

224. "Whoever kills a Dhimmi [a non-Muslim living in an Islamic State], shall not get [or smell] the odour of . . . Paradise, though it is smelt from a distance of forty year's journey." NADVI, *supra* note 219, at 42 (citing BUKHARI SHARIF). "Allah has forbidden me [Muhammad] to oppose any Dhimmi or any body else." *Id.* (citing MISHKAT SHARIF (KITAB-UL-FITAN)). Muslims are forbidden from oppressing and murdering non-Muslims living in an Islamic State.

225. See *supra* note 223.

226. See *supra* notes 218-21 and accompanying text.

227. See *Zaheeruddin*, 1993 S.C.M.R. at 1777-78. See also *supra* notes 205-06 and accompanying text; H.R. Con. Res. 370, *supra* note 14.

"[c]an anyone blame a Muslim if he loses control of himself on hearing, reading or seeing such *blasphemous* material as has been produced by Mirza [Ghulam Ahmad] Sahib?"<sup>228</sup> The Pakistan Court, after portraying a false picture of Ahmadi beliefs, gave license to perpetrators of violence against Ahmadis. Furthermore, the Court declared that allowing an Ahmadi to display his Islamic identity "is like creating a [Salman] Rushdie out of him. Can the administration in that case guarantee [the Ahmadis'] life, liberty and property and if so at what cost?"<sup>229</sup> The Pakistan Court "further denigrate[d] Ahmadi Muslims by referring to them as 'hyper-sensitive.'"<sup>230</sup> By restricting Ahmadi rights in the name of public order, the Pakistan Court gave license to the opponents of Ahmadis to create more disorder and violence in the name of defending their faith and the Prophet Muhammad's honor. Further, the Court embold-

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228. *Zaheeruddin*, 1993 S.C.M.R. at 1777 (emphasis added). By making this statement, the Pakistan Court constructed a direct relation between Ordinance XX and the Blasphemy Law of the Pakistan Penal Code § 295C.

[W]hen an Ahmadi or Ahmadi display in public on a placard, a badge or a poster or write on walls or ceremonial gates or buntings, the 'Kalima', or chant other 'Shaa'e're Islam' it would amount to publicly defiling the name of Holy Prophet (p.b.u.h.) [peace be upon him] and also other Prophets . . .

*Id.* at 1778. Ahmadi beliefs were therefore judicially declared blasphemous. Ahmadis are now subject to charges pursuant to § 295C which carries a mandatory death sentence. *See supra* note 65. The State now pursues prosecutions of Ahmadis via § 295C instead of Ordinance XX because of the severity of the punishment under the former. *See Pakistan's Blasphemy Laws Are Abused - Amnesty*, REUTER NEWSWIRE, July 27, 1994.

The International Commission of Jurists reported on the ramifications of the addition of § 295C to the Pakistan Penal Code.

This new offence of blasphemy, with its extremely severe penalty, is likely to make it even more difficult for Ahmadis to pursue their faith as the application of the previous legislation has already established the way in which their teachings are viewed. There can be little doubt that the specific claim to prophethood for Mirza Ghulam Ahmad, whatever the qualifications applied to it, will inevitably be regarded as defilement by "imputation, innuendo, or insinuation."

PETREN ET AL., *supra* note 22, at 113. The Pakistan Supreme Court's yielding to the will of *ex parte mullahs* is no surprise considering the Court's historical label of timidity. *See Mahmud, supra* note 209, at 1230.

229. *Zaheeruddin*, 1993 S.C.M.R. at 1778. "By stating that allowing an Ahmadi to display Islamic symbols in public is like creating a Salman Rushdie out of him, the Court had made a direct incitement to kill Ahmadis." Robert F. Drinan, *Pakistan Falls Short On Religious Freedom*, CHRISTIAN SCI. MON., Jan. 5, 1994, at 23. Rushdie was publicly sentenced to death by Ayatollah Khomeini of Iran for the offense of blasphemy. *See* Yousef M. Ibrahim, *Muslim Edicts Take on New Force*, N.Y. TIMES, Feb. 12, 1995, at A14; Forte, *supra* note 23, at 57-58 (showing that the mere public expression of Ahmadi religious belief "is seen by militants as blasphemous").

