

**(2010) 01 BOM CK 0123**

**Bombay High Court**

**Case No:** Criminal Application No. 1421 of 2007

R.V. Bhasin

APPELLANT

Vs

State of Maharashtra and Marine  
Drive Police Station <BR> Indian  
Union Muslim League and  
Others

RESPONDENT

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**Date of Decision:** Jan. 6, 2010

**Acts Referred:**

- Bombay Police Act, 1951 - Section 59
- Constitution of India, 1950 - Article 19, 19(1), 19(2), 226
- Criminal Law (Amendment) Act, 1961 - Section 2, 4(1)
- Criminal Procedure Code, 1973 (CrPC) - Section 144, 468, 473, 95, 95(1)
- Penal Code, 1860 (IPC) - Section 124A, 153, 153A, 153B, 292

**Citation:** (2010) 112 BOMLR 154 : (2012) CriLJ 1375 : (2012) 2 KLT 69 (SN) : (2010) 1 RCR(Criminal) 694

**Hon'ble Judges:** Ranjana Desai, J; R.S. Mohite, J; D.Y. Chandrachud, J

**Bench:** Full Bench

**Advocate:** J.P. Cama and R.J. Cama, instructed by R.V. Bhasin, Y.H. Muchhala, Amin Solkar, Shaikh Yakub and Mubin Solkar, instructed by Judicial Law and Associates for Intervenors 4 to 8 and I.G. Khandelwal and Party in Person for Intervenor 3, for the Appellant; Ravi Kadam, General, S.R. Borulkar, P.A. Pol, Public Prosecutor and M.M. Deshmukh, for the Respondent

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**Judgement**

Ranjana Desai, J.

Rule. Respondents waive service. With the consent of the parties and at the request of the counsel, taken up for hearing.

2. The applicant, who is an advocate, is the author of a book entitled "Islam - A concept of Political World Invasion By Muslims" ("the book"). The book was

published in 2003 by National Publications, 76, Bajaj Bhavan, Nariman Point, Mumbai of which the applicant claims to be the proprietor. The book was translated into Hindi by Dr. Anil Misr.

3. In exercise of powers conferred by Sub-section (1) of Section 95 of the Code of Criminal Procedure, 1973 ("the Code") the Government of Maharashtra issued a notification dated 9/3/2007 ("the Notification") and declared that every copy of the book as well as of the translation thereof shall be banned and forfeited to Government. The Notification is as follows:

NOTIFICATION

General Administration Department

Mantralaya, Mumbai - 400 032

Dated the 9th March, 2007

Code of  
Criminal  
Procedure, 1973.

No. PUB2007-C.N.15/07-XXXIV -

WHEREAS the national Publications having its office at 76, Bajaj Bhavan, Nariman Point, Mumbai - 400 021, has published a Book, in the year 2003, captioned as "ISLAM - A Concept of Political World Invasion by Muslims" written by one R.V. Basin, Advocate Supreme Court of India, containing 166 pages and translated in Hindi by Dr. Anil Mishra captioned as "ISLAM RAJNAITIK VISHWA PAR MUSLIM AKRAMAN KI AVADHARANA" containing 180 pages (hereinafter referred as the said Book" and "the translated Book" respectively).

AND WHEREAS the author of the said book (and in the relevant translation thereof as "the translated Book") has made several derogatory and false statements about Muslim religion, Muslim community, Mohammed Paigambar and Muslim priests, as specified in Schedule appended hereto.

AND WHEREAS the author of the said Book (and in the relevant translation thereof as "the translated Book") has made derogatory and false statements on page number 4 referring to Muslim religious Book Quran that, Muslims should kill Kafirs (Non - Muslims) and if they do so it is stated on page number 4 that, they would be given 72 beautiful girls and 72 handsome youth; similarly, the author has stated on page number 5 further that, where-ever Muslims are ruling other religious people be killed and on page number 10 thereof it is stated that, Muslims do not consider and accept other religious people equal to them and that where-ever Muslim population is less they are increasing it in an attempt to make themselves equal with others, therefore it is said that "Hum Panch, Hamaare Pachhis".

