
Chapter - XV

OF OFFENCES RELATING TO RELIGION

295. Injuring or defiling place of worship, with intent to insult the religion of any class.—Whoever, destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

SYNOPSIS

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| 1. Scope and summary. | 5. Any place of worship. |
| 2. Charge. | 6. "Object held sacred". |
| 3. Procedure. | 7. Any class of persons. |
| 4. Defiles. | 8. Intentionally. |

1. Scope and summary. Section 295, P.P.C., falls in Chapter XV, "Of Offences Relating To Religion," which intends to prevent wanton insult to the religious notions of a class of person. This section, as the perusal of it reveals, is intended to protect any place of worship or any object held sacred by any class of persons from insult, destruction and damages. The section is intended to respect the religious susceptibilities of persons of different religious creeds or persuasions. Courts have got to be circumspect in such matters and to pay due regard to the feelings and religious emotions of different classes of persons with different beliefs irrespective of the consideration whether or not, they share those beliefs or whether they are rational or otherwise in the opinion of the Court. [AIR 1958 S.C. 1032] Section 295 speaks of defiling of any place of worship of any object held sacred by any class of people. It does not require investigation into possession or ownership of the land. [PLD 1962 Dacca 476] The ingredients of S. 295 are:-

- (i) *first*, that a person should destroy, damage or defile;
 - (a) any place of worship or
 - (b) any object held sacred by any class of persons; and
- (ii) *secondly*, (a) he should have the intention of thereby insulting the religion of any class of persons, or
 - (b) the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion. If any one of the ingredients is not present the section cannot apply.

Provision of S. 295-A, P.P.C., is attracted against a person who deliberately and maliciously insults or attempts to insult the religion or the religious belief of a person or class of persons. Where FIR does not indicate that the accused destroyed, damaged or defiled any

[S. 295-A]

[295-A.]

Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs. Whoever, with deliberate and malicious intention of outraging the religious feelings, of any class of the citizens of Pakistan, by words, either spoken or written or by visible representations insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to [Ten]² years, or with fine or with both.]

SYNOPSIS

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| 1. Historical background of legislation of law on blasphemy in Pakistan. | 6. "Deliberate and malicious intention". |
| 2. Scope. | 7. Forfeiture of offending copies. |
| 3. Charge. | 8. Procedure—Cognizance of offence. |
| 4. Obtaining of sanction under S. 196, Cr.P.C. | 9. Appreciation of evidence. |
| 5. Constitutional validity of S. 295-A. | 10. Benefit of doubt. |

1. Historical background of legislation of law on blasphemy in Pakistan. Blasphemy according to book "Words and Phrases" legally defined by Butterworths Vol. I, is defined as under:

"Blasphemy is a misdemeanour at common at common law punishable by fine and imprisonment. It consists in:

- (1) scoffingly or irreverently ridiculing or impugning the doctrines of the Christian faith;
- (2) in uttering or publishing contumelious reproaches of Jesus Christ; or
- (3) in profane scoffing at the Holy Scriptures or exposing any part thereof to contempt or ridicule. It is not blasphemy with due gravity and propriety to contend that the Christian religion or any part of its doctrine, or the whole or any part of the Holy Scriptures, is untrue.

The offence of avowing blasphemous and impious opinions contrary to the doctrines and principles of the Christian religion on the part of a person who has been educated in or has at any time made profession of the Christian religion consists in law of asserting or maintaining that there are more gods than one or denying the Christian religion to be true or the Holy Scriptures to be of divine authority, by writing, printing, teaching or advised speaking."

Historically speaking the Blasphemy Law was enacted by the British to protect the religious sentiments of the Muslim minorities in the Sub-Continent before partition against the Hindu majority. After the creation of the Pakistan, the Muslim themselves were in majority. Section 295-A of the Pakistan Penal Code was enacted by Act (XXV of 1927) due to the agitations ensued following the decision of the Lahore High Court in the notorious Rangila Rasool's case. [AIR 1927 Lah. 590] In 1980, section 295-A was added to the P.P.C. In 1982, section 295-B was introduced. While in 1986, section 295-C was legislated. Initially life imprisonment was the sentence prescribed. However, in 1991 this was replaced with mandatory death penalty. A Muslim cannot be attributed blasphemy because if he permits an offence u/s. 295(c) of the Code, it will amount to apostasy and he becomes a *murtid* (a person who repudiates Islam after embracing it). [PLD 2002 Lah 587]

