

## **For joining Civil Service, Army, Judiciary, IHC declares faith affidavit compulsory**

*Parliament must ensure protection of Prophethood finality*

**Justice Siddiqui in ‘historic’ verdict tells Parliament to “also take measures which will completely terminate those who scar this belief (in end of prophethood)”.**

### **HRCP calls on the government to appeal the verdict**

*Islamabad: On March 9, 2018* Justice Shaukat Aziz Siddiqui of Islamabad High Court (IHC) announced his verdict on a case concerning some “controversial amendments” to the Khatme Nabuwat (KN, end of the prophethood) oath in the Election Act 2017 and gave a judgment that carried a number of rulings on issues related with not only religion but also secondary religious affairs, their implications and applications in Pakistan’s government and society.

In this story we intend to reproduce mostly quotes from independent sources, lawyers, intellectuals, journalists etc. so that a fair view of the honorable judge’s verdict and its impact is presented.

Before we reproduce the judgment, we put down first the pledge and assurance of the great founding father of Pakistan, Mr. Jinnah, on this issue of religion and the new state, so that the IHC rulings are seen and judged in the correct and apposite background.

“...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 where there is no discrimination no distinction between one community and another, no discrimination between one caste or creed and another. We are starting with this fundamental principle that we are all citizens and equal citizens of one State.”

However Justice Siddiqui, the single judge bench of IHC has his own opinion and has announced a verdict whose excerpts we reproduce below:

SHAUKAT AZIZ SIDDIQUI: For the reasons to be recorded later on, these petitions are allowed with following declarations and directions.

2. It is mandatory for every citizen of Pakistan, to get their identity with authentic particulars. No Muslim is permissible to disguise his/her identity as non-Muslim and no non-Muslim has the right to appear as a Muslim. Any citizen who does so, will betray the State resulting in exploiting the Constitution.

3. Definition of Muslims and Non-Muslims is written in Article 260(3)(a)(b) of the Constitution which is signified by nation’s consensus. Unfortunately, according to this distinct standard vital legislation could not take place. Consequently, a Non-Muslim minority disguised as a Muslim Majority by hiding their real identity and betraying the State, due to which not only complications were born but also paves way to oppose extremely important Constitutional requirements. According to the report of the Establishment Division there is no data of any civil servant’s record related to this, which is alarming and a major setback and also it is against the spirit and requirements of the Constitution.

4. Most of the minorities residing in Pakistan hold a separate identification in reference to their names and identity but according to the constitution one of the minorities do not hold a distinct identification due to their names and general attire which leads to crisis. Due to their names they can easily mask their belief and become part of Muslim majority. Also they can then gain access to dignified and sensitive posts resulting in accumulation of all benefits.

5. It is significant to prevent this situation because the appointment of a non-Muslim on constitutional posts is against our organic law and rituals. Similarly non-Muslims do not qualify to be elected on certain constitutional offices. ...

6. The matter of absolute and unqualified finality of prophethood of Muhammad (Peace be upon him) the last of the prophets is the nucleus of our religion. In History, countless attacks were made in this. It is mandatory for every Muslim to guard and protect this nucleus. The parliament being a highly prestigious institution and a representative of Pakistan nation, is the guardian of this religious core. In this scenario, it is the right of Muslim majority to expect proper awareness and sensitivity. Other than the protection of the basic belief of Khatam-e-Nabuwwat, the parliament should also take measures, which can completely terminate those who scar this belief.

8. It is mandatory for the State to safeguard the sentiments and religious beliefs and also protect the rights of minority according to the religion of the State of Pakistan "Islam" declared by the Constitution of Pakistan.

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

1. In order to get CNIC, Passport, Birth certificate and entry in voter list, an affidavit must be sworn by the applicant based on the definition of Muslim and Non-Muslim provided by Article 260 (3) (a) (b) of the Constitution.

2. An affidavit mentioned above should be a requirement for appointment in all Government and Semi-Government institutions especially, Judiciary, Armed Forces and Civil Services, etc.

3. NADRA must fix time duration for any citizen who intends to make correction/change in the already given particulars, especially religion.

5. The Government of Pakistan, shall take special measure ensuring availability of correct particulars of all the citizens so that it should not be possible for any citizen to hide his/her real identity and recognition. Government shall also take immediate steps for conducting inquiry concerning alarming and visible difference in the population record of Qadianis/Ahmadis available with the NADRA and figures collected through recent census in this regard.

6. It is binding on the State to take care of the rights, feelings and religious beliefs of the Muslim Ummah and to also ensure the protection of rights of minorities in the light of teachings of "Islam" being the religion declared by the Constitution of the country. ...

