

Hearings on Religious Freedom in India and Pakistan: Mr. Mujeen Rahman Prepared Testimony

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PERSECUTION OF AHMADIS IN PAKISTAN

Presentation by:

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Mr. Rehman is a member of the Ahmadiyya Community, with 39 years experience of trials, appeals and Constitutional jurisdiction. He will speak of legal provisions and on-the-ground Ahmadiyya situation from personal knowledge and experience and defense counsel in large number of Ahmadi cases.

INTRODUCTION:

Religious belief is a matter of conscience and conscience cannot be compelled. Any attempt to do so is bound to inflict incalculable misery on those who are subjected to such compulsion. Denial of religious freedom to Ahmadis in Pakistan is not merely a cleavage between religious groups. It is a State-sponsored institutionalized denial. It can properly be described as an attempt to change theology and prescribe a religion for Ahmadis against their conscience.

Present day Pakistan presents a bleak picture of persistent relentless unmitigated denial of religious freedom to Ahmadis over more than last two decades. This denial of religious freedom in all its various manifestations is deep and pervasive. There is clear and convincing evidence in the police reports, judgments of the courts, statute books, the record of the Parliament and the national press, that Ahmadis in Pakistan are confronted with a situation of blatant denial of religious freedom.

RIGHT OF SELF IDENTIFICATION:

The freedom of religion begins with freedom to profess faith in religion of ones choice. The right to practice and propagate that faith follows the right to profess. But even before the right to profess there is a right of self-identification. That right has been denied to Ahmadis in Pakistan.

The systematic institutionalized denial of religious freedom to Ahmadis started in 1974 when as a political maneuver Zulfikar Ali Bhutto officially classified Ahmadis as non-Muslim by the Constitutional 2nd Amendment Act 1974

To judge and assess the enormity, sweep and extent of the denial of religious freedom one needs to know what Ahmadi faith or Ahmadiyyat is. Ahmadiyyat is not a new religion of faith nor is it a cult. "The Ahmadiyya belief as professed and practiced for the last 100 years, objectively viewed and analyzed by outside observers, as discovered and found by research scholars and partially recognized in judicial pronouncements is a Movement within the broad spectrum of Islam. According to Ahmadiyya perception It is a movement for spiritual revival. "The Movement does not depart from Islam in the very least, nor does it add one iota to the doctrine and teachings of Islam. Yet, it is a fresh presentation of Islam and more particularly of the wisdom and the philosophy that underlies its teachings based upon and deriving entirely from the Holy Quran and pronouncements and practices of the Holy Prophet of Islam."(2) In 166 countries of the world including USA, Canada, UK, Germany, Africa, Indonesia and India - the country where the founder of the movement was born - Ahmadis are identified as Muslims.

Viewed in this background nothing of religion is left for an Ahmadi when he is not allowed to profess and practice Islam as his religion. The constitutional amendment of 1974, strikes at the very heart of the religious belief of the Ahmadiyya Community. They are deprived of the very essence and substance of their faith. Ahmadis are denuded of their religious identity.

LAW OF APOSTASY

The council of Islamic Ideology, which is a council, created under article 230 of the constitution prepared a draft legislation prescribing the death penalty for Apostasy in which the expression Apostasy has been defined:

"means renunciation of Din-e-Islam by a Muslim, which includes denial by him of any of the essential of Din including Khatme Nabuwat."

The 1974 amendments declared Ahmadis "not - Muslims" for supposed denial of the concept of Khatme Nabuwat. The Ahmadi-faith was defined by constitution as a denial of that concept. Thereafter the denial was defined as apostasy thus the very belief itself is made punishable with death.