2. Scope. Section 295-A is meant to safeguard and protect deliberate and intentional outrage of religious feeling or belief of any class of the citizen of Pakistan. The section is not confined to the words either spoken or written but it includes insults or attempt to insult by visible

¹ Inst. by Act XXV of 1927.
² Subs. by Cr. L. (Third Amendment) Ordi. XXI of 1991. PLD 1991 Cent. St. 437 w.e.f. 7.7.1991.

[S. 295-B]

FIR being not a substantive piece of evidence, can only be used for corroboration or contradiction of the complainant's statement which he makes before the Court on oath. P.Ws. contradicting materially regarding factum of writings on the wall coupled with the fact that complainant expressing his desire not to pursue the case is enough to make the case doubtful giving benefit of doubt to the accused. [1995 P.Cr.L.J. 811]

Torn pieces of the Holy Qur'an recovered from the house of accused. Witnesses deposing that the accused used to pass indecent remarks against the Holy Prophet. (P.B.U.H.) *Khulfa-e-Rashidin*, and *Ahle-Bait*. Case of the prosecution held proved. Conviction and sentence maintained. [2001 MLD 1203]

9.1 Change of religion. Petitioner a true Muslim having full faith in Islam and follower of Hazrat Muhammad (P.B.U.H.). Mere balled statement of some persons about some Muslim not sufficient to belief that the person had ceased to be a Muslim and had adopted some other religion unless said persons himself confesses the same. In the absence of allegation of confession that he had embraced some other religion and had ceased to be a Muslim, no cognizable offence can be said to have been constituted. [2006 YLR 1766]

10. Benefit of doubt. The Holy Prophet (s.a.w.) has said:

"Remit punishment on account of doubt so long as you have ability."

"Where there is even a mild chance, release him, for releasing by an error on the part of an Imam is better than punishing anyone by error."

When Maiz confessed his guilt of zina, the Holy Prophet (s.a.w.) made an inquiry into his mental state as well as his knowledge about the ingredients of the offence to which he was confessing. The same was done in the case of Ghamadiyyah. Hazrat Ali (*May Allah be pleased with him*) in a case of accusation against Shurahah did not order her to be punished for zina without investigation into the voluntary nature of the genuineness of her confession. [PLD 2002 Lah 587] Accused claiming to be Muslim taking plea during the trial that he did not utter such abusive language as has been alleged by the complainant and other prosecution witnesses, Court should not insist on accused that he had used the abusive language against the Holy Prophet Hazrat Muhammad (p.b.u.h.) whose teaching is always forgiveness and mercy. [2000 YLR 1273] No one from the public other than the two prosecution witnesses and the complainant appearing to record their statements. Accused in his statement u/s. 342, P.P.C. stating that his previous writings were secured by the police under pressure while he was in custody and said statement of the accused found support from the testimony of I.O. Such quality of evidence cannot be relied in a case as serious as registered under Ss. 295-A and 295-C, P.P.C. Accused allowed benefit of doubt and acquittal. [PLD 2002 Lah 587]

295-B. Defiling, etc. of copy of Holy Qur'an. Whoever willfully defiles, damages or desecrates a copy of the Holy Qur'an or of an extract therefrom or uses in any derogatory manner or for any unlawful purpose shall be punishable with imprisonment for life.]

SYNOPSIS

- Scope.
Procedure.
Defile.
4. Intention.
 5. Willfully.
 6. Section 295-B, P.P.C., r/w S. 84, P.P.C.
- Scope. Section 295-B of the Code was inserted by Act I of 1982, it deals with defiling etc. copy of Holy Qur'an. It provides that whoever willfully defiles, damages or desecrates a copy of Holy Qur'an or of an extract there from or uses it in any derogatory manner or for any

Inserted by Ord. I of 1982. PLD 1982 Cent. St. 146.