230. PARKER, *supra* note 99, at 10, citing *Zaheeruddin*, 1993 S.C.M.R. at 1779.

ened the authorities and the general public to abuse, molest and kill Ahmadis in the name of Islam.<sup>231</sup>

#### IV. International Human Rights Law

International human rights law protects Ahmadis' fundamental right of freedom of religion. The United Nations Charter,<sup>232</sup> the Universal Declaration of Human Rights,<sup>233</sup> the International Covenant on Civil and Political Rights<sup>234</sup> and the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief<sup>235</sup> all safeguard the Ahmadi right to freedom

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231. Whenever any Islamic state has sought to enforce the law of apostasy, it has inevitably set loose private acts of terror and execution against the one who [allegedly] forsook Islam. It re-establishes tribal and clan vengeance within Islam. If an Islamic state, such as Pakistan, is created over tribal cultures, the result is predictable.

Forte, *supra* note 23, at 56.

232. "The Purpose[s] of the United Nations are: . . . to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion . . ." U.N. CHARTER, art. 1(3). "[T]he United Nations shall promote: . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." *Id.* art. 55(c).

233. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Universal Declaration of Human Rights art. 18, at 1, G.A. Res. 217A(III), U.N.Doc.A/811 (1948) [hereinafter Universal Declaration], reprinted in BASIC DOCUMENT SUPPLEMENT TO INTERNATIONAL LAW: CASES AND MATERIALS 144-45 (Louis Henkin et al. eds., 3d ed. 1993) [hereinafter DOCUMENT SUPPLEMENT]. Sir Muhammad Zafrulla Khan was one of the drafters of the Universal Declaration. PARKER, *supra* note 99, at 3.

234. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. . . . No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice. . . . Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

International Covenant on Civil and Political Rights, art. 18(1)-(3), 999 U.N.T.S. 171 [hereinafter International Covenant], reprinted in DOCUMENT SUPPLEMENT, *supra* note 233, at 156-57. Article 19 of the International Covenant refers to freedom of expression and states that it can only be restricted "[f]or the protection of national security and public order. . . ." According to the International Covenant, freedom of religion is a nonderogable right. *Id.* art. 4(2). Religious groups are protected from advocacy of "hatred that constitutes incitement to discrimination, hostility or violence." *Id.* art. 20.

235. [T]he right to freedom of thought, conscience, religion or belief shall include . . . the following freedoms:

of religion.<sup>236</sup> When there is hostility or bigotry based on religious intolerance, governments are obligated to defend the suffering group and provide effective redress.<sup>237</sup> Ordinance XX violates all of these international standards. Ahmadis are discriminated against by Ordinance XX because of hostility from the Sunni majority. Ahmadis cannot call themselves Muslims, assemble as they wish, publish their literature freely or practice their Islamic faith.<sup>238</sup> The Pakistan Government violated international human rights law when it enacted Ordinance XX. The Pakistan Court disregarded these international standards by not defending and protecting Ahmadis.

Ordinance XX was denounced in 1985 by the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities as a violation of human rights.<sup>239</sup> Resolution 1985/21

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- (a) To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;
  - (b) To establish and maintain appropriate charitable or humanitarian institutions;
  - (c) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;
  - (d) To write, issue and disseminate relevant publications in these areas;

Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, art. 6, G.A. Res. 36/55 (1981) [hereinafter Religious Declaration], reprinted in DOCUMENT SUPPLEMENT, *supra* note 233, at 173.

Limitations may be placed on the right to publicly practice a religion when "necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others." Religious Declaration, art. 1(3); see also International Covenant, *supra* note 234, art. 18(3); Universal Declaration, *supra* note 233, art. 29(2). See discussion *supra* Part III, Section C (demonstrating how the public safety requirement does not apply to the case of Ahmadis). Limitations regarding the right to maintain or deviate from a religion or belief, however, are not permissible. Religious Declaration, art. 2(1); International Covenant, *supra* note 234, art. 18(2); KRISHNASWAMI, STUDY OF DISCRIMINATION IN THE MATTER OF RELIGIOUS RIGHTS AND PRACTICES at 16, U.N.Doc.E/CN.4/Sub.2/200/Rev.1 U.N. Sales No. E. 60. XIV. 2 (1960).

