

Section 298 (B) - AHMADIYYAS

(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 address, any person, other than a Caliph or companion of the Holy Prophet Muhammad (pbuh) as “Ameer-ul-Mumineen” “Khalifatul-Mumineen” “Khalifatul-Muslimeem” Sahaabi” or “Razi Allah Anho”;

(b) refers to or address, any person, other than a wife of the Holy Prophet Muhammad (pbuh) as “Ummul-Mumineen”

(c) refers to, or address, any person other than a member of the family “Ahle-bait” of the Holy Prophet Muhammad (pbuh) 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 be liable to a fine.

(2) Any person of the Qadiani group or Lahori group (who calls 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 be liable to a fine.

This section is deliberately discriminatory to prevent Ahmadis from practicing their own belief. The law violates Article 18 of the International Covenant on Civil and Political Rights (ICCPR), and gives license to persecute Ahmadis. The second amendment to the Constitution declared Ahmadis as non-Muslims. Several civil suits were filed to take over Ahmadi mosques and to seek injunctions against Ahmadis. Finally, in November 1977 the Lahore High Court passed a judgment dismissing orders of the subordinate courts granting injunctions against Ahmadis. In the **Abdur Rehman Mubashir’s case**,¹ the Court ruled:

“It may be noticed that although the Muslims of the Sub-Continent and their Ulemas have been declaring the Qadianis as infidels since at least the eighties of the last Century i.e. for over 9 years and there has been litigation between them about the use of mosques and there have been at least two country-wide agitations in Pakistan on the demand of the

¹ Abdur Rehman Mubashir v. Amir Ali Shah, PLD 1978 Lahore 113 at 190.

Muslims for declaring the Qadianis as a non-Muslim minority but the demand made in the plaint has been made for the first time sometimes last year. On behalf of the respondents an attempt was made to explain the delay in raising these pleas on the ground that this question arose after the Constitution declared the Qadianis as non-Muslims. This explanation cannot be accepted for the reasons firstly that the Constitution has not conferred any particular right on the Muslims.”

The outcome of Rehman Mubashir’s case prompted the hard liners to press for a law and Zia-ul-Haq gladly obliged.

There are numerous prosecutions under this section but relatively fewer reported cases. The **Ata Ullah v State**² highlights the discrimination that Ahmadis face in Pakistan. In this case, an Ahmadi was arrested for committing an offence under Section 298-B. It was alleged that the accused constructed a place of worship that could be mistaken for a mosque. Despite the accused offering to remove anything that could be associated with Islam e.g. minarets, he was refused bail. The Lahore High Court appointed two amicus curiae- Mr Bilal Ahmad Qazi and Mr Muhammad Haq Nawaz Qamar, who held that:

“the persistent behaviour of the Qadianis shows that they do not adhere to the law of the land and deliberately violate the Constitution claiming to be real Muslims.”

Section 298 (C)

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 a Muslim or calls, or refers to his faith as Islam, or preaches or propagates his faith, or invites other to accept his faith, by words, either spoken or written or by visible representation or in any manner whatsoever outrages 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 a fine.

This section was enacted in the PPC in 1984, subsequent to a constitutional amendment in 1974 declaring Ahmadis to be non-Muslims. This section criminalises Ahmadis if they refer to themselves as Muslims and it has been used as a weapon against them. Although there have been reports of cases under this section, there are not many reported cases in the law reports. The law is discriminatory and persecutes Ahmadis.

² Ata Ulla v. The State, PLD 2000 Lahore.364.

The Ghaffar Ahmad v. State case³

In this case, three Ahmadis stood accused under Section 298-C, they were granted bail as the FIR was based on an alleged confessional statement made 13 years ago before the FIR was lodged

The case of Khurshid Ahmad⁴

In this case, certain orders were passed by the Provincial Home Secretary and the District Magistrate Jhang banning the centenary celebrations by the Ahmadis which were challenged by Mirza Khurshid Ahmad and Hakim Khurshid Ahmad, petitioners and office bearers of the central and local organisations of the said community. The petition was dismissed by the court stating that for reasons of public policy, public good and interests of the ordinary people of the country, justifiable basis exist for banning religious celebrations of Ahmadis

The case of Khan Muhammad⁵

The petitioner, Khan Muhammad was arrested under Section 298-C of PPC, by police station Dera Ghazi Khan for having had written Kalma Tayyaba and verses of the Holy Quran inside the place of worship of the Ahmadis. It was alleged that the petitioner by doing so, had committed an offence under the mischief of Section 298-C of the PPC. He was refused bail by the trial court. Later, the applicant was released on bail as according to the judge, the petitioner did not appear to have offended the provision of Section 298-C PPC, his petition was thereafter allowed.

3. Recommendations

1. Unless repealed, criminalisation of offences related to religion contained in chapter XV of PPC should carry ingredients of malicious intent (*mens rea*) and they should be made non-cognizable and compoundable.
2. All trials under this chapter should be conducted at the level of the High Courts.
3. Those making false accusation under this chapter should be punished and a section in the law be added to that effect.
4. In trials carried out under Section 295-C PPC, standards of Tazkiya-al -shuhood should be applied to witnesses.

³ Ghaffar Ahmad v. The State, MLD 1081(2001).

⁴ Khurshid Ahmad v. Government of Punjab, PLD 1992 Lahore High Court.1.

⁵ Khan Muhammad v. The State, NLR 1987 Criminal 771(1) Barkat From Protection to Exploitation (The laws against Blasphemy in Pakistan (AGHS Legal Aid Cell) at165.

5. Eventually all sections of law under the chapter of PPC titled 'Offences relating to Religion 'that are discriminatory or undermine fundamental rights or principles of due process and fair trial should be repealed.