unlawful purpose shall be punishable with imprisonment for life. Physical respect of the Holy Qur'an and spiritual feeling with its teachings cannot be separated from each other. Spiritual respect and honour is a matter of an individual relating to his thinking whereas physical honour and respect is a matter of his visible action. Act consciously and deliberately with or without intention to damage and destroy the honour, respect and greatness of a person in the eye of public in general or to satisfy one's own feelings. Provision of the section attracted. [1994 MLD 15] No person can be held guilty on the presumed intention without doing an act towards the commission of the offence. Conviction can be based on mere presumption or suspicion but there had to be unimpeachable and unresistable evidence to connect the accused with the commission of the offence. [2003 YLR 2114] It is not permissible in Islam to inflict punishment on an accused person if he retracts from the confession allegedly made by him. [2003 P.Cr.L.J. 206] Inscription of *Kalma Tayyaba* on walls of place of worship of Qadianis would not make offence u/s 295-B. [1997 SD 448]

2. **Procedure.** Cognizable—Warrant—Non bailable—Not compoundable—Court of Sessions

3. **Defile.** Please see s. 295, synopsis 4.

4. **Intention.** Act of defiling or desecrating if done consciously and deliberately with or without the intention to damage and destroy the honour, respect and greatness of a person in the eye of public in general or with the purpose to satisfy one's own feelings shall be a wilful act bringing the case within the purview of S. 295-B, P.P.C. [1994 MLD 15] Intention of the accused has to be accounted for before holding him responsible for the commission of the offence under this section. [2007 MLD 1040] Intention is conscious state in which mental faculties are aroused into activity and summoned into action for the purpose of achieving a conceived end. [2007 MLD 935] No person can be held guilty on the presumed intention without doing an act towards the commission of the offence. [2003 YLR 2114]

5. **Willfully.** Legal word "willfully" in S. 295-B, P.P.C., would essentially connote that act of defiling, damaging or desecrating the Holy Qur'an must be willful. Term 'wilful' in law would mean an intentional and deliberate act. Default or negligence could amount to wilful act, if the doer of the wrongful act when under the ordinary circumstances, while committing the default or guilt or negligence, knew that what he was doing and intended to do as a free agent was forbidden or injurious in view of the concept of penal law. Dictionary meaning of "willful" means "wantonly", deliberate, intentional and consciously and not accidentally. "willfully", in the context of the provisions of S. 295-B, P.P.C., would mean that act of defiling, damaging, desecrating or distorting the original text of the Holy Qur'an or part of it must be with intention to achieve a nefarious objective contemptuously and showing disrespect to Holy Qur'an which he was forbidding by law to do. Act of willfully defiling, damaging and desecrating of Holy Qur'an or part of it, would constitute the offence committed intentionally, knowingly, purposely for achieving the detestable objectives while in the absence of such intention, necessary "mens rea" would be absolutely lacking and in that eventuality the person accused for such an offence could not be held guilty except in very rare and exceptional circumstances. [PLD 2007 Pesh. 83]

6. **Section 295-B, P.P.C., read with S. 84, P.P.C.** Defence amply proving on record that the accused at the time of incident was in insane person and he did not know the nature of his act. Section 84, P.P.C., provides that nothing is an offence done by a person who at the time of doing it by person of unsoundness of mind is incapable of knowing the nature of the act or that but he was doing was either wrong or contrary to law. Accused proving on record that at the time of occurrence he was not in a state of sanity and was incapable of knowing the nature of his act. No rebuttal on record. Accused entitled to acquittal. [2007 MLD 1040]

"[295-C. **Use of derogatory remark etc., in respect of the Holy Prophet:** Whoever by words, either spoken or written, or by visible representation, or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Muhammad (peace be upon him) shall be punished with death, or imprisonment for life, and shall also be liable to fine."]⁴

4 Inserted by Act III of 1986. PLD 1986 Cent. St. 70.

(S. 296)
296. Disturbing religious assembly.—Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship, or religious ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

SYNOPSIS

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|--------------------------|-------------------------|
| 1. Scope. | 5. "Voluntarily". |
| 2. Charge. | 6. "Assembly". |
| 3. Procedure. | 7. Saying "amin". |
| 4. Religious procession. | 8. Music before mosque. |