236. Pakistan is a member of the United Nations. DOCUMENT SUPPLEMENT, *supra* note 227, at 24. Pakistan's Constitution is a post-World War II constitution and thus incorporates the Universal Declaration. Rahman Interview, *supra* note 4. Pakistan, however, did not ratify or sign the International Covenant. See DOCUMENT SUPPLEMENT, *supra* note 233, at 162. Aside from the United Nations Charter, these international documents are not binding on Pakistan. This section demonstrates Pakistan's disregard for United Nations human rights standards.

237. See U.N. Commission on Human Rights Resolution 1993/25, op. paras. 3, 5, and 6, at 111-112 U.N.Doc.E/1993/23.

238. See *infra* Appendix I.

239. The Sub-Commission . . . expresses its grave concern at the promulgation by Pakistan of Ordinance XX of 28 April 1984 which, *prima facie*, violates the right to liberty and security of the persons, the right to freedom from arbitrary arrest or detention, the right to freedom of thought, expression, conscience and religion, the right of religious minorities to profess and practise their own religion, the right to an effective legal remedy; [the Sub-Commission] further expresses its grave concern that persons charged with and arrested for violations of Ordi-

rejects the Pakistan Government's justifications for Ordinance XX's restrictions on Ahmadis as a public safety regulation. The Pakistan Government asserted that Ahmadi beliefs incite violence and that the government must "restrain Ahmadi practices which offend orthodox Muslims."<sup>240</sup> According to international standards, Ahmadis possess the right to Muslim self-definition.<sup>241</sup> Although there is much debate on the status of human rights as international customary law, this section demonstrates Pakistan's disregard for the human rights standards espoused by the United Nations.<sup>242</sup>

## Conclusion

Ahmadis are individuals who have distinctive religious beliefs, as do other communities in Islam. Ahmadis face arrest and impris-

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nance XX have been reportedly subjected to various punishments and confiscation of personal property, and that the affected groups as a whole have been subject to discrimination in employment and education and to the defacement of their religious property; . . .

*Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its Thirty-Eighth Session*, at 102 U.N.Doc.E/CN.4/1986/5 (1985/21, The situation in Pakistan) [hereinafter Resolution 1985/21]. See *infra* Appendix IV for the full text of Resolution 1985/21.

240. Statement of Pakistan (Right to Reply), 42 U.N. E.S.C. Commission on Human Rights, U.N.Doc.E/CN.4/1986/SR.31, cited in PARKER, *supra* note 99, at 7 n.23.

"In defending Ordinance XX, then President General Zia-ul-Haq told this author [Karen Parker] 'Ahmadis offend me because they consider themselves Muslims. . . . Ordinance XX may violate human rights but I don't care.'" PARKER, *supra* note 99, at 7 (interview with President General Zia-ul-Haq, Army House, Rawalpindi, Pakistan, May 5, 1986).

241. PARKER, *supra* note 99, at 7.

Pakistan Penal Code Section 295C, which provides the death sentence for "blasphemy" has also given the United Nations reason for grave concern. Implementation of the Declaration, *supra* note 14, at 81.

Holding civilian trials in military courts violates international standards of human rights. H.R. Con. Res. 370, *supra* note 14.

242. Pakistan's noncompliance with international human rights standards, initially established by the U.N. Charter, makes it unworthy of membership in the United Nations.

This Ordinance violates basic human rights in the most obnoxious form and is an affront to humanity and the fundamental principles of the United Nations . . . Any country which does not respect the basic human rights and blatantly violates the United Nations Charter . . . must not be permitted to remain a member of the United Nations.

