



Qualified Equality

Minorities in the Constitution of Pakistan

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EXECUTIVE SUMMARY

Fundamental rights, and how the state is able to protect these rights for of its citizens, have become important issues in this age of heightened security concerns and religious extremism. How the world has changed over the last decade and half, and how this has affected minorities all over the world, are widely debated issues all over the world. This sensitive issue of minorities and the way that particular states have been protecting their minorities is particularly important for Islamic nation states, all products of the twentieth century. Equality of citizens before the state is a significant feature of all modern constitutions, and including the Islamic state of Pakistan. Together, the doctrines of equality and non-discrimination provide for the very basis for the enjoyment of fundamental human rights and have central to the human rights movement. Their significance is not limited to civil and political rights alone, as they also encompass economic, social, and cultural rights.

Article 25 of the Constitution of the Islamic Republic of Pakistan 1973 provides for equality of all citizens of the state before the law of the land. In this paper we examine this constitution to demonstrate how the three pillars of the state i.e. the executive, the legislature, and the judiciary have played a role in safeguarding the equality of all citizens before law. While this critical analysis gives an overview of the fundamental rights of citizens as provided by the Constitution, it also provides insight into the legal cover that has been provided to minorities. Our objectives are to critically analyse the constitutional framework for the protection of minorities, gauge the implementation of the principles of equality and non-discrimination, and finally identify the provisions which are either inherently discriminatory or pave the way for discrimination towards minorities.

Religious minorities in Pakistan, particularly the Ahmedis, have faced a tough time as the quest for making Pakistan a truly Islamic country has intensified since the 1970s. The largely controversial Islamisation of the Constitution has not only been done through different Islamic provisions being added through amendments, but also through secondary legislation brought by the executive and approved by the legislature. However, a silver lining has been the judiciary, which through its interpretation of these constitutional provisions and its recommendations to the executive, has been providing a sense of equality to minorities. Turning around the negative atmosphere for minorities, created either through conscious legislation or simple negligence, would involve a conscious effort by the executive and legislature in not only implementing the recommendations of the judiciary but also repealing some of the secondary legislations that have benefitted no one but piled on the misery for an already marginalised section of Pakistani society.

Qualified Equality: Minorities in the Constitution of Pakistan

Together, the doctrines of equality and non-discrimination provide for the basis of fundamental human rights. Their significance is not limited to civil and political rights alone as they also encompasses economic, social, and cultural rights. Indeed, equality and non-discrimination are “central to the human rights movement.”¹ Our objectives in this paper are to critically analyse the constitutional framework for the protection of minorities in Pakistan, gauge the implementation of the principles of equality and non-discrimination, and identify provisions that are either inherently discriminatory or pave the way for discrimination towards minorities. The relevant provisions of the constitution of Pakistan 1973 and requisite laws have been attached as Annex to this paper.

INTRODUCTION

*We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that those amongst these are life, liberty and the pursuit of happiness.*²

The importance of equality is patently clear from this quote by Thomas Jefferson, a great constitutionalist and statesman. Equality means ensuring that individuals or groups are treated fairly and equally and no less favourably, specific to their needs, including in areas of race, gender, disability, religion or belief, sexual orientation, and age.³ Equality is the foremost important feature of constitutionalism, which connotes in essence limited government or a limitation on government. Subsequently, constitutionalism is the antithesis of arbitrary power.⁴ Equality has the status of an inalienable right under domestic law and *Jus Cogen* (peremptory norm) in international law, from which no derogation is ever permitted.

In order to understand the underlying characteristics of the aforementioned legal principles of equality and non-discrimination, it is essential to understand the concept of rights. In layman’s terms, a right can be explained as an “interest recognized and protected by law.”⁵ It can be created and enforced either by a constitutional provision or by an ordinary enactment. When a right is safeguarded by a constitutional guarantee, it is called a

¹ Jerome Shestack, “The Jurisprudence of Human Rights,” in Theodor Meron ed, *Human rights in International Law: Legal and Policy Issues* (Oxford: Clarendon Press, 1984), 101.

² Thomas Jefferson, 3rd President of the USA.

³ “What are Equality and Diversity?” Available at: <http://www.ed.ac.uk/equality-diversity/about/equality-diversity>

⁴ S. A. De Smith, *Constitutional and Administrative Law*, (1977), 34.

⁵ L.B. Curzon, *Jurisprudence* (London: Cavendish Publishing), 235.

‘Fundamental Right’ because by getting constitutional cover it has been placed beyond the power of any organ of the state, whether executive or legislature, which cannot legally act in violation of it. Such a right cannot be taken away, suspended, or abridged save as expressly provided by the very Constitution itself. The essential characteristic of the Fundamental Rights is that they impose limitations, express or implied, on public authorities, interfering with their exercise.⁶

According to John Locke, man is born “with a title to perfect freedom and an uncontrolled enjoyment of all rights and privileges of the law of nature...”⁷ As per the Declaration of the French Revolution in 1789, which was inspired by Lockean philosophy, “the aim of all political association is the conservation of the natural and inalienable rights of man.” A.V. Dicey, the eminent constitutional theorist in his celebrated work *Introduction to the Study of the Law of the Constitution* while emphasising the constitutional principle of the Rule of Law, emphatically described equality before law as one its three facets, thereby highlighting the significance of equality and its importance in the legal framework.⁸ Derogation from this principle would result in an unjust and unequal society.

The 1973 Constitution of Pakistan is the supreme legislation of the state, and the guarantor of fundamental rights and freedoms of its citizens. It is the cornerstone of constitutional protections and a shield against arbitrary and capricious executive authority. Any inadequacy in the constitutional framework and principles permeates the legal, political, social, and economic systems, leading to inequality and discrimination.

Constitution and Constitutionalism

The Social Contract is “a model that describes the origin of society and the legitimacy of the state over the individual.”⁹ Social Contract theory, subsequently, is “the voluntary agreement among individuals by which, according to any of the various theories, as of Hobbes, Locke, or Rousseau, organised society is brought into being and invested with the right to secure mutual protection and welfare or to regulate the relations among its members.”¹⁰ The concept of the Social Contract theory is that when society was primitive, people lived in a ‘State of Nature’.¹¹ In the absence of government, law, and the rule of law, there was hardship and oppression, to overcome which they entered into two agreements: (1) *Pactum Unionis* and (2) *Pactum Subjectionis*. By the first pact

⁶ [PLD 1969 SC 387]

⁷ Extracts from John Locke, *Two Treatises of Government* (1690). See Chapter VII, section 87-89).

⁸ *Introduction to the Study of the Law of the Constitution* (1885).

⁹ “Hobbes, Locke, Rousseau: The Social Contract,” *Effects of Political Enlightenment on the French Revolution*. See: <http://frenchenlightenment.weebly.com/hobbes-locke-rousseau-the-social-contract.html>

¹⁰ “Social Contract,” on dictionary.com. See: <http://dictionary.reference.com/browse/social-contract>

¹¹ Edwin Curley, “On the Citizen: Hobbes, Thomas,” in *Leviathan* by Hobbes, 1651 (Cambridge: Hackett Publishing, 1994).

of *Unionis*, people sought protection of their lives and property, resulting in mutual respect. By the second pact of *Subjectionis*, people united together and pledged to obey an authority, and as a result, surrendered all or part of their freedom to an authority.¹² This idea is central to the fundamental basis for the development of government and law, especially democratic theory and its application.

Social Contract theory set the foundation for concepts that underpinned democratic government, and influenced implementation of democratic governments in many countries. It had particular influence on the framers of the United States Constitution. An early example of this is the Mayflower Compact, which bound the signers into a "Civil Body Politic" for the purpose of passing "just and equal Laws . . . for the general good of the Colony." These words expressed the idea of self-government for the first time in the New World.¹³ In light of this argument, it is the state's responsibility to guarantee everyone protection of life, property, and liberty.

The contemporary world is divided into several nation states. A nation is recognised as "the political community that ensures the legitimacy of the state over its territory, and transforms the state into the state of all its citizens."¹⁴ In the modern world, a constitution is the accord between the state and its citizens. As some explain it, a country's constitution "seeks to establish its fundamental or basic or apex organs of government and administration, describe their structure, composition, powers and principal functions, define the inter-relationship of these organs with one another, and regulate their relationship with the people, more particularly, the political relationship."¹⁵ The term 'Constitutional law' is broader than 'Constitution' as it comprises the Constitution, relevant statutory law, judicial decisions, and constitutional conventions, all to ensure a just and equitable society.

Traditionally, the framework of a country's government is divided into three institutional organs: (1) legislature to make laws, (2) executive to implement and execute the laws and policy, and (3) judiciary to interpret the laws and administer justice. As M.P. Jain elaborates this further: "It is the constitution of the country which provides the answer to the questions: What is the mutual relationship between the Legislature and the Executive? Or, between the Executive and the Judiciary? Or, between the Legislature and the Judiciary? What is the relationship between these organs and the people? Does the Constitution guarantee any rights for the people?"¹⁶ The judicial organ of the state jealously guards the constitution. Subsequently, "judges have nothing to do with

¹² "Hobbes, Locke, Rousseau: The Social Contract."