1. **Scope.** Causing disturbance to religious assemblies lawfully engaged in the performance of religious worship or religious ceremonies has been enacted by S. 296 of the Code to be an offence entailing criminal liability. Section 296 provides, 'whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship, or religious ceremonies, shall be punished with imprisonment to the extent of one year, or fine, or both'. This section affords special protection to religious gathering may be daily prayers, funeral ceremonies or any lawful engagement in the performance of religious worship. Even gathering of three persons is enough to attract provision of the section so as to form and assembly. The object of the section presumably is to secure freedom from molestation when people meet for the performance of acts in quiet spot vested for the time in the assemblies exclusively; and not when they engage in worship in an unquiet place open to all the public as thoroughfare. [(1909) 10 PLR 466] The ingredients of the section are:-

- i) Causing disturbance to any assembly;
- ii) Lawfully engaged in the performance of religious worship or religious ceremony;
- iii) That such disturbance was voluntarily;

There is no question of active intention. In order that this section may apply the assembly must be actually engaged in the performance of religious worship or religious ceremonies when the alleged disturbance is caused. Disturbance during an interval in a worship or prayer is not covered by this section. The assembly must be lawfully engaged in a religious worship or religious ceremony. If the ceremony is commenced by an act which is not lawful it cannot be said that persons engaged in it are lawful it cannot be said that persons engaged in it are lawfully engaged, from the mere circumstance of their falling into a posture of worship, though such worship may be real. The worship referred to in the section must be a real worship and not a cloak for doing something else. [(1896) ILR 23 Cal 60 (DB)] The mere fact that when a religious procession is passing a mosque the music is stopped does not mean that the procession is not actually engaged in religious worship at that time. [AIR 1949 Nag 132] The section is applicable to any one who causes the disturbance. Persons who are themselves engaged in the performance of religious worship or religious ceremonies can be guilty under this section. [AIR 1943 Nag 199]

2. **Charge.** I (name and office of Magistrate, etc.) hereby charge you (name of the accused) as follows:--

That you, on or about the _____ day of _____ at _____ voluntarily caused disturbance to an assembly, namely _____ lawfully engaged in the performance of religious worship (or religious ceremonies) and thereby committed an offence punishable under section 296 of the Pakistan Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

3. **Procedure.** Cognizable—Summons—Bailable—Not compoundable—Triable by Magistrate of first class.

4. **Religious procession.** A religious procession can be regarded as an assembly lawfully engaged in the performance of religious worship and voluntarily causing disturbance to religious procession will be an offence under this section. [(1890) ILR 12 All 495 (FB)]

5. **"Voluntarily".** Even in the absence of an active intention to cause disturbance to an assembly engaged in the performance of religious worship, the accused would be guilty of an offence under this section where he has actually caused disturbance to such assembly by his act if at the time when he did the act he knew that he was likely thereby to cause disturbance to the religious assembly. [(1910) 11 Cri LJ 400 (Mad)]

6. **"Assembly".** Under this section, special protection is given only to congregational and not individual worship. [(1883) ILR 6 Mad 203 (FB)] Even three persons are enough to constitute an "assembly" within the meaning of this section. [AIR 1940 All 291]

7. **Saying "amin".** Merely uttering the word "amin" in a loud tone according to tenets of accused's sect, during prayer in a mosque, while the majority of the congregation utter it in a low tone according to the tenets of their sect is not an offence under this section. [(1891) ILR 13 All 419 (FB)]

8. **Music before mosque.** Where a mosque is abutting on a highway, going in a procession with music at a time when prayer is going on in the mosque will be an offence as such music must necessarily disturb the people engaged in the prayer. [(1910) 11 Cri LJ 400 (Mad)] This section only applies to an assembly which is actually engaged in performance of religious worship or religious ceremonies. Hence there is no warrant for prohibiting processions passing a certain place of worship at all times of the day. No sect is entitled to deprive others forever of the sight to use public streets for processions on the plea of sanctity of their place of worship or on the plea that worship is carried on therein day and night. [(1883) ILR 6 Mad 203 (FB)] The playing of music before a mosque is not an offence when it is done at times agreed upon between the communities. [AIR 1945 Mad 496]

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297. **Trespassing on burial place, etc.**—Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person is likely to be insulted thereby,

commits any trespass in any place of worship or on any place of sepulture, or any place set apart for the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any person assembled for the performance of funeral ceremonies,

shall be punished with imprisonment of either description for a term which may extend to one year, or with fine or with both.

