

**(1980) 01 AHC CK 0092**

**In the Allahabad High Court**

**Case No : Criminal Case No. 2746 of 1978**

Maulana Azizul Haq Kausar Naqvi and Another

APPELLANT

Vs

State

RESPONDENT

**Date of Decision : 21-01-1980**

**Acts Referred:**

Constitution of India, 1950 — Article 19(1)  
Criminal Procedure Code, 1973 (CrPC) — Section 94(4), 95, 95(1), 95(2), 95(3)  
Limitation Act, 1908 — Section 18, 22, 29(2), 4, 9  
Limitation Act, 1963 — Section 24, 4, 5  
Penal Code, 1860 (IPC) — Section 124, 153A

**Citation : (1980) ACR 125**

**Hon'ble Judges : S.J. Hyder, J;S. Malik, J;P.N. Harkauli, J**

**Bench : Full Bench**

**Advocate : R.N. Singh, Haider Husain and Manish Chandra Tewari, for the Appellant; N.A. Khan and M.A. Qadeer, for the Respondent**

**Final Decision : Allowed**

## Judgement

S.J. Hyder, J.—This is an application u/s 96 of the Code of Criminal Procedure 1973 filed by Azizul Haq Kausar Naqvi and Inamul Haq Qadri. The applicants call in question the validity of the notification dated June 28, 1977 issued by the State Government forfeiting the book entitled "Munaqib-e-Ahle Bait" (In praise of the Members of the Household of the Holy Prophet). The said notification has been issued in the purported exercise of powers of the State Government u/s 95 of the said Code. The impugned notification, excluding the schedule appended thereto, is reproduced below for the sake of convenience:

Whereas it appears to the State Government that the Urdu Book entitled "Manaqib e-Ahle-Bait" written by Maulana Azizul Haq Kausar Naqvi Nizami, published by 1. Maulvi Inamul Haq Kadtri Siraji, 2. Dr. Haji Ali Raza Qadin Siraji, 3. Mohammad Yasin Khan, 4. Haji Barkatullah Nakshband Kadiri Siraji and 5. Abdul Rashid Kadiri Siraji, printed at Ilmi Electric Machine Press, Telia Nala, Varanasi contains matter detailed in the Schedule to this notification which

harshly criticises the role of Amir Moavia who is held in high esteem by the Sunni Muslims and the language used is likely to hurt the feelings of the Sunni Muslims and lead to greater misunderstanding between Shia Muslims and Sunni Muslims and which is thus prejudicial to the maintenance of harmony between Shia and Sunni Muslims and which is likely to disturb the public tranquility and the publication whereof is punishable u/s 153-A of the IPC, 1860.

Now, therefore, in exercise of the powers u/s 95 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), and on the grounds noted above, the Governor is pleased to declare every copy of the said book and of any other documents containing copies, reprints and translation of, or extract from the said book to be forfeited to Government.

2. A bare reading of the notification shows that the order of forfeiture was passed by the State Government on the ostensible ground that the book severely criticised the role of Amir Mauwrya who, in the opinion of the State Government, is held in high esteem by the Sunni Muslims.

3. The language employed in the book in its opinion, was likely to hurt the feelings of that sect and was calculated to lead to greater misunderstandings between the Shia Muslims and the Sunni Muslims and was thus prejudicial to the maintenance of harmony and goodwill between the members of the two sects, and in consequence was likely to disturb public peace and tranquility. The State Government was further of the opinion that the publication of the said work was an offence punishable u/s 153-A of the IPC.

4 Azizul Haq Kausar Naqvi, the first applicant, is the author of the book and Inamul Haq Kadri is one of its publishers. Both of them have claimed that they themselves belong to the Sunni sect and that the book referred to above does not contain any material which is likely to promote feelings of ill-will between the Sunnis and the Shias. According to them, the publication aforesaid is not likely to disturb public tranquility and it does not amount to an offence punishable u/s 153-A of the IPC. They have also raised some legal contentions against the validity of the aforesaid notice which shall be considered later in this judgment.

5. As already stated, the notification u/s 95 Code of Criminal Procedure is dated June 28, 1977 and was published in the Government Gazette on (sic)rd July, 1977. The application u/s 96 Code of Criminal Procedure has been moved in May, 1978. Since Sub-section (1) of Section 96 of the Code of Criminal Procedure lays down that an application for setting aside an order shall be moved by the person aggrieved by such notification within two months from the date of its publication in the official Gazette, the applicants have also filed an application u/s 5 of the Limitation Act praying for the condonation of the delay. The application is supported by an affidavit of Inamul Haq Qadri.

