**P L D 1991 Federal Shariat Court 10**

**Before Gul Muhammad Khan, CJ.,**

**Abdul Karim Khan Kundi, Ibadat Yar Khan,**
**Abdul Razzak A. Thahim and Fida Muhammad Khan, JJ**

**MUHAMMAD ISMAIL QURESHI--Petitioner**

**Versus**

**PAKISTAN through Secretary, Law**
**and Parliamentary Affairs--Respondent**

Shariat Petition No.6/L of 1987, decided on 30th October, 1990.

(**a) Penal Code (XLV of 1860)-----**

----S. 81 ---Criminal liability---Requirements ---Intentionally doing wrong Consequences ---"Intention", what covers ---Wrongs ---Kinds of --- Mens rea, different forms --(Criminal liability -----Words and phrases ----Mens real.

Criminal liability may require the wrongful act to be done intentionally or with some further wrongful purpose in mind, or it may suffice that it was done recklessly; and iris each case the mental attitude of the doer is such as to make punishment effective. If a person intentionally chose the wrong doing, penal discipline will furnish him with a sufficient motive to choose the right instead, for the future. If, on the other hand, he committed the forbidden act without wrongful intent, yet realising the possibility of the harmful result, punishment may be an effective inducement to better conduct in the future.

Yet there are other cases in which, for sufficient or insufficient reasons, the law is content with a lower form of mens rea. This is the case with crimes of negligence. A person may be held responsible for some crimes if he did not do his best as a reasonable man to avoid the consequence in question. In another case the law may go) even beyond this; holding a man responsible for his acts, independently altogether of any wrongful state of mind or culpable negligence, Wrongs which are thus independent of fault may be distinguished as wrongs of strict liability.

The wrongs thus are of three kinds:--

(1) Intentional or reckless wrongs, in which the mens rea amounts to intention, purpose, design, or at least foresight.

(2) Wrongs of negligence, in which the mens rea assumes the less serious form of mere carelessness, as opposed to wrongful intent or foresight. With these wrongs defences such as mistake will only negative mens rea if the mi3stake itself is not negligent.

(3) Wrongs of strict liability, in which the mens rea is not required, neither wrongful intent nor culpable negligence being recognised as a necessary condition of responsibility; and here defences like mistake are of no avail.

An intention thus is the purpose or design with which an act is done. Suppose one buys a gun. His intention may be to shoot for sport or game, to use in self-defence or to shoot some one to cause his death. However, if the latter act is proved as not shooting

for defence but as killing then the intention can be said to be to do this very thing i.e. to kill him.

An unintentional act is one lacking such purpose or design. An act such as killing, which (consists of a cause and an effect, may be unintentional when the actor brings about consequences which he does not intend. One may kill by mistake, say firing at a game or wrongly imagining him to be someone else. In the former cases he flails to foresee the consequences, in the latter case he is ignorant of some of the circumstances.

A state of law, however, could provide that a man be held liable for such consequences, even though he did not intend them. In the first place, such a rule would obviate the need for difficult inquiries into the mental element. But secondly, and more important, the rule could be justified on the ground that a man should not do acts which he foresees will involve consequential harm to others, whether or not he intends to cause this harm. Such behaviour is clearly reckless or blameworthy, unless the risk can be justified by reason of the social interest of the act itself.

The law may, and sometimes does, impute liability, outside the strict definition of intention, for what is called constructive intention. Consequences which are in fact the outcome of negligence merely are sometimes in law dealt with as intentional. Thus he who intentionally does grievous bodily harm to another, though with no desire to kill him, or certain expectation of his death, is guilty of murder if death ensues.

Law frequently, though by no means invariably, treats as intentional, all consequences due to that form of negligence which is distinguished as recklessness that is to say, which the actor foresees as the probable results of his wrongful act. The foresight of the reasonable man is of course an obviously useful evidential test, whereby to infer, what the actor himself foresaw, but the rule just mentioned has transformed it into a presumption of law which cannot, it seems, be rebutted. Intention thus covers acts expressly intended or those done recklessly.

**(b) Islamic jurisprudence--**

---- Crime and punishment---Criminal intention ---Shariah makes no difference whether criminal intent precedes the offence or synchronizes with it---Penalty in either case is identical---Shariah thus draws no line of distinction between homicide or infliction of injury decided upon beforehand and unpremeditated homicide or injury and lays down identical penalty in both the cases---Prescribed punishment for murder is "qisas" whether it is premeditated or not.---[Sentence].

In the Shariah, it makes no difference whether the criminal intent precedes the offence or synchronizes with it. In either case the penalty is identical. This principle is substantiated by the following Tradition of the Holy Prophet (p.b.u.h.):--

> "Allah condones all those sinister ideas coming into the minds of the members of my Ummah which they have not expressed or put into practice:"

That is why the Shariah draws no line of distinction between homicide or infliction of injury decided upon beforehand and unpremeditated homicide or injury and lays down identical penalty in both the cases. The prescribed punishment for murder is `qisas' whether it is premeditated or not.

**(c) Islamic Jurisprudence---**

---- Crime and punishment---Intention---Definite and indefinite intention-- Distinction---If the act of the offender results in homicide he is a wilful killer whether or not his intention of murder involved a definite victim.--[Words and phrases].

The intention may be definite or indefinite. The intention of an offender to do a definite wrong to an indefinite person will be regarded as definite intent. If the offender is conscious of the potential results of his act and does intend to produce all or some of those results his offence would in spite of its indefinite results be treated as a definite act, whatever the results produced by it. The Hanafites and the Hamblites as well as some Jurists of the Shafi'ee School do not differentiate between definite and indefinite intents in criminal cases including homicide. Hence if the act of the offender results in homicide he is a wilful killer whether or not his intention of murder involves a definite victim.

Further, in determining the accountability of the offender and the sort of offence he is guilty of, the Jurists place both definite and indefinite intents on equal footing and regard them as subject to the same injunction except when the offence consists of homicide and the criminal intent is indefinite.

**(d) Islamic Jurisprudence-----**

----Crime and punishment---"Criminal intent" and "motive of crime"-- Distinction.---[Words and phrases].

The Shariah has kept in view the difference between criminal intent and the motive of crime, right from its very beginning but has not admitted of the bearing of the motive on the commission and pattern of the crime and the punishment entailed by it. Thus, it matters little in the Shairah whether the motive of offence is noble, just as killing, in retaliation, for the murder of one's next of kin or for the indignity suffered at the hands of the victim, or whether the motive is ignoble just as killing in lieu of pecuniary compensation or to commit larceny.

In other words, the motive of crime has nothing to do with the criminal intent; nor does it affect the pattern of crime or its punishment. So it is practically possible to reject the effect of motive so far as the `hadd', `qisas' offences are concerned but it is not so in the case of penal punishment. The motive does not affect the `hadd' or `qisas' offences because the law-maker has confined the powers of the Court to the prescribed punishments, admitting of no consideration of the motive behind the commission of offences. But in the case of `tazeer' punishments the law-maker empowers the Court to determine the quantum of penalty and choose the kind of penalty so that it may be possible for the Court to take into account the motives of offences in the determination of the quantum of punishment.

In other words the difference between the man made laws in force and the Islamic Shariah is that the latter does not recognize the effect of motives in the case of offences which are categorised as `Hudood' or `Qisas' but in the case of other offences, there is nothing in the Shariah inhibiting the Court to take into account the motive of crimes although it does not theoretically admit of its effect on punishment.

