

The Judiciary

2018

A High Court Judge in action on End of Prophethood (KN) front

Islamabad: Justice Shaukat Aziz Siddiqui of Islamabad High Court (IHC) was in the news and mentioned in dispatches prior to March 2018 on various issues including Khatme Nabuwat (KN). During the hearings leading to his verdict the media reported his directions, observations and actions; these are reported here without any comment.

1. The daily Dawn reported the following in its issue of February 22, 2018 (extracts):

IHC asks scholars to assist in identifying non-Muslims

ISLAMABAD: The Islamabad High Court (IHC) has appointed four Islamic scholars as amicus curiae and sought their assistance on six questions regarding the identification of non-Muslims.

IHC Justice Shaukat Aziz Siddiqui during Wednesday's hearing of a petition filed on the identification of non-Muslims in government, semi-government and autonomous organizations, who have not identified themselves as non-Muslims, posed six questions to the amicus curiae....

The court has appointed Prof Dr Hafiz Hassan Madni from Punjab University, former Council of Islamic Ideology (CII) member Dr Mohsin Naqvi, CII member Prof Dr Sahbzada Sajidur Rehman and Mufti Mohammad Husain Khalil Khel.

The questions are: 'Whether an Islamic state could evolve a law to determine identity of Muslims and non-Muslims', 'Whether non-Muslims should be allowed to introduce themselves Muslims,' 'Whether such concealment falls into the ambit of fraud', 'What is the responsibility of the state in such a situation', and 'Whether it is a violation of fundamental rights if the state inquires about the religion or religious beliefs of citizens'.

The court also directed the scholars for their availability from February 26 onwards.

2. The daily Pakistan reported the following in its issue of February 21, 2018 (extracts):

Islamabad High Court orders separation of Khatme Nabuwat and Faizabad Sit-in (Dharna) case

....Khatme Nabuwat case will be heard on daily bases

Islamabad (Online, NNI, INP): ...The Constitution of Pakistan does not recognize Qadianis as Muslims. If Qadianis are to stay in Pakistan, they should do so as citizens and not indulge in thievery (*naqab*) in Islam. We'll not make any compromise on the issue of End of Prophethood. Justice Shaukat Aziz Siddiqui of IHC made the remarks in court when the other day Deputy Attorney General could not present Raja Zafrul Haq Committee Report, that he was playing a strange game with the court, why he should not require the Prime Minister to present himself.... No compromise shall be made on this issue; 'You are not even aware of the sensitivity of this issue; there is no issue more important than the amendment to the Election Act,' the judge said....

3. ARY published the following on February 23, 2018 in Urdu: *Arynews.tv/ihc-hearing-Khatme-e-Nabuwat-case*

No one can change his religion without court permission (Hukm)

Islamabad: Islamabad High Court while hearing a case of Khatme Nabuwat in relation to Election Act issued a stay order (*Hukme Imtinaee*) regarding change of religion, ordering that no one can change his religion without authorization of a court.

As per detail, a plea was heard in Islamabad High Court on Khatme Nabuwwat with reference to Election Act. The hearing was held by single bench of the High Court, Justice Shaukat Aziz Siddique....

NADRA, on court orders, presented a record of registered Qadianis.... Important disclosures were made regarding Qadianis through NADRA records.

NADRA report stated that there were 1,67,473 registered Qadianis in the country. 10205 Muslims switched over to Qadiani status with change in their CNIC. Their data was presented in a sealed envelope.

Justice Shaukat Siddiqui asked the Acting Chairman of NADRA whether NADRA can change religion of a Pakistani Muslim. The Acting Chairman NADRA told the court that NADRA system had no such option; those who change their religion to present a false oath (*Half Nama*) at the time of application for a CNIC, (sic).

Justice Shaukat Siddiqui remarked that all this was the biggest fraud with the state and the Muslim Ummah. Qadianis in order to join government service, tell a lie and pose as Muslim, and they revert to their real faith on retirement.

