Hearings on Religious Freedom in India and Pakistan: Mr. M.L. Shahani Prepared Testimony

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Testimony of M.L. Shahani

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NON-MUSLIM CITIZENS IN PAKISTAN

Thank you very much for this opportunity to describe how the laws of Pakistan affect the lives of religious minorities in my country. I have served for over 25 years as an attorney in Pakistan, mainly in private practice and, for a brief time, as Advocate General of Sindh and Judge of High Court of Sindh. I have represented many individuals from minority faiths who have been drawn into the machinery of our legal system because of their religious affiliation.

The essential point I wish to make is this: Non-Muslim citizens in Pakistan are by operation of law separate and unequal citizens. Understandably so, because the Constitution of the Islamic Republic of Pakistan is loaded in favor of the Islamic faith, which in practice makes non-Muslim citizens of the country unequal citizens. Please consider the following Constitutional provisions, among others:

- The Preamble says that the sovereignty of the Republic rests with God Almighty.

- Article 2 of the Constitution says that Islam shall be the State Religion.

- Article 2A adopts the Objectives Resolution as an Annex to the Constitution. Unfortunately, before the Resolution was made a substantive provision of the Constitution the word "freely" in the clause relating to the freedom for the non-Muslim minorities was removed, so that the adoption carried the potential of reducing the protections afforded non-Muslims.

- Article 20 of the Constitution deals with freedom of religion subject to law.

- Articles 51 and 106 adopt a communal electorate (Separate Electorate).

- A non-Muslim lawyer cannot appear before Federal Shariat Court by virtue of the embargo of Article 203-E of the Constitution.

- The President and Prime Minister not only have to be Muslims but must declare so while taking their oath of office.

(For these constitutional provisions, see APPENDIX-I.)

The impact of these constitutional provisions are as follows:

- A non-living organ (the State) has been given Religion. The other citizens who do not belong or subscribe to the State religion live in perpetual fear.

- When religion is mixed with Politics, both lose their efficacy as instruments of change in the society. For example, when Religion which is on a higher pedestal meets Politics, it looses the higher position and Politics gains impetus to meet Religion at the higher level.

- The fears of non-Muslims when the Objectives Resolution was adopted were expressed by the fact-finding team of the International Commission of Jurists. Their report was published in the form of a booklet by the Human Rights Commission of Pakistan. The Commission described some laws which treat Muslims and non-Muslims differently and then said (at pages 101-102):
"[T]hese ordinances may offend
against the Constitutional guarantees of religious freedom and equality before the law, but they are possibly immune from Constitutional challenge because of the validation given to all the ordinances made by the President during Martial Law .... Whether or not this is so, there is undoubtedly anxiety amongst those belonging to the non-Muslim religions that their position will become even worse with the adoption of the Constitution (Ninth amendment) Bill. Under that amendment the injunctions of Islam as laid down in the Holy Quran and Sunnah shall be the supreme law and source of guidance, and any law held by the Federal Shariat Court to be repugnant to those injunctions will cease to have effect. Although this power is not supposed to extend to any provisions in the Constitution, including the guarantees of religious freedom, there is no confidence that this will ultimately be proved to be so. Their concern stems partly from the existing application of Islamic Criminal Laws on non-Muslims but also from the fact that, when the Objectives Resolution was incorporated as an annex to the Constitution by Revival of Constitution of 1973 Order, the word "freely" was omitted from the clause concerning adequate provision for minorities to profess and practice their religions. This unexplained omission leads them to fear that there will be further encroachment on their religious freedom with the development of Islamisation." (Emphasis is mine.)

- Non-Muslim citizens of this country were being killed on the false accusation of Blasphemy, such as the late Nainat Ahmar and others in extra-judicial killings, such as Banto Masih. Sections 295-B and 295-C PPC have become tools in the hands of fundamentalists to persecute non-Muslim citizens of the country.

- Superior Judiciary has also ruled that the phrase "subject to the law" as used in Article 20 of the Constitution (a fundamental right guaranteeing freedom of religion and protection from taxes on the basis of religion) means "subject to Islamic Law" (1993 SCMR 1918 at page 1772 to 1774). This ruling will also affect Article 4, which specifically guarantees that all citizens (without classification of religion) are equal before the law and entitled to equal protection of law. When the law relating to equality between a Muslim citizen and non-Muslim citizen would be decided on the touchstone of Holy Quran and Sunnah, the law will always tilt in favor of a Muslim citizen while a non-Muslim will continue to live in perpetual fear, and fear in even greater degree because of the Objectives Resolution.