**(e) Islamic Jurisprudence ---**

----Crime and punishment ---Hadd---Shariah recognises an offence liable to Hadd only if it is accompanied by an express intention ---Shariah waives the penalty of Hadd if any doubt occurs therein as doubts dispel sentences of Hadd.--[Sentence].

**(f) Islamic Jurisprudence------**

---- Crime and punishment---Contempt of Holy Prophet (p.b.u.h.) being an intentional or reckless wrong in which the mens rea amounted to intention, purpose, design or at least foresight, would attract the penalty of Hadd and accused would be liable to death sentence ---Hadd where not attracted in such a case---Accused has to be allowed an opportunity to explain lest an innocent person is punished.--[Sentence].

The wrongs of kinds of intentional or reckless wrongs in which the mens rea amounts to intention, purpose, design, or at least foresight will attract the penalty of Hadd and it will apply to the contemnor of the Holy Prophet (p.b.u.h.). Further, as intention is to be gathered from the facts surrounding the event, the acts falling in the category of wrongs of negligence in which the mens rea assumes the less serious form of mere carelessness as opposed to wrongful intent or foresight and wrongs of strict liability in which the mens rea is not required will not attract the sentences of Hadd, provided the accused shows that he never intended to commit the offence and is penitent if the words said, jesture made or the act done were ambiguous or they could show some straits of guilty mind or malice. Penitence, in an alleged offence of contempt of the Holy Prophet (p.b.u.h.), would be availed to show that mind of the accused had no guilty straits or malice and the penalty will be dispelled on that account and not for the reason that penitence can wipe out an intended contempt.

The mere fact that the words uttered sounded contemptuous of the Prophet (p.b.u.h.) is not an offence until it is based on malicious action or degration. For example, speaking loudly has been prohibited before the Prophet (p.b.u.h.).

However, it will be no offence if it is done for the cause of battle or for frightening the enemy etc.

The meaning and import of words differ from place to place. Again context may also suggest different meaning. The accused therefore, must be allowed an opportunity to explain lest an innocent person is punished.

Right of an accused to explain cannot be taken away. It is, therefore, only after the explanation that the Court can decide whether the words so said were intended to malign, were they used maliciously and contemptuously or were uttered innocently.

In view of the equal status of all the Prophets as such, the same penalty of death shall apply, in case any one utters contemptuous remarks or offers insult, in any way, to any one: of thorn.

Verses of Holy Qur'an and Ahadith of Holy Prophet (p.b.u.h.) extensively quotes.

**(g) Penal Code (XLV of 1860)----**

295-C---Constitution of Pakistan (1973), Art.203-D---Repugnancy to injunctions of Islam--Use of derogatory remarks etc. in respect of Holy Prophet (p.b.u.h.)---Alternate punishment of life imprisonment as provided in S.295-C, Penal Code, 1866() being repugnant to the Injunctions of Islam as given in Holy Qur'an and Sunnah. Federal Shariat Court directed that the words "life imprisonment" were to be deleted from S.295-C, P.P.C. with a further direction that a clause may further be added to.S.295-C so as to make the same acts or things when said about other Prophets, also offence with the same punishment by 30th April, 1991: --[Sentence].

Mian Abdul Sattar Najam, Deputy Attorney-General, Hafiz S.A.Rahman and Iftikhar Hussain Ch. for the Federal Government.

Nazir Ahmad Ghazi, AA.-G., Riazur Rahman Yazdani and Jalaluddin Khuld, AA.-G. for the Punjab Government.

Mian Muhammad Ajmal; Addl. A.-G for the N.-W.F.P. Government.

Hafiz S.A.Rahman for the Sindh

Ghazi Rashid and Allah Bakhsh Gondal for Others.

Maulana Saeeddudin Sherkoti, Maulana Salauddin Yousaf, Maulana Abdul Shakoor, Maulana Fazal Hadi, Maulana Abdul Falah, Maulana Subhan Mahmood, Mufti Ghulam Sarwar Qadri, Maulana Gohar Aman and Maulana Riazul Hassan Noori Jurisconsults Dates of hearing: 26th to 29th November, 1989 and 4th to 7th March, 1990.

**JUDGMENT**

**GUL MUHAMMAD KHAN, CJ. -----**This order shall also dispose of Shariat Petition No. 1/L of 1984 and S.S. M. No. 106/87 on the same point. Petitioner Muhammad Ismail Qureshi, Advocate, challenges section 295-C of the Pakistan Penal Code which was enacted vide Ordinance I of 1988. Earlier, the same petitions had moved a similar application (Shariat Petition No. 1/L of 1984) but before, it could be decided the legislature, of its own, amended the law and inducted section 259-C, P.P.C., referred to above. The petitioner feeling unsatisfied even with that has approached this Court. Section 295-C reads as under:--

> Section 295-C. Use of derogatory remarks etc. in respect of the Holy Pry--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 (p.b.u.h.) shall be punished with death, or imprisonment for life and shall also be liable to fine.

2. The precise objection taken against this provision is that the alternate punishment of life imprisonment therein is repugnant to the Injunctions of Islam as laid down in the Holy Qur'an and Sunnah of the Holy Prophet (p.b.u.h.). The contention raised is that any disrespect or use of derogatory remarks etc. in respect of the Holy Prophet (p.b.u.h.) comes within the purview of hadd and the punishment of death provided in the Holy Quran and Sunnah cannot be altered. The learned counsel had relied on Verse 13 of Surah Anfal, Verse 65 of Surah Al-Nisa in this regard. The learned counsel also referred to some Traditions of the Holy Prophet (p.b.u.h.) in support of his plea to plead that the sentence of death only is the punishment and no Court shall be given the authority, to pronounce the lesser sentence of life imprisonment.

3. This Court issued public notices and also requested some Jurisconsults to assist. The case was heard at Lahore. Karachi and Islamabad on so many dates and had the assistance of the following Jurisconsults:--

(1) Maulana Subhan Mahmood Sahib.

(2) Maulana Mufti Ghulam Sarwar Qadri Sahib.

(3) Maulana Hafiz Salahuddin Yousaf Sahib.

(4) Maulana Muhammad Abdo-hu Al-Falah Sahib.

(5) Maulana Syed Abdul Shakoor Sahib.

(6) Maulana Fazle Hadi Sahib and

(7) Maulana Saeed-ud-Din Sherkoti Sahib.

Out of the above, the following supported the plea taken by the petitioner to say that sentence of death is only sentence for this offence:--

(1) Maulana Subhan Mahmood Sahib.

(2) Maulana Mufti Ghulam Sarwar Qadri Sahib.

(3) Maulana Harz Salahuddin Yousaf Sahib.

(4) Maulana Muhammad Abdo-hu Al-Falah Sahib.,

(5) Maulana Syed Abdul Shakoor Sahib and

(6) Maulana Fazle Hadi Sahib.

The following further stated that in case repentance is shown by the offender the sentence would be waived:--

(1) Maulana Subhan Mahmood Sahib.

(2) Maulana Mufti Ghulam Sarwar Oadri Sahib and

(3) Maulana Hafiz Salahuddin Yousaf Sahib.

Maulana Saeed-ud-Din Sherkoti, however, stated that even lesser punishment could be given.

4. Maulana Subhan Mahmood relied upon Verses 9:65 and 66, 33:57, 49:2, 2:217, 5:75. 39:1, 65, 47:28. He has related some Ahadith and juristic opinions wherein the contemner has been considered an apostate. He has further relied upon a Hadith related on the authority of Abu Qulabah wherein the punishment of contemner has been prescribed as death. He has also relied upon the Hadith related by Oazi Ayaz that Holy Prophet said "Kill the person who abuses the Prophet and whip the one who abuses his companions." He also relied upon Ahadith that the Holy Prophet (p.b.u.h.) had punished his contemners with death. He also referred to the consensus of opinion of the Jurists that the punishment of contemner is death. He further maintained that the punishment of life imprisonment can be given to a woman contemner or a non-Muslim contemner of the Holy Prophet (p.b.u.h.).