This order is being issued in both English and Urdu versions.

(SHAUKAT AZIZ SIDDIQUI) JUDGE

It is rare in history that a people ignore their founding father's pledge in this manner.

Earlier in the previous month during the hearing of this very case, Justice Siddiqui issued a stay order (*hukmeimtinaee*) regarding change of religion, ordering that no one can change his religion without authorization of a court.

Here it is relevant to quote Art. 18 of Universal Declaration of Human Rights:

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

Surely Justice Siddiqui must have been aware that the state of Pakistan is a signatory to UDHR.

According to one legal opinion, if no appeal is launched, the court's directives will have to be followed.

During the hearing of this case Justice Siddiqui came up with remarks which were quoted by the press as news items; these ought to be put down here for archives:

- If (Ahmadis) wish to stay on in Pakistan, they should do so as non-Muslim citizens, and to not commit thievery against Islam (*naqbnalagain*). ([bbc.com/urdu/Pakistan-43288413](http://bbc.com/urdu/Pakistan-43288413))
- The Ulama should demand (of the government) that Pakistan be run as per its constitution. *The daily Dunya; Faisalabad, February 27, 2018*
- A committee of ulama should examine candidates' religious beliefs before their appointment. *The daily Pakistan; Lahore, March 2, 2018*
- (Here) People talk more about the rights of minorities than the majority. *The daily Jang; Lahore, March 1, 2018*

Justice Siddiqui's judgment was received with no mixed feeling by the intelligentsia; they, with a few exceptions, criticized it forthrightly. Below we mention some of these opinions:

- ✓ Ms. Zohra Yusuf, a board member at the Human rights Commission of Pakistan called the ruling "very dangerous".
- ✓ Mr. Saroop Ijaz of Human Rights Watch said:  
The judge "is not only attacking everybody's religious freedom in Pakistan but he is also focusing on one particular sect, which is Ahmadis.  
"A judgment like this would enable and incite violence."
- ✓ "The witch hunt of Ahmadis continues. Unfortunately the fundamental rights enshrined in the constitution are marred by the Zia era legislation that Pakistan's parliament is yet to review. These legal instruments have turned Pakistan into a state that practices religious apartheid against one community," said Raza Rumi, editor, political analyst.

“Sadly, the judiciary has upheld anti-Ahmadi constitutional provisions and laws time and again. The judges, however strongly they might feel about matters of faith, must desist from such a path.”

- ✓ Mr. I.A. Rehman, a senior columnist said, “The court took up this matter unnecessarily. Such a judgment should not have been given. This will make it more difficult for Ahmadis to get jobs etc. Nobody has right to ask anyone about his personal matter – neither our faith nor our constitution allows this. The government should go into an appeal against this judgment.”
- ✓ Mr. Waqar Gillani wrote in *The News* on March 18, 2018: “A recent judgment by the IHC, directing the government to adopt stricter measures in letting people declare their religion at the time of accepting government job and getting official identity documents, paves the way for religious persecution at the state level and more intolerance in society.”

Extreme right-wing elements were delighted with Justice Siddiqui’s verdict, and the vernacular press printed his remarks and rulings in headlines.

A mulla Naveed Hashmi wrote in the daily *Ausaf* on March 2, 2018: “Justice Siddiqui is the big name that is forehead ornamentation of our judiciary and the subject of Muslims’ prayers. It is he, who casts deadly fear all the time in the hearts of the distorted, the unbridled freedom lovers, the enemies of Pakistan ideology and the honour of the Prophet and the rebels of End of Prophethood.”

Capt. ® Safdar, an MNA (PML-N) and son-in-law of Mr. Nawaz Sharif, the former prime minister, was most impressed by Justice Siddiqui’s rulings and demanded that IHC judgment as related to the end of Prophethood should be made a part of the Constitution of Pakistan. (*The daily Jang; March 16, 2018*)

Mullas of End of Prophethood faction were delighted with the IHC verdict. They demanded immediate action on its rulings in their meeting on March 11 at Evan-i-Iqbal presided by Maulvi Saeed Ahmad Inayatullah visiting from Saudi Arabia.

The very nature, content and impact of this trial and judgment deserve mention. Many from the realm of law, academia, press and H.R. took notice and aired their opinion on this unusual case.

Syed Mujahid Ali, a distinguished column-writer wrote in humsub.com.pk: “The question is whether IHC is sanctioned (*majaz*) to hold a one-sided examination of this sensitive issue of a small minority group that is most harassed. Unless an authorized court like the Supreme Court clearly rules, it is improper to collect information and then raise questions over any citizen’s belief and personal pursuits.