6. It appears that although the notification u/s 95 Code of Criminal Procedure was published in the Govt. Gazette as far back as July 23, 1977 no actual seizure of the book was made. In the affidavit of Inamul Haq Qadri, it has been stated

that the applicants, for the first time, came to know of the order of forfeiture passed by the State Government on 21st of May, 1978, when one Haji Mohammad Yusuf told them that a news item had been published in a Urdu Daily named "Siyasat" of 7th of May, 1978 about a notification having been issued in respect of the said book u/s 95 of the Code of Criminal Procedure by the State Government. He further stated that neither he nor Azizul Haq Kausar Naqvi are acquainted with Hindi or English languages and they do not subscribe to a copy of the Government Gazette. Immediately on coming to know of the said order, the applicants came to Allahabad and have filed the application u/s 96 Code of Criminal Procedure without any further delay.

7. A counter-affidavit has been filed on behalf of the State Government in which the only point which has been stated is that ignorance of law is no excuse and that the applicants have filed the application belatedly which is liable to be dismissed in limine as barred by time.

8. In a suitable case, a litigant may be relieved of the harshness of law of limitation by the court and for that purpose powers have been conferred on it u/s 5 of the Limitation Act, 1963. u/s 29(2)(a) of the Limitation Act of 1908, if was provided that if a special law prescribed for a period of limitation, different from the period prescribed therefore by the First Schedule of the Act, then for the purposes of determining any period of limitation, prescribed for an application by the special law, the provisions contained in Section 4, Sections 9 - 18 and Section 22 were applicable to the extent to which they were not expressly excluded by the special law. The provisions of Section 5 of the Limitation Act of 1908 were not made applicable in the case of a special law and local law. u/s 29(2) of the Limitation Act of 1963, a significant change has been made; The said section now lays down that Sections 4 - 24 of the Limitation Act would apply even in the case of a special or local law unless their application is expressly excluded by such special or local law. The result, therefore, is that while under the Act of 1908 this Court would have been incapable of extending the period of limitation, in the instant case, by having recourse to the provisions of Section 5 of the Limitation Act, 1963 position now is totally different and the period of limitation prescribed u/s 96(1) of the Code of Criminal Procedure can now be extended by this Court in an appropriate case.

9. The fact that the State Government did not execute its notification u/s 95 of the Code of Criminal Procedure by making actual seizure of the book, is a circumstance which lends credence to the averments made in the affidavit accompanying the application u/s 5 Limitation Act. In the circumstances of the case, we feel inclined to condone the delay in filing the application on the grounds stated in the affidavit.

10. The first ground of attack advanced on behalf of the applicants is that u/s 95(1)(a) of the Code of Criminal Procedure, it was obligatory on the State Government to state the grounds of its opinion that the book referred to above contained any matter, the publication of which was punishable u/s 153-A, of the

IPC. According to the learned Counsel, a statement of such grounds was mandatory and that the impugned notification is void for non-compliance of this essential requirement. He further submitted that under Sub-section (4) of Section 96 of the Code of Criminal Procedure, all that the High Court is required to do is to examine the grounds mentioned in the notification and if on the scrutiny of such grounds the court comes to the conclusion that the book did not contain any such matter as is referred to in Sub-section (1) of Section 95, it is bound to set aside the declaration of forfeiture. In support of this contention, learned Counsel placed reliance on *Harnam Das v. State of U. P.* 1961 AWR 573, *Lalai Singh Yadav v. State of Uttar Pradesh* 1971 AWR 517 (Special Bench), *Chinna Annamalai v. The State of Tamil Nadu* AIR 1971 Mad 448 and *Mohammad Khalid v. Chief Commissioner, Delhi* AIR 1968 Del 13.

11. The authorities referred to above deal with the interpretation of the provisions contained in Section 99A and 99D of the Code of Criminal Procedure 1898. It may be stated that under the said Code of Criminal Procedure, the power to issue an order of forfeiture of certain publications which were considered by the Government to be objectionable and the proceedings consequent thereon was governed by Sections 99A, 99B, 99C, 99D, 99E and 99G. The substance of the said provision has now been re-enacted in the Code of Criminal Procedure, 1973 in a more concised form in Sections 95 and 96 of the Code of Criminal Procedure, 1973. Sub-sections (1) and (2) of Section 95 of the new Code have reproduced the provisions of Section 99A of the old Code. Sub-section (3) of Section 95 corresponds with Section 99G of the Code. The provisions of Section 99D have been re-enacted in Sub-sections (4) and (5) of Section 96. In spite of the fact that there is a slight departure in the language employed in the provisions of the old Code and the phraseology used in the said sections of the new Code, the substance of the matter remains the same.