5. Maulana Mufti Ghulam Sarwar Qadri, relied upon Verses 49:57, 9:65,66, 9:61-62. 58:8, 33:57, 4:65, 2:104 of the Holy Quran and some Ahadith to say that punishment of death only is prescribed for contemner. He also referred to the Ahadith wherein the Holy Prophet (p.b.u.h.) had pardoned his contemners. He also cited verses of Holy Ouran and also Ahadith of the Holy Prophet (p.b.u.h.) to argue that they are clear on the point that repentance is acceptable in any offence. Reference was also made to the sayings of the prominent Hanfi Jurists specially` Ibri Abidin and concluded that the repentance of the contemner is acceptable and this is the preferred view of Hanafi Jurists.

6. Maulana Harz Salahuddin Yousaf relied upon the views of Hanfi Jurists that the repentance of the contemner can be accepted and thereafter he will not be given the punishment of death. He also cited verses of Holy Quran and Ahadith of the Holy Prophet (p.b.u.h.), particularly, a Hadith related on the authority of Ibn Abbas that Holy Prophet (p.b.u.h.) said, "Kill the person who changes his religion (Islam):" In his view a Muslim contemner becomes an apostate and so must be condemned to death. He also quoted opinion of Ibn Taimiyyah that the punishment of the contemner is death. He also relied upon the views of Imam Malik Shah and Ahmad to the same effect.

7. Maulana Muhammad Abdu-hu Al-Falah, among other verses relied upon Verse 4:46 of the Holy Ouran and Ahadith of the Holy Prophet (p.b.u.h.) wherein the Prophet has prescribed the punishment of death for his contemner. He further stated that there is

consensus of the opinion among the Jurists on the point that the punishment of the contemner is death.

8. Maulana Syed Abdul Shakoor cited Verses 9:24, 33:57 and 9:12. He also quoted Hadith of the Holy Prophet (p.b.u.h.) that the punishment of contemner is death and that he did punish his contemners with death. He further quoted views of different Jurists from the book Al-Fiqh ala Mazahibil Arb'a by Abdul Rehman Jazeeri, Vol. V, pages 274-275 and Raddul Mukhtar Vol. III pages 290-291.

9. Maulana Fazle Hadi, relied upon Verses 49:2, 33:57,28, 58:22, 9:12, 9:65 and 66. He also cited some Ahadith of the Holy Prophet (p.b.u.h.) wherein the punishment of death has been prescribed for the contemner of the Prophet. He also quoted opinions of Jurists that the punishment of the contemner is death.

10. Maulana Saeed-ud-Din Sherkoti, quoted Verses 48:9, 49:2,3,53, 4:13, 2:187, 229 and 33:57 of the Holy Ouran. He also cited many of Ahadith wherein the Holy Prophet (p.b.u.h.) had punished his contemners with death as also he had pardoned some of his contemncrs. He also referred to many views of Jurists specially those described by Maulana Ashraf Ali Thanvi in his book Imdadul Fatawa Vol. V, pages 166-168.

11. Almost all the Jurisconsults have relied upon the following verses which are as under:--

> "33:57 Lo! those who malign Allah and his Messenger, Allah hath cursed them in the world and the Hereafter, and hath prepared for them the doom of the disdained.

Explaining this verse Allama Qurtubi writes:

> "Everything which becomes a means of malignment of the Holy Prophet whether by quoting words bearing different meanings or similar actions comes under his malignment. (Al-Jamiu Liahkamil) Quran, Vol.XIV, page 238)."

Allama Ismail Haqqi while explaining this verse writes:

> "With the malignment of Allah and his Prophet is meant only the malignment of the Prophet in fact, and mention of Allah is only for glorification and exaltation and to disclose that the malignment of the Prophet is indeed the malignment of Allah."

12. The next verses relied upon (9:61-62) is as follows:--

> "9:61-62 And of them are those who vex the Prophet and say: He is only a hearer. Say: A hearer of good for your, who believeth in Allah and is true to the believers, and a mercy for such of you as believe. Those who vex the Messenger of Allah, for them there is a painful doom."(9:61).

"They swear by Allah to you (Muslims) to please you, but Allah, with His Messenger, hath more right that they should please him if they are believers." (9:62).

> Ibn Taimiyyah while explaining these verses writes: "Verse 9:62 denotes that the malignment of the Prophet is the opposition of Allah and His Prophet" (Assarimul Mashel, pages 20, 21).

13. Ibn Taimiyyah further writes: "It is related on the authority of Ibn Abbas that when a man from a group of contemners came to the Prophet, he said to him why you and your friends abuse me." That person went and brought his friends and they all swore in

Allah and said that they have not abused him. On this the following verses were revealed:--

58:18:

> "On the day when Allah will raise them all together, then will they swear unto him as they (now) swear unto you, and they will fancy that they have some standing. Lo! is it not they who are the liars?

58:20:

> "The devil hath engrossed them and so hath caused them to forget remembrance of Allah. They are the devil's party. Lo! is it not the devil's party who will be the losers?

These verses are linked with Verse 58:20 which is as under:--

58:20:

> "Lo! those who oppose Allah and His messenger, they will be among the lowest."

14. Thus this link of the verses of the Holy Qur'an is obvious that these abusers and contemners of the Prophet are the opponents of Allah and His Prophet about whom the Qur'an says:

> "When thy Lord inspired the angels, (saying) I am with you. So make those who believe stand firm. I will throw fear into the hearts of those who disbelieve. Then smite their necks and smite of them each finger (8:12).
>
> That is because they opposed Allah and His messenger. Whoso opposed to Allah and His messenger, (for him) Lo! Allah is severe in punishment. (8:13).
>
> And if Allah had not decreed migration for them. He verily would have punished them in this world, and theirs in the Hereafter is the punishment of the Fire.(59:3).
>
> That is because they were opposed to Allah and His messenger; and whoso is opposed to Allah (for him) verily Allah is stern in reprisal." (59:4).

So these verses clearly prescribe the severe punishment of death for the opponents of Allah and his Prophet, who include contemners of the Prophet (p.b.u.h.) (ibid., page 24).

15. The Holy Qur'an further mentions in this regard:--

> "Ii the hypocrites; and those in whose hearts is a disease, and the alarmists in the city do not cease. We verily shall urge thee against them, then they will be your neighbours in it but a little while. (33:60),

Accursed, they will be seized wherever found and slain with a (fierce) slaughter." (33:61).

These verses state that the punishment of these munafiqrn (contemners) is death. (ibid., page 42).

16. The Holy Qur'an has described the glorification and exaltation of the Prophet in another way and has ordered the Muslims to maintain it and be careful in this regard

otherwise their good deeds will be rendered vain. Quran says:--

> "O ye who believe! Lift not up your voices above the voice of the Prophet, nor shout when speaking to him as ye shout one to another, lest your works to rendered vain while ye perceive not." (49:2).

Ibn Taimiyyah while explaining this verse writes "In this verse the believers have been prohibited from raising their voices over the voice of the Prophet and that their loud voice before the Prophet may not render their good deeds as vain and they will not understand it.