¹³ "The Mayflower Compact," *Constitutional Rights Foundation*. Available at: <http://www.crf-usa.org/foundations-of-our-constitution/mayflower-compact.html>

¹⁴ N. J. Smelser and P.B, Baltes (eds.), *International Encyclopaedia of the Social and Behavioural Sciences Vol. 15* (Elsevier: Oxford Science Ltd, 2001).

¹⁵ Wade and Phillips, *Constitutional & Administrative Law*. See Chapter 1.

¹⁶ M. P. Jain, *Indian Constitutional Law* (Wadhwa Nagpur). See chapters 1 and 2.

shades of public opinion which holders of public office may represent or with passion of the day which sway public opinion. Task of the judge is to tenaciously and fiercely uphold and implement the Constitution and law.”¹⁷

Besides the concept of constitution, there is also the imperative concept of constitutionalism. The difference between the two is that the former ought not merely to confer powers to various organs of government, but also seek to restrain those powers. Constitutionalism recognises the need for government but insists upon limitations being placed upon governmental powers.¹⁸ Unlimited powers jeopardise inherent freedoms and privileges of citizens, which might lead to an authoritarian, oppressive government. Constitutionalism envisages checks and balances, putting the powers of the legislature and the executive under some restraints, and not making them arbitrary and capricious. Therefore, to preserve the basic rights of individuals and to maintain their liberty, the constitution should be permeated with constitutionalism, wherein it should have as an integral part certain restrictions on the powers conferred by it on governmental organs.

Political scientists categorise rights into positive and negative sets. Positive rights are those that “require the government to act in certain ways. The government must take a hands-on approach to ensure that guaranteed positive rights are accessible to the rights-holders. Positive rights therefore place a heavy burden on the government by requiring that resources be allocated in specific ways, and with limited flexibility.”¹⁹ Examples of positive rights are protection of person and property, social, economic and cultural rights, education, and employment etc. On the other hand, negative rights “require the government to refrain from acting in certain ways; governments can respect individuals’ negative rights simply by doing nothing at all. Negative rights put certain activities off limits for the government, meaning that rights violations occur when the government’s actions step too far out of bounds.”²⁰ Examples of negative rights include civil and political rights, life, speech, private property, religion etc. In the case of the Province of Sindh v MQM, the Honourable Supreme Court, while recognising the concept stated, “Holder of a negative right was entitled to non-interference, while the holder of a positive right was entitled to provision of some good or service.”²¹ Thereupon, it is the duty of the state to act in those circumstances where the protection of citizens is paramount (positive rights), and refrain from taking any arbitrary actions that could be a hurdle in the enjoyment of rights (negative rights).

¹⁷ [2012 SCMR 6]

¹⁸ Jain, *Indian Constitutional Law*. See Chapters 1 and 5.

¹⁹ “Positive and Negative Rights,” *Centre for Constitutional Studies, University of Alberta*.

<http://ualawccsprod.srv.ualberta.ca/ccs/index.php/pr/534-positive-and-negative-rights>

²⁰ *Ibid*.

²¹ [2014 PLD SC 531]

The Constitution of Pakistan, 1973: A Brief History

In the wake of new directions in international politics in the early twentieth century, people of the Indian sub-continent demonstrated unprecedented struggle and sacrifice for their right of self-determination and freedom from British imperialism. Unfortunately, it took the sovereign state of Pakistan 25 tumultuous years of bureaucratic hegemony, internal military interventions, and the breaking up of the country itself, to overcome its constitutional uncertainty and agree upon a unanimously accepted constitution.

Muhammad Ali Jinnah, the founder of the country and a great statesman and constitutionalist, envisioned a just and equitable society based on the principle of equality. He made it patently clear in his very first speech to the First Constituent Assembly of Pakistan as its President, “The Constituent Assembly has got two main functions to perform. The first is the very onerous and responsible task of framing our future constitution of Pakistan and the second of functioning as a full and complete Sovereign body as the Federal Legislature of Pakistan.”²² With this, he was providing the impetus for the future political and constitutional path to be taken by the newly independent country. He continued: “Dealing with our first function in this Assembly ... Remember that you are now a Sovereign legislative body and you have got all the powers. It, therefore, places on you the gravest responsibility as to how you should take your decisions. The first observation that I would like to make is this. You will no doubt agree with me that the first duty of a Government is to maintain law and order, so that the life, property and religious beliefs of its subjects are fully protected by the State.” In this short speech the only principle that Jinnah stressed thrice was the importance of equality. And this is evident from his famous and oft-quoted words:

*You are free; you are free to go to your temples, you are free to go to your mosques or any other place of worship in this state of Pakistan ... You may belong to any religion or caste or creed that has nothing to do with the business of the state ... We are starting in the days when there is no discrimination, no distinction between one community and another, no discrimination between one caste or creed or another. We are starting with this fundamental principle that we are all citizens and equal citizens of one state.*²³

However, in the brief history of Pakistan it is clear that Jinnah’s vision has not been fulfilled. It is not our purpose in this paper to comment on the constitutional experiments carried out and the lack of public involvement in the constitutional process until the early 1970s. Nevertheless, it is pertinent to here that Pakistan has had three constitutions: in 1956, 1962, and finally in 1973. The Constitution of 1973 was drafted after the separation of East

²² Muhammad Ali Jinnah’s Address to the 1st Constituent Assembly of Pakistan, August 11, 1947.

²³ Ibid.

Pakistan in 1971 and is celebrated as unanimously accepted. It was drafted after consultation and deliberation involving all the political parties in the country.

It is worthwhile also to briefly look at the preamble to the Constitution. A preamble is a brief statement affixed to a statute indicating the principles used as guidelines by its framers. It usually states the general object and intention of the legislature in enacting the same.²⁴ As it was the will of the people of Pakistan to establish an order, the major constitutional principles on which the constitution of Pakistan was based are enshrined in the preamble. The salient features in the preamble, pertinent to our subject matter, are reproduced below:²⁵

- (1) Wherein the principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed;
- (2) Wherein adequate provision shall be made for the minorities freely to profess and practice their religions and develop their cultures;
- (3) Wherein shall be guaranteed Fundamental Rights, including equality of status, of opportunity and before law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality; and
- (4) Wherein adequate provisions shall be made to safeguard the legitimate interests of minorities and backward and depressed classes.

The Constitution has 280 Articles divided into seven parts and seven schedules. It has been amended 21 times in the 42 years since its ratification. Part II of the Constitution is further divided into two chapters, namely Fundamental Rights (Articles 8-28) and Principles of Policy (Articles 29-40). The chapter on Fundamental Rights contains, as the name suggests, all the Articles relating to basic and inalienable rights of the citizens of Pakistan, and the chapter on Principles of Policy has all the main guiding policy matters of the country which the Government of Pakistan is bound to keep paramount whilst making government policy, whether internal or external. It is pertinent to state here that this chapter is the main subject matter of this paper, along with certain Islamic provisions contained in the Constitution.

Fundamental Rights, Principles of Policy, and Islamic Provisions

Fundamental Rights

Fundamental rights, Principles of Policy, and Islamic provisions form some of the basic features of the Constitution of Pakistan. Fundamental Rights are those rights that are primordial in nature, and thus imperative

²⁴ Secretary of State v Maharaja of Bobbili. ILR 43 Mad. 529 (PC).

²⁵ The Constitution of Pakistan 1973 is available at: http://www.na.gov.pk/uploads/documents/1333523681_951.pdf

and essential for the very existence, development, progress, and prosperity of citizens of the state, and are necessary for the growth and expression of their personalities.²⁶ These rights are available to each and every citizen of Pakistan, and in addition certain special protections have been granted to minorities in order to safeguard and protect their rights, and provide them with equality of status and equal treatment before law. It is of paramount importance to understand that human rights are available to citizens of any jurisdiction because of their very existence as humans. It would be prejudicial and discriminatory to treat one citizen as different from another, and a violation of the principle of equality as enunciated in Article 25 of the Constitution, that is, “All citizens are equal before law and are entitled to equal protection of law.” And this is evident from the judgment of the Supreme Court of Pakistan that “neither in interpreting statutes nor precedents are judges confined to the alternatives of blind, arbitrary choice, mechanical deduction from rules with predetermined meaning.”²⁷

In a country where an overwhelming majority (96%) belongs to a particular religion, perhaps special protections should be available in the legal framework in order to protect minorities. A minority is defined as “a racial, ethnic, religious, or social subdivision of a society that is subordinate to the dominant group in political, financial, or social power without regard to the size of these groups.”²⁸ It is essential to understand the meaning of the term discrimination in order to grasp the importance of the principles of equality and non-discrimination. Discrimination is defined and explained as, “treating a person less favourably than others on grounds unrelated to merit, usually because he or she belongs to a particular group or category. As well as direct discrimination, this may involve indirect discrimination, victimization, or harassment. It is unlawful to discriminate on racial grounds, on grounds of sex, religion or belief, disability or age.”²⁹ The Supreme Court of India has explained in *Sri Srinivasan theatre v Govt of Tamil Nadu*, that the two expressions ‘equality before law’ and ‘equal protection of law’ do not mean the same thing even if there may be much in common between them. ‘Equality before law’ is a dynamic concept having many facets. One facet is that there shall be no privileged person or class and that none shall be above law. Another facet is “the obligation upon the state to bring about, through the machinery of law, a more equal society ... For, equality before law can be predicted meaningfully only in an equal society.”³⁰

Before proceeding to the details of Fundamental Rights and Principles of Policy, it is pertinent to make a reference to Article 8 of the Constitution of Pakistan which gives teeth to fundamental rights and makes them justiciable. It states: “Any law, or any custom or usage having the force of law, in so far as it is inconsistent with the

²⁶ [2012 CLC 958]

²⁷ [PLD 2012 SC 1]

²⁸ “Minority,” in *Random House Dictionary*. See: <http://dictionary.reference.com/browse/minority>

²⁹ From the *Oxford Law Dictionary*, 7th Edition.