12. In the case of *Harnam Das* (supra), it was held by the Supreme Court that reading Sections 99A, 99B and 99D together, the words "matter of such nature" as is referred to in Sub-section (1) of Section 99A appearing in Section 99D mean only those matters on which the order of forfeiture was based i.e. those which for reasons stated by it, the Government thought was punishable under one or more of the sections of the Penal Code referred to in Section 99A. According to the law laid down by the Supreme Court, the High Court exercising powers u/s 99D could only consider the grounds which had weighed with the State Government in passing the order of forfeiture and that it was not open to the High Court to hold an enquiry for itself and to find out whether the publication contained any matter of such a nature which was referred to in Sub-section (1) of Section 99A. This view of the Supreme Court has been respectfully followed in the other decisions to which reference has been made above. The same principles would apply while interpreting Sections 95, 96(4) and 96(5) of the new Code of Criminal Procedure.

13. From the notification in the instant case, it would, however, appear that the

State Government has annexed an Appendix to the impugned notification. In the said Appendix, the State Government has mentioned the passages of the book which in its opinion were punishable u/s 153A of the Indian Penal Code and also the pages on which the said passages occurred are given. In the authorities just referred to above, the position was totally different. The notifications impugned in the said cases did not refer to any passage which was considered by the State Government to be objectionable or punishable under the different sections of the Indian Penal Code referred to in Section 99A of the old Code. The instant case, therefore, is distinguishable from the cases on which reliance has been placed on behalf of the applicants.

14. Learned Counsel, however, argued that mere citation of passages which were considered by the State Government to be an offence u/s 153A IPC is not sufficient compliance with the requirements of law. According to him, the State Government should have further stated how and in what manner the said passages were likely to offend the religious feelings of Sunni sect of Muslims and was thus prejudicial to the maintenance of harmony between the Shia and the Sunni Muslims and for that reason was likely to disturb public tranquility and peace. Carried to its logical limits, the argument pressed upon us made it obligatory on the State Government to give detailed reasons for its opinion that the objectionable passages in the book amounted to an offence punishable u/s 153A IPC. We have given careful consideration to the submission just stated above and we are unable to accept the same. In our opinion, the notification gives a clear indication of the facts and the statements and representations which, according to the State Government, offended the provisions of Section 153-A of the Indian Penal Code. In our opinion, it was not at all necessary for the State Government to incorporate in the notification detailed reasons on the basis of which it had formed its opinion.

15. Learned Counsel submitted that some of the passages considered by the State Government to be objectionable and punishable u/s 153-A deal with Omayad Caliphs only and they do not contain any reflection against the first Caliph of the dynasty, namely, Mauvia. He next contended that Mauvia is not held in high esteem by the Sunni Muslims and any adverse criticism of his administration and conduct could not hurt the religious feelings of the members of that sect. He submitted that similar views have been held throughout the ages by the Sunni scholars of authority. Finally he submitted that the passages considered by the State Government as objectionable are couched in mild and dignified language and no criminality can be attached to them u/s 153-A of the IPC.

16. Before proceeding to consider these submissions, it would be appropriate to briefly survey the facts of Mahomedan history which have a bearing on the controversy in this case. The Arabian society, before the advent of Islam, was mainly nomadic. There were only a few cities in Arabia at that time, most important of which was Mecca. The Arabs as a whole were Pagans. However,

their Pagnaism was in general of a crude and inartistic kind, lacking in sophisticated ritual, and possessing no remarkable mythology. There was not a tinge of philogopshical speculation in their Paganism. In this state of society, the most powerful bond was that of the tribe. The affluent tribes commanded greater respect and authority amongst the Pagan Arabs.

17. The most important and affluent tribe which dominated the civic life of Mecca, and for that reason of the Arabs of southern Arabia at least, was that of Quraish. An important member of the said tribe was Abde Manaf. He had two sons--Hashim and Abdush-Shams. Hashim gave birth to Abdul Muttalib who had a number of sons. For the purpose of this case, we may only refer to three of those sons, namely, Abdullah, Abu Talib and Abbas. The Holy prophet, Mahommed, was a son of Abdullah. Abu Talib's son was Ali who was married to the Prophet's daughter Fatema Zahra. Ali was one of the earliest converts to Islam and he had two sons from his wife Fatema Zahra, namely, Hasan and Hussain. The Abbaside Caliphs who ruled from Baghdad for over 500 years from 749 A. D. were descendants of Abdul Muttalib's third son Abbas. The descendants of Hashim son of Abde Manaf pre known in Islamic history as Hashimites.

18. The second son of Abde Manaf gave birth to a son known Ommaiya. The third Caliph Usman was one of the descendant of Ommaiya. Muavia who was the founder of Ommaiyad dynasty which ruled from Damascus from 661 A. D. to 749 A. D. was also a descendant of Ommaiya.