17. It is obvious from different Verses of Our'an that infidelity and apostasy render actions of any person as vain. The Holy Qur'an says:--

> "They question thee (O Muhammad) with regard to warfare in the sacred month. Say: Warfare therein is a great (transgression), but to turn (men) from the way of Allah, and to disbelieve in him and in the Inviolable place of Worship, and to expel his people thence, is a greater (sin) with Allah, for persecution is worse than killing. And they will not cease from fighting against you till they have made you renegades from your religion, if they can. And whoso becometh a renegade and dieth in his disbelief such are they whose works have fallen both in the world and the Hereafter. Such are rightful owners of the Fire: they will abide therein. (2:217).

This day are (all) good things made lawful for you. The food of those who have received the Scripture is lawful for you, and your good is lawful for them. And so are the virtuous women of those who received the Scripture before you (lawful for you) when ye give them their marriage portions and live with them in honour, not in fornication, nor taking them as secret concubines, whose denieth the faith, his work is vain and he will be among the losers in the Hereafter. (5:5).

This is the quidance of Allah whereby he guideth whomsoever of his bondmen he listeth. And if they had associated, to naught would have come all that they were wont to work. (6:88).

And verily it hath been revealed unto thee as unto those before thee (saying); If thou ascribe a partner to Allah thy work will fail and thou indeed will be among the losers. (39:65).

That is because they are averse to that which Allah hath revealed, therefore maketh he their actions, fruitless. (47:9).

18. In order to stop insinuations against the Prophet, Holy Qur'an prohibited the believers to use ambiguous words as used by the jews for insulting the Prophet. The Holy Qur'an says:--

"O ye who believe! say not (unto the Prophet):

> "Listen to us" but say "Look upon us, and be ye listeners. For disbelievers is a painful doom:" (2:104).

Maulana Muhammad Ali Siddiqui while explaining this verse, writes: "The jews used this word as insult of the Prophet. The word `raina has two meanings, good and bad. Its good meaning is "Be kind and attentive to us. The bad meaning is that jews spoke it Raeena which means "Oh! our shepher" and they used this word to degrade the Prophet. So it is an innuendo amounting to contempt of the Prophet. Therefore Muslims were prohibited to use this word so as to stop all the means which lead to the contempt of the Prophet.

19. The jews used the word raina as raeena for defecting the religion (of Islam). Holy Quran says:--

> Some of those who are jews change words from their context and say: `We hear and disobey; hear thou as one who heareth not' and `Listen to us!' distorting with their tongues and slandering religion. If they had said: `we hear and we obey; hear thou, and look at us' it had been better for them, and more, upright. But Allah hath cursed them for their disbelief, so they believe not save a few." (4:46).

Allama Qurtubi writes, "they Muslims were prohibited from speaking this word so as to stop the means leading to the contempt of the Prophet. The glorification and exaltation of Prophet is the base of the religion and thus depriving it is depriving the religion:" (Maalimul Quran by Muhammad Ali Siddiqui, Vol. I, pages 463-468).

20. It has been related on the authority of Abdullah Bin Abbas that a munafiq man named Bishar had a dispute with a jew in some matter. The jew told him to go to the Prophet for decision and the munafiq told him to go to Kaab Bin Ashraf. Anyhow they went to the Holy Prophet (p.b.u.h.) and the Prophet decided in favour of the jew. The person (munafiq) was not willing on that decision and thus they brought the dispute before Hazrat Umar. The jew told Hazrat Umar that Holy Prophet (p.b.u.h.) has already decided in my favour but this man was not willing on that. Then Hazrat Umar said to munafiq: "Is this so". He said "Yes". Hazrat Umar went inside, got his sword and killed the munafiq and said, "I decide so for the person who does not agree to the decision of the Holy Prophet." On this Verse 4:65 was revealed which is as under:--

"By nay, by thy Lord, they will not believe (in truth) until they make thee judge, of what is in dispute between them and find within themselves no dislike of that which thou decidest, and submit with full submission." (4:65).

(Ruhul Maani, Vol. V, page 67). This action of Hazrat Umar as approved by Holy Qur'an is an authority for the sentence of death for contempt of the Holy Prophet (p.b.u.h.).

21. The Holy Qur'an has further declared that the contempt of the Prophet is apostasy in any form it may be. Holy Qur'an says:--

> "And if thou ask them (O Muhammad) they will say: We did but talk and jest. Say: Was it at Allah and his revelations and his messenger that ye did scoff? (9:65).

Make no excuse. Ye have disbelieved after your (confession of) belief. If we forgive a party of you, a party of you we shall punish because they have been guilty." (9:66).

22. Ibn Taimiyyah while explaining these verses writes, "This text is on the point that cutting jokes with Allah, his verses and His Prophet is infidelity. So the contempt is more liable to be infidelity as is derived from this verse that he who insults the Prophet becomes apostate." (Assarimul Maslul, page 31).

Abu Bakar Ibn Arabi while explaining this verse writes, "the hypocrites spoke this word either intentionally or as a joke and whatever the case may be it is infidelity because making joke with the words of infidelity is also infidelity. (Ahkmul Qur'an, Vol. 11,page 964).

23. The Holy Our'an, as a glorification of the Holy Prophet (p.b.u.h.) prohibited even the slightest cause of annoyance and declared that marriage with the wives of the

Prophet after his death is prohibited for the believers so as to avoid not being means of the contempt of the Prophet. Holy Quran says:--

> "O ye who believe! Enter not the dwellings of the Prophet for a meal without waiting for the proper time, unless permission be granted you. But if ye are invited enter and when your meal is ended, then disperse. Linger not for conversation. Lo! that would cause annoyance to the Prophet, and he would be shy of (asking) you (to go); but Allah is not shy of the truth. And when ye ask of them (the wives of the Prophet) anything, ask it of them from behind a curtain. That is purer of your hearts and for their hearts. And it is not for you to cause annoyance to the messenger of Allah, nor that ye should, ever marry his wives after him. Lo! that in Allah's sight would be an enormity. (33:53)."

24. The Holy Prophet (p.b.u.h.) is the best interpreter of the above-noted verses of the Holy Our'an and it is also proved by his Sunnah that his contemner is liable to the penalty of death. Reference may be made to the following Ahadith:--

(i) It has been related on the authority of Hazart Ali that Holy Prophet (p.b.u.h.) said: "Kill the person who abuses a Prophet and whip by stripes the one who abuses my companions:" (Al-Shifa, Qazi, Ayaz Vol.II, page 194).

(ii) It has been related on the authority of Ibn Abbas that a blind person in the period of Holy Prophet (p.b.u.h.) had a female slave who used to abuse the Holy Prophet (p.b.u.h.). This blind person bade her to abstain from it and warned her not to do so but she didn't care. One night when she was as usual abusing the Holy Prophet (p.b.u.h.), this blind person took a knife and attacked her belly and killed her. Next morning when the case of murder of this woman was referred to the Holy Prophet (p.b.u.h.). he collected the people and said, "who has done this job. Stand and confess because of my right on him for what he has done." On this the blind person stood and came rolling the people before the Holy Prophet (p.b.u.h.) and said, "O Prophet, I have killed this slave woman because she abused you. I have constantly forbade her but she didn't care for that. I have two beautiful sons from her and she was my very good companion, but yesterday when she started abusing you, I took my knife and attacked on her belly and killed her:" The Holy Prophet (p.b.u.h.) said. "O people! be witnesses that the blood of this woman is vain (Abu Daud, Vol.II, pages 355-357).

(iii) It has been related on the authority of Hazrat All that a Jew woman used to abuse the Holy Prophet (p.b.u.h.) and thus a person killed her. The Holy Prophet (p.b.u.h.) declared her blood as vain (ibid).