³⁰ [AIR 1992 SC 1004]

rights conferred by this chapter shall to the extent of such inconsistency, be void.” The effect of Article 8 is that fundamental rights cannot be infringed upon by the government either by enacting a law or through administrative action. Moreover, the judiciary “has a duty to examine the constitutionality of any law if it is concluded that it has been promulgated in derogation of the Fundamental Rights as envisaged by Article 8 of the constitution, or where any provision of any law is found contrary to the Constitution.”³¹ In the case of *Ajay Hasia (Ajay Hasia v Khalid Mujib)* in India,³² it was noted: “It must be remembered that the fundamental rights are constitutional guarantees given to the people of India and are not merely paper hopes or fleeting promises and so long as they find a place in the constitution, they should not be allowed to be emasculated in their application by a narrow and constricted judicial interpretation ... [and thus the] Court has to adopt the interpretation which furthers the objectives of the constitution rather than negates them.”³³

However, as has been point out earlier and envisioned by the founder of Pakistan and the framers of the constitution, special provisions for the protection of minorities and their religious freedoms were constituted in the chapter of Fundamental Rights. These include:

- Article 20: Freedom to profess religion and to manage religious institutions,
- Article 21: Safeguard against taxation for purposes of any particular religion,
- Article 22: Safeguards as to educational institutions in respect of religion etc,
- Article 25: Equality of citizens,
- Article 26: Non-discrimination in respect of access to public areas,
- Article 27: Safeguard against discrimination in services,
- Article 36: Protection of minorities.

A cursory reading of these Articles shows us that many of the rights and privileges provided to minorities, for instance, Articles 25, 26, and 27, are meant for the general population as well. However, some are specifically provided to protect the minorities and for the purposes of this study we will closely examine their impact on the country through the judicial system and implementation by the executive of the country. Details of the aforementioned Articles have been included in the Annex.

³¹ [PLD 2012 SC 870]

³² [AIR 1993 SC 487]

³³ [PLD 1993 SC 76]

The Articles mentioned above and those available under the first part of Chapter Two of the Constitution are not exhaustive but provide comprehensive protection to the minorities in Pakistan. However, closer examination of the same and analysis of how these articles have been interpreted by the judicial organ of the state, and ignored or implemented by successive governments that lead the executive branch of the state, provides us with insight into the actual situation of minorities. All organs of the state have to work together for the state machinery to run in accordance with the Constitution and according to the wishes of the political sovereign that is the public.

Principles of Policy

Principles of Policy are the aspirations of the writers of a constitution that are intended to be the guiding principles of the policy of the state. These provisions constitute the manifesto of the policies and programmes of the state, and are required to be kept in view by subsequent generations in order for continuity in the maintenance of a homogeneous and consistent policy in the matter of handling affairs of the state. The executive is to follow them in their everyday work, and the judiciary is also bound to follow them for understanding and applying the provisions of law.³⁴ In essence, their importance can be gauged by the assertion that “any organ of the state can be directed by an order of the Court to observe Principles of Policy in their respective spheres of working.”³⁵

Islamic Provisions

Arguably the most prominent of the Islamic provisions in the Constitution is the Objectives Resolution, which was originally adopted on March 12, 1949 by the Constituent Assembly of Pakistan, even before the first Constitution was framed in 1956. Prime Minister Liaquat Ali Khan was the Presenter of the Resolution, and upon its passage labeled it “the most important occasion in the life of this country, next in importance only to the achievement of independence.”³⁶ However, critics have characterised it as a piece of rhetoric,³⁷ and of no pragmatic value or significance. Birat Chandra Mandal, popularly known as Jogindra Nath Mandal, the first Temporary Chairman of the Constituent Assembly and the first Law Minister of Pakistan, emphatically stated in his speech in the Constituent Assembly: “I have reason to believe that were this resolution to come before this house within [the]

³⁴ A. K. Brohi, *Fundamental Rights*, 313.

³⁵ [PLD 2012 LAH 445]

³⁶ Speech of Liaquat Ali Khan to the Constituent Assembly of Pakistan, 9th March 1949.

³⁷ Ayaz Amir, “In Islam’s Name: Our Disservice to Islam,” *PakColumnist* December 10, 2013.

<http://www.pakcolumnist.com/islams-name-disservice-islam-ayaz-amir.html>

lifetime of [the] great creator of Pakistan, Quaid-i-Azam Muhammad Ali Jinnah it would not have come in its present shape.”³⁸

The leader of the opposition in the Constituent Assembly, Sri Chandra Chattopadhyaya, while commenting on the Objectives Resolution, stated: “In my conception of state where people of different religions live there is no place for religion in the state. Its position must be neutral: no bias for any religion. If necessary, it should help all the religions equally. No question of concession or tolerance to any religion. It smacks of inferiority complex. The state must respect all religions: no smiling face for one and askance look to the other. The state religion is a dangerous principle. Previous instances are sufficient to warn us not to repeat the blunder.”³⁹ It is pertinent to point here that no minority member voted for the Resolution. The Republic of Pakistan’s name was formally changed to Islamic Republic of Pakistan in the Constitution of 1956 as a direct result of the Objectives Resolution, which has since been part of subsequent constitutions, except for a brief stint during General Ayub’s era and the Constitution of 1962. Pakistan was the first country to use the prefix ‘Islamic’ in its name. Moreover, the Objectives Resolution was not originally part of the 1973 Constitution. It was instituted in the Constitution in the era of General Zia-ul-Haq by Presidential Order 14 of 1985, which makes it a substantive part of the Constitution.

There is a wealth of case law on Article 2A of the Objectives Resolution, with some conflicting judgments and ideologies. In a verdict of the Supreme Court of Pakistan, “after the addition of Article 2A in the Constitution, the Holy Quran and Sunnah have become the supreme law of Pakistan and the courts are obliged to enforce the existing laws with such adaptations as are necessary in the light of the Holy Quran and Sunnah to uphold the Holy provisions thereof ... Where existing laws or any provision thereof, on examination by the Federal Shariat Court are repugnant to the injunctions of Islam, such laws or provisions thereof cease to have effect on the day on which the decision of the court takes effect.”⁴⁰ In a previous judgment of the Supreme Court however, the court enjoys power to strike down any law in conflict with any provision of the Constitution. In spite of this power vested in the superior courts, they do not have power to strike down any provision of the Constitution which may be in conflict with any of its provisions. Even in the presence of Article 2A as a substantive part of the Constitution, the court cannot strike down any provision on its (Article 2A’s) touchstone.⁴¹

The Supreme Court of Pakistan in the case of District Bar Association, Rawalpindi v Federation of Pakistan concluded this debate, and the judgment stands as the highest precedence on the issue: “Objectives Resolution

³⁸ Speech on March 9, 1949, in the Constituent Assembly of Pakistan.

³⁹ Speech on March 12, 1949, in the Constituent Assembly of Pakistan.

⁴⁰ [PLD 2001 SC 18]

⁴¹ [PLD 1997 SC 426]

could not be given a supra-Constitutional status. Objectives Resolution was not to be treated as a grund norm and therefore impliedly placed on a higher pedestal than the Constitution of Pakistan. Opening sentence of the Objectives Resolution was very important as it sets out the Islamic doctrine of sovereignty by stating that sovereignty over the entire universe rested in Almighty Allah and in Him alone, and all temporal power was to be exercised as a sacred trust through the chosen representatives of the people. However, conferring a similar status on the rest of the Objectives Resolution was not justified. Any attempt to attach a quasi-mystical, or supremely overarching significance and importance to the Objectives Resolution, as if it had been uniquely conceived by the founders of Pakistan, was not altogether justified.”⁴²

It can be argued that in order to reconsolidate the Islamic identity of the country, there was a stronger tendency, perhaps inadvertent, to emphasise the Islamic aspects in the 1973 Constitution. It is worthwhile to recognise the other Islamic provisions that entered the Constitution as a direct or indirect consequence of the Objectives Resolution. Critics maintain that the Constitution has been Islamised and brought under the umbrella of Islam and its principles. It is important thus to examine the Islam-specific provisions to understand the kinds of special rights and privileges that have been conferred upon the religion and its followers, since they are seen as favouring a single religion in the country and being the basis of inequality and discrimination. The Islam-specific provisions in the Constitution of 1973 are as under:

Article 2: Islam shall be the State religion of Pakistan.