Ordinance XX prohibits Ahmadis to identify themselves as Muslim or their religion as Islam. Which itself is a heavy burden on their conscience but to declare themselves as Ahmadis is also not free from the mischief of law. In Pakistan there are large number of forms and declarations required to be filled in for job applications and admission into educational institutions for the purposes of service record etc. Prior to 1984 all Ahmadi declarations identified them as Muslims and their religion as Islam. Having been burdened by law they have now to declare their faith as Ahmadi. This has been treated in some cases as change of religion and therefore Apostasy punishable with death. A case in point, is that of an Air Force Corporal Basharat Ahmad whose case was referred by Ministry of Defense to the Islamic Ideology Council. Like other Government Departments, certain forms and declarations are required to be filed at regular intervals. Corporal Basharat Ahmad filed his declaration and since the new law prohibited an Ahmadi from declaring his faith as Islam, he declared his faith as Ahmadi. Compared with declaration of his previous years, this was treated as a change of religion and the case was referred by the Minister of Defense to the Islamic Ideology Council. In its meeting dated 17th August, 1984 the Council adopted the following resolution:

"So far as the change of religion and apostasy ... Council recommends that if any Muslim changes his religion and becomes an Ahmadi/Qadiani (including Lahori Group), he on the basis

of Quranic injunction, Sunnah and Ijma', would become apostate and Islamic community as a whole considers such person liable to be "Slain". The Council thus recommends that if any Muslim changes religion, then he may be asked to rescind or reconsider his decision and if he does not agree or repent then the grace period of three days during which he will be invited and persuaded to retrace himself back to Islam. But if, in spite of it, he does not do so, then according to the Islamic law shedding his blood is permissible and sentence of death be awarded. Regarding the aforementioned reference the Council recommends that till such time that the law of apostasy is enforced all apostate should be at once removed from service."

Corporal

Basharat Ahmed was dismissed from service for "changing his religion from Islam to Ahmadiyyat." The airman concerned was apparently dismissed without assigning reason. The airman applied to the Chief of Air Staff for reinstatement in the service. In reply to the request he was informed by letter No. Air Headquarters/22879, 5th February, 1989.

"Your application has been examined at an appropriate level. It is informed that you were dismissed from service under Section 20(1) of PAF Act 1953, for committing "Apostasy" i.e. changing religion from Islam to Ahmadiat. In accordance with the existing policy airmen dismissed under the said clause are ineligible for re-instatement in the PAF."

So the situation is that if he declares his faith as Islam he is guilty under Section 298-C PPC and if he abides by the law and declares his faith as Ahmadi he is an apostate, liable to death punishment.

While the apostasy law is still in the draft form it is being executed in extra judicial manner. In the North West Frontier Province one Daulat Khan, who was son of a Mulana belonging to a family of Mullas, opted to become an Ahmadi and was charged for blasphemy. One Riaz Ahmed who was making arrangement for his defense and release on bail was beaten to death by a Mob right in the front of the police station in the close proximity of the court. The law enforcing agencies stood close by and watched the killing. Abdul Rashid, another companion, was severely wounded and was left by the Mob as

dead. He survived and was forced to leave his country to save his life. He is presently living under political asylum in Holland.

In the daily Dawn of August 28, 2000, a Senior sitting Judge of the Lahore High Court Mian Nazeer Akhter is reported to have said in a public meeting that there were two options for Muslims. They can seek legal action against those committing blasphemy Ahmadis in accordance with the law of the country concerned. In case of absence of any law they can follow the traditions set up of Ghazi Illam-ud-Din Shaheed. Which means assassinating the person who is perceived or purported to have committed blasphemy according to the perception of the killer without recourse to law.

RIGHTS TO PROFESS & PRACTICE

In Pakistan the clergy and the State have merged their authority; neither is available against the other. The legislation and judicial pronouncements provide clear and convincing evidence that Ahmadis are being forced to change Theology.

Section 298-C PPC is so widely worded that anything under the sun can be brought within the mischief of the section. Every manifestation of religious belief for an Ahmadi is an offense, whether it is done privately or in public. Ahmadis may be prosecuted under Section 298-C for their social etiquettes and behavior, which is rooted in spontaneous essential habit. After an in-depth study and analysis of the situation of Ahmadis, Professor Yohannan Friedman was driven to the conclusion that "Ordinance 20 of April, 1984 has transformed the daily life of an Ahmadi in Pakistan into a crime"¹. A Canadian Professor of comparative religion Antonio Guelterri observed,

"The most sinister feature of Section 298 (c) is that it amounts to a kind of Orwellian attempt at the thought control.

