[**Minorities as citizens**](https://www.dawn.com/news/1682858/minorities-as-citizens)

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*“ARTICLE 260(3) of the Constitution though declares the Ahmedis/Qadianis as non-Muslims, it neither disowns them as citizens of Pakistan nor deprives them of their entitlement to the fundamental rights guaranteed under the Constitution.” — Justice Mansoor Ali Shah*

What stops Pakistan from becoming a modern, constitutional and successful Islamic state? Many things come to mind, for example, lack of real democracy and socioeconomic equality, illiteracy, an inconsistent economic growth, etc. But without one critical factor, there can be no modernity nor national success. This is domestic peace, and the greatest danger to domestic peace in any religious society is religiously inspired extremist violence. Passionate religious differences are normal but once converted to violence, they destroy societies.

Justice Mansoor Ali Shah, along with Justice Amin-ud-Din Khan, in a recent Supreme Court judgement in the Tahir Naqash case addresses this fundamental issue by asking whether minorities or non-Muslims, such as Ahmedis/Qadianis, are citizens and whether as citizens they are entitled to fundamental rights, because only if we honour these fundamental rights for non-Muslims as well, “can we, the people of Pakistan, prosper and attain the rightful and honoured place amongst the nations of the world”, declares Justice Shah. This is not a question of history or the past but a question of our future: do we become like Modi’s Hindutva India which treats its minorities, especially Muslims, like second-class citizens without giving them fundamental rights, or like Jinnah’s modern constitutional Islamic state, which treats its minorities or non-Muslims as citizens with fundamental rights?

Facts: The Tahir Naqash case involved Ahmedis/Qadianis who were charged for offences under Section 298-B (‘Misuse of epithets, descriptions and titles reserved for certain holy personages or places’) and under Section 298-C (‘Persons of Qadiani group calling themselves a Muslim or preaching or propagating his faith’) of the Pakistan Penal Code (PPC). The Supreme Court judgement does not acquit them of these aforementioned offences and allows the trial of these individuals for these offences. The only and limited question involved in this case was whether they could be additionally charged with the offences under Section 295-B (‘Defiling of Holy Quran’) and Section 295-C (‘Use of derogatory remarks in respect of the Holy Prophet [PBUH]’). In other words, a limited question of criminal law and fundamental rights of citizens being tried for offences dealing with their religious practices.

‘Bigoted behaviour towards our minorities paints the entire nation in poor colour’.

What the judgement does not challenge: The judgement in the Tahir Naqash case accepts certain established principles underlying our constitutional and religious jurisprudence. Firstly, under Article 260(3) of the Constitution, Ahmedis/Qadianis have been declared non-Muslims by the representatives of the people of Pakistan. Secondly, the Supreme Court of Pakistan in the Zaheeruddin case (1993) declared the ‘Anti-Islamic Activities of the Qadiani Group, Lahori Group and Ahmedis (Prohibition and Punishment) Ordinance, 1984’ as valid and constitutional. Thirdly, the constitutional validity of Sections 295-B, 295-C, 298-B and 298-C of the PPC was not in question. The fundamental question deliberated in this case was different: whether the Constitution or law prohibits Ahmedis/Qadianis to profess and practise their religion in their place of worship as non-Muslims and the relationship between their right to worship and fundamental rights.

Minorities and fundamental rights: A group of individuals having been declared as minorities or non-Muslims and their religious rights having been restricted to some extent by the PPC does not necessarily mean that they cease to be Pakistani citizens. Thus, Justice Shah declares: “All citizens of Pakistan, whether Muslim or non-Muslim, are guaranteed fundamental rights under the Constitution including equality of status, freedom of thought, expression, belief, faith, worship subject to law and public morality.” In other words, they are entitled to the fundamental right to life under Article 9, the fundamental right to practise their religion under Article 20, the fundamental right to safeguards for religious education under Article 22, the fundamental right to equality under Article 25 and the right to enjoy the protection of law and be treated in accordance with the law under Article 4.

Justice Mansoor Ali Shah especially emphasises the fundamental right to dignity under Article 14, which “encapsulates the notion that every person has inherent equal worth”. In order to lead us towards the path of a modern constitutional Islamic state, Justice Shah declares that “to deprive a non-Muslim (minority) of our country from holding his religious beliefs, to obstruct him from professing and practising his religion within the four walls of his place of worship is against the grain of our democratic Constitution and repugnant to the spirit and character of our Islamic republic … Bigoted behaviour towards our minorities paints the entire nation in poor colour, labelling us as intolerant, dogmatic and rigid”.

Moreover, this judgement reaffirms the fundamental principles of criminal jurisprudence, especially when charging individuals with such grave offences as Sections 295-B and 295-C of the PPC, because such mere allegations themselves have grave physical and societal consequences for the accused persons. Firstly, the judgement declares that individuals cannot be charged with “defiling of Holy Quran” (Section 295-B, PPC) by a mere reading of it by non-Muslims, without alleging and showing ‘actus reus’, which would translate to an overt act of defilement. It further declares that individuals cannot be charged with “use of derogatory remarks in respect of the Holy Prophet” (Section 295-C, PPC) by merely having his name inside their place of worship, without alleging and showing ‘actus reus’, which would then translate to an overt act of derogation.

Unlike India’s supreme court, which has, at worst, become an apologist for a Hindutva India or at best, remained silent in the face of Hindutva repression, the judges of the superior courts of Pakistan, like Justice Mansoor Ali Shah, are at the forefront of protecting the fundamental rights of minorities and non-Muslim Pakistani citizens. Therefore, in the mediocre and intolerant times we live in, Justice Mansoor Ali Shah’s Tahir Naqash judgement is not only brave but is also creative, humanist and ground-breaking.

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