(iv) It has been related on the authority of Abu Barzah who said, "I was sitting with Abu Bakar when he became furious at a person:" I said to him, "O! Caliph of the Prophet of Allah. "Order me to kill him". On this he became normal and stood up and went inside and called me and said, "What did you say? I said, "Order me to kill him." He said, "Had I ordered you, would you have killed him?" I said,. "Yes." He said, "No;" I swear by Allah that no one other than the Holy Prophet (p.b.u.h.) is in the position that his contemner be killed." (ibid).

(v) It has been related on the authority of Jabir Ibn Abdullah that Holy Prophet (p.b.u.h.) said "who will help me against Kaab bin Ashraf. He has indeed teased Allah and His Prophet." On this Muhammad Ibn Maslamah stood and said, "O Prophet of Allah! do you want me to kill him: Prophet said, "Yes". Then he went alongwith Abbas Ibn Hiber and Ibad Ibn Bishar and killed him. (Bukhari, Vol.II, page 88).

(vi) It has been related on the authority of Bara Ibn Azib who said that Holy Prophet sent some persons of Ansar under the headship of Abdullah Ibn Atik to a jew

named Abu Raffia who used to tease the Holy Prophet (p.b.u.h.) and they killed him, (Assarimul Maslul by Ibn Taimiyyah, page 152).

(vii) It has been related on the authority of Umair Ibn Umayyah that he had a `mushrikah' sister who teased him when he met the Holy Prophet (p.b.u.h.) and used to abuse the Holy Prophet (p.b.u.h.). At last one day he killed her with his sword. Her sons cried and said, "We know her murderers who killed our mother and the parents of these people are `mushrik', (infidels)." When Umair thought that her sons may not murder wrong persons, he came to the Holy Prophet (p.b.u.h.) and informed him of the whole situation. The Prophet said to him, "Have you killed your sister?" He said, "Yes." Prophet said, "Why" He said that she was harming me in your relation. The Prophet called her sons and asked about the murderers. They showed other persons as murderers. Then Prophet informed them and declared her death as vain. (Majmauz Zawaid wa Manbaul Fawaid, Vo1.V, page 260).

(viii) It has been narrated that after the conquest of Makka, the Holy Prophet, after giving general pardon, ordered killing of Ibn Khatal and his she-slaves who used to compose defamatory poems about the Holy Prophet. (Al-Shifa by Qazi Ayaz, Vol. II, page 284 Urdu Translation).

(ix) It has been narrated by Qazi Ayaz in Shifa that a person abused the Holy Prophet (p.b.u.h.) The Prophet said to Sahaba "Who will kill this person" On this Khalid Ibn Walid said, "I will kill him." The Prophet ordered him and, he killed him (ibid).

(x) It has been narrated that a person came to the Holy Prophet and said, "Oh Prophet! My father abused you and I couldn't bear it thus killed him." The Holy Prophet (p.b.u.h.) confirmed his action."(ibid), page 285).

(xi) It has also been related that a woman who belonged to Bani Khatmah tribe used to abuse the Holy Prophet (p.b.u.h.) The Holy Prophet (p.b.u.h.) said to his companions, "who will take revenge from this abusive woman." A person of her tribe took the responsibility and killed her. He then came to the Holy Prophet who said "In this tribe the two goats will not quarrel and the people will live in unity and integrity " (ibid), page 286),

25. Abdur Razaq in his Musannaf has related the following Traditions about the contempt of the Holy Prophet (p.b.u.h.) and its punishment:

(i) Hadith No.9704: It has been related on the authority of Ikrimah that a person abused the Holy Prophet (p.b.u.h.). The Holy Prophet (p.b.u.h.) said, "who will help me against my (this) enemy." Zubair said, "I". Then he (Zubair) fought with him and killed him. The Holy Prophet (p.b.u.h.) gave him this goods.

(ii) HadithNo.9705- It has been related on the authority of Urwah Ibn Muhammad (who relates from a companion of the Prophet) that a woman used to abuse the Holy Prophet (p.b.u.h.). The Holy Prophet (p.b.u.h.) said, "who will help me against my (this) enemy." On this Khalid Ibn Walid went after her and killed her.

(iii) Hadith No.9706: It has been related on the authority of Abdur Razaq who relates from his father that when Ayub Ibn Yahya went to Adrian, a man was referred to him who had abused the Holy Prophet (p.b.u.h.). He consulted (the Ulama) in this matter. Abdur Rahman Ibn Yazid Sanani advised him to kill him and he killed him. Abdur Rahman had related to him a hadith in this regard that he had met Umar and had got a great knowledge from him. Ayub also referred this

action to Abdul Malik (or Walid Ibn Abdul Malik). He replied him appreciating his action.

(iv) Hadith No.9707: It has been related on the authority of Saeed Ibn Jubair that a person falsified the Holy Prophet (p.b.u.h.). The Prophet sent Ali and Zubair and said to them, "kill him when you find him."

(v) Hadith No.9708:It has been related on the authority of Ibn Taimi who relates from his father that Hazrat Ali ordered the person who blamed (abused) the Holy Prophet (p.b.u.h.) be killed. (Musannaf Abdur Razaq, VoI.V, pages 377-378).

26. It is pertinent to mention here that Holy Prophet (p.b.u.h.) had pardoned some of his contemners but the Jurists concur that Prophet himself (p.b.u.h.) had the right to pardon his contemners but the Ummah has no right to pardon his contemners. (Assarumal Maslul, Ibn Taimiyyah, pages 222-223).

27. Ibn Taimiyyah writes, "Abu Sulaiman Khattabi said, "When the contemner of the Holy Prophet (p.b.u.h.) is a Muslim then his punishment is death and there is no difference of the opinion among the Muslims about this matter in my knowledge." (Assarimul Maslul, page 4).

28. Qazi Ayaz writes, "Ummah is unanimous on the point that the punishment of a Muslim who abuses the Holy Prophet (p.b.u.h.) or degrades him death. (Al-Shifa, Vo1.II, page 211).

Qazi Ayaz further writes, "Every one who abuses Holy Prophet (p.b.u.h.), points out any defect in him his lineage, his religion or in any of his qualities, or makes allusion with him or resembles him with another thing as his inslut disrespect, degradation, disregard or his defect, he is contemner and he will be killed, and there is consensus of the ulema and Jurists on this point from the period of Sahaba till this time. (AI-Shifa By Qazi Ayaz, Vol.11, page 214).

29. Abu Bakar Jassas Hanafi writes, "There is no difference of opinion among the Muslims that a Muslim who maligns or insults the Holy Prophet (p.b.u.h.) intentionally becomes apostate liable for death. (Ahkamul Quran Vol.III, page 106). It will be useful to note one Hadith here:--

"It has been related on the authority of Abdullah Ibn Abbas that Prophet (p.b.u.h.) said, "Kill the person who changes his religion (Islam)." (Bukhari, Vo1.11, page 123).

30. It has been related by Qazi Ayaz that Haroonur Rashid asked Imam Malik about the punishment of the contemner of the Prophet and told him that some Jurists of Iraq had suggested the punishment of whipping him stripes. Imam Malik became furious on that and said, "O Amir ul Muainin how the Ummah has the right to exist when her Prophet is abused. So kill the person who abuses the Prophet and whip stripes to one who abuses the companions of the Prophet." (AI-Shifa, Vol. III, page 215).

31. Ibn Taimiyyah, while relating the opinions of the Jurists in this connection, writes, "Abu Bakar Farsi Shafie has related that there is consensus of opinion among the Muslims that the punishment of contemner of the Prophet is death, if he is Muslim." (Assarimul Maslul, page 3).