Persons are to be charged and tried not on the basis of alleged anti-social acts, offensive even as the definition of these acts might be, such as calling one's place of worship a mosque. Rather, one is to be tried on the basis of one's inner state of mind or intentions, whether one deliberately intends to mislead or deceive other people with respect to his/her identity as a Muslim. Who can ascertain this short of a confession?"(3)

There are cases against Ahmadis under Section 298-C for manifestation of religious beliefs covering over not less than 36 different forms of day-to-day practices; Marriage Invitation card, greeting card, writing of Qura'anic verse on a Neon sign, writing Kalema on a Tomb-Stone, Display of buntings on Prophet Day celebrations, reciting Holy Qura'an in loud voice, an obituary Notice and offering Funeral prayer have been brought under charge U/S 298C PPC. The list of acts, which attracts 298-C PPC may be added infinitely. A representative case in point is that of one Karamat Hussain, an Ahmadi of Nowshera, who was one of the very early victims of the Ordinance XX and was charged for greeting a fellow citizen with the traditional Assalam-o-Alaikum, meaning God Bless you. The person was not only charged, but also actually convicted and sentenced by a court to 6 months imprisonment.

As on 8th September, 2000, there were 2943 Ahmadis who have been charged under various offenses for their religious belief and practice and no less than 200 Ahmadis are still facing charges of blasphemy involving death penalty. A tabulated statement of cases registered against Ahmadis on different counts is attached as Annexure-B. Another tabulated statement of Ahmadis facing false charges under 295-C involving death sentence is attached as Annexure-C.

RIGHT TO WORSHIP

The Ahmadi places of worship themselves are not Immune from attacks or desecration. Large number of places of worship in all the four provinces of Pakistan have been demolished, desecrated, sealed or handed over to the miscreants by the administration very recently. On December 17, 1999, the police and local authorities in Khyaban Colony, Faislabad prevented Ahmadi worshippers from attending Friday prayers. The premises were cordoned off and the worshippers were forcibly prevented from entering. When the worshippers asked the police for a written order, no response was given. Within weeks, the authorities sealed the mosque.

During the short period of September 1999 to January 2000,

at least 7 places of worships (mosques) were demolished, desecrated and in sealed. In Bahawalnagar Punjab a mosque was sealed. In Dera Gaza Khan mosque sealed in 1986 was handed over to non-Ahmadis. In Badin, Sindh Assistant Commissioner stopped the repair of an Ahmadi mosque and ordered its demolition. In Faisalabad, Punjab the Ahmadiyya worship place was sealed. In Madumalli, Dist: Sialkot Punjab the mosque was desiccated and in Nasirabad, Sindh the place of worship was desecrated and sealed. A tabulated statement is attached as Annexure-D.

ROUND THE GLOBE TWICE

A classic example of denial of right of worship can be found in the case of Mubarak Nusrat in the Pakistani province of Sindh. He was charged under 298-C for having prayed while he was in the police lock-up. His trial in court lingered on for 11 years. During this period he had to travel long distance to attend his court hearings. It Pakistani human rights activist aptly observed, during the trial the accused and his advocate, Ali Ahmad Tariq, had to travel thousands of kilometers for their appearances in the various courts. The accused, a meticulous man, claimed that had he kept a proper log, it would have shown that by January 2000 the total number of kilometers covered would have amounted to 98,840. Nusrat and his attorney may like to know that this distance is over twice the measurement of the equatorial circumference of Earth (40,076 km), the planet on which they exist. He was sentenced to two months and twenty-one days of imprisonment and a fine of Rs.3000/- because he had gone round the globe twice to earn his conviction

RIGHT TO COMMUNICATE AND DISSEMINATE INFORMATION

The newspaper, periodicals, journals and other publications of Ahmadiyya Community are also subjected to severe restrictions. There have been as many as 45 cases against the printer and the publisher of the Ahmadiyya organ, the Daily Al-Fazal, and there have been 43 cases registered under Section 298-C against various journals and periodicals. These cases severely impair the religious activity of Ahmadis in writing and disseminating their publications or to maintain communication with various sections of the Ahmadiyya Community.