The court issued a stay order on change of religion and ordered that no one can change his religion without court order; after the stay order now NADRA cannot change anyone's religion (entry in records).

Subsequently the judge held hearings in presence of amicus curiae and state witnesses. A few reports from the media are copied below (sources are mentioned at the end of this story):

- Earlier the National Data Base Registration Authority (NADRA) submitted a report before the court according to which 10,205 persons had changed their religious status from Muslim to Ahmadi. The (Single) bench then directed NADRA to provide details on how many got new passports after changing their religion. (*Pakistan Today*)
- During the hearing, Justice Siddiqui directed Nadra to provide name, father's name, age and details of foreign trips of those persons in a sealed envelope to the court. (*Nation 27 Feb*)
- The FIA on Wednesday sought time from the Islamabad High Court to provide travel history of 6,001 persons who changed their religious status from Muslim to Qadiani on their CNICs. (*Nation, 01-March 2018*)
- Justice Siddiqui remarked that there were several youth who changed their religious status to get foreign citizenship. (*Nation, 01 March, 2018*)
- Mohsin Naqvi (a.c.) added that law for apostates in Pakistan is not clear and that it should be properly implemented. To this Justice Shaukat Aziz Siddiqui responded that proper "amendments have not been made in the Constitution regarding Ahmadis". (*Pakistan Today*)
- "What will be status of people converting to the Ahmadi faith after retiring from public service? Aren't these people fooling the state?" Siddiqui asked, adding that to fool an Islamic state is tantamount to treason. He said that the biggest problem of Pakistan is that instead of majority rights, there is more focus on minority rights. (*Pakistan Today*)
- Both the bench (Siddiqui) and the amicus curiae expressed that the September 7, 1974 legislation through which Qadianis were declared non-Muslim has several lacunas in it. The bench said that this exercise is aimed at providing the legislature with recommendations to cover those lacunas. Sajid ur Rehman (a.c.) said the non-Muslims could not be allowed to participate in the matters that are related to the interests of Muslims. The collective wisdom should decide that what official posts and authorities should be reserved for Muslim, and non-Muslims should not be appointed over these. (*The News*)
- Prof. Dr Hafiz Hassan Madni of the Institute of Islamic Studies, the University of the Punjab assisted the court as amicus curiae and said, "A person who converts from Islam to another faith is an 'apostate' and deserves a penalty prescribed for this." (*Death, according to this mulla*)

He said Ahmadis were more dangerous than non-believers as they were neither Muslims nor Christians and, in fact, they had covered themselves under Islam. (*Nation 27 February, 2018*)

- He (Mulla Madni a.c.) said the oath of Khatme Nabuwat was an essential part of oath for president and prime minister. This oath should be duly included in the amended law, besides making part of the oath of federal ministers, Senate Chairman and other officials.

Justice Siddiqui asked Madni if there was a condition for a judge to be a Muslim. He replied Prophet Muhammad (SAW) has said that a judge should be a learned person both in terms of religion and worldly affairs. A recommendation should be made that a non-Muslim should not be appointed a judge, he said. (*The Nation/27-Feb*)

- Sajidur Rehman (a.c.) said that if a Qadiani pretends himself to be a Muslim for getting a job, it amounts to cheating and fraud with the state and also tantamount to treason. Referring to the incidents from Islamic history, Sajidur Rehman said that for concealing the real faith, major penalty could be imposed on such persons. Sajidur Rehman said the state should include into its list when scrutinizing particular posts.

To a question by the court that there were instances when fingers were pointed at some persons that they changed their religion for some benefit, Sajidur Rahman said that there should be a board of Ulema who should decide about the faith of a person. (*The News*)

In a subsequent hearing Judge Siddiqui directed the Pakistan Electronic Media Regulatory Authority (PEMRA) to provide details on the Muslim Television Ahmadiyya International TV Channel. (*Pakistan Today 2018/03/02*)

Advocate Akram Sheikh was assisting the court as amicus curiae. He was of the view that Ahmadis could not be permitted to adopt Islamic ways and teachings.