19. The prophet was persecuted by Meccans so much so that he and his trusted followers felt compelled to seek refuge at Medina which is at a considerable distance to the north of Mecca. There was frequent fighting between the Meccans, who were led by Abu Sufian, father of Muavia and the Medinites led by the prophet. Ultimately the forces of Islam led by the prophet triumphed and succeeded in capturing Mecca. After the conquest of Mecca by the forces of Islam, Abu Sufian and his son Muavia accepted Islam along with a number of other persons. The persons of Mecca who embraced Islam after its conquest were derisively called by the Medinites and those Meccans who had embraced Islam earlier as Tulaqa (freed men).

20. Muavia was a young man of about 25 years at the time of the conquest of Mecca. He was possessed of great ability and learning. The Prophet was impressed by the personality of Muavia and was deputed by him to write the Holy revelations.

21. The prophet died at the age of 62 years in the year 632 A. D. The question of finding a suitable successor to carry on the work of the prophet was one of pressing necessity. Abu Bakar who was the father of the favourite wife of the Prophet, Aisha was elected to the office. His selection was made by consensus amongst the followers of Islam and he was the undisputed vicegerent for about three years. Before his death, he nominated Umar to succeed him to the office.

The recommendation of the first Caliph was accepted by the generality of the Muslims and Umar not only consolidated but considerably extended the domain of Islam.

22. Before his death, Umar had appointed six trusted companions of the Holy Prophet to select his successor. He made a specific direction that no one amongst his sons shall be chosen. One Abdul Rahman, son of Auf, was the Chairman of the said committee. The decision of the committee was made subject to the general approval of the Muslim Community. On the death of Umar, the committee decided in favour of Usman and that decision was accepted by the community as a whole without any demur. As already stated, Usman was a descendant of Omayya. He was very close to the Prophet and was a person of gentle nature. He was, however, murdered by mutineers who swarmed into Medina from such far off places as Iraq and Egypt.

23. The murder of Usman created a piquant situation in the Islamic world which had considerably expanded by this time. It extended from Yeman in the south to the frontiers of Asia Minor in the north and from Iran in the east to the Atlantic in the west. The companions of the Prophet proposed the name of Ali to fill the vacuum created by the death of Usman. This decision was accepted by the generality of the Muslims except Muavia, who was Governor of Syria for over twelve years. His domain included not only Syria proper but also Lebanon, Palestine and Trans Jordan. Muavia was a very capable and a popular Governor and was held in esteem in these areas. Along with Muavia, the people of the provinces over which he ruled also refused to offer allegiance to Ali. The pretext on which Muavia refused to accept the Caliphate of Ali was that the latter had failed to punish the mutineers who had murdered Usman. He professed that he would offer allegiance to Ali only after punishment had been meted out to the persons who were concerned in the murder of Usman. A bloody and indecisive battle was fought between the forces of Ali and Muavia at Siffin, a place somewhere on the borders of Iraq and Trans Jordan. Sometimes thereafter, Ali fell a victim to the dagger of an assassin in 661 A. D. With his death ended, according to the Sunni doctors the period of the Khilafate Rashida (Caliphs on the right path) or Khilafate Kamila (Perfect Caliphate). The period of Khilafate Rashida or Khilafate Kamila lasted for about 29 years according to the Christian era.

24. Hasan, son of Ali, was a man of peace and he offered his allegiance to Muavia who assumed the governance of Islamic world though not without dissent. He made Damascus as his capital and Medina which had been the traditional seat of Islamic Government lost its importance. Muavia designated his son Yazid as his successor and obtained allegiance to the proposed succession during his life time. The designation of Yazid as successor of Muavia was not liked by a considerable body of Muslim opinion, Hussain, son of Ali, and Abdullah, son of Bubair, were amongst the prominent dissenters. Muavia died in 680 A. D. and after his death, Hussain, with his party of seventy persons which, included

women and children, was ambushed near Karbala, a place in Iraq. He along with most of the male members of the party were put to death by the Governor of Kufa, Ibne Zayad. Abdullah, son of Zubair, also revolted and the revolt was mercilessly suppressed by the Governor of Yazid, and his successor.

25. The Abbasides is the longest dynasty which ruled the Islamic world for more than 500 years. According to the Sunni historians of authority such as Kamil Ibne Asir, Ibne Khaldoon and others, the founder of the dynasty Abdul Abbas rallied support of the majority of the Muslims on the slogan that the Omayyads were mere usurpers and the right to govern the Islamic world belonged to the Hashites and primarily to the descendants of the Able Bait. The expression "Able Bait" connotes those who lives in the same house with the Prophet. According to the majority of the Sunni opinion, the wives of the Holy Prophet, his daughter Fatema Zahra, her husband Ali and their two sons Hasan and Hussain fall under this category. However, after capturing power and overthrowing the Omayyad dynasty, Abul Abbas gave a harangue at the mosque of Kufa. During the course of his address, he announced that an era of concord and happiness was now to begin and the Caliphate had been restored to the House of the Prophet. He asserted that the Abbasides were the real heirs of the prophet, as they were the descendants of his eldest uncle Abbas. He emphasised that Muavia and the other rulers belonging to the Omayyad dynasty were actually imposters.