“IHC is perhaps unaware that no state interferes in personal pursuits and belief of its citizens. All over the world such intrusion is considered improper and unacceptable. This issue is related to an individual’s freedom and his right to have belief of his choice. A citizen’s belief has no connection with a citizen’s relationship with the state. If a state practices probe in its citizen beliefs, it will lead to accusing a minority of rebellion and deceit.”

Rana Tanveer pointed out a serious lapse in the hearing of this case, in the Daily Times of March 11, 2018. He wrote, “The judgment has been passed without the fulfillment of legal prerequisites. A very famous and well-known principle of law is that no one can be condemned unheard. That is exactly what happened in this matter. Ahmadis, who are the major affectees of this judgment, were never made party in the petition nor were issued notice to give their point of view.

“...The court has also issued a translation of this order in Urdu, which will make it easy for anti-Ahmadi zealots, many of who cannot read English, to understand and implement, in their way.”

Here we should reproduce a most relevant extract from a document of permanent standing, the original Pakistan (Lahore) Resolution of 1940: “Adequate, effective and mandatory safeguards should be specifically provided in the Constitution for minorities in these units and in the regions for the protection of their religious, cultural, economic, political, administrative and other rights, and interests in consultation with them; and in other parts of India where the Mussalmans are in a minority, adequate, effective and mandatory safeguards for them and other minorities for their religious, cultural, economic, political, administrative and other rights, and interests **in consultation with them.**”(emphasis added) This was deliberately ignored.

The daily *The Nation* of March 10, 2018 pointed discerningly to another aspect: “The judgment derives its rule from Article 5 of the constitution, which demands loyalty to the state. The IHC here is doing an extremely purposive interpretation of the clause. To allow such a purposive interpretation and to go almost as far as to make a new law on it, it is prudent for the judges to look at the context of the situation, context which was badly missed in this case.”

The daily *The Nation* highlighted the on-going trend of judicial over-reach: “In this context, it is not immediately clear why the Islamabad High Court felt it necessary to rule on this matter or direct the government to take any action given that the initial cause of offence had already been dealt with. It is certainly not clear why the court would go a step further, in what is arguably an instance of judicial overreach, to engage in such a questionable interpretation of the Constitution to justify a decision that, in addition to being deeply unsettling, also amounts to enacting new laws concerning the conduct of governance and the nature of citizenship in Pakistan.”

The rulings regarding change of religion in identity documents will create problems. As regards the CNIC etc, a procedure was already in place and Ahmadi had learnt to deal with identity issues through NADRA etc. It is not uncommon that when processing a CNIC, an Ahmadi applicant or NADRA officials make a mistake and an incorrect entry gets incorporated in the card. Now to put that right, the applicant is required to go to a court (rather than NADRA) where the issue may be blown out of proportion by the judge or by a mulla who intervenes and agitates the change as act of apostasy which according to him calls for a Sharia penalty (according to the mulla: Death).

Justice Siddiqui’s verdict broadly requires that citizens be identified as Muslims and Non-Muslims as per definitions given in the Constitution. Ahmadi, for day to day purposes, had accepted to call themselves ‘Ahmadi’ in place of ‘Muslim’ or ‘Ahmadi Muslim’. Now, it is most likely that they will have to choose often between being a Muslim and a Non-Muslim. If they choose Muslim, they could be imprisoned for three years; the only other choice of Non-Muslim is imposition of a ‘false’ religious identity that Ahmadi would resent immensely. This is serious violation of Freedom of Religion. (In fact, already some government departments have implemented this Muslim/Non-Muslim terminology to deny Ahmadi their rights.) Justice Siddiqui’s ruling will most likely create a great deal of unnecessary and mal-intended difficulties for many Ahmadi.

Jobs shall be affected adversely for all marginalized groups. The daily *The Nation* foresaw this and observed: “Earlier this week, in a judgment that rests upon extremely questionable logic and a mind-bogglingly wide interpretation of the constitution, the Islamabad High Court has ruled that all citizens who aspire to work in the civil service, judiciary, or armed forces will first need to declare their religion, and that the religious affiliation of Pakistan’s citizens must be recorded on all official identity documents, including national ID cards, passports, and birth certificates.”

Ahmadis have repeatedly experienced that while seeking a government job, the interviewing officials and boards visibly change their attitude after they come to know the religious identity of the applicant.