Article 2A: The principles and provisions set out in the Objectives Resolution reproduced in the Annex are hereby made substantive part of the Constitution and shall have effect accordingly.

Article 31: Steps shall be taken to enable the Muslims of Pakistan, individually and collectively, to order their lives in accordance with the fundamental principles and basic concepts of Islam and to provide facilities whereby they may be enabled to understand the meaning of life according to the Holy Quran and Sunnah.

Article 41: A person shall not be qualified for election as President unless he is a Muslim of not less than forty-five years of age and is qualified to be elected as member of the National Assembly.

Article 203(c): There shall be constituted for the purposes of this chapter a court to be called the Federal Shariat Court (a parallel court system, with limited jurisdiction, especially for Islamic matters).

Article 227: All existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah, in this Part referred to as the Injunctions of Islam, and no law shall be enacted which is repugnant to such Injunctions.

⁴² [PLD 2015 SC 401]

Article 228: There shall be constituted within a period of ninety days from the commencing day a Council of Islamic Ideology, in this part referred to as the Islamic Council.

Article 229: The President or the Governor of a Province may, or if two-fifths of its total membership so requires, a House or a Provincial Assembly shall, refer to the Islamic Council for advice any question as to whether a proposed law is or is not repugnant to the Injunctions of Islam.

Article 230: The functions of the Islamic Council shall be (amongst other functions), to make recommendations.... as to the measures for bringing existing laws into conformity with the Injunctions of Islam and the stages by which such measures should be brought into effect.

JUDICIAL INTERPRETATION

The judiciary as explained above is the most vital organ of the state from the perspective of citizens. It is the guarantor and protector of their fundamental rights and freedoms, as its responsibilities include protecting them from the excesses of the legislative and executive branches of the state.⁴³ It is also the final forum for redressing their grievances. Our aim in this section is to gauge the role of the judiciary in its responsibilities of protecting the rights and freedoms of minorities, and providing remedies and reparations against the violation of rights.

Regarding religious freedoms, Justice Munir has noted: “The right of a man to entertain such religious views as appeals to his individual conscience, without dictation or interference by any person or power, civil or ecclesiastical, is as fundamental in a free government as is the right to life and liberty.”⁴⁴ The term ‘religion’ has not been defined in the Constitution. The Lahore High Court, while interpreting the freedom of religion in the case of *Tauseef Hussain v District Magistrate Chakwal* established it as follows:

*Freedom to believe is absolute but to act according to such belief has been subjected to regulation for the protection of the society. Freedom to act should have an appropriate definition to preserve the enforcement of that protection. Power to regulate has to be exercised in such a way that it does not infringe the protected freedom. Courts can judicially review whether the act of the State conforms to the fine balance of rights and responsibilities in this connection.*⁴⁵

Fortunately, the superior judiciary has played a significant role in protecting the rights of minorities. It has made several decisions rejecting any kind of discrimination towards them, and inequality between different minorities and Muslims. It has treated all as equal citizens of the country, whether it has been on the issue of

⁴³ K.K Ghai, “Judiciary: Functions, Importance and an Essential Quality of Judiciary.”

See: <http://www.yourarticlelibrary.com/essay/law-essay/judiciary-functions-importance-and-an-essential-quality-of-judiciary/40352/>

⁴⁴ Justice Munir, *Constitution of Pakistan* (1962), 153.

⁴⁵ [2001 PCRLJ 1173 LAH]

verification of pleadings (Article 25),⁴⁶ reliability of witnesses irrespective of their religion (Article 25),⁴⁷ issues relating to minorities getting their identifications (Article 26, 27),⁴⁸ protecting Auqaf property i.e. minority religious institutions' property from being misappropriated (Article 20),⁴⁹ declaring that religion is not an issue for promotion in government services (Article 27),⁵⁰ or the courts protecting minorities from undue pressure or discrimination relating to accusations made against them.⁵¹

Of all the articles dealing with religious minorities, Article 20 is the most significant as it provides for the freedom to practice religion and manage religious institutions. The Honourable Supreme Court in its suo moto action interpreted the Article as follows:

.....the right of religious conscience conferred on every citizen was a right conferring three distinct rights i.e Right to profess, Right to Practice and Right to Propagate. Article 20 of the constitution did not merely confer a private right to profess but conferred a right to practice both privately and publicly his or her religion. Moreover, it conferred the additional right not only to profess and practice his own religion but to have the right to propagate his or her religion to others. Such propagation of religion had not been limited to Muslims having the right to propagate their religion but such right was equally conferred on non-Muslims to propagate their religion to their own community and to other communities.⁵²

However, the harsh reality remains that it is extremely difficult for minorities to propagate their religion because of widespread intolerance and religious fanaticism despite the attempt of the court to bring the Constitution into action. The following judgments illustrate how constitutional judicial decisions and recommendations have shown adherence to principles of equality and rights, even as they have not translated into a just and equitable society.

Upon dismissing the writ disallowing a church from being constructed, the Lahore High Court observed that, “[a] church is a religious institution, construction of which according to Article 20 of the Constitution is a right of Christian citizens of Pakistan.”⁵³

⁴⁶ 1990 MLD 538

⁴⁷ 2011 SCMR 379

⁴⁸ 2012 SCMR 1147

⁴⁹ PLD 2014 SUPREME COURT 100

⁵⁰ 2005 MLD 1053

⁵¹ 2015 MLD 1560 wherein the High Court held that all cases relating to religion or allegations of religious nature had a higher standard of proof or evidence.

⁵² [PLD 2014 SC 699]

⁵³ [2005 CLC 678 LAH]

In another judgment regarding the publication of a book propagating Christianity, the Lahore High Court expressed in regard to Articles 20 and 36 of the Constitution:

Contention of the petitioner under Art. 199 of the Constitution was that the Provincial Government be directed to impose ban qua the book “God’s Special Agents” and that the respondent be restrained from preaching and projecting the programme of Christianity in Pakistan. Held, under Art. 20 of the Constitution every citizen enjoys a Fundamental Right to profess, practise and propagate his religion and every religious denomination and every sect thereof has a right to establish, maintain and manage its religious institutions. Petitioner failed to point out and to address any argument as to how the actions of the respondent offend against any particular law, public order or morality so as to exclude the application of Art. 20 of the Constitution. Reliance of the petitioner upon Art. 227 of the Constitution in the context was inapt inasmuch as clause (3) thereof ensures that “nothing in this part shall affect the personal laws of non Muslim citizens or their status as citizens” and rather gives added strength to Art. 20 of the Constitution and is also consistent with the principles of policy as contained in Art. 36 of the Constitution.⁵⁴

It is very unfortunate that the self-proclaimed torchbearers of Islam forget the message of Prophet Muhammed (pbuh) regarding the treatment and protection of minorities. On the issue of forced conversion to Islam in the same judgment as above, the Supreme Court expressed: “Islam did not compel people of other faiths to convert; Islam gave them complete freedom to retain their own faith and not to be forced to embrace Islam. Such freedom was documented in both the Holy Quran and Sunnah. Holy Quran (10: 99) ref”.⁵⁵

Pakistan has witnessed many cases in which non-Muslim women, especially Hindu women, have been kidnapped and forced to convert and then married off to one of their kidnapers. In one judgment, the Supreme Court expressed that “in view of Article 20 of the Constitution, there is no necessity of a specific legislation as has been prayed for, because every citizen has a fundamental right to profess, practice and propagate his religion. Supreme Court observed that where there is a forced conversion, the law always took its own course.”⁵⁶

The Supreme Court observed in the context of non-Muslim witnesses that: “Mere fact that prosecution witness was Ahmadi by faith, the same was no ground to reject his testimony against a person who was not so.”⁵⁷ This seems a positive step but in instances regarding certain minorities the legal framework and judiciary appear very stringent. Discrimination is patently clear from this decree: “Power under S.144 Criminal Procedure can legitimately be exercised for public good in the interest of the people of the country, activities of Ahmadis and

⁵⁴ [2005 PLD 354 LAH]

⁵⁵ [PLD 2014 SC 699]

⁵⁶ [PLD 2012 SC 679]

⁵⁷ 2011 SCMR 379

propagation of their faith being resisted by people in general, provides justification for banning the centenary celebrations of Ahmadiat under S.144 CrPC. By such order of the District Magistrate, the right to profess and practice faith by Qadianis in manner stood infringed or violated.”⁵⁸

In suo moto actions following a suicide bomb attack on September 22, 2013 on a church in Peshawar, and threats against the Kalash tribe and the Ismaili community in Chitral, the Supreme Court of Pakistan observed that:

*.....under the Constitution minorities had a special status; that the very genesis of Pakistan was grounded in the protection of the religious rights of all, especially those of minorities; that the incidents of desecration of places of worship of minorities could be warded off if the authorities concerned had taken preventive measures at the appropriate time; that the inaction on the part of the law enforcement agencies was on account of the lack of proper understanding of the relevant law; that there was a general lack of awareness about minority rights among the people and those entrusted with enforcement of law were also not fully sensitized to such issue; that desecration of places of worship of even non-Muslims was an offence under the Pakistan Penal Code, 1860; that it would be counter intuitive if the right to freedom of religion enshrined in Article 20 of the constitution was interpreted in a manner which had the effect of encroaching upon religious freedoms of minority religions in the country.*⁵⁹

In the same suo moto action, the Supreme Court made several recommendations to the federal and provincial governments for the effective enforcement of fundamental rights guaranteed to minorities. The recommendations included the following:

That the Federal Government should constitute a taskforce tasked with developing a strategy of religious tolerance.