SYNOPSIS

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| 1. Scope. | 6. "Commits any trespass". |
| 2. Charge. | 7. Place of sepulture. |
| 3. Procedure. | 8. Indignity to human corpse. |
| 4. Trespass. | 9. Disturbance. |
| 5. Sanctity to human corpse and funeral rites. | 10. Assembly. |
| | 11. Muharram procession. |

1. **Scope.** Section 297 of the Code deals with incidents of trespass at places set apart for the performance of funeral rites and for depositories of the remains of the dead. A dead body is a sacred thing in law. This is an object so held in section 295 of the Code. Offering any indignity to any person's corpse is a crime. Trespassing over the burial places with the intention of and injuring feeling of any person or insulting religion of any person knowingly constitute an offence u/s 297, P.P.C. The essence of this section is an intention or knowledge of likelihood, to wound feelings or insult religion, and when with the intention or knowledge trespass on a place of

298. Uttering words, etc. with deliberate intent to wound religious feelings—Whoever, with the deliberate intention of wounding the religious feelings of any person utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

SYNOPSIS

1. Scope.
2. Charge.
3. Procedure.
4. With deliberate intention.

1. Scope. Destruction, damages or defiling of any place of worships or any object sacred has been made offence in S. 295 of the Code. In this section wounding or injuring religion feeling of any person even by oral words or by making gestures has been declared to be an offence entailing punishment to the extent of one year, in view of this section 298 is has more wide import than S. 295. Attention may be invited to the author's note who drafted the Code, to quote, "In framing clause 282 (now section 298), we had two objects in view; we wish to allow all fair latitude to religious discussion, and at the same time to prevent the professors of any religion from offering, under the pretext of such discussion, intentional insults to what is held sacred by others. We do not conceive that any person can be justified in wounding with deliberate intention the religious feelings of his neighbour by words, gesture or exhibitions. A warm expression dropped in the heat of controversy, or an argument urged by a person, not for the purpose of insulting and annoying the professors of a different creed, but in good faith for the purpose of vindicating his own, will not fall under the definition contained in this clause." [Note J, p. 37]

Section 298 of the Code is attracted against a person who utters any words or makes any sound within the hearing of a person with intention of wounding the religious faith of that person. Provision of S. 298, P.P.C., would be attracted to the case where the accused has spoken few words against the religion and has snatched the religious books from the complainant, who was Imam Masjid and was reading those books while sitting in the mosque. [PLD 2005 Lah. 631 (September)]

Section 298 provides whoever with the deliberate intention of wounding the religious feelings of any person utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places any object in the sight of that person, shall be punished with imprisonment to the extent of one year or fine or both. To prove offence under this section the prosecution is required to prove the following ingredients:-

- i) Deliberate and intentional injuring religious feeling of any person;
- ii) By uttering words, or
 - a) By making sounds in the hearing of that person, or
 - b) By making any gesture in the sight of any person.

Section 298, P.P.C., prohibits deliberate and intentional wounding of the religious feeling of any person uttering any words or making any sound in the hearing of that person or making any gesture in sight of that person or places any object in the sight of that person. Person uttering such words with deliberate intention to wound religious feeling is said to have committed offence under this section. It entails punishment with imprisonment of their description of a term extending to one year or with fine or with both. Section 298, P.P.C., is wider in its scope than S. 295, P.P.C., and includes any action which is known to wound the religious feeling of others. Section 298 protects intentional wounding of religious feeling of any person uttering indecent words, etc., with the deliberate intention of wounding the religious feelings of others. The section is much wider in scope than S. 295 and includes any action which is known to wound the religious feelings of others while S. 295 is limited to certain specified kinds of acts. [AIR 1937 All 13] It aims at to allow a fair latitude to religious discussion and at the time prevents intentional insults to what is held sacred by others. The

of any section of the public. [AIR 1963 Orissa 23] Mere invasion of civil rights of certain sevaks of a shrine or even an attempt to change the mode of performance of the rituals does not amount to an offence under this section unless it can be inferred that the intention was to wound to religious feelings of other persons. [AIR 1963 Orissa 23]

298-A Use of derogatory remarks, etc. in respect of holy personages.