Then there is the serious problem of security which is directly linked to such rulings issued by the executive or the judiciary. The editor of the daily *The Nation* foresaw the repercussion in this field and commented thus: “This provision would only make sense if there was no fear of violence against the Ahmadi population. With the various attacks on Ahmadi religious sites, even the most conservative hard liner today would not deny that there is significant danger to being openly Ahmadi. IHC should have the foresight to indicate the abuse and bloodshed such a law could open the doors to. Moreover, this order to make a sort of black list for Ahmadis, which is eerily reminiscent of concentration camps, is targeting of a religious group, and goes against the equality clause of the constitution.” (*March 10, 2018*)

Justice Siddiqui emphasized display of religious identity. On this Mehr Tarar commented as follows:

“The honorable judge further stated that he found “alarming” that “one of the minorities” was “often mistaken for being Muslims” due to their names and general attire, that has the possibility to lead them “to gain access to dignified and sensitive posts, along with benefits.” And that “citizens” failure to declare their ‘true faith’ was ‘against the spirit and requirements of the Constitution’.

...

“In a country where Ahmadis now mostly live in self-defensive, survivalist anonymity, they are doomed either way. Hide what defines them. Or reveal their faith to qualify for governmental jobs, thus ensuring their exclusion from most areas. This court injunction to clearly state your faith on different forms is, to my utter sadness, a reminder of the Nazi-issued “Jewish badge”. You don’t need to be a student of world history to know the fate of the Jewish people who wore that badge: persecution, stigmatization, humiliation, segregation, monitoring and controlling of movement.” (<https://www.dailyo.in/voices/pakistan-ahmadi-muslim-islambad-high-court-islam/story/1/22768.html>)

The mulla is on record repeatedly to insist that the Sharia penalty for apostasy is death, although this is baseless according to some high-ranking scholars. Encouraged by official verdicts like the instant, one mulla Qari Ayub Chinioti, a few days later, said unabashedly, “Those who adopted Qadiani religion should be punished for apostasy.” (*The daily Nawa-i-Waqt, March 16, 2018*) These bigots are sensible enough to demand ‘punishment for apostasy’, and not mention ‘death’ openly.

It appears that Justice Siddiqui got tired of observing the demanding etiquettes and language of modern day judiciary and let it go with a bang: “... Other than the protection of the basic

belief of Khatme Nabuwwat the parliament should also take measures which can completely terminate those who scar this belief.” Reference to the Oxford Dictionary leaves one in no doubt that, in plain language, a legalized massacre is urged.

Ms. Mehr Tarar wrote a five-page article two days after Justice Siddiqui wrote his short order on March 9. She gave it the title: **Why Ahmadi Muslims are doomed in Pakistan?** After describing in essential detail Ahmadis’ plight in the past 43 years, she came to the conclusion: “The latest court verdict and its principal points are a mere legal whitewashing and authentication of the already existing persecution, ostracisation, and what I look at as a mostly corpse-less but an organized genocide of Ahmadis in Pakistan. Now it is an open season on Ahmadis in Pakistan. And now more than ever, Pakistan is no country for anyone who looks at himself and lives his life as an Ahmadi Muslim. “And to me, as a human being, as a Muslim and as a Pakistani, this is not the Pakistan of Mohammad Ali Jinnah. And this is not in any way the true representation of Islam of Allah as delivered to and preached by my beloved prophet, Muhammad, peace be upon him.”

There are some auxiliary elements to this case, which deserve a mention. Justice Siddiqui, in his short order artfully took care of guarding his flanks. He praised the parliament and even a leading politician Raja Zafrul Haq of the ruling party.

As for the parliament, he wrote: “This fact is applauseable, that soon after the emergence of legal default in the Election Act, 2017 the parliament by its collective wisdom and understanding displayed complete sensitivity towards the matter and brought it in conformity with the requirements. These matters demand such sensitivity and unity.” It should be clarified that the parliament thereby effectively denied the right of vote to Ahmadi citizens.

For Raja Zafarul Haq, the judge had the following commendation: “Senator Raja Zafarul Haq is well known for his legal acumen as lawyer and experienced legislator as well who by chairing the committee made a very commendable report. Moreover, with his honesty and wisdom he handled all the points very comprehensively, which annulled all the negative impressions. Now, it is for the Parliament to further deliberate on the issue or not.”(Para 7) Raja Zafar has been a senior office holder in the Saudi-financed *Rabita Aalam-i-Islami* and has consistently played anti-Ahmadi role in Pakistan as well as the *Wahabi* and *Sunni* world. He represents PML-N in Khatme Nabuwwat rallies and conferences. He was known as the opening batsman in General Zia’s political team. Last year in an ‘All-Parties’ conference in Islamabad on February 1, 2017, while seated next to Maulana Fazlur Rehman (JUI-F) and Sirajul Haq (Jamaat Islami) he stated, “... Qadianis were declared non-Muslims in 1974 but further legislation was delayed till 1984. If Qadianis think that I am responsible for that, I don’t care.”*Birds of the same flock!*