That appropriate curricula should be developed at school and college levels to promote a culture of religious and social tolerance.

That the Federal Government should take appropriate steps to ensure that hate speeches in social media are discouraged and the delinquents are brought to justice under the law.

That a National Council for minority rights should be constituted.

That a special police force should be established with professional training to protect the places of worship of minorities.

That the Federal Government and all Provincial Governments should ensure the enforcement of the relevant policy directives regarding reservation of quotas for minorities in all services.

⁵⁸ [PLD1992 LAH 1]

⁵⁹ [PLD 2014 SC 699]

That in all cases of violation of any of the rights guaranteed under the law of desecration of the places of worship of minorities, the concerned law enforcing agencies should promptly take action including the registration of criminal cases against the delinquents.

Unfortunately, the Federal and Provincial Governments are yet to take any concrete action in policy or legislation in order to implement the guidelines provided for in the judgment. The Supreme Court did deal in it with the situation facing all religious minorities but nevertheless failed to address the issues facing the most vulnerable minority in Pakistan, i.e. the Ahmedis or Qadianis or Lahori Group (hereafter referred to as the Ahmedis). A detailed look at the desperate situation of this particular minority is provided in the next section.

The government has also under Article 36 provided for all minorities to: participate freely in all kinds of elections, for additional separate seats for minorities in all levels of legislature, and for certain quotas for minorities in sectors of public life including the all important government and judicial services. The judiciary has been quite liberal in interpreting and implementing this right and privilege.⁶⁰ Through various decisions, it has not only upheld minorities' rights for due representation at various levels of the government, whether executive or legislature, it has also not allowed them to be limited to these special seats. The minorities are and always have been allowed to stand for election in all general seats and have not been disqualified on the basis of religion.⁶¹

Nevertheless, despite all the active protection from the higher judiciary, and the express guarantees provided by the Constitution, the legislative and executive branches of the state have failed to protect minorities by their lax or often negligible attention towards safeguarding minorities. Moreover, the state itself has often legislated and implemented various acts and policies that openly violate the rights of the minorities. This discrimination at state level adds to social, economic, and political discrimination and inequality and creates hurdles in the way of social integration of practitioners of various religions. Perhaps no minority community suffers from this more than the Ahmedis.

AHMEDIS

Ahmedis are a distinct religious minority under the Constitution of Pakistan. The community was declared non-Muslim under the 2nd Amendment to the Constitution on September 7, 1974. The case of Ahmedis is different from other minorities on the grounds that they are not just socially and politically discriminated against, but face legal discrimination as well. The Constitution that provides freedoms to minorities, has declared Ahmedis to be non-Muslim. Moreover, in blatant violation of their fundamental rights, the state passed the Anti-Islamic Activities

⁶⁰ 2001 YLR 1001.

⁶¹ 2002 YLR 1001.

of the Qadiani Group, Lahori Group and Ahmedis (Prohibition and Punishment) Ordinance, 1984. Critics have termed it a patent violation of Article 8 of the Constitution and against the wishes expressed by Muhammad Ali Jinnah, pointed to earlier in this paper, that a person could belong to any religion, caste, or creed, and that had nothing to do with the business of the state. The ordinance set standards that the Ahmedi community has to adhere to in relation to its religious institutions, public appearance, propagation, and preaching.

It is relevant here to look at Article 260 of the Constitution that defines the terms ‘Muslim’ and ‘non-Muslim’. Originally, the Article stated: “A person who does not believe in the absolute and unqualified finality of Prophet-hood of Muhammad (peace be upon him), the last of the prophets, or claims to be a prophet in any sense of the word or of any description whatsoever, after Muhammad (pbuh) or recognises such a claimant as a prophet or a religious reformer, is not a Muslims for the purposes of the Constitution or Law.” With an amendment in Article 106(3) of the Constitution, the Ahmedi community was added to a list of minority communities for representation (reserved seats) in the provincial assemblies.⁶²

It was the liberal government of Zulfikar Ali Bhutto that succumbed to the political pressure of religious political parties and the deteriorating law and order situation, and passed this amendment. Some in the public and political sphere considered these amendments lenient and not stringent enough, and Bhutto was labeled pro-Ahmedi. It was during the unconstitutional and illegal government of General Zia-ul-Haq and a result of the Islamisation policy of the time that very stringent and unconstitutional actions were taken, leading to the violation of fundamental rights of Ahmedis.

The aforementioned provision was substituted by Presidential Order 24 of 1985 with effect from March 19, 1985, during the Zia regime, and Article 260(3) subsequently read as follows:

In the Constitution and all enactments and other legal instruments, unless there is anything repugnant in the subject or context: “Muslim” means a person who believes in the unity and oneness of Almighty Allah, in the absolute and unqualified finality of the Prophethood of Muhammad (peace be upon him), the last of the prophets, and does not believe in, or recognize as a prophet or religious reformer, any person who claimed or claims to be a prophet, in any sense of the word or of any description whatsoever, after Muhammad (peace be upon him); and “non-Muslim” means a person who is not a Muslim and includes a person belonging to the Christian, Hindu, Sikh, Buddhist or Parsi community, a person of the Qadiani Group or the Lahori Group who call themselves ‘Ahmadis’ or by any other name or a Bahai, and a person belonging to any of the Scheduled Castes.

⁶² 2nd Amendment of the Constitution in 1974.

Proponents of the Anti-Islamic Activities of the Qadiani Group, Lahori Group and Ahmedis (Prohibition and Punishment) Ordinance, 1984 celebrated its passing as a victory to control the menace of Ahmadiyyat. Specific sections in the subject ordinance made it a criminal offence for an Ahmedi to do any of the following:

- a) to call or pose himself directly or indirectly as a Muslim or refer to his faith as Islam;
- b) to preach or propagate his faith posing as a Muslim, or to invite others to accept his faith or in any manner whatsoever outrage the religious feelings of Muslims;
- c) to call people to prayer by reciting Azan to refer to his mode or form of call to prayer as Azan;
- d) to refer or call his place of worship as Masjid;
- e) to refer any person other than a Caliph or companion of the Holy Prophet Muhammad (PBUH) as Ameerul-Mumineen, Khalifatul-Muslimeen, Sahaaba, Razi-Allah Anho; any person other than the wives of the Holy Prophet (pbuh) as Umm-ul-Mumineen; and any person other than a member of the family of the Holy Prophet (pbuh) as Ahl-e-bayt.

According to the ordinance through which the Pakistan Penal Code was amended, Sections 298 (B) and (C) were inserted. While criminalising the abovementioned acts, the statement that they “shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine” was also added.⁶³ The amendment clearly shows that the state of Pakistan has not only trampled on the religious freedom of the Ahmedis but has criminalised many of their acts, so that “Qadianis can profess that they believe in the unity of Allah and the prophet-hood of Mirza Ghulam Ahmed but they cannot profess themselves to be Muslims.”⁶⁴ Unfortunately, the judiciary, in particular the federal Shariat Court, has also followed suit and in various judgments relating to this particular ordinance, affirmed the ordinance and ruled that it does not interfere with the Ahmedis’ right to practice and profess their religion under Article 20 of the Constitution.⁶⁵

The declaration of Ahmedis as non-Muslims and the following ordinance putting a number of restrictions on them, led to this particular religious minority being marginalised and targeted by extremists. Cases have been registered against them for a number of “offences,” from having minarets on their religious institutions to calling Azan in their off-springs’ ears, and from their gravestones carrying Quranic verses to their giving wedding cards printed with Quranic verses.⁶⁶

The Lahore High Court has also observed that:

⁶³ Sections 298B & 298C, Pakistan Penal Code.

⁶⁴ [PLD 2000 LAH 364,]; [PLD 1992 LAH 1]

⁶⁵ [PLD 1984FSC 136]; [PLD 1985 FSC 8], 1993 SCMR 1718.