26. Upto this time, there were two principal groups who were contending for political power in the Islamic world. The first group consisted of the partisans of the house of Ali. The second faction consisted of the partisans of Muavia and the house of Omayya. No doubt there was a third group in existence which was known as the "Kharijis". This group was opposed both to Ali and Muavia. The adherents of this sect were practically wiped off by Ali in the battle of Naharwan. Thereafter, Kharijis ceased to be a force and at present their number is negligible and is confined to a few pockets in the United Arab Emirates of the Persian Gulf area and a few places in North Africa. The Kharijis have not in any way influenced Muslim history and it is not, therefore, necessary to deal with this sect any further.

27. Until the advent of the Abba-side dynasty, except for political divisions, there was no doctrinal difference between the adherents of the house of Ali and the adherents of the house of Omayya. The foundation of the Abba-side dynasty by Abdul Abbas, however, was productive of two distinct sects within the brotherhood of Islam who differed from each other in many doctrinal matters.

28. The adherents of the house of Ali who had supported Abdul Abbas in the uprising against the Omayyad were greatly disappointed by what they considered to be an act of perfidy on the part of Abdul Abbas when he seized power in the name of house of Abbas, ignoring the claims of the descendants of Ali. Gradually they propounded the theory of the divine right of the house of Ali to rule the Islamic world. They developed a theological content for this political stand. According to the adherents of this school, namely, Shias, the Imam

(exemplary leader) was transformed into metaphysical being, a manifestation of God, and the primordial light that sustains the universe and bestows true knowledge of the teaching of Quran on man. According to the Shias Ali was the first Imam and on his death only his descendants could succeed to that office. Only an Imam, according to the sect was the sole repository of spiritual and temporal power in the Islamic world.

29. The overwhelming majority of the Muslims, however, did not subscribe to the said view and they are known as "Sunnis" or to give them their full appellation "Able Sunnat Wal Jammāt". The term "Sunnat" means "the well trodden path", which in Islamic terminology, signifies the example set by the prophet. In conjunction with the word "Wal Jammāt", the term clearly indicates that the conspicuous and the well defined way is the way of the consolidated majority of the community as against the peripheral or wayward actions of the sectarians who are considered to be erroneous. The Sunni position is stated in Encyclopaedia Britannica (Macropaedia) Volume 9 at page 916 as follows:

At the same time, while condemning Schisms and branding dissent as heretical, Sunnism, developed the opposite trend of accommodation, catholicity and synthesis. A putative tradition of the prophet that says "differences of opinion among my community are a blessing" was given wide currency. This principle of toleration ultimately made it possible for diverse sects and schools of thought notwithstanding a wide range of difference in belief and practice to recognise and co-exist with each other. No group may be excluded from the community unless it itself formally renounced Islam.

30. When the Abbasides had occupied the throne, Ommayyads were accused of every possible vice. It was openly proclaimed that Islam was not safe in their hands. This policy was pursued to its logical conclusion. The official historians attributed every imaginable fault in the Ommayyads including Muavia. The official history of the Ummayyade as has been handed over to us by these historians is coloured by the Abbaside feeling against Muavia and his successors to such an extent that we can scarcely distinguish the true from the false. Ameer Ali in his celebrated work "The spirit of Islam" at page 315 has observed:

Every corner of Irak and Hijaz was ransacked for traditions in support of the right of the house of Abbas. The doctors of law were required to formulate the principles of orthodoxy in explicit terms; and gradually the grand superstructure of the Sunni Church was raised on the narrow foundations of Abbaside self-interest.

31. It must, however, be acknowledged that all the Sunni historians and the Ologians did not succumb to the Abbasides pressure. Some of them fearlessly gave expression to their views on the events which followed the death of the Holy prophet and the rise of the Ommayyad dynasty. The consensus which ultimately developed amongst the Sunni school of thought, as already stated, was that the first four Caliphs came to be known under the collective name of

Khali-e-Rashideen, namely, the rightly guided Caliphs, or some time as "Khalifa-e-Kamil" or "perfect Caliphs."