Whoever by words, either spoken or written, or by visible representation, or by any imputation, innuendo or insinuation, directly or indirectly, defiles the sacred name of any wife (*Ummul Mumineen*), or members of the family (*Ahle-bait*), of the Holy Prophet (Peace Be Upon Him), or any of the righteous Caliphs (*Khulafa-e-Raashideen*) or companions (*Sahaaba*) of the Holy Prophet (Peace Be Upon Him) shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

SYNOPSIS

1. Scope.
2. Charge.
3. Procedure.
4. Constitutionality.

1. Scope. Section 298-A of the Code was added by Ordinance, XLIV of 1980. This section deals with the use of derogatory remarks etc., in respect of Holy Personages *i.e.*, the sacred name(s) of any wife (*Ummul Mumineen*) or members of the family (*Ahle-Bait*) of the Holy Prophet (P.B.U.H.) or any of the righteous Caliphs (*Khulafa-e-Rashidin*) or companions (*Sahaba*) of the Holy Prophet (P.B.U.H.). [1998 P.Cr.L.J. 189] The import of this section is the same as that of S. 295-C of the Code which is regarding use of derogatory remarks in respect of Holy Prophet Muhammad (P.B.U.H.). The personages of Holy Prophet, his wives (*Ummul Mumineen*), or the members of his family (*Ahle-Bait*), or the righteous Caliphs (*Khulafa-e-Rashideen*) or his Companions deserve due respect and dignity. One should not be allowed to disgrace their personalities by using dirty language. Section 258-A aims at to safeguard the dignity and respect qua the holy personages. It provides, whoever by words, either spoken or written, or by visible representation, or by any imputation, innuendo or insinuation, directly or indirectly, defiles the sacred name of any wife (*Ummul Mumineen*), or members of the family (*Ahle-bait*), of the Holy Prophet (Peace Be Upon Him), or any of the righteous Caliphs (*Khulafa-e-Raashideen*) or companions (*Sahaaba*) of the Holy Prophet (Peace Be Upon Him) shall be punished with imprisonment to the extent of three years, or fine or both. In order to constitute offence under this section, the prosecution is require to prove the following ingredients.

- (i) That the accused used derogatory remarks either spoken or written or by visible representation *etc.*;
- (ii) That the accused defiled the name's of the holy personages;
- (iii) That the derogatory remarks so used were directly or indirectly to insult the holy personage;

2. Charge. I _____ (name and office of Magistrate, etc.) hereby charge you _____ (name of the accused) as follows:

That you on or about the _____ day of _____ at _____ by writing [or speaking the words (mention them)] (or by signs or by visible representations, viz _____) insulted (or attempted to insult) the religion (or the religious beliefs) of a class of citizens of Pakistan, to wit _____, with the deliberate and malicious intention of outraging the religious feelings of that class, and thereby committed an offence punishable under section 298-A of the Pakistan Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

3. Procedure. Cognizable—Summons—Bailable—Not compoundable—Triable by Magistrate of the First or Second Class.

4. Constitutionality. Authority taking action under a valid law, the question of denial of fundamental rights would not arise. [1993 SCMR 1718]

[298-B. Misuse of epithets, descriptions and titles, etc., reserved for certain holy personages or places. (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 addresses, any person, other than a Caliph or companion of the Holy Prophet Muhammad (Peace Be Upon Him), as 'Ameer-ul-Mumineen', 'Khalifat-ul-Mumineen', 'Khalifat-ul-Muslimeen', 'Sahaabi' or 'Razi Allah Anho';
- (b) refers to, or addresses, any person, other than a wife of the Holy Prophet Muhammad (Peace Be Upon Him), as *Ummul-Mumineen*;
- (c) refers to, or addresses, any person, other than a member of the family (*Ahle-bait*) of the Holy Prophet Muhammad (Peace Be Upon Him), as *Ahle-bait*; or
- (d) refers to, or names, or calls, his place of worship as Masjid;

shall be punished with imprisonment or either description for a term which may extend to three years, and shall also be liable to fine.