Letter from Hazrat Mirza Tahir Ahmad, Head of the Ahmadiyya Muslim Community in Islam, to the author, postdated Nov. 1, 1994 (spelling and punctuation corrected) (on file with the *Law and Inequality Journal*). See also United Nations, Elimination of all forms of intolerance and discrimination based on religion or belief: Study Series 2 49 (1989) (stating that nations who refuse to comply with U.N. General Assembly Resolutions and declarations, like the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, place themselves in positions that are incompatible with their status as members of the United Nations).

onment because of their religious beliefs and peaceful practices in a country they love and helped create. The Pakistan Court unjustly held constitutional the continued repression and discrimination against Ahmadis. This article is an appeal to the Pakistan Supreme Court to shed its historical timidity and instead make decisions according to principles of justice. It is also a plea to the rest of the world to actively condemn the tyranny occurring in Pakistan.

The reasoning that the Pakistan Supreme Court used in *Zaheeruddin* to justify the constitutionality of Ordinance XX is absurd and dishonest. Ordinance XX is facially repugnant and a violation of freedom of religion and conscience.<sup>243</sup> Criminalizing the expression of religious views is contrary to the Constitutions of Pakistan and the United States, as well as international and Islamic law. The Pakistan Court deemed the laws against Ahmadis necessary to preserve public order, yet these laws serve to promote and incite violence against Ahmadis, thereby encouraging public disorder. The Court's creation of a trademark or copyright on religious terminology and practice is misplaced and violates freedom of expression and religion. No rational court would use company and trademark law to justify the exclusivity of religious epithets. Furthermore, Ordinance XX is worded vaguely and broadly making every facet of an Ahmadi's life potentially criminal. The Pakistan Court justified the repression of Ahmadis through flawed and disingenuous reasoning. The decision in *Zaheeruddin* legitimizes and perpetuates the dangers to life and property that Ahmadis experience daily in Pakistan. The Pakistan Court wrongly declared Ordinance XX of 1984 constitutional.

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243. The Blasphemy Law of § 295C of the Pakistan Penal Code also violates freedom of conscience and belief.

## APPENDIX I

Ordinance No. XX of 1984<sup>244</sup>

The Gazette of Pakistan

Islamabad, Thursday, 26 April 1984

No.F.17(1)84-Pub. The following Ordinance made by the President is hereby published for general information:

## An Ordinance

*to amend the law to prohibit the Quadiani group, Lahori group and Ahmadis from indulging in anti-Islamic activities*

WHEREAS it is expedient to amend the law to prohibit the Quadiani 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 Quadiani Group, Lahori Group and Ahmadis (Prohibition and Punishment) Ordinance, 1984.

(2) It shall come into force at once.

## 2. Ordinance to override orders of 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:

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244. PAKISTAN, ORDINANCE XX (1984), *quoted in* GUALTIERI, *supra* note 19, at 9-10. *See also* PAKISTAN PENAL CODE §§ 298B and C.

**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 '*Ameer-ul-Mumineen*' [Leader of the Faithful], '*Khalifa-tul-Mumineen*' [Caliph of the Faithful], '*Khalifa-tul-Muslimeen*' [Caliph of the Muslims], '*Sahabi*' [Companion] or '*Razi Allah Anho*' [May God Be Pleased With Them];

(b) refers to, or addresses, any person, other than a wife of the Holy prophet (peace be upon him), as '*Ummul-Mumineen*' [Mother of the Faithful];

(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' [Mosque];

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 presentation, 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.

**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 a Muslim, or calls, or refers to, his faith as Islam, or preaches or propagates 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. . . .



## APPENDIX II

Conditions of Bai'at (Initiation) in the  
Ahmadiyya Movement in Islam

by

Hazrat Mirza Ghulam Ahmad of Qadian  
The Promised Messiah and Mahdi  
(Peace be upon him)<sup>245</sup>

I. The initiate shall solemnly promise that he shall abstain from Shirk [association of a partner with God, for example, polytheism] right up to the day of his death.

II. That he shall keep away from falsehood, fornication, adultery, trespasses of the eye, debauchery, dissipation, cruelty, dishonesty, mischief and rebellion; and will not permit himself to be carried away by passions, however strong they may be.

III. That he shall regularly offer the five daily prayers in accordance with the commandments of God and the Holy Prophet [Muhammad]; and shall try his best to be regular in offering the Tahajjud (pre-dawn supererogatory prayers) and invoking Darood (blessings) on the Holy Prophet; and that he shall make it his daily routine to ask forgiveness for his sins, to remember the bounties of God and to praise and glorify Him.