⁶⁶ 1992 PCRLJ 2351, Lahore, and 1993 SCMR 1718.

Provisions of Anti-Islamic Activities of Qadiani Group, Lahori Group and Ahmadis (Prohibition and Punishment) Ordinance, 1984 give the actual epithets, the descriptions and also, titles and other requirements sought to be protected or imposed which cannot be used for entities or situations other than those for whom they have been prescribed... Legislation, in any way does not interfere with the religious freedom of the Ahmadis, for same only prohibits them from using said epithets etc. on which they have no claim of any nature and does not prohibit them from coining their own. Ahmadis like other minorities, are free to profess their religion and no one can take away, that right of theirs either by legislation or by executive orders. Ahmadis, however, are obliged to honour the Constitution and the law and should neither desecrate or defile the pious personage of any other religion including Islam, nor should they use their exclusive epithets, descriptions and titles and also avoid using the exclusive names like mosque and practice like Azan so that the feelings of the Muslim community are not injured and the people are not misled or deceived as regards the faith.⁶⁷

In the case of *Zaheer-ud-din v The State*, before the Supreme Court of Pakistan, while giving his dissenting judgment (minority view) Justice Shafiur Rahman expressed:

Provisions of S.298-C (c) & (d), PPC as standing themselves, individually or the two together are violative of the fundamental rights of religion's freedom and of equality and of the speech in so far as they prohibit and penalise only the Ahmedis and Qadianis from preaching or propagating their faith by words written or spoken or by visible representation. Invitation to one's own faith when it is not accompanied by any other objectionable feature cannot be condemned. However, if the acts mentioned in the clauses c & d are accompanied with what is provided in clause e or has to the effect of clauses a & b then the acts will be penal under these relevant clauses and not under clauses c & d. To this extent clauses c & d of section 298-C, PPC would be ultra vires the Constitution...Provisions of S.298-B 2 (d) and S.298 (c) are ultra vires the Fundamental Rights contained in Article 20 & 25 of the Constitution.⁶⁸

There have been instances where the judiciary has acted in the protection of the rights of Ahmedis, but either because of religious prejudices or social and political pressures, it has largely been reluctant in providing relief. The legislature and executive branches of the state have failed miserably in this context.

Responsibility under International Law

Pakistan is party to many international human rights declarations, conventions, and treaties. The international legal regime has had a somewhat significant impact on developing economies over the years, but still faces resistance and reservations. The state of Pakistan was amongst the first countries to sign the landmark Universal Declaration on Human Rights (UDHR) in 1948. The Declaration also forms part of the International Bill of

⁶⁷ [PLD 2000 LAH 364]

⁶⁸ 1993 SCMR 1718.

Rights along with the International Covenant on Civil and Political Rights (ICCPR) and International Covenant of Economic Social and Cultural Rights (ICESCR). The UDHR, although only a declaration, served as a forerunner and provided the foundation for the legally binding and enforceable ICCPR & ICESCR that followed.

The preamble of the UDHR, emphasising the significance of the inherent dignity and equality of humans, states: “whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.” Articles 1 and 2, reiterate this principle.

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

These are not just political aspirations but promises that the state of Pakistan made to the world, which along with many of the provisions of the UDHR today part of the customary international law with binding force.

Article 1 (3) of the United Nations charter, elaborating upon its own purposes and principles, states the following: “To achieve international cooperation 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.” The statement is emphatic, and stresses fundamental human rights and the principles of equality and non-discrimination keeping in view minorities in different nation states of the world.

The inter American Court in its extensive judgment and reasoning in the advisory opinion in the case of Juridical Condition and Rights of Undocumented Migrants (September 17, 2003) observed that the fundamental principle of equality and non-discrimination has entered into the domain of the *jus cogens*. It is important to understand the significance of this principle in international law. *Jus cogens* refers to “certain fundamental, overriding principles of international law, from which no derogation is ever permitted.”⁶⁹ In simpler terms, they are rules of international constitutional importance and under no circumstances can they be violated. Examples include genocide, torture, and crimes against humanity.

For this paper the pertinent international convention is ICCPR, which was adopted in December 1966 and entered into force in March 1976. After a regrettable lapse of 32 years, the government of Pakistan finally signed

⁶⁹ Ian Brownlie, *Principles of Public International Law* (Oxford: Oxford University Press, 1998).

the treaty on April 17, 2008, and it was ratified on June 23, 2010 but with certain reservations. At the time of ratification, Pakistan expressed reservations on Articles 3, 6, 7, 12, 13, 18, 19, 25, 27, and 40 of the Convention. The world community raised alarm, asking whether the reservations complied with international law. It must be kept in mind that if the reservations are against the spirit of the treaty, they are held incompatible. The relevant articles of the ICCPR are listed below:

Article 2: Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 3: The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 18: Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to 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.

Article 27: In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

The following statement on this matter can be accessed from a notification by the ICCPR Resource Center:

Most of the reservations were incompatible with the objectives of ICCPR and needed to be withdrawn. Prime Minister Syed Yousaf Raza Gilani directed to withdraw most of the reservations regarding Articles 6, 7, 12, 13, 18, 19 and 40 of ICCPR. As a result, there are now only two reservations regarding Articles 3 and 25 that seem unspecific and non-transparent. According to Article 3, the state is bound to “ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.” This reservation is not transparent and infringes the basic right of active participation in politics for both men and women. According to Article 25, every citizen has a right: “(a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; and (c) To have access, on general terms of equality, to public service in his country.”⁷⁰

As per the Constitution, a non-Muslim can never become the head of the state in Pakistan, which is clearly discriminatory and against the spirit of the Constitution. The state of Pakistan has provided defences to these

⁷⁰ “ICCPR-Pakistan,” *ICCPR Resource Center*. Available at: http://iccpr.sojhla.org/?page_id=145

reservations and noted the measures it has adopted to give effect to the rights recognised by the ICCPR, as well as the progress made so far in the initial report of the state under Article 40 of the Covenant.⁷¹ The report was due in 2011, but was only submitted in 2015.

CONCLUSION

The Constitution is the sovereign document of the Islamic Republic of Pakistan. It is the cornerstone of its citizens' liberties and freedoms, and a fountain of hope. It is the people of Pakistan who are the political sovereigns, who have bestowed upon the parliament the right to legislate on their behalf. Their fundamental inalienable rights should be absolute, not qualified, even as objective qualifications are permitted in order to maintain peace, law and order, and to protect the rights of other citizens.

In a society marred by violence and intolerance, minorities feel insecure and threatened. The Constitution provides adequate safeguards for safety and security in general, but in relation to equality there are numerous concerns in the provisions of the Constitution and the case law highlighted in this paper. The superior courts of Pakistan have worked hard to provide a liberal interpretation of the Article providing fundamental rights to the citizens of Pakistan, especially the minorities.⁷² However as noted above, the implementation of these liberal interpretations has not been fruitful.

Some of the aforementioned provisions of the Constitution of Pakistan e.g. Article 41, are directly discriminatory which is against the true spirit of the Constitution and the universal fundamental rights and freedoms. Article 260(3), while not directly discriminatory, paved the way for indirect discrimination. It was a result of this provision that the Anti-Islamic Activities of the Qadiani Group, Lahori Group and Ahmedis (Prohibition and Punishment) Ordinance, 1984 was passed, which was not just against constitutional principles enshrined in the Constitution but also against the principles of fundamental rights and freedoms, and therefore, in breach of the freedoms and protections available under Articles 20 and 36 of the Constitution of Pakistan.

As is evident from the discussion in this paper and the judgments of the Supreme Court of Pakistan, the executive and the legislature have failed to provide adequate safeguards to minorities.⁷³ Some of the provisions are against equality and pave the way for discrimination, and have not been rectified and amended. It is imperative that the government implements the recommendations of the Supreme Court in the aforementioned suo moto

⁷¹ Pakistan Report, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/267/96/PDF/G1526796.pdf?OpenElement>

⁷² 1993 SCMR 1718, PLD 2014 SC 699

⁷³ [PLD 2014 SC 699]

case, but also passes legislation in order to curb hate speech, and religious and cultural discrimination. The recently proposed legislation to outlaw hate speech is a step in the right direction.

The safeguards and freedoms enunciated in the Constitution of Pakistan have to be elaborated and re-enforced via ordinary enactments too. The legislature will have to play an instrumental role to bring in new legislation to curb social and religious discrimination in light of the Fundamental Rights and Principles of Policy. The senior judiciary will have to ensure that the lower judiciary is working in line with the guidelines they provide, and is functioning according to the rule of law. The executive branch is involved in these matters on a daily basis and will have to ensure that the constitutional safeguards are being extended to the citizens of Pakistan on the principles of equality and non-discrimination, and subsequently make policy amendments aligned with constitutional provisions and principles, in order to ensure a society based on justice, fairness, and equality.