32. The above discussion leaves no manner of doubt that according to Holy Qur'an as interpreted by the Holy Prophet (p.b.u.h.) and the practice ensuing thereafter in the Ummah, the penalty for the contempt of the Holy Prophet (p.b.u.h.) is death and nothing else. We have also noted that no one after the Holy Prophet (p.b.u.h.) exercised or was authorised the right of reprieve or pardon. The next question arising in the case

is thus to specify or clearly define the offence of cotempt of the Holy Prophet (p.b.u.h.).

33. The words and have been used for the contempt of the Prophet in Holy Qur'an and Sunnah. means to suffer, to harm, to molest, to contemn, to insult, to annoy, to irritate, to injure, to put to trouble, to malign, to degrade, to scoff. (Arabic English lexicon, E.W. Lane, Book-I, Part-I page 44). The word means to insult, to abuse, to revile, to scold, to curse, to defame. (Ibid., pages 212, 249).

Allama Rashid Raza, while explaining the meaning of the word writes, "It means anything with which the body or the mind of a living person is pained though very lightly." (Al-Manar, Vol.X, page 445).

Allama Ibn Taimiyyah, while explaining the significance of the contempt writes, "It means to curse the Prophet, prays for any difficulty for him, or refers to him such a thing which does not behove with his position or uses any insulting, false and unreasonable words or imputes ignorance to him or blames him with any human weakness etc." (Aasarinul Maslul, Ibn Taimiyyah, page 526).

34. Ibn Taimiyyah, while concluding the discussion about the scope and what constitutes the offence of the contempt of the Prophet (p.b.u.h.) writes, "Sometimes a word in a situation may amount to injury and insult while such a word may not amount to injury and insult on another occasion. This shows that the interpretation of the words which bear different meanings and senses changes with the change of circumstances and occasions. And when (insult, contempt) has neither been defined in Shariah nor in dictionary, the custom and usage will be relied upon in determining its interpretation. So what is considered contempt and insult in the custom and usage that will be considered contempt and insult in Shariah as well and vice versa." (Assarimul Maslul, Ibn Taimiyyah, page 540).

35. Criminal liability may require the wrongful act to be done intentionally or with some further wrongful purpose in mind, or it may suffice that it was done recklessly; and in each case the mental attitude of the doer is such as to make punishment effective. If a person intentionally chose the wrong doing, penal discipline will furnish him with a sufficient motive to choose the right instead, for the future. If, on the other hand, he committed the forbidden act without wrongful intent, yet realising the possibility of the harmful result, punishment may be an effective inducement to better conduct in the future.

36. Yet there are other cases in which, for sufficient or insufficient reasons, the law is content with a lower form of mens tea. This is the case with crimes of negligence. A person may be held responsible for some crimes if he did not do his best as a reasonable man to avoid the consequence in question. In another case the law may go even beyond this; holding a man responsible for his acts, independently altogether of any wrongful state of mind or culpable negligence. Wrongs which are thus independent of fault may be distinguished as wrongs of strict liability.

37. The wrongs thus are of three kinds:--

(1) Intentional or Reckless Wrongs, in which the mens tea amounts to intention, purpose, design, or at least foresight.

(2) Wrongs of Negligence, in which the mens tea assumes the less serious form of mere carelessness, as opposed to wrongful intent or foresight. With these wrongs defences such as mistake will only negative mens tea if the mistake itself is not negligent.

(3) Wrongs of Strict Liability, in which the mens tea is not required, neither wrongful intent nor culpable negligence being recognised as a necessary condition of responsibility; and here defences like mistake are of no avail.

38. An intention thus is the purpose or design with which an act is done. Suppose one buys a gun. His intention may be to shoot for sport or game, to use in self-defence or to shoot some one to cause his death. However, if the latter act is proved as not shooting for defence but as killing then the intention can be said to be to do this very thing i.e. to kill him.

39. An unintentional act is one lacking such purpose or design. An act such as killing, which consists of a cause and an effect, may be unintentional when the actor brings about consequences which he does not intend. One may kill by mistake, say firing at a game or wrongly imagining him to be someone else. In the former cases he fails to foresee the consequences, in the latter he is ignorant of some of the circumstances.

40. A system of law, however, could provide that a man be held liable for such consequences, even though he did not intend them. In the first place, such a rule would obviate the need for difficult inquiries into the mental element. But secondly, and more important, the rule could be justified on the ground that a man should not do acts which he foresees will involve consequential harm to others, whether or not he intends to cause this harm. Such behaviour is clearly reckless or blameworthy, unless the risk can be justified by reason of the social interest of the act itself.

41. Both in this special connection and generally, then it is to be observed that the law may, and sometimes does, impute liability, outside the strict definition of intention, for what is called constructive intention. Consequences which are in fact the outcome of negligence merely are sometimes in law dealt with as intentional. Thus he who intentionally does grievous bodily harm to another, though with no desire to kill him, or certain expectation of his death, is guilty of murder if death ensues.

42. Law frequently, though by no means invariably, treats as intentional, all consequences due to that form of negligence which is distinguished as recklessness that is to say, which the actor foresees as the probable results of his wrongful act. The foresight of the reasonable man is of course an obviously useful evidential test, whereby to infer, what the actor himself foresaw, but the rule just mentioned has transformed it into a presumption of law which cannot, it seems, be rebutted. Intention thus covers acts expressly intended or those done recklessly.

43. In the Shariah, it makes no difference whether the criminal intent precedes the offence or synchronizes with it. In either case the penalty is identical. This principle is substantiated by the following Tradition of the Holy Prophet (p.b.u.h.):--

> Allah condones all those sinister ideas coming into the minds of the H members of my Ummah which they have not expressed or put into practice.

That is why the Shariah draws no line of distinction between homicide or infliction of injury decided upon beforehand and unpremeditated homicide or injury and lays down identical penalty in both the cases. The prescribed punishment for murder is `qisas' whether it is premeditated or not.

44. The intention may be definite or indefinite. The intention of an offender to do a definite wrong to an indefinite person will be regarded as definite intent. If the offender is conscious of the potential results of his act and does intend to produce all or some of those results his offence would in spite of its indefinite results be treated as a definite act, whatever the results produced by it. The Hanafites and the Hamblites as well as some Jurists of the Shafi'ee School do not differentiate between definite and indefinite intents in criminal cases including homicide. Hence if the act of the offender results in

homicide he is a wilful killer whether or not his intention of murder involves a definite victim.

Further, in determining the accountability of the offender and the sort of offence he is guilty of, the Jurists place both definite and indefinite intents on equal footing and regard them as subject to the same injunction except when the offence consists of homicide and the criminal intent is indefinite.

45. The Shariah has kept in view the difference between criminal intent and the motive of crime, right from its very beginning but has not admitted of the bearing of the motive on the commission and pattern of the crime and the punishment entailed by it. Thus, it matters little in the Shariah whether the motive of offence is noble, just as killing, in retaliation, for the murder of one's next of kin or for the indignity suffered at the hands of the victim, or whether the motive is ignoble just as killing in lieu of pecuniary compensation or to commit larceny.

46. In other words, the motive of crime has nothing to do with the criminal intent; nor does it affect the pattern of crime or its punishment. So it is practically possible to reject the effect of motive so far as the 'hadd', `qisas' offences are concerned but it is not so in the case of penal punishment. The motive does not D affect the `hadd' ox `qisas' offences because the law-maker has confined the powers of the Court to the prescribed punishments, admitting of no consideration of the motive behind the commission of offences. But in the case of `tazeer, punishments the law-maker empowers the Court to determine the quantum of penalty and choose the kind of penalty so that it may be possible for the Court to take into account the motives of offences in the determination of the quantum of punishment.