(2) Any person of the Qadiani group or Lahori group (who call 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 or either description for a term which may extend to three years and shall also be liable to fine.

SYNOPSIS

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| 1. Scope. | 5. Ahmadis prohibited to use epithets etc. |
| 2. Procedure. | 6. Mosque. |
| 3. Constitutionality. | 7. Interpretation. |
| 4. Not a scheduled offence. | |

1. **Scope.** Section 298-B was inserted in the Code by Ordinance XX of 1984. The previous section 298-A preserved and protected the respect and reverence deserved to be bestowed to the holy personages, this section forbids use of epithets descriptions and titles, etc., reserved for certain holy personages or places. This section has specific reference to the Qadiani group or Lahori group who call themselves 'Ahmadis', who have been restrained to use words either spoken or written or by the visible representation referring to, or addressing, any person, other than a Caliph or companion of Holy Prophet Muhammad (P.B.U.H.) as 'Ameer-ul-Mumineen', 'Khalifat-ul-Mumineen', 'Khalifat-ul-Muslimeen', 'Sahaabi' or 'Razi Allah Anho'. Like restriction is imposed to refer or address any person other than a wife of Holy Prophet Muhammad (P.B.U.H.) 'Ummul-Mumineen' etc. 'Ahmadis' are also restrain to refer to or name or call their place of worship as 'Masjid'. According to Subsection (2) they have also been restrained to refer or call to prayers as 'Azan' or recites the word of 'Azan' as use by Muslim. The offender

(S 298-C) constructed according to the common and familiar design of a "Masjid" and persons aggregate and pray in the manner of Muslims then it can be thought that they are Muslims. In order to avoid deception to Muslim community Qadianis are prohibited under section 298-B of the P.P.C. from misusing certain epithets reserved for the highly reverend personages, announcing call for prayers through Azan or calling their place of worship as "Masjid". insistence on the part of the Qadianis and their community to use prohibited epithets and (Shaa'ir-e-Islam) leaves no manner of doubt that they want to do so intentionally and it may amount not only to defiling those pious personages but also deceiving others; that if their religious community insists on deception as its fundamental right and wants assistance of Courts in doing the same then God help it. Consequently they (the persons belonging to Qadiani or Lahori Group) have no right to use the epithets etc., and the Shaa'ir-e-Islam, which are exclusive to Muslims and they have been rightly denied their use by law. Their use of the 'Shaa'ir-e-Islam etc., thus amounts to either posing as Muslims or to deceive others or to ridicule. [PLD 2000 Lah 364]

7. Interpretation. Section 298-B and 298-C are two independent sections creating distinct offences. Section 298-B is primarily intended to protect the holy names, titles, personages, places etc., from misuse. But section 298-C prescribes punishment for conduct and general behaviour of a Qadiani if he directly or indirectly poses himself as Muslim, or calls, or refers to, his faith as Islam, or preaches or propagates his faith, or invites others to, accept his faith, by words, either spoken or written or by visible representation or in any other manner whatsoever outrages the religious feelings of the Muslims. There is no ambiguity in the words used in S. 298-C, P.P.C., to discover the legislative intent. No other rule of interpretation or construction can be adopted in interpreting S. 298-C, P.P.C., except that the legislative intent can be well-judged by giving effect to grammatical meanings of the words used as well as scheme of the Ordinance. [PLD 1988 Quetta 22]

298-C. Person of Qadiani group, etc., calling himself a Muslim or preaching or propagating his faith. 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 as a Muslims, 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 representations or in any manner whatsoever outrages the 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 fine].

SYNOPSIS

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| 1. Scope. | 4. Wearing badge having "Kalma Tayyaba". |
| 2. Procedure. | 5. Interpretation. |
| 3. Constitutionality. | 6. Not a scheduled offence. |

1. Scope. Section 298-B, P.P.C. and Section 298-C are two independent sections creating distinct offence. Section 298-B is primarily intended to protect the holy names, titles, personages, places etc. from misuse. But section 298-C prescribes punishment for conduct and general behaviour of a Qadiani if he directly or indirectly poses himself as a Muslim or calls, or refers to, his faith as Islam, or preaches or propagates his faith, or invites others to accept his faith, by words, either spoken or written, or by visible representation or in any manner whatsoever outrages the religious feelings of the Muslim. Simple meaning of word 'pose' as used in section 298-C is to assume the role of or to pretend to be what in fact one is not. Expression 'when a Qadiani poses himself as Muslim' means when he acts as Muslim or he assumes the role of a Muslim. [PLD 1988 Quetta 22]