In reply to a question whether to install filters and checks, acquiring knowledge about personal faith of citizens can be termed as infringement to any fundamental right guaranteed by the Constitution of Islamic Republic of Pakistan, he replied that as installation of filters and checks requires knowledge about the personal faith of individuals, which may become a tool in the hands of the administration and is capable of being misused, with this note of caution, and with the intent to protect minorities, such data could be collected by making declarations necessary....

He further said, "Hence neither a member of a majority group nor a member of a minority group can change sides, to avail benefits accorded to sects other than its own; and if this is done, it tantamount to a plain fraud on the law, liable to be visited such penalties provided under the law. It should be clearly understood that Qadianis, Ahmadis and Lahori group are admittedly a distinct and separate religious (minority) sect, having been declared as such by the Second Constitutional Amendment, followed by corresponding changes brought about in the law. They themselves consider and declare members of other sects of Islam as non-believers/non-Muslims," the lawyer added. (*Nation, 03-March-2018*)

Also, "Addressing the court the lawyer suggested a strict action" against those who changed their religious status from Muslim to Ahmadi..." Sheikh being concerned over the revelations in the government report said that "Ahmadis can't be allowed to exercise Islamic rituals as it could "hurt the religious sentiments of Muslims..." The lawyer suggested that one should submit an affidavit on the finality of prophethood mandatory for issuance of a CNIC (Identity Card). (*Pakistan Today, 2018/03/02*)

Notes: 1) Judge Siddiqui invited no Ahmadi scholar or advocate to present a different view on issues under consideration of the court.

2) Siddiqui finally issued his Order Sheet on March 9, 2018. The Order and our comments on it are available in Chapter 1A. In July this judge made public his 172-page Judgment Sheet. Our comments on this sheet are available in our Supplementary Monthly Report for July 2018.

References:

1. <https://dailytimes.com.pk/209593/court-can-seek-legislation>
2. <https://nation.com.pk/03-Mar-2018/census1998-data-on-ahmadis>
3. <https://www.pakistantoday.com.pk/2018/03/02/court-can-ask-govt>
4. <https://www.dawn.com/news/1392732>

Quotable quotes by the Chief Justice of SC Pakistan`

Islamabad; February 20, 2018: Mr. Saqib Nisar the Chief Justice of Pakistan described the Parliament as supreme but said the Constitution was above that and had set the limits. This and other comments on law-making powers of the Parliament are very relevant to the anti-Ahmadiyya laws and the Constitutional Amendment Nr. II. We reproduce below the quotes as reported in *The News International* on February 21, 2018 (extracts):

Constitution above parliament: CJ

Says document sets limits; any legislation against fundamental rights can be struck down; given powers will be used with full authority

Any legislation found in contravention of the fundamental rights of the citizens could be struck down, he added....

The chief justice said it was conveyed the other day that the court could not intervene in the process of legislation. "But I reiterate in front of senior media persons that the Parliament is supreme but there is a Constitution above it, which has prescribed our limits", the chief justice said.

The chief justice said any legislation made by Parliament and found in contravention of fundamental rights of the citizens could be struck down in accordance with law.

"We will not transgress our authority unless any provision of the Constitution relating to fundamental rights of the citizens is violated," the chief justice remarked.

The petitioner, Hamid Mir, however, submitted that the chief justice had not named anyone, saying some people were bent upon making it an issue and hence the chief justice should not take that into account. "By no mean, we are giving any explanation nor are we bound to give explanation. We are also not scared but the power given to us by Allah and Constitution will be used with full authority," the chief justice remarked.

One accused of fraud imposes un-Islam on Ahmadi witness

Canal View Township, Lahore; May 22, 2018: Mr Abdullah Gill, an Ahmadi is a drug inspector. He registered a case against a local medicine manufacturing company for supplying non-standard ORS to the government.