In the words of the founder of Pakistan, “The first duty of a government is to maintain law and order, so that the life, property and religious beliefs of its subjects are fully protected by the State.”⁷⁴ As per the judgment of the Honourable Supreme Court of Pakistan, the legislature and the executive have to promote social and religious tolerance, and ensure the representation of all minorities in all the functions of the state. Simultaneously, the state has to improve the social and economic conditions of minorities and other backward and vulnerable classes of the society, in order to guarantee a level playing field for all citizens of Pakistan.

⁷⁴ Speech in the first Constituent Assembly of Pakistan, August 11, 1947.

Annex A: Relevant Articles in the Constitution of Pakistan 1973

Preamble of the Constitution of Pakistan 1973

Whereas sovereignty over the entire Universe belongs to Almighty Allah alone, and the authority to be exercised by the people of Pakistan within the limits prescribed by Him is a sacred trust;

And whereas it is the will of the people of Pakistan to establish an order:-

Wherein the State shall exercise its powers and authority through the chosen representatives of the people;

Wherein the principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed;

Wherein the Muslims shall be enabled to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as set out in the Holy Quran and Sunnah;

Wherein adequate provision shall be made for the minorities freely to profess and practise their religions and develop their cultures;

Wherein the territories now included in or in accession with Pakistan and such other territories as may hereafter be included in or accede to Pakistan shall form a Federation wherein the units will be autonomous with such boundaries and limitations on their powers and authority as may be prescribed;

Therein shall be guaranteed fundamental rights, including equality of status, of opportunity and before law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality;

Wherein adequate provision shall be made to safeguard the legitimate interests of minorities and backward and depressed classes;

Wherein the independence of the judiciary shall be fully secured;

Wherein the integrity of the territories of the Federation, its independence and all its rights, including its sovereign rights on land, sea and air, shall be safeguarded;

So that the people of Pakistan may prosper and attain their rightful and honoured place amongst the nations of the World and make their full contribution towards international peace and progress and happiness of humanity:

Now, therefore, we, the people of Pakistan,

Cognisant of our responsibility before Almighty Allah and men;

Cognisant of the sacrifices made by the people in the cause of Pakistan;

Faithful to the declaration made by the Founder of Pakistan, Quaid-i-Azam Mohammad Ali Jinnah, that Pakistan would be a democratic State based on Islamic principles of social justice;

Dedicated to the preservation of democracy achieved by the unremitting struggle of the people against oppression and tyranny;

Inspired by the resolve to protect our national and political unity and solidarity by creating an egalitarian society through a new order;

Do hereby, through our representatives in the National Assembly, adopt, enact and give to ourselves, this Constitution.

Part 1: Introductory

2. Islam to be State religion. Islam shall be the State religion of Pakistan.

2A The Objectives Resolution to form part of substantive provisions

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

The Objectives Resolution

Whereas sovereignty over the entire universe belongs to Allah Almighty alone and the authority which He has delegated to the State of Pakistan, through its people for being exercised within the limits prescribed by Him is a sacred trust;

This Constituent Assembly representing the people of Pakistan resolves to frame a Constitution for the sovereign independent State of Pakistan;

Wherein the State shall exercise its powers and authority through the chosen representatives of the people;

Wherein the principles of democracy, freedom, equality, tolerance and social justice as enunciated by Islam shall be fully observed;

Wherein the Muslims shall be enabled to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as set out in the Holy Quran and the Sunnah;

Wherein adequate provision shall be made for the minorities to [freely] profess and practice their religions and develop their cultures;

Wherein the territories now included in or in accession with Pakistan and such other territories as may hereafter be included in or accede to Pakistan shall form a Federation wherein the units will be autonomous with such boundaries and limitations on their powers and authority as may be prescribed;

Wherein shall be guaranteed fundamental rights including equality of status, of opportunity and before law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality;

Wherein adequate provisions shall be made to safeguard the legitimate interests of minorities and backward and depressed classes;

Wherein the independence of the Judiciary shall be fully secured;

Wherein the integrity of the territories of the Federation, its independence and all its rights including its sovereign rights on land, sea and air shall be safeguarded;

So that the people of Pakistan may prosper and attain their rightful and honored place amongst the nations of the World and make their full contribution towards international peace and progress and happiness of humanity.

4. Right of individuals to be dealt with in accordance with law, etc

1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be and of every other person for the time being within Pakistan.

(2) In particular-

(a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;

(b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and

(c) no person shall be compelled to do that which the law does not require him to do.

PART II: Fundamental Rights and Principles of Policy

CHAPTER 1: FUNDAMENTAL RIGHTS

8. Laws inconsistent with or in derogation of Fundamental Rights to be void.

(1) Any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights so conferred and any law made in contravention of this clause shall, to the extent of such contravention, be void.

(3) The provisions of this Article shall not apply to

(a) Any law relating to members of the Armed Forces, or of the Police or of such other forces as are charged with the maintenance of public order, for the purpose of ensuring the proper discharge of their duties or the maintenance of discipline among them; or

(b) any of the-

(i) laws specified in the First Schedule as in force immediately before the commencing day or as amended by any of the laws specified in that Schedule;

(ii) other laws specified in, Part I of the First Schedule;

and no such law nor any provision thereof shall be void on the ground that such law or provision is inconsistent with, or repugnant to, any provision of this Chapter.

(4) Notwithstanding anything contained in paragraph (b) of clause (3), within a period of two years from the commencing day, the appropriate Legislature shall bring the laws specified in **Part II of the First Schedule** into conformity with the rights conferred by this Chapter:

Provided that the appropriate Legislature may by resolution extend the said period of two years by a period not exceeding six months.

Explanation: If in respect of any law Majlis-e-Shoora (Parliament) is the appropriate Legislature, such resolution shall be a resolution of the National Assembly.

(5) The rights conferred by this Chapter shall not be suspended except as expressly provided by the Constitution.

20. Freedom to profess religion and to manage religious institutions.

Subject to law, public order and morality-

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

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

21. Safeguard against taxation for purposes of any particular religion.

No person shall be compelled to pay any special tax the proceeds of which are to be spent on the propagation or maintenance of any religion other than his own.

22. Safeguards as to educational institutions in respect of religion, etc.

(1) No person attending any educational institution shall be required to receive religious instruction, or take part in any religious ceremony, or attend religious worship, if such instruction, ceremony or worship relates to a religion other than his own.

(2) In respect of any religious institution, there shall be no discrimination against any community in the granting of exemption or concession in relation to taxation.

(3) Subject to law,

(a) no religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any educational institution maintained wholly by that community or denomination; and

(b) no citizen shall be denied admission to any educational institution receiving aid from public revenues on the ground only of race, religion, caste or place of birth.

(4) Nothing in this Article shall prevent any public authority from making provision for the Advancement of any socially or educationally backward class of citizens.

25. Equality of citizens.

(1) All citizens are equal before law and are entitled to equal protection of law.

(2) There shall be no discrimination on the basis of sex.

(3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.

27. Safeguard against discrimination in services.

(1) No citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, sex, residence or place of birth:

Provided that, for a period not exceeding forty years from the commencing day, posts may be reserved for persons belonging to any class or area to secure their adequate representation in the service of Pakistan:

Provided further that, in the interest of the said service, specified posts or services may be reserved for members of either sex if such posts or services entail the performance of duties and functions which cannot be adequately performed by members of the other sex:

Provided also that under-representation of any class or area in the service of Pakistan may be redressed in such manner as may be determined by an Act of Majlis-e-Shoora (Parliament).

(2) Nothing in clause(1) shall prevent any Provincial Government, or any local or other authority in a Province, from prescribing, in relation to any post or class of service under that Government or authority, conditions as to residence in the Province, for a period not exceeding three years, prior to appointment under that Government or authority.

CHAPTER 2: PRINCIPLES OF POLICY

31. Islamic way of life.

(1) Steps shall be taken to enable the Muslims of Pakistan, individually and collectively, to order their lives in accordance with the fundamental principles and basic concepts of Islam and to provide facilities whereby they may be enabled to understand the meaning of life according to the Holy Quran and Sunnah.

(2) The State shall endeavour, as respects the Muslims of Pakistan,-

(a) to make the teaching of the Holy Quran and Islamiat compulsory, to encourage and facilitate the learning of Arabic language and to secure correct and exact printing and publishing of the Holy Quran;

(b) to promote unity and the observance of the Islamic moral standards; and

(c) to secure the proper organisation of Zakat, [ushr,] auqaf and mosques

36. Protection of minorities.

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

Part III: The Federation of Pakistan

41. The President.

(1) There shall be a President of Pakistan who shall be the Head of State and shall represent the unity of the Republic.

(2) A person shall not be qualified for election as President unless he is a Muslim of not less than forty-five years of age and is qualified to be elected as member of the National Assembly.

PART IX: Islamic Provisions

227. Provisions relating to the Holy Quran and Sunnah.

(1) All existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah, in this Part referred to as the Injunctions of Islam, and no law shall be enacted which is repugnant to such injunctions. [Explanation: In the application of this clause to the personal law of any Muslim sect, the expression "Quran and Sunnah" shall mean the Quran and Sunnah as interpreted by that sect.]