IV. That under the impulse of any passions, he shall cause no harm whatsoever to the creatures of Allah, in general, and Muslims, in particular, neither by his tongue nor by his hands nor by any other means.

V. That he shall remain faithful to God in all circumstances of life, in sorrow and happiness, adversity and prosperity, in felicity and trials; and shall in all conditions remain resigned to the decree of Allah and keep himself ready to face all kinds of indignities and sufferings in His way and shall never turn away from it at the onslaught of any misfortune; on the contrary, he shall march forward.

VI. That he shall refrain from following un-Islamic customs and lustful inclinations, and shall completely submit himself to the authority of the Holy Quran; and shall make the word of God and the sayings of the Holy Prophet the guiding principles in every walk of his life.

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245. GUALTIERI, *supra* note 19, at 123-124 (quoting HAZRAT MIRZA GHULAM AHMAD, ISHTEHAR TAKEEL-E-TABLIGH (1889)).

VII. That he shall entirely give up pride and vanity and shall pass all his life in lowliness, humbleness, cheerfulness, forbearance and meekness.

VIII. That he shall hold faith, the honour of faith, and the cause of Islam dearer to him than his life, wealth, honour, children and all other dear ones.

IX. That he shall keep himself occupied in the service of God's creatures, for His sake only, and shall endeavour to benefit mankind to the best of his God-given abilities and powers.

X. That he shall enter into a bond of brotherhood with this humble servant of God, pledging obedience to me in everything good, for the sake of Allah, and remain faithful to it till the day of his death; that he shall exert such a high devotion in the observance to this bond as is not to be found in any other worldly relationship and connections demanding devoted dutifulness.

## APPENDIX III

Passport Declaration in Case of Muslims [in Pakistan]<sup>246</sup>

I \_\_\_\_\_ s/o \_\_\_\_\_ aged \_\_\_\_\_ years,  
adult Muslim, resident of . . . hereby solemnly declare that:

(i) I am a Muslim and believe in the absolute and unqualified finality of the prophethood of Muhammad (peace be upon him) the last of the prophets.

(ii) I do not recognize any person who claims to be a prophet in any sense of the word or of any description whatsoever after Muhammad (peace be upon him) or recognize such a claimant as a prophet or a religious reformer as a Muslim.

(iii) I consider Mirza Ghulam Ahmad Qadiani to be an imposter nabi [prophet] and also consider his followers whether belonging to the Lahori or Qadiani group, to be non-Muslim.

Date \_\_\_\_\_ Signature or thumb impression.

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246. GUALTIERI, *supra* note 19, at 121. The Pakistan Government made the belief that Ahmadis are non-Muslim necessary to possess Muslimhood, and thus a tenet of Islam for passport purposes.

## APPENDIX IV

1985/21 *The Situation in Pakistan* 81 . . .<sup>247</sup>

*The Sub-Commission on Prevention of  
Discrimination and Protection of Minorities*

*Guided by the principles of the United Nations Charter, the Universal Declaration of Human Rights, and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 82 . . .*

*Bearing in mind the Proclamation of Teheran in which the International Conference on Human Rights proclaimed that the gross denials of human rights arising from discrimination of grounds of religion outrage the conscience of mankind and endanger the foundations of freedom, justice and peace in the world, 83 . . .*

*Recognizing that the independence of the judiciary and judicial review, as general principles of law of civilized nations, are an essential element of the effective legal remedy required of all nations,*

*Taking into account Commission resolution 1985/40 of 13 March 1985 in which the Sub-Commission is requested, inter alia, to keep in mind the relationship between violations of human rights and mass exoduses,*

1. *Expresses its grave concern at the promulgation by Pakistan of Ordinance XX of 28 April 1984 which, prima facie, violates the right to liberty and security of the persons, the right to freedom of thought, expression, conscience and religion, the right of religious minorities to profess and practice their own religion,*
2. *Further expresses its grave concern that person charged with and arrested for violations of Ordinance XX have been reportedly subjected to various punishments and confiscation of personal property, and that the affected groups as a whole have been subjected to discrimination in employment and education and to the defacement of their religious property;*
3. *Requests the Commission on Human Rights to call on the Government of Pakistan to repeal Ordinance XX and to restore the human rights and fundamental freedoms of all persons in its jurisdiction;*
4. *Alerts the Commission on Human Rights of the situation in Pakistan which is one with great potential to cause a mass exodus, especially of members of the Ahmadi community.*

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247. Resolution 1985/21, *supra* note 239.