32. The first four Caliphs who ruled the Islamic world after the death of the Prophet are known as Khalifa-e-Rashideen or Khalifa-e-Kamleen for several reasons. In the first place, either they were elected to the office or came to occupy it by consensus. The stand taken by Ali himself in this matter is stated by Ameer Ali in "The Spirit of Islam" at page 293 thus:

With his (Ali) usual magnanimity and devotion to the Faith, scrupulously anxious to avoid the least discord among the disciples of the Master, Ali at once gave in his adhesion to Abu Bakr. Three time was he set aside, and on every occasion he accepted the choice of the electors with out demur. He himself had never stood forth as a candidate for the suffrages of the electors, and whatever might have been the feeling of his partisans, he had never refrained from giving to the first two caliphs his help and advice in the governance of the Commonwealth and they on their side had always deferred to his counsel and his exposition of the Masters' teachings.

33. Syed Ameer Ali in the said work has referred to the differences of Ali with the third Caliph Usman but has stated that he never opposed him and in fact sent his two sons Hasan and Hussain to defend Usman when he was besieged by the insurgents.

34. The second quality which distinguishes the first four Caliphs from the other Caliphs which followed them, is that they did not act arbitrarily but in consultation with the companions of the prophet. Moreover, these Caliphs acted strictly in accordance with the teachings of the Quran and the precepts of the prophet. There are other features which distinguish the administration of the first four Caliphs from the other Caliphs which followed them but it is not necessary to enumerate them.

35. There is a putative saying of the Holy prophet stating that the Caliphate on the right path will last for about twenty-nine years after his death and thereafter it will be followed by despotism. The Sunni writers are agreed that this period ended with the assassination of Ali. Muavia and the subsequent Caliphs who ruled the Islamic world either from Damascus, Baghdad or Constantinople were all despots. The Sunni doctors have, therefore, evolved a theory that a person who defacto usurps power and control over the Islamic world can also be caliphs. Shah Waliullah, a famous divine who flourished in Delhi during the 18th Century, and who is held in high esteem by Sunni theologians, has stated in his work "Azaltual Khafa" that persons who obtain defacto control over temporal power may be of two kinds. In the first category, he places persons of high character and religious devotion and he includes Muavia in this category. In the second class are those persons who are not possessed of high character and who do not act according to the dictates of religion.

36. From the foregoing, it follows that the hard core of Sunni religious thought,

interalia, is faith in Allah and that Mohammad is his prophet and that the first four Caliphs were his rightful successors. It does not extend further and does not require adherence to any other Caliph who succeeded the Khalfa-e-Rashideen or Khalfa-e-Kamleen. We have already indicated the Shia doctrine of Imanat. The Shias do not subscribe to the Sunni doctrine of Khalafat. Ameer Ali has stated the main difference between the two schools in the following words:

The question of the Imamate, or the spiritual headship of the Musulman Commonwealth, is hence for the chief battleground of the two sects. The Shiah holds that the spiritual heritage bequeathed by Mohammed devolved on Ali and his descendants. They naturally repudiate the authority of the Jamaat (the people) to elect a spiritual head who should supersede the rightful claims of the prophet's family.

37. There is no authority for the proposition that Muavia was held in high esteem by the Sunnis. His actions came in for strong criticism during the Abbaside period, which was a period during which the principal doctrines of this school took their shape and form, and when the appellation "Ahle Sunnat Wal Jamaat" first came into existence. Even in recent time, Islamic theologians of eminence have commented adversely on Muavia. In this connection, we may only refer to the views expressed by such eminent scholars, subscribing to different political thought, as Maulana Abul Kalam Ahmad Azad (see "Sada-e-Haq" and "Islamic Republic") and Maulana Abul Ala Maududi, founder of Jamaate Islami (see "Khalifat aur Malookiyat").

38. The critics of Muavia, amongst the Sunni theologians, have emphasised that the greatest disservice done by him to the faith was the appointment made by him of his own son Yasid to act as his successor. It is further pointed out that he obtained the oath of allegiance to his son during his life time either under duress or by using other unfair means. This practice was consistently followed by the succeeding Caliphs and, in the process the democratic system of Government which is an essential element of Islamic ethos was completely obliterated. There are certain other matters, on which we need not dilate, for which the conduct of Muavia has been adversely commented upon. The apologist of Muavia, amongst the Sunni theologians, admit that he acted incorrectly in the matter of the appointment of his son as his successor. They further admit that he was in error in doing certain other acts. They, however, gloss over these shortcomings of Muavia on the ground that these were due to a bonafide error of judgment.

39. In this case we are not called upon to decide which of these views is correct. However, from what has been stated above, it follows that the basic assumption underlying the impugned notification that Muavia is held in high esteem by the Sunni Muslims is untenable.