AND WHEREAS the author of the said Book (and in the relevant translation thereof as "the translated Book") has made derogatory and false statements about Jihaad,

Quaran, Mohammed Paigambar, Indian Muslims and conversion on page numbers 12, 13, 15, 16, 17, 21, 23, 25, 28, 43, 45, 104, 136, 150, 151, 152, 155, 159 and 160 etc. which poses danger to social harmony as well as law and order situation;

AND WHEREAS on page number 23 of the said Book in the relevant translation thereof as the translated Book", "Khatme Nawabac" (Nabuwat) has been written as sentiments of Muslims;

AND WHEREAS this might raise a question mark about the basic aim and objective behind writing the book without taking the Muslim sentiments into consideration and without giving a thorough consideration to the subject, the Government has taken serious note of this derogatory, tasteless and malicious writings;

AND WHEREAS in column of Hindi evening newspaper "Dopahar Ka Saamana", dated 20th January 2007 an article is published captioned as "Dharmki Aadme Apna Hee Jugad" has referred the translated Book, and an offence has been registered against the Editor, Executive Editor, Printer and Writer of the said Book under Sections 153A, 295A, 505 read with 34 of Indian Penal Code in Dadar Police Station as C.R. No. 34/07;

AND WHEREAS for the reasons aforesaid the Government of Maharashtra is of the opinion that the circulation and sale of the said Book and relevant translation thereof as the translated Book contain abusive language bringing meanness to Jihaad, Quaran, Mohammed Paigambar, Indian Muslims and conversion, as well as derogatory and false references therein is likely to create hatred against Muslims in the minds of non-Muslims thereby promoting enmity between classes so also the said Book and relevant translation thereof as the translated Book outrages the feelings of a Muslim section of society and maliciously insulting the religion and religious beliefs of Muslims and likely to lead to acts of violence and disharmony and that any further circulation and sale of the said Book and relevant translation thereof as a translated Book is likely to result in breach of peace and public tranquility between classes and groups, as such the said Book and relevant translated Book should be forfeited;

NOW, THEREFORE, in exercise of the powers conferred by Sub-section (1) of Section 95 of the Code of Criminal Procedure, 1973 (2 of 1974), in its application to the State of Maharashtra, the Government of Maharashtra hereby declares that every copy of the said Book "ISLAM - A Concept of Political World Invasion by Muslims" as well as the relevant translation thereof as the translated Book - "ISLAM RAJNAITIK VISHWA PAR MUSLIM AKRAMAN KI AVADHARANA" shall be banned and forfeited to the Government.

#### SCHEDULE

1. "Gandhi advocated pardon to the Assassin Muslim who killed Swami Shradhhanand, who was believed to have written a book with its Title "rangeela

Rasul"? (Preface)."

2. "The Muslims believe and are ordained by their holy religious texts to eliminate Kufr and the Kafirs from the surface of the earth. Any bloody war that is fought by the believers against the nonbelievers carries the religious sanction of Islam". (Introduction page numbers 3 and 4).

3. "Should he die in this pursuit, the God assumed Almighty as per Quaranic statements assures to such pursuer of faith, an assured life joy and pleasure in the heavens where he is promised to be served by 72 beautiful maidens and 72 young male children to beget pleasure. Such a person is called as Shaheed. Should he survive while pursuing this aim and live on the earth, Quaran promises on behalf of the God Almighty Allaha to enjoy the life on earth by using all that he gets by way of victory over the Kafirs." (Introduction page number 4)

4. "Islam declares to its followers where political governance is in the hands of the believers, they are to act and crush any counter idea and where it still lacks political control then to lie on wait for the moment when through all other means, Darul-Herb gets converted into Darul- Islam." (Introduction page number 5).