1.1 Pose. Simplest meaning of word "pose" as used in S. 298-C is to assume the role of or to pretend to be what in fact one is not. [PLD 1988 Quetta 22] Ahmadis being non-Muslim use of Shaaire Islam etc., by them amounts to either posing as Muslims or

deceiving others or ridiculing them. [1993 SCMR 1718] If any Ahmadi claims to be or gives out publicly to be a Muslim then he would be acting in violation of the Constitutional provision contained in Article 260(3). [1993 SCMR 1718]

2. Procedure. Cognizable—Summons—Not bailable—Not compoundable—Imprisonment of either description for 3 years and fine—Magistrate of the First or Second Class.

3. Constitutionality. Sections 298-B & 298-C, P.P.C., are not ultra vires the Constitution neither Article 20 of the Constitution. Any community however, vocal organized, affluent or influential it may be, would not be allowed to cheat others of their faith or rights, usurp their heritage and to deliberately and knowingly do such acts or take such measures as may create law and order situation. Freedom of religion is not allowed to interfere with the law and order or public peace and tranquility. As regards clause (c) of S. 298-C its provision are consistent with the Constitutional provisions contained in Article 19, 20 and 260(3), of the Constitution. [1993 SCMR 1718]

3.1 Freedom to profess religion. The freedom of profess religion has been made, "subject to law, public order and morality". This right in the nature of things, cannot be absolute. Conduct remains subject to regulation for the protection of the society. So the freedom to act must have appropriate definition to preserve the enforcement of that protection. Religious practices though are protected yet he term "freedom of religion" yet only such practices as are integral and essential part of the religion. Court has to be determine whether a particular practice, constitutes essential and integral part of the religion or not. [1993 SCMR 1718]

3.2 Right to process religion. Power u/s 144, Cr.P.C., can legitimately be exercised for a purpose which is consider to be for public good or to be in the interest of people of the country. [PLD 1992 Lah. 1]

4. Wearing badge having "Kalma Tayyaba". When an Ahmadi or Ahmadi display in public, on a placard, a badge or a poster or write on walls or ceremonial gates or buntings, the "Kalma" or chant other Shaarie Islam it would amount to publicly defiling the name of Holy Prophets, and exalting the name of Mirza Ghulam Ahmad which action infuriates Muslims causing serious breach of peace. [1993 SCMR 1718] Wearing badge having "Kalma Tayyaba" inscribed on it by an Ahmadi does not per se amount to outraging the feelings of Muslims nor does it amount to his posing as a Muslim. Ahmadi wearing such badge on being questioned and interrogated having given the reply that he was Muslim would not be an offence under the law. [1993 SCMR 1718 p.1748]

5. Interpretation. Section 298-B and 298-C are two independent sections creating distinct offences. Section 298-B is primarily intended to protect the holy names, titles, personages, places etc., from misuse. But section 298-C prescribes punishment for conduct and general behaviour of a Qadiani if he directly or indirectly poses himself as Muslim, or calls, or refers to, his faith as Islam, or preaches or propagates his faith, or invites others to, accept his faith, by words, either spoken or written or by visible representation or in any other manner whatsoever outrages the religious feelings of the Muslims. There is no ambiguity in the words used in S. 298-C, P.P.C., to discover the legislative intent. No other rule of interpretation or construction can be adopted in interpreting S. 298-C, P.P.C., except that the legislative intent can be well-judged by giving effect to grammatical meanings of the words used as well as scheme of the Ordinance. [PLD 1988 Quetta 22]

5.1 Mens rea. Qadianis wearing badge of Kalma Tayyaba and going in crowded streets depicts the criminal intention or mens rea on their part. [PLD 1988 Quetta 22]

6. Not a scheduled offence. Offences committed under S. 298-B and 298-C being not scheduled offences, provision of s. 6, Anti Terrorism Act, 1997 not applicable. [PLD 2000 Lah 364]