## APPENDIX V

In the House of Representatives  
Thursday, July 17, 1986

HON. TONY P. HALL OF OHIO

Thursday, July 17, 1986<sup>248</sup>

Mr. HALL of Ohio. . . .

H. CON. RES. [370]

Concurrent resolution expressing the sense of the Congress with respect to repression by the Government of Pakistan of individuals known as Ahmadis.

Whereas Ahmadis are individuals who profess their religion to be Islam, but have certain distinctive religious beliefs (as do other sects of Islam);

Whereas the Government of Pakistan and some of the people of Pakistan are discriminating against Ahmadis because of the religious beliefs of Ahmadis;

Whereas there are approximately 3,500,000 [to 4,000,000] Ahmadis living in Pakistan;

Whereas Pakistan is obligated under the United Nations Universal Declaration of Human Rights and the United Nations Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief;

Whereas Article 20 of the Constitution of Pakistan provides that every citizen and religious sect has the right to practice and propagate religions and to establish religious institutions;

Whereas in April 1984, the Government of Pakistan established Ordinance XX by presidential decree;

Whereas, notwithstanding the Constitution of Pakistan, Ordinance XX provides that any Ahmadi may lose the right to his or her property, be fined, and be imprisoned for 3 years, if the Ahmadi involved publicly suggests that Ahmadis are Muslims;

Whereas in a message to the International Khatm-E-Nubuwwat Conference (an international meeting of Muslims) in London in August 1985, President Mohammad Zia-ul-Haq of Pakistan stated that the Government of Pakistan has taken several emphatic measures in recent years to prevent Ahmadis from practicing the Islamic faith, and that the Government of Pakistan will exterminate the Ahmadi faith;

Whereas the imposition of death sentences and lengthy prison terms on Ahmadis, including civilians, by special military courts in

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248. H.R. Con. Res. 370, *supra* note 14.

Pakistan in certain cases indicates that religious persecution may be a factor in the decisions of courts in Pakistan;

Whereas trying civilians in military courts is a violation of internationally recognized legal principles;

Whereas hundreds of Ahmadis have been arrested for wearing Muslim religious insignia;

Whereas Ahmadis have been discriminated against with respect to admissions to educational institutions and the civil armed services of Pakistan;

Whereas the Government of Pakistan has encouraged the people of Pakistan to commit acts of persecution against Ahmadis, including murder, attacks on mosques used by Ahmadis, and the defacement of religious property;

Whereas Ahmadis have fled Pakistan and have sought political asylum in other countries because of religious persecution;

Whereas 2 organizations in the United States, the Lawyers Committee for Human Rights and the Human Rights Advocates, have determined that Ahmadis are being subjected to systematic and extensive discrimination on the basis of religious belief; and

Whereas, in August 1985, the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the United Nations Commission on Human Rights determined in resolution numbered 1985-21 that Ordinance XX violates the right of religious minorities to profess and practice their own religion, and called on the Government of Pakistan to repeal Ordinance XX: Now, therefore, be it

*Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Congress that the Government of Pakistan should-*

- (1) Repeal Ordinance XX;
- (2) cease persecution of, and discrimination against, Ahmadis;
- (3) provide that any trial of civilians by military courts be reviewed by civilian courts; and
- (4) restore all internationally recognized human rights to all of the people of Pakistan. . . .