We place on record here the names of Amicus Curiae that Justice Siddiqui chose to help in arriving at his ‘historic’ verdict and rulings:

**Religious scholars**

Prof. Dr. Hafiz Hassan Madni (26.02.2018)

Prof. Dr. Sahibzada Sajid-ur-Rehman (27.02.2018)

Prof. Dr Mohsin Naqvi (28.02.2018)

Mufti Muhammad Hussain Khalil Khel (1.3.2018)

## Constitutional experts

Mr. Muhammad Akram Sheikh, Sr. ASC. (02.03.2018)

Dr. Muhammad Aslam Khaki, ASC assisted by Ms. Yasmeen Haider, Advocate (05.03.2018)

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

Siddiqui wrote down: ... the role of Mr. Arshad MehmoodKiyani, learned Deputy Attorney General (representing the government) is also appraisable who with zeal and hard work successfully fulfilled/completed all the responsibilities/assignments given to him by the Court which has helped a lot in reaching right conclusions.

During the proceedings of this case, Justice Siddiqui countermanding the newly passed Election Act 2017 by the Parliament, restored all 8 laws concerning the end of prophethood. **“If heavens fall, I don’t care”**, he said. (*The daily Mashriq, November 15, 2017*) Thus he added singularly judiciary’s share to denial of basic rights of Ahmadis, despite the fact that the Supreme Court had openly supported these rights.

Also:

- ✓ According to Justice Siddiqui “the appointment of a non-Muslim on constitutional posts is against our organic law and rituals.” Law experts have mentioned only three such posts: the president, the prime minister and seat on Federal Shariat Court. Justice Siddiqui is perhaps proposing to lengthen this list.
- ✓ The existing law prohibits Ahmadis use eight specified Islamic terms like *RaziAllahAnhu, Masjid*. The mischief of this law brought no credit to Pakistan. Now Siddiqui requires the Parliament “to ensure that all the terms which are specifically used for ‘Islam’ and ‘Muslims’ are not used by the persons belonging to any of the minorities...” Between Justice Siddiqui and his four amicus curiae, this list could be a fair sized booklet of Arabic words.
- ✓ Justice Siddiqui requires true faith of a person to be recorded in birth certificate. People wonder how to know the belief system of a new born baby.
- ✓ Mulla Allah Wasaya of Aalami Majlis Khatme Nabuwwat, the petitioner, at the time of approaching IHC perhaps never dreamt to obtain such a windfall from Justice Siddiqui. He has a judicial license for a lot now; for action, sky is the limit.
- ✓ In overview, one saw in Pakistan in 1974 a coalition between the mulla and the politician, in 1984 it was mulla-military alliance, now in 2018 it is the mulla and the single-bench judge. It is exigent that the Chief Justice Supreme Court takessuomotu notice to undo this undesired syndication.
- ✓ Last but not least, even the Awami Worker Party finds that “the decision sets a dangerous precedent” and that “the verdict could make non-Muslims more vulnerable to mob violence instead of trying to end their systematic persecution”. (*Dawn, March 15, 2018*)

Human Rights Commission of Pakistan termed the ruling as cause for serious concern and suggested that it should be appealed by the federal government. “This ruling has serious repercussions for all religious minorities, not least the Ahmadiyya Community. Requiring a faith declaration for Computerized National Identity Cards, passports, birth certificates and entry into voter lists will further choke the capacity of minorities to exercise their fundamental rights. These requirements will only enable

and deepen institutional discrimination against minority communities,” the Commission added. “The consequences of this ruling could be deadly for members of this community, given their already precarious personal safety situation in the country.” It is essential that the government act in aid of its minority citizens by appealing this ruling speedily and robustly, said the HRCP. (It is more than 17 days that the government has not indicated any move in that direction.)

The talented Visiting Fellow at Harvard Law School, Mr. Yasser Latif Hamdani has dived deeper to find the remedy to this judicial misadventure. He wrote: Justice Siddiqui’s short order on the Election Act of 2017 has referred to the Article 5 (Loyalty to the state):

“I submit that the judgment itself is in violation of Article 5, since it gives the impression of bias and partiality against a specific community. The oath of office taken by all judicial officers requires them to decide matters impartially and purely on the basis of law and constitution.

“It is time that the Supreme Judicial Council should look into the matter seriously. The Council should take requisite action over conduct unbecoming of a judicial officer and for attempts to provoke hatred and violence against Ahmadis in Pakistan akin to what happened to Jews in Nazi Germany.”