47. In other words the difference between the man-made laws in force and the Islamic Shariah is that the latter does not recognize the effect of motives in the case of offences which are categorised as `Hudood' or `Qisas' but in the case of other offences, there is nothing in the Shariah inhibiting the Court to take into account the motive of crimes although it does not theoretically admit of its effect on punishment.

48. It will be seen from the above discussion that Shariah recognises an offence liable to Hadd only if it is accompanied by an express intention. Shariah also waives the penalty of Hadd if any doubt occurs therein. It is also based on a Tradition of the Holy Prophet (p.b.u.h.) that doubts dispel sentences of Hadd.

49. So the wrongs of the first category only in para.37 above will attract the penalty of Hadd and it will apply to the contemner of the Holy Prophet (p.b.u.h.). Further, as intention is to be gathered from the facts surrounding the event, the acts falling in the second and third categories will not attract the sentences of Hadd, provided the accused shows that he never intended to commit the offence and is penitent if the words said, jesture made or the act done were ambiguous or they could show some straits of guilty mind or malice. We may also clarify that penitence, in an alleged offence of contempt of the Holy Prophet (p.b.u.h.), would be availed to show that mind of the accused had no guilty straits or malice and the penalty will be dispelled on that account and not for the reason that penitence can wipe out an intended contempt.

The Holy Qur'an says:

> "33:5 And there is no sin for you in the mistakes that ye make unintentionally, but what your hearts purpose (that will be a sin for you), Allah is forgiving, merciful."

"6:54 When those come to thee who believe in Our Signs, Say: "Peace be on you; Your Lord had inscribed for Himself (the rule of) Mercy: verily, if any of you did evil in

ignorance, and thereafter repented and amended (His conduct), lo! He is Oft-Forgiving, Most Merciful."

"16:106 Anyone who, after accepting faith in Allah, utters unbelief, except under compulsion, His heart remaining firm in faith but such as open their breast to unbelief, on them is Wrath from Allah, and theirs will be a dreadful penalty."

"40:19 (Allah) knows of (the tricks) that deceive with the eyes, and all that hearts (Of men) conceal."

50. It has been related on the authority of Hazrat Umar that he heard the Prophet (p.b.u.h.) say "the reward of deeds depends upon the intention and every person will get the reward according to what he had intended. So whoever emigrated for worldly benefits or for a woman to marry, his emigration was for what he emigrated for." (Bukhari, Vol.I, page 1, Hadith No.l).

51. It has been related on the authority of Ubaye Ibn Ka'b who said, "There was a person among the Ansar whose house was situated at the farthest end of Madina, but he never missed any prayer along with the Messenger of Allah (p.b.u.h.). We felt pity for him and said to him: O, so and so, why don't you buy a house near the Prophet's house so as to save you from the troubles of the heat and the coming from a long distance. He said: Listen! by Allah, I do not like my house to be situated by the side of Muhammad (p.b.u.h.). I took (these words of his) ill and came to the Apostle of Allah (p.b.u.h.) and informed him about (these words). He (the Holy Prophet) called him and he said exactly like that (which he had mentioned to Ubbay Ibn Ka'b) but made a mention of this also) that he wanted a reward for his steps. Upon this the Apostle of Allah (p.b.u.h.) said: in fact for you is the reward which you intend. (Muslim, Vol. I, English Translation by Abdul Hameed Siddiqui, pages 323-324, Hadith No.1404). The above Tradition clearly shows that on the face of it the words said sounded contemptuous but that was not the intention of the ulterer and so he was absolved of any penalty.

52. It has been related on the authority of Yahya Ibn Sayyed that the Apostle of Allah was seated while a grave was being dug at Madina. A man suddenly looked down into the grave and said: Bad is the sleeping place of a believer. The Apostle of Allah retorted: What a bad thing you have said. The man explained. I have not meant that, but I meant that fight in the way of Allah (is better). Then the Apostle of Allah said thrice: There is nothing like death in the way of Allah. There is no other tract of land in the world in which I would prefer my grave. (Mishkat, Vol.III, pages 662-663, English Translation by Fazlul Karim, Hadith No. 575).

53. It is relevant to mention here that the mere fact that the words uttered sounded contemptuous of the Prophet is not an offence until it is based on malicious action or degration. For example, speaking loudly has been prohibited before the Prophet. The Holy Qur'an says, "O ye who believe! Raise not your voice above the voice of the Prophet nor speak aloud to him in talk, as ye may speak aloud to one another, lest your deeds become void and ye perceive not:"

(49:2). In this connection Allama Qurtubi while explaining Verse 49:2 writes, "this is the prohibition of shouting and raising the voice over the voice of Prophet which actually injured him. However, it will be no offence if it is done for the I cause of battle or for frightening the enemy etc.

54. Allama Alusi, while explaining Verse 49:2 writes, "When this verse was revealed Sabit Ibn Qais "whose voice was naturally loud, went to his house and closed his door and started weeping. When he didn't attend the gatherings of the Prophet for a long time, the Holy Prophet (p.b.u.h.) enquired about him. The companions said to the Prophet that he had closed the door of his house and is weaping inside the house. The Holy Prophet (p.b.u.h.) called him and asked him, "What happened to you, He said, `O

Prophet! when this verse was revealed, having loud voice, I feared that I may not be one of those whose good deeds will be rendered vain." The Holy Prophet (p.b.u.h.) said to him, "you are not among them. You will live with blessings and die with blessings:" According to Hassan it was based on the ground that his loud voice was a natural thing because he was dumb and mostly dumbs speak with loud voice, and his loud voice was not meant to degrade or insult the Holy Prophet (p.b.u.h.) as that of the hypocrites about whom this verse was, revealed." (Ruhul Maani, Vol. XXVI, pages 124-125).

55. Allama Alusi further writes, "their shouting before the Prophet is of two kinds: (i) which does not amount to rendering the good deeds vain; (ii) which amounts to rendering the good deeds vain. The first is not based on malicious and insulting action as in case of shouting and speaking with loud voice in battles, quarrelling with opponents of injury or insult as Prophet ordered on the day of the battle of Hussain to Hazrat Abbas to call the people with loud voice and he called people with such a loud voice that all the pregnant women delivered their pregnancies by that. And the second is based on malicious and insulting actions as was done by the hypocrites and infidels. (ibid).

56. Qurtubi writes that the last portion of this verse was revealed about a person who said, "I will marry Hazrat Aisha after the death of the Prophet." When Prophet was informed he was greatly injured by that: At this occasion this verse was revealed which prohibited marrying with the wives of Prophet for ever and the Holy Prophet said, "My wives in this world will be my wives in the hereinafter." But before the revelation of this verse there had practically happened that the Holy Prophet (p.b.u.h.) once divorced a wife named Kalbiah and she married with Ikrima Ion Abu Jahal and according to some she married with Ashas Ion Qais Kindi. This shows that at that time it was not a source of the injury of the Prophet in their mind by saying to marry his wife after his death as it had not been prohibited." (ibid., page 230).

57. The Holy Prophet (p.b.u.h.) didn't punish Mistah, Hassan and Hamnah who had actually participated in the accusation of Hazrat Aisha and he also did not declare them as hypocrites. Ion-e-Taimiyyah, explaining that position writes, "they had not intended the injury of the Prophet and there was not any sign of that, while Ion Ubayy had intended the injury. This was because at that time it had not been told to them that the wives of the Prophet in this world will be his wives hereinafter and it was possible about their wives in general sense. It is for this reason that Holy Prophet (p.b.u.h.) hesitated in their matter and consulted Ali and Zaid and enquired from Barirah and consequently didn't declare those who didn't intend the injury of the Prophet as hypocrites on the possibility in their mind that Holy Prophet might have divorced the accused wife. But after the order that his wives in this world will be his wives hereinafter and that they are the mothers of the believers, their accusation would be the injury of the Prophet at any cost." (Assarimul Maslul, ala Shatimir Rasul, page 49).