## APPENDIX VI

Congressional Human Rights Caucus  
U.S. House of Representatives  
Washington D.C. 20515<sup>249</sup>

March 1, 1994

Prime Minister Benazir Bhutto  
Office of the Prime Minister  
Islamabad, Pakistan

Dear Mrs. Prime Minister:

As members of the United States Congress, we would like to congratulate you on your recent electoral victory. We appreciate the time and consideration you have given to working with us on human rights issues in the past and we are looking forward to continuing that relationship in the future. We are writing to express our deep concern about recent events in Pakistan that restrict the right of religious freedom. We are concerned that recent changes made to civil and criminal law undermine the ability of religious minorities in Pakistan to worship freely.

We understand that the Supreme Court recently decided to uphold the constitutionality of Ordinance 20 (the Anti-Islamic Activities of Qadiani, Lahori Group and Ahmadiya Ordinance which makes it a criminal offence for Ahmadiya Muslims to practice or preach their faith). The Appeals Court ruled that Article 20 of Pakistan's Constitution, guaranteeing the right of freedom of religion, was not enforceable. We are told that the Supreme Court judges argued that the Ahmadiya may not refer to the call of prayers as "Azan" or recite Azan as used by the Muslims; may not describe themselves as Muslims; may not refer to their faith as Islam; and may not in any manner outrage the religious feelings of Muslims.

The U.S. Department of State and Amnesty International report several cases of religious persecution against members of the Ahmadiya minorities in Pakistan. Many have been detained on charges of blasphemy, which accuses them of defiling the name of the Prophet Muhammad—an accusation the Ahmadiya fervently deny. The punishment for blasphemy is death, pursuant to Article 295C of the Pakistan Penal Code. It is of great concern to us that under the blasphemy laws individuals may be arrested for pursuing their religious beliefs.

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249. Letter from the Congressional Human Rights Caucus, U.S. House of Representatives, to Pakistan Prime Minister Mrs. Benazir Bhutto (Mar. 1, 1994) (on file with Ahmadiyya Community in Islam, Baltimore, Md.).

We are concerned about the cases of Mr. Muhammad Nisar Ahmad, Mr. Abdul Quadeer, Mr. Malik Muhammad Din, Mr. Muhammad Ilyas Munir, and Mr. Muhammad Haziq Rafiq Tahir, five members of the Ahmadiya community who were reportedly arrested on October 26, 1984, while they prayed inside a mosque with several other Ahmadiya. Their prayers were interrupted by some 50 Muslim activists who began erasing verses from the Koran and other writings on the mosque's walls. The activists were allegedly acting in accordance with Ordinance 20 which prohibits Ahmadiya from calling themselves Muslim or displaying Koranic verses. It is reported that when the mob threatened the lives of the worshippers and started destroying property, the mosque's caretaker opened fire on the crowd of activists and killed two.

Despite the sworn admission in court that the mosque's caretaker accepted complete responsibility for the two deaths, five Ahmadiya men were tried in 1985 by Special Military Court no. 62 in Multan [Pakistan] and convicted for involvement in the killings. Two of the prisoners were sentenced to death and the others received sentences for 25 years imprisonment. We are also concerned that these civilians were tried by a military court and we ask that your government consider re-opening the cases with the intent of hearing them in civilian court.

The right to freedom of religion is guaranteed in the United Nations Universal Declaration of Human Rights and other international human rights documents. Several hundred members of religious minorities in Pakistan, including children, have been arrested due to the provisions in the "blasphemy" laws and recently several have received the death penalty for their religious beliefs. We are aware of your long term sensitivity to human rights issues and we hope you will give due consideration to our concerns. We look forward to your government's response.

Cordially,

[Tom Lantos, John Edward Porter, Steny Hoyer, Harris Fawell, Alcee Hastings, Benjamin Gilman, Martin Frost, David Price, Louise McIntosh Slaughter, Henry Waxman, Barney Frank, Christopher Smith, Herbert Bateman, Jan Meyers, Lane Evans, Tony Hall, Patricia Schroeder, Howard Berman, Ronald Dellums, Mike Kreidler, Jolene Unsoeld, Carolyn Maloney, Nita Lowey, Corrine Brown, Steven Schiff, Albert Wynn, Carrie Meek. Howard Coble, Jose Serrano, Frank McCloskey, William Hughes, Frank Wolf, Jim Leach, Eric Fingerhut and Tim Johnson.

Members of Congress.]