On May 22, 2018 he went to the drug court in official capacity to follow-up the case. When about to record his statement on oath, the defense lawyer told the judge that the inspector was a *Mirzai* so he should take the oath of a non-Muslim. "I belong to the Ahmadiyya denomination. I call myself a Muslim but we are non-Muslim vide the Constitution. You can administer me whichever oath you want", said Mr Gill. At this the state attorney told the defense lawyer that Ahmadis also believe in Allah.

It seems that the defense attorney wanted to assert to his advantage that the prosecution witness was a ‘non-Muslim’ while the accused was a ‘Muslim’. On insistence of the defense lawyer the judge administered Mr Gill the oath, “I solemnly declare that I will tell the truth, the whole truth and nothing but the truth”. The wording of oath for Muslims is slightly different: “I swear by Almighty God that I will tell the truth, the whole truth and nothing but the truth”.

Ahmadi denied release on bail

Chak 368, District Layya; October 02, 2018: Mr. Javed Ahmad Grumman was charged in a fabricated blasphemy case under PPC 295-C in police station Chobara, District Layya on July 1, 2018 in FIR Nr 288/18. His interim bail was cancelled on July 14, 2018, he was arrested and sent to Layya Jail. On August 6, Rai Yasseen Shaheen the Additional Sessions Judge Layya refused his post-arrest bail.

His bail application was submitted in the High Court (Multan Bench). Here also Justice Sarfraz Ahmad refused him release on bail. He is still behind bars only for his faith.

Lahore High Court reserves decision on anti-Ahmadi plea

Lahore; October 16, 2018: The daily jang reported that the Lahore High Court reserved its decision regarding a writ, worthy of hearing or not, about the implementation of the Khatme Nabuwwat law. Justice Shahid Waheed heard the plea, of one Abid Hussain, who took the position that the ‘end of prophethood’ law was not being implemented strictly which gives rise to blasphemy incidents; so the court should order the government to mention non-Muslim status of Qadianis in their ID cards.

New affidavits of faith and belief

It is reliably learnt that some authorities in the government are in the process of introducing affidavits of faith for their employees and recruits etc. A sample pair, one for Muslims and another for non-Muslims, is attached at the Annex IV. This step is fraught with serious, long lasting and damaging consequences. It deserves analysis and comment, even if brief in a report like this.

These affidavits are the outcome of a verdict given by Justice Siddiqui of Islamabad High Court on March 9, 2018 on the issue of *Khatme Nabuwwat* (finality of prophethood).

The fact that there is one affidavit for Muslims and another one for all non-Muslims shows that the human resources in the departments/organizations are being divided in two groups based on their commitment to Islam as understood officially. These divide one Pakistani identity into two distinct and divisive categories: Muslims and non-Muslims.

While holding hearings in this case, Justice Siddiqui was reported in the media to have remarked:

1. If they (Ahmadis) wish to stay on in Pakistan, they should do so as non-Muslim citizens, and not commit thievery against Islam (*naqb na lagain*). (bbc.com/urdu/pakistaan-43288413)
2. IHC restores all 8 laws concerning the end of prophethood. **“If heavens fall, I don’t care”**: Justice Siddiqui (*The daily Mashriq; November 15, 2017*)

The language of the affidavits is bizarre – particularly for ‘non-Muslims’. A negative statement is unnecessarily imposed on the deponent. He is told to state ‘that I am a non-Muslim.’ Why should he say what he is not? He could be simultaneously non-Jew, non-Sikh, non-Ahmadi, non-Bahai as well as non-White, non-European, non-Punjabi etc. Also, an Ahmadi is required to add, ‘and belong to Ahmadi’. This makes no sense, as ‘Ahmadi’ is not a religion. An Ahmadi is a person who considers himself a Muslim and believes Mirza Ghulam Ahmad to be the Messiah promised in Islam.

People with no religion have no place in either affidavit. Will they be disowned by Pak bureaucracy?