58. Maulana Ahmad Yar Khan Badayuni writes, "intention" of the contemner is necessary for proving the offence of contempt of the Holy Prophet (p.b.u.h.). If a person said, "The Holy Prophet (p.b.u.h.) was poor and was not a fortunate." So he will become infidel only when he intends the contempt of the Prophet with that." (Nurul Irfan, Part X, page 74).

59. Some of the Jurists are, however, of the opinion that if the contempt of the Holy Prophet (p.b.u.h.) is in manifest and express words, the contemner will not be asked as to what was his intention but if the words are such which bear or have the capacity of bearing different meanings and senses out of which only one amounts to contempt, he will be asked as to what was his "intention." (Al-Shifa, Qazi Ayaz, Vol.II, page 221).

60. We, however, do not agree. Firstly, the meaning and import of words differ from place to place. Again context may also suggest different meaning. The accused

therefore, must be allowed an opportunity to explain lest an innocent person is punished. It is related that Holy Prophet (p.b.u.h.) said, "The mistake of qazi (judge) in releasing a criminal is better than his mistake in punishing an innocent." (Sunan Al-Baihaqi, Vol. VIII, page 184). The Holy Qur'an also confers right of hearing on every accused. It is to be noted that though Allah Almighty knows, that whatever is written in the scrolls by the guardian Angels, about the deeds of a person in this world, is correct beyond any doubt, yet we find that the man will be heard and if he objects to the writings of the angels, Allah shall call witnesses including his hands, feet, eyes and ears. See al-Qur'an 17:13, 14, 36:65, 27:20, 22, 16:93 and 21:23. We also find from the Traditions referred to in paras.36-41 above that the right of an accused to explain is there and cannot be taken away. It is, therefore, only after the explanation that the Court can decide whether the words so said were intended to malign, were they used maliciously and contemptuously or were uttered innocently.

61. It has been related on the authority of Ubaidullah Ion Rafi'a that he heard Hazrat Ali saying, "Allah's Apostle sent me, Az-Zubair and Al-Migdad somewhere saying, `Proceed till you reach Rawdat Khakh. There you will find a lady with a letter. Take the letter from her". "So, we set out and our horses ran at full pace till we got at Ar-Rawda where we found the lady and said (to her). "Take out the letter." She replied, "I have no letter with me." We said, "Either you take out the letter or else we will take off your clothes." So she took it out of her braid. We brought the letter to Allah's Apostle and it contained a statement from Hatib Bin Abi Balta'a to some of the Maccan pagans informing them of some of the intentions of Allah's Apostle. Then Allah's Apostle said, "O Hatib what is this? Hatib replied, "O Allah's Apostle "Don't hasten to give your judgment about me. I was a man closely connected with the Quraish, but I did not belong to this tribe, while the other emigrants with you, had their relatives in Mecca who would protect their dependents and property. So I wanted to recompense for my lacking blood relation to them by doing them a favour so that they might protect my dependents. I did this neither because of disbelief nor apostasy nor out of preferring kufr (disbelief) to Islam." Allah's Apostle said, "Hatib has told you the truth ... ... ... ... ..." (Bukhari, Vol.IV, pages 154-155, Hadith No.251).

62. A Hanafi Jurist, Allama Muhiyuddin, writes, "the jurists opine that in matter of the contempt of the Prophet (p.b.u.h.) the ruler or the judge has to look into the situation and the general conduct of the contemner before deciding the matter." (Akham Al-murtad, Numan Abdur Razaq Samraqi, page 109).

63. An Indian 'renowned scholar Maulana Ahmad Raza Khan Brailwi writes in this regard, "There is difference between the words of infidelity and the position of the person who quotes these words and becomes infidel with that. (Tamhid-e-Imam, page 59). He further says, "The use of the word raina is not contempt now as it is not said in the context of contempt of the Prophet in these days:' (Khatm-e-Nubuwwat, page 71).

64. It has been related that a jew woman named Zainab Bint al-Haris mixed poison in meat and offered it to the Prophet (p.b.u.h.) liked eating the meat of the arm of the goat, she mixed more poison in that part of the meat. Holy Prophet (p:b.u.h.) and Bishar Ibn Al-Bar'a who was accompanied with the Holy Prophet (p.b.u.h.) ate from that. But when Holy Prophet (p.b.u.h.) started eating, he felt that it is poisonous and thus threw it out from his mouth. Then Holy Prophet (p.b.u.h.) called that jew woman and asked her about that. She confessed to have mixed poison in that meal. The Holy Prophet (p.b.u.h.) then asked her as to why she had done so. She answered that she thought if you (Prophet) are a king, we will get rid of you and if you are a Prophet, there will be no harm to you. The Holy Prophet (p.b.u.h.) forgave her. (Aqziyah al-Rasul by Muhammad Ibn Farj Urdu Translation, pages 189, 190).

65. It is also to be noted that Allah Almighty creates no distinction or inequality in the status of the Prophets though He did bestow on some of them more gifts than others. We quote here for reference the following verses from the Holy Our'an:--

17:55 We did bestow on some Prophets more (and other) gifts than on others: and We gave to David (the gift of) the Psalms.

"2:253 Those apostles we endowed with gifts, Some above others; To one of them Allah spoke; Others He raised. To degress (of honour); To Jesus the son of Mary. We gave clear (Signs), and- strengthened him with the Holy Spirit. If Allah had so willed, succeeding generation would not have fought among each other, after clear (Signs) had come to them, But they (chose) to wrangle, some believing and others rejecting. If Allah had so willed they would not have fought each other; but Allah fulfilleth His plan."

"2:136 Say ye; "We believe in Allah, and the revelation given to us, and to Abraham. Ismail, Isaac, Jacob, and the Tribes, and that given to Moses and Jesus and that given to (all) Prophets from their Lord; We make no difference between one and another of them; and we bow to Allah (in Islam)."

"3:84 Say: We believe in Allah, and in what has been revealed to us and what was revealed to Abraham, Ismail, Isaac, Jacob, and the Tribes, and in (the Books) given to Moses, Jesus, and the Prophets, from their Lord; We make no distinction between one and another among them, and to Allah do we bow our will (in Islam):"

and Verses 2:285, 4:150 and 4:152.

66. Practically, all the Jurisconsults and Scholars agreed that in view of the above verses and the equal status of all the Prophets as such, the same penalty of death as determined above shall apply, in case any one utters contemptuous remarks or offers insult, in any way, to any one of them.

67. In view of the above discussion we are of the view that the alternate punishment of life imprisonment as provided in section 295-C, P.P.C. is repugnant to the Injunctions of Islam as given in Holy Qur'an and Sunnah and therefore, the said words be deleted therefrom.

68. A clause may further be added to this section so as to make the same acts or things when said about other Prophets, also offence with the same punishment as suggested above.

69. A copy of this order shall be sent to the President of Pakistan under Article 203-D(3) of the Constitution to take steps to amend the law so as to bring the same in conformity with the Injunctions of Islam. In case, this is not done by 30th April, 1991 the words "or imprisonment for life" in section 295-C, P.P.C. shall cease to have effect on that date.

M.BA./572/FSC Order accordingly.

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