Thirty-eight cases have been registered against the Daily Al-fazl involving 121 workers and journalists. Sixty three cases have been registered against other weeklies and periodical published from Rabwah involving 161 workers. The Editor of Daily Al-fazl faces charges in 42 different cases. The printers of various Ahmadiyya periodicals face charges in 93 various cases. The editor of monthly "Ansarullah" faces charges in 18 cases. The publisher of the monthly "Ansarullah" faces charges in 17 cases. More than 400 issues of Ahmadiyya periodicals were proscribed by the Government. 62 books/publications published by the Ahmadiyya Community before April 1984 have been proscribed by the Government. A tabulated statement attached as Annexure-E.

ABDICATION OF JUDICIARY.

The judicial process has undergone a gradual erosion and has virtually abdicated its function as protector of religious freedom. In 1959, In the case of Agha Abdul Karim Shorish Kashmiri versus Province of West Pakistan, the Lahore High Court observed that "Ahmadis as citizens of Pakistan are also guaranteed by the constitution the freedom to profess and proclaim they are within the fold of Islam". The court held that Ahmadis could not be prevented from professing their faith in; Islam notwithstanding their doctrinal differences with other sects of Islam.

In the year 1978 in the case of Abdul Rehman Mubasher versus Amir Ali Shah, the Lahore High Court held that notwithstanding the constitutional amendment declaring them non-Muslim, Ahmadis could call their place of worship as Masjid and could call Aazan and could adopt Islamic practices.

But In 1984 in the case of Mujeeb-ur-Rahman versus Federation of Pakistan the same judge sitting as the Chief Justice of the Federal Shariat Court validated the Ordinance XX being "An implementation of the constitutional fiat". However the court also observed, "the ordinance does not interfere with the right of the petitioners or other Qadianis. They are at liberty to profess Qadianism or Ahmadism as their religion and to profess their faith in Mirza Ghulam Ahmed of Qadian as prophet or the promised Messiah or the Promised Mehdi. They are also at liberty to practice their religion and worship inter alia in their places of worship according to the tenets of their religions."

In 1992 in the case of Mirza Khursheed Ahmed and others versus The Province Of Punjab, Justice Khalil-ur-Rahman of Lahore High Court made observations to the effect that when Ahmadis recite Kalima Tayyeba , they commit an offense not under section 298-C PPC but under section 295-C PPC which is punishable with death.

By a strange perversion of logic the cardinal Muslim credo became blasphemy.

In Nankana, Sahib a case based on the allegation of issuing invitation card on a marriage, registered under 298-C PPC was converted in to 295-C PPC. When the matter was taken to the High court the Lahore High Court not only refused to grant bail, but also went a step further then the case of Mirza Khursheed Ahmed and said that even when Ahmadies invoke blessings on the Prophet Muhammad (peace be upon him) by way of traditional Darud, they commit an offense under Section 295-C PPC and bail can not be allowed. Thus by judicial interpretation invoking blessing upon the Prophet has become blasphemy.

In the year 1993 in Zaheer-ud-Din case the minority opinion set aside conviction with the observation that:

"This conviction is defective because in view of the discussion and findings already record for an Ahmadi to wear a badge being 'Kalima Tayyaba' inscribed on it does not per se amount to outraging the feelings of Muslims nor does it amounts to his posing as Muslim."

The minority further held:

"The exhibition or use of 'Kalima Tayyaba' correctly reproduced, properly and respectfully exhibited cannot be made a ground per se for action against those who use 'Kalima Tayyaba' in such a manner. If for ascertaining its peculiar meaning and effect one has to reach the inner recesses of the mind of the man wearing or using it ----- then it would be beyond the scope of the law and in any case it will infringe directly the religious freedom guaranteed and enjoyed for the citizens under the Constitution, where mere belief unattended by objectionable conduct cannot be objected to".

The majority view in Zaheer-ud-Din case, however, held that wearing badge of Kalima Tayyaba by Ahmadis was a provocation for mainstream Muslims, the court observed:

"So, if an Ahmadi is allowed by the administration or the law to display or chant in public the Shaair-e-Islam, it is like creating a Rushdi out of him. Can the administration in that case guarantee his life, liberty and property and if so at what cost?"