The mulla insists that Ahmadis must accept the ‘non-Muslim’ identity and status imposed on them, and distance themselves from Islam; this is not acceptable to Ahmadis, as it violates their fundamental belief. The mulla’s wish was granted and implemented by Justice Siddiqui. These affidavits not only serve as tools to open the door of discrimination against Ahmadis, but also would thereby facilitate all sorts of social, political, professional and financial hardships and deprivations against them. This judge, in order to worsen Ahmadis, has imposed a procedure on the administration that will make millions sign unnecessary and iniquitous affidavits. The entire exercise is in fact Ahmadi-specific, and the single-judge bench did not hide his motivation.

These affidavits will trigger still more criminal charges and litigations against Ahmadis, ranging from apostasy allegations to civil suits concerning marriage, inheritance, etc. and deprivations from jobs, hardships in careers, difficulties in businesses etc. As per the mulla’s understanding of Sharia the penalties could range from stoning to death, lashings in public, loss of eligibility to inherit from even parents, etc. This is not mere speculation; this is demanded incessantly by the mulla in his rallies and open conferences. Justice Siddiqui has discretely, even unabashedly, hinted the need for such discrimination in Para 4 of his judgment, objecting against Ahmadis’ *“access to dignified and sensitive posts resulting in accumulation of all benefits”*, etc.

These divisive affidavits are being imposed through departmental rules; they are not a requirement of the Constitution, even if the definitions are derived from a controversial amendment to the Constitution.

It is not only the higher social and political values that are at risk, these affidavits will directly and effectively affect the lives of millions in offices, in the field – everywhere. These will affect their social relations, dining together, lodging, career development, job environment – everything. Religion and belief will become the top factor in formulating human resources policy and its implementation. Soon, the belief factor will discriminate among Muslims for being Deobandi, Barelvi, Shia, Ahle Hadith, Ahle Quran, Muqallid, non-Muqallid etc. This would make the state non-functional.

NADRA has already implemented these affidavits for its personnel. Reportedly it is considering imposition of these affidavits on all citizens for various purposes dealt with by NADRA.

The affidavit for Muslims requires the deponent to sign the given statement that he believes ‘in the absolute and unqualified finality of the Prophethood of Muhammad (Peace be upon him) the last of the Prophets and do not believe in, or recognize as 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).’

It may be noted that mere faith in the ‘Finality of Prophethood’ is not enough; it is the official detailed given meaning and interpretation that is equally incumbent upon the deponent to accept.

In the second affidavit everyone has to state, right in the beginning, that he is a Non-Muslim. As such, for an Ahmadi, it is not enough to declare that he is an Ahmadi; he must declare the non-Muslim status imposed upon him. This is absurd.

Verdict of a Malaysian court

July 6, 2018: In a report released by Free Malaysia Today on July 6, 2018 following was stated, (extracts):

JAIS (Selangor Islamic Department) has no right to stop Ahmadiyya Muslims, court rules.

The Shah Alam High Court today ruled that Islamic authorities in Selangor have no right to stop religious activities of the Ahmadiyya Community, who follow a sect which Muslims generally regard as being outside the fold of Islam.

Judge Vazeer Alam Mydin Meera also ruled that the Selangor Islamic Department (JAIS) has no right to bring charges against members of the sect for violating a state *fatwa* against the Ahmadiyya teachings.

The court ruled that the Selangor Islamic religious authorities have no jurisdiction over Ahmadi Muslims in the state.

The judge also ordered the state chief Shariah prosecutor and chief religious enforcement officer to stop their investigations against the (Ahmadi) applicants.

The Judge also ordered five defendants – chief religious enforcement officer, the investigating officer, JAIS, state chief Shariah prosecutor and the Selangor government – to pay the (Ahmadi) applicants RM 25,000 in costs.

Lawyer Aston Parva told reporters the essence of today’s ruling was that the Ahmadi Muslims could manage their religious affairs without interference from the state religious authorities.