- Some argue that in an Islamic State a non-Muslim cannot judge the causes of Muslims. Thus non-Muslim citizens are not be appointed as Judges, and the services of the existing non-Muslim Judges can be dispensed with.

- Sub Constitutional Legislation. Section 295-C was introduced in the Penal Code relating to blasphemy of the Prophet Mohammad, PBUH. By virtue of the decision of the Federal Shariat Court, it now carries a mandatory death sentence. The Criminal Proceedings Code states that the judge presiding at the trial of a blasphemy case shall be Muslim. The provisions of Section 295-C are more abused than observed. Most of the cases under Section 295-C are based upon false accusations and/or aimed at settling personal scores or personal vendettas. Moreover, when Muslim judges preside over such trials, it has been observed that the judgment delivered is neither fair nor legal.

One such example is that of Gul Masah. He was accused of blasphemy by a neighbor with whom he had a dispute over a water tap. The complainant charged Gul Masah and his brother with blasphemy. During the course of investigation it transpired that his brother was not even in the village when the incident is alleged to have occurred. In the first information report, the complainant gave the names of two witnesses who, according to him, were present when the words of blasphemy were uttered by the accused. The witnesses did not support the case of the prosecution and they stated that they were not present nor that they knew of any such incident relating to the blasphemy attributed to the accused.

The judge in the judgment wrote "although the prosecution

witnesses did not support the case of prosecution, [nevertheless] the complainant is a young man of 21 years, a student of third year college, has a beard and appears to be true Muslim and had no rhyme or reason to falsely implicate accused." He then sentenced the accused to death. Anywhere internationally, after the prosecution witnesses do not support the case of the prosecution, the accused is honorably acquitted, but not in this case. Thus, the religious qualifications of a judge mandated by the law forced the judge to render an unfair and illegal judgment, which was eventually turned down by the Appellate judges of High Court for obvious reasons.

The fears of non-Muslims, however, are further strengthened by the recent behavior of some judges who are appointed in the High Court. These judges, when addressing the public at large, are advocating that it is the duty of a Muslim to silence the voice of a blasphemer. Recently this has been so said by Justice Akhter of the Lehore High Court. [Daily Dawn dated August 28, 2000; copy available for inspection.]

- Islamic Hadd punishment has been introduced. Federal Shariat Court is the Appellate Court to hear appeals arising out of conviction under HADD laws. While a non-Muslim can be accused under the HADD laws, nevertheless he cannot be defended by a non-Muslim lawyer, because Article 203-E of the Constitution states that only a Muslim lawyer can appear before Federal Shariat Court. This, in fact, is also a negation of the right given under Article 10 to the accused [for any offense] to be defended by a lawyer of his own choice. Thus, what has been given in the earlier part of the Constitution in Article 10 has been taken away by the subsequent part of the Constitution. For this reason, the Constitution is unevenly balanced and loaded against non-Muslim citizens of Pakistan.

- Unfortunately, Pakistani law also has serious inequalities in the area of domestic relations. For example, under decisions of the Federal Shariat Court, if a Christian woman converts to the Muslim faith, her earlier Christian marriage stands automatically dissolved. On the other hand, under the Divorce Act, if a Muslim woman converts to any other faith and marries according to the converted faith, her prior marriage remains intact; the conversion has only the effect of giving the prior spouse a ground for divorce.

Proposals/expectations from United States Government

Patently, the practice of the Constitution and the laws is in violation of the Universal Declaration of Human Rights. The non-Muslim citizen in Pakistan expects that the machinery should be provided for the enforcement of Universal Declaration of Human Rights.

The governments who are violating the solemn undertaking inherent in ratifying the Universal Declaration of Human Rights should be taken to task, and sanctions should be imposed in the same manner as in the case of South Africa. In the case of South Africa, it was colored apartheid; while, in the case of South Asian countries, it is religious apartheid.

It is also expected that any country who perpetrates injustice in any form or manner is not a country governed by the rule of law. Let us remember Martin Luther King, Jr. who said "Injustice anywhere is a threat to justice everywhere". Injustice is not confined within the borders of the country where it is being practiced. It has a trans-national impact.

Concluding, I again paraphrase Martin Luther King, Jr. who said that: "The greatest sin of our times lies not with the few who destroy, but with the many who remain silent."