40. Having disposed of the factual aspect of the controversy, we shall now proceed to examine the legal principles governing the case. Section 153-A of the IPC reads as under:

Whoever--(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes, or attempts to promote, on grounds of religion, race, language, caste or community or any other ground whatsoever, feelings of enmity or hatred between different religious, racial or language groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religions, racial or language groups or castes or communities and which disturbs or is likely to disturb the public tranquility, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

41. The essential ingredients of the aforesaid provision of law are:

(1) That the accused promoted or attempted to promote feelings of enmity and hatred between different religious, racial or language groups or caste or communities or that the accused has done an act which is prejudicial to the maintenance of harmony between such groups or caste or communities and which is likely to disturb public tranquility.

(2) That he promoted or attempted to promote feelings of enmity or hatred by words or signs or visible representations or otherwise or had acted prejudicially to the maintenance of harmony which disturbs or is likely to disturb public tranquility.

42. In a Single Judge decision of the Lahore High Court Dalip Singh, J. in the case *Raj Paul v. Emperor* AIR 1927 Lah 590, while interpreting the section observed:

It seems to me that that section was intended to prevent persons from making attacks on a particular community as it exists at the present time and was not meant to stop polemics against deceased religious leaders however, scurrilous and in bad taste such attacks might be.

43. The law thus enunciated by Dalip Singh, J. has never been accepted. The question about the interpretation of Section 153-A of the IPC again arose before the same High Court in *Devi Sharan Sharma v. Emperor* AIR 1927 Lah 594, about a month later and a Division Bench, while rejecting the existence contention advanced on behalf of the Crown that any criticism of a religious leader even though couched in a dignified and restrained language would fall within the ambit of Section 153-A of the Code, observed:

At the same time a scurrilous and vituperative attack on a religion or on its founder (and it seems to me difficult to distinguish an attack on the founder of a religion from an attack on the religion founded by him) would require a considerable amount of explanation to take it out of the four corners of the explanation.

44. It may be stated that Section 153-A as it stood at that time contained an Explanation which was in the following words:

It does not amount to an offence within the meaning of this section to point out without malicious intention and with an honest view to their removal, matters, which are producing or have a tendency to produce feelings of enmity or hatred between classes of Her Majesty's subjects.

45. This explanation has been omitted by Act XLI of 1961. A similar question came up for consideration before a Special Bench of this Court in the case of *Kali Charan Sharma Vs. Emperor*, . Lindsay, J. with whom Banerji, J. and Walsh, Ag. C. J. agreed enunciated the law as under:

If the language is of a nature calculated to produce or to promote feelings of enmity or hatred the writer must be presumed to intend that which his act was likely to produce. This was the principle laid down by Best, J. in *Burdett's* case in dealing with a case of seditious libel and the same principle clearly applies to the case of a publication punishable u/s 153-A, IPC. Applying this test to the case before me I can only say that in my opinion the natural, indeed the inevitable, consequence of writing such as I find in this book is the excitement of enmity or hatred or both between the followers of the Hindu and Mahomedan religious.

A little later he observed:

It must of course be recognised that in countries where there is religious freedom a certain latitude must of necessity be conceded in respect of the free expression of religious opinions together with a certain measure of liberty to criticize the religious beliefs of others, but it is contrary to all reason to imagine that liberty to criticize includes a licence to resort to the vile and abusive language which characterizes the book now before me.

46. In the case of *Gopal Vinayak Godse Vs. The Union of India and Others*, , Chandrachud, J. (as he then was) delivering the judgment of the Special Bench emphasised that in order to bring a case within the purview of Section 153-A, intention to promote enmity or hatred apart from what appeared from the writing itself was not a necessary ingredient. It was enough to show that the language of the writing was of a nature calculated to promote feelings of enmity and hatred for, a person must be presumed to intend the natural consequences of his act. The Special Bench of that court carefully went into the different passages of the book entitled "*Gandhi Hatiya Animee*" which had been proscribed by the Delhi Administration u/s 99-A of the Code of Criminal Procedure, 1898 and was of the view that although the language of the book was some what heavy and involved, it was not of a nature which could inflame feelings of hatred and enmity between Hindus and Muslims and no criminality could attach to the author u/s 153-A of the IPC.

47. In the case of *Kedar Nath Singh Vs. State of Bihar*, , the Supreme Court had to consider if Section 124A IPC which prescribes punishment for the offence of sedition. It was urged before the court that the provision was violative of the fundamental right guaranteed to the citizens under Article 19(1)(a) of the Constitution. Their Lordships held that the true scope and content of Article 19(1)

(a) can be determined only by reading it along with Clause (2) of the said Article which is in the nature of an exception to the general words used in Article 19(1) (a). Sinha, C. J. speaking for the court held:

Any law which is enacted in the interest of public order may be saved from constitutional invalidity. It is only when the words written or spoken etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of public order. So construed, the section, in our opinion, strikes a correct balance between individual fundamental rights and the interest of public order.