In 1997 section 295-A was included in the schedule of Anti-Terrorism Activities Law. This provision was also used against Ahmadis, and the ordinary cases under 289-C, pending in various courts over a period of time, with no nexus with any terrorist activity were transferred to anti-terrorist courts in order to procure quick convictions with long sentences. Thus the denial of self identification was followed by denial to profess religion of choice followed by denial and curtailment of religious practice under 298-C PPC which was followed by legislation and interpretative broadening of denial of religious freedom by the judgment of courts which was further followed by converting the practice of religion by an Ahmadi into a terrorist activity, The Supreme Court ruled in Mehram Ali's Case, that in order to attract jurisdiction of the Anti-Terrorist Court, the offense must have some nexus with terrorism. But the courts without regard to the letter and spirit of law continue to charge Ahmadis under Anti-Terrorism Act. The denial of religious freedom is pervasive and unmistakable.

PROGNOSIS

"The right to freedom of thought, conscience and religion is probably the most precious of all human rights, and the imperative need today is to make it a reality for every single individual regardless of the religion or belief that he professes, regardless of his status, and regardless of his condition in life. The desire to enjoy this right has already proved itself to be one of the most potent and contagious

political forces the world has ever known. But its full realization can come about only when the oppressive action by which it has been restricted in many parts of the world is brought to light, studied, understood and curtailed through co-operative policies; and when methods and means appropriate for the enlargement of this vital freedom are put into effect on the international as well as on the national plane."⁽¹⁾

The denial of religious freedom of Ahmadies at the state level continues un-abated. And the future does not hold out any hopes either.

The clergy in Pakistan made a quantum jump in power and influence during the Zia-ul-Haq period and as a result of fear psychosis created by the clergy the influence continued to rise during subsequent political regimes. General Pervaiz Musharaf initially put up a neutral face, but very soon came under the spell of the clergy. Mr. Mahmood Ahmed Ghazi, the member of Security Council and Advisor to General Pervaiz Musharaf, is himself a clergy. He was educated in Madresa and is Imam and Khateeb of Faisal Mosque in Islamabad. He appeared as a Jurist-Consult in the Federal Shariat Court, he took an extreme line, harder than the other fundamentalist scholars and clerics who appeared in the court as Amicus. Whereas according to others, the present Ahmadies and their children could not be treated as apostates, only future converts could be treated as such, according to Mahmood Ahmad Ghazi, not only the new converts or the present Ahmadis, but also their children and children's children are liable to punishment for apostasy. A child born in an Ahmadi family is an apostate. The lenient view is that a child born in Ahmadi family should be taken over by state to be brought up in accordance with Islam. It was so stated by the Advocate General of Punjab during a court hearing.

President Mohammad Rafiq Tarar is a die hard member of Majlisa-e-Ahraar, the precursor of Majlis-e-Khatm-e-Nabuwat. During the Zia-ul-Haq period he was included in a delegation which went to South Africa to oppose Ahmadis in a case in a South African court. His presence in the presidency is a constant support and encouragement to the forces of religious intolerance. One cannot be very optimistic about the change of things within near or foreseeable future.

Any inquiries or interventions by human rights organizations on the situation is met by a standard official response is that it is a question of religious susceptibilities of mainstream Muslims and the West does not understand the issue. Such a response is really evasive and misleading. Any intervention at the official level needs to be on the broader International

covenants Anti-Human rights concerns. International intervention can be more usefully made with reference to 11th August, 1947 speech of Mr. Mohammad Ali Jinnah in the first session of the Constituent assembly of Pakistan. That position still holds good and no Pakistani establishment has yet had the courage to officially depart from that position.

In Pakistan the clergy and the state have merged their authority; neither is available to stand against the other. The judiciary too has gradually abdicated and yielded its essential role as protector of fundamental liberties. At times the judiciary has not only sanctioned and validated the denial of religious freedom, but have even instigated such denial. The state is using its political authority and apparatus to enforce change of theology. The religious freedom of Ahmadis is at its lowest ebb.