(2) Effect shall be given to the provisions of clause (1) only in the manner provided in this Part.

(3) Nothing in this Part shall affect the personal laws of non-Muslim citizens or their status as citizens.

28. Composition, etc., of Islamic Council.

(1) There shall be, constituted with a period of ninety days from the commencing day a Council of Islamic ideology, in this part referred to as the Islamic Council.

(2) The Islamic Council shall consist of such members, being not less than eight and not more than twenty as the President may appoint from amongst persons having knowledge of the principles and philosophy of Islam as

enunciated in the Holy Quran and Sunnah, or understanding of the economic, political, legal or administrative problems of Pakistan.

(3) While appointing members of the Islamic Council the President shall ensure that

(a) so far as practicable various schools of thought are represented in the Council;

(b) not less than two of the members are persons each of whom is, or has been a Judge of the Supreme Court or of a High Court;

(c) not less than one-third of the members are persons each of whom has been engaged, for a period of not less than fifteen years, in Islamic research or instruction; and

(d) at least one member is a woman.

(4) The President shall appoint one of the members of the Islamic Council to be the Chairman thereof.

(5) Subject to clause (6), a member of the Islamic Council shall hold office for a period of three years.

(6) A member may, by writing under his hand addressed to the President, resign his office or may be removed by the President upon the passing of a resolution for his removal by a majority of the total membership of the Islamic Council.

229. Reference by Majlis-e-Shoora (Parliament), etc. to Islamic Council.

The President or the Governor of a Province may, or if two-fifths of its total membership so requires, a House or a Provincial Assembly shall, refer to the Islamic Council for advice any question as to whether a proposed law is or is not repugnant to the Injunctions of Islam.

230. Functions of the Islamic Council.

(1) The functions of the Islamic Council shall be-

(a) to make recommendations to Majlis-e-Shoora (Parliament) and the Provincial Assemblies as the ways and means of enabling and encouraging the Muslims of Pakistan to order their lives individually and collectively in all respects in accordance with the principles and concepts of Islam as enunciated in the Holy Quran and Sunnah;

(b) to advise a House, a Provincial Assembly, the President or a Governor on any question referred to the Council as to whether a proposed law is or is not repugnant to the Injunctions of Islam.

(c) to make recommendations as to the measures for bringing existing laws into conformity with the Injunctions of Islam and the stages by which such measures should be brought into effect; and

(d) to compile in a suitable form, for the guidance of Majlis-e-Shoora (Parliament) and the Provincial Assemblies, such injunctions of Islam as can be given legislative effect.

(2) When, under Article 229, a question is referred by a House, a Provincial Assembly, the President or a Governor to the Islamic Council, the Council shall, within fifteen days thereof, inform the House, the Assembly, the President or the Governor, as the case may be, of the period within which the Council expects to be able to furnish that advice.

(3) Where a House, a Provincial Assembly, the President or the Governor, as the case may be, considers that, in the public interest, the making of the proposed law in relation to which the question arose should not be postponed until the advice of the Islamic Council is furnished, the law may be made before the advice is furnished:

Provided that, where a law is referred for advice to the Islamic Council and the Council advises that the law is repugnant to the Injunctions of Islam, the House or, as the case may be, the Provincial Assembly, the President or the Governor shall reconsider the law so made.

(4) The Islamic Council shall submit its final report within seven years of its appointment, and shall submit an annual interim report. The report, whether interim or final, shall be laid for discussion before both Houses and each Provincial Assembly within six months of its receipt, and Majlis-e-Shoora (Parliament) and the Assembly, after considering the report, shall enact laws in respect thereof within a period of two years of the final report.

231. Rules of procedure.

The proceedings of the Islamic Council shall be regulated by rules of procedure to be made by the Council with approval of the President.

PART XII: Miscellaneous

CHAPTER 5: INTERPRETATION

260. Definitions.

(1) In the Constitution, unless the context otherwise requires, the following expressions have the meaning hereby respectively assigned to them, that is to say,

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

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

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

Constitution (Second Amendment) Act, 1974
ACT XLIX of 1974, September 21, 1974
An Act to amend the Constitution of the Islamic Republic of Pakistan

The following Act of Parliament received the assent of the President on the 17th September, 1974, and is hereby published for general information:—

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

It is hereby enacted as follows: –

1. Short title and commencement.

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

(2) It shall come into force at once.

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

3. Amendment of Article 260 of the Constitution,

In the Constitution, in Article 260, after clause (2), the following new clause shall be added, namely :-

“(3) A person who does not believe in the absolute and unqualified finality of the Prophethood of Muhammad (peace be upon him) the last of the Prophets or claims to be a Prophet, in any sense of the word or of any description whatsoever, after Muhammad (peace be upon him), or recognizes such a claimant as a Prophet or a religious reformer, is not a Muslim for the purposes of the Constitution or law.”

Annex B: The Anti-Islamic Activities of Qadiani Group, Lahore Group and Ahmadis (Prohibition and Punishment) Ordinance 1984

ORDINANCE XX of 1984: An Ordinance to amend the law to prohibit the Qadiani group, Lahori group and Ahmadis from indulging in anti-Islamic activities

[Gazette of Pakistan, Extraordinary, Part 1, 26th April, 1984]

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

Whereas it is expedient to amend the law to prohibit the Qadiani group, Lahori group and Ahmadis from indulging in anti-Islamic activities;

And whereas the President is satisfied that circumstances exist which render it necessary to take immediate action;

Now, therefore, in pursuance of the Proclamation of the fifth day of July, 1977, and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance:-

PART I: PRELIMINARY

1. Short title and commencement.

(1) This Ordinance may be called the Anti-Islamic Activities of Qadiani Group, Lahori Group and Ahmadis (Prohibition and Punishment) Ordinance, 1984.

(2) It shall come into force at once.

2. Ordinance to override orders or decisions of Courts.

The provisions of this Ordinance shall have effect notwithstanding any order or decision of any Court.

3. Addition of new sections 298-B and 298-C Act XLV of 1860.

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

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

(1) Any person of the Qadiani group or the Lahori group (who call themselves 'Ahmadis' or by any other name) who by words, either spoken or written, or by visible representation,

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

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

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

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

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

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

Any person of the Quadiani group or the Lahori group (who call themselves ‘Ahmadis’ or by any other name), who, directly or indirectly, poses himself as a Muslim, or calls, or refers to, his faith as Islam, or preaches or propagates his faith, or invites others to accept his faith, by words, either spoken or written, or by visible representations, or in any manner whatsoever outrages the religious feelings of Muslims, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.”

PART III: AMENDMENT OF THE CODE OF CRIMINAL PROCEDURE, 1898 (ACT V OF 1898)

4. Amendment of section 99-A, Act V of 1898.--In the Code of Criminal Procedure, 1899 (Act V of 1898), hereinafter referred to as the said Code, in section 99-A, in subsection (1),

(a) after the words and comma, “of that class,” the words, figures, brackets, letter and commas “or any matter of the nature referred to in clause (J) of subsection (1) of section 24 of the West Pakistan Press and Publications Ordinance, 1963,” shall be inserted; and

(b) after the figure and letter “:95-A”, the words, figures and letters “or section 298-A or section 298-B or section 298-C” shall be inserted.

5. Amendment of Schedule II, Act V of 1898.

In the said Code, in Schedule II, after the entries relating to section 298-A, the following entries shall be inserted, namely:

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

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

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

In the West Pakistan Press and Publications Ordinance, 1963 (W. P. Ordinance No. XXX of 1963), in section 24, in subsection (1), after clause (j), the following new clause shall be inserted, namely:---

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

Annex C: Pakistan Penal Code (Act XLV of 1860)

Pakistan Penal Code Act XLV of 1860, October 6th, 1860
CH XV: OF OFFENCES RELATING TO RELIGION

296. Disturbing religious assembly: Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship, or religious ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

297. Trespassing on burial places, etc.: Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, commits any trespass in any place of worship or on any place of sculpture, or any place set apart for the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse or causes disturbance to any persons assembled for the performance of funeral ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both

298. Uttering words, etc., with deliberate intent to wound religious feelings: Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year or with fine, or with both.

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

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

(1) Any person of the Qadiani group or the Lahori group (who call themselves 'Ahmadis' or by any other name who by words, either spoken or written, or by visible representation:

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

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

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

(d) refers to, or names, or calls, his place of worship a "Masjid";

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

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

298-C. Person of Qadiani group, etc., calling himself a Muslim or preaching or propagating his faith: Any person of the Qadiani group or the Lahori group (who call themselves 'Ahmadis' or by any other name), who directly or indirectly, poses himself as a Muslim, or calls, or refers to, his faith as Islam, or preaches or propagates his faith, or invites others to accept his faith, by words, either spoken or written, or by visible representations, or in any manner whatsoever outrages the religious feelings of Muslims shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.



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