48. From the law laid down by the Supreme Court, it is evident that their Lordships were conscious, while dealing with the offence of what an English lawyer would call "seditious libel" that in order to make a person criminally liable, attention has to be paid to the manner in which the thing has been said and not merely to the matter which has been said. To revert to the terminology employed by the English lawyers, the passage extracted above from the judgment of the Supreme Court can equally apply to "blasphemous libel" with which Section 153-A of the IPC is concerned.

49. We may now proceed to consider the law on the subject as applied in England. Before the First World War English society was of a unitary nature. Christian religion was considered the part of the law of the land and the view held by the courts was that any attack on the basic doctrines of Christianity was an offence inasmuch as it tended to destroy those obligations whereby the society was bound together. This view of law was applied with full vigour by the English courts to protect the society from the fall out from the disorders, following the French Revolution. The teachings of French philosophers like Voltaire and Rousseau naturally had their impact on the intelligential in England and a spate of books and articles were published by English authors which questioned the basic concepts of the teachings of Christ. The decisions of the English Courts to which we have briefly referred above, was intended to prevent the disintegration which overtook French society after the fall of Bastille.

50. The trend of the English decisions following the French Revolution provoked an opposite reaction. Starkie on Libel enunciated the law of blasphemous libel in the following words:

A wilful intention to pervert, insult, and mislead others by means of licentious and contumelious abuse applied to sacred subjects, or by wilful misrepresentations or artful sophistry calculated to mislead the ignorant and unwary, is the criterion and test of guilt. A malicious and mischievous intention, or, what is equivalent to such an intention in law as well as morals, a state of apathy and indifference to the interests of society, is the broad boundary between right and wrong.

51. The law enunciated by Starkie was accepted as the correct law by Lord

Coleridge, C. J. in R. v. Remsey and Foote (1883) 15 CCC 231 at 236. Lord Coleridge again applied the same principle in Rex v. Bradlough (1883) 15 CCC 217 at 230.

52. The matter again came up before the House of Lords in Bowman v. Secular Society Limited AIR (1979) 898. In his speech Lord Finlay observed at page 422:

In my opinion, the Appellants have failed to establish that all attacks upon religion are at common law punishable as blasphemous. There are no doubt to be found in the cases many expressions to the effect that Christianity is part of the law of England but no decision has been brought to our notice in which a conviction took place for the advocacy of principles at variance with Christianity, apart from circumstances of acurrility or intemperance of language.

In the same case, Lord Summerson held:

In the present day, meetings or processions are held lawful which 150 years ago would have been deemed seditious, and this is not because the law is weaker or has changed but because the times have changed. The society is stronger than before. In the present day, reasonable men do not apprehend the dissolution or the down fall of the society because religion is publicly assailed by methods not scandalous.

In Rex v. Lemon AIR (1979) 898, Lord Diplock enunciated the law thus:

To publish opinions denying the truth of doctrines of the established Church or even of Christianity itself was no longer held to amount to the offence of blasphemous libel so long as such opinions were expressed in temperate language and not in terms of offence, insult or ridicule.

53. It is thus firmly established, both in India and in England, that criminality for the offence of blasphemous libel, or criminality u/s 153-A of the Indian Penal Code, does not attach to the things said or done but to the manner in which it is said or done. If the words spoken or written are couched in temperate, dignified, and mild language, and do not have the tendency to insult the feelings or the deepest religious convictions of any section of the people, penal consequences do not follow.

54. We do not propose to refer to the various passages in the book "Munaqib-e Ahle Bait" to which objection has been taken in the impugned notification. In the introduction to the said book, it has been specifically stated that it was being written to controvert the erroneous teachings propounded in the book by one Mahmood Ahmad Abbasi which is entitled as "Khilafat-e Muaviya wa Yazid." The aforesaid work of Mahmood Ahmad Abbasi was itself proscribed by a notification issued u/s 99-A of the Code of Criminal Procedure, 1898. The validity of the said notification came in for consideration before the Delhi High Court in Mohammad Khalid (supra).

55. We have very carefully examined the different passages of the book

"Munaqibe Ahle Bait", which are considered by the State Government as objectionable, and we are of the opinion that they do not contain any matter which may be characterised, as written in bad taste or couched in offensive or intemperate language. On the principles of law discussed above, the publication of this book can not be said to be a criminal act which may be punishable u/s 153-A of the Indian Penal Code.

56. In view of our findings, the notification of the State Government dated June 28, 1977 is liable to be quashed.

57. The result is that this petition succeeds and is hereby allowed. The notification No. 6694-p/VIII-6-1196-76 dated June 28, 1977, issued by the State Government u/s 95 of the Code of Criminal Procedure, 1973, is hereby quashed. We make no order as costs.