5. "Muslims do not and cannot accept any non-believer as equal to them and hence Modi of Gujarat too right when he cautions Indian people UNITE to safeguard themselves from the Muslim invasion who are waiting only to convert India from Darul Herb to Darul Islam and now openly say and believe in HAM PAANCH - HAMARRE PACCHIS."(page number 10).

6. "This is one religion that supports its spread by waging jihads including justifying conducts of terrorism when it says "show no mercy to the non-believers (Kafirs) or the idol worshipers and lie in wait for them to behead them when they appear before you. (the believers i.e. the Muslims)". (page number 17, para 2).

7. "Islam considers weaker sex of women as a commodity meant for the use and pleasure of men owing allegiance to Islam." And "Those who embraced Islam in India, mostly did so under the threat of sword or were lured into it for its easy promise of heavens where beautiful women and young kids were promised as rewards to the believers." (page number 28, para 2).

8. "HOWEVER ON GOING THROUGH SEVERALS OF ITS AYATS, ITS ORDAINMENTS GIVEN TO ITS FOLLOWERS ARE NOT ONLY DANGEROUS BUT IN FACT PROMOTE HATRED IN THE SOCIETY, IT IS BOUND TO CREATE BITTERNESS BETWEEN THE MUSLIMS AND THE NON-MUSLIMS LIVING IN AAA "AINDIA" REF IS MADE TO IPC SECTION 153A Sub-sections (a) & (b) YET IT IS NOT APPLIED AGAINST MUSLIM'S HOLY BOOK." (page number 104, para 4).

By order and in the name of the  
Governor of Maharashtra,

Sd/-

(Manisha Mhaiskar)

Joint Secretary to the Government.

4. The applicant has in this application, inter alia, challenged the Notification.

5. Section 95 insofar as it is relevant reads thus:

95. Power to declare certain publications forfeited and to issue search warrants for the same. - (1) Where -

(a) any newspaper, or book, or

(b) any document,

wherever printed, appears to the State Government to contain any matter the publication of which is punishable u/s 124A or Section 153A or Section 153B or Section 292 or Section 293 or Section 295A of the Indian Penal Code (45 of 1860), the State Government may, by notification, stating the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter, and every copy of such book or other document to be forfeited to Government, and thereupon any police officer may seize the same wherever found in India and any Magistrate may by warrant authorize any police officer not below the rank of sub-inspector to enter upon and search for the same in any premises where any copy of such issue or any such book or other document may be or may be reasonably suspected to be.

(2) In this section and in Section 96, -

(a) "newspaper" and "book" have the same meaning as in the Press and Registration of Books Act, 1867 (25 of 1867)

(b) "document" includes any painting, drawing or photograph, or other visible representation.

(3) No order passed or action taken under this section shall be called in question in any Court otherwise than in accordance with the provisions of Section 96".

6. u/s 96 of the Code, a person having any interest in any newspaper, book or other document, in respect of which a declaration of forfeiture has been made has to apply to the High Court and every such application has to be heard by a Special Bench of the High Court of three judges. Hence, this application filed under Sections 95 and 96 of the Code is placed before this Bench. Section 96 of the Code reads thus:

96. Application to High Court to set aside declaration of forfeiture.-

(1) Any person having any interest in any newspaper, book or other document, in respect of which a declaration of forfeiture has been made u/s 95, may, within two months from the date of publication in the Official Gazette of such declaration, apply

to the High Court to set aside such declaration on the ground that the issue of the newspaper, or the book or other document, in respect of which the declaration was made, did not contain any such matter as is referred to in Sub-section (1) of Section 95.

(2) Every such application shall, where the High Court consists of three or more Judges, be heard and determined by a Special Bench of the High Court composed of three Judges and where the High Court consists of less than three Judges, such Special Bench shall be composed of all the Judges of that High Court.

(3) On the hearing of any such application with reference to any newspaper, any copy of such newspaper may be given in evidence in aid of the proof of the nature or tendency of the words, signs or visible representations contained in such newspaper, in respect of which the declaration of forfeiture was made.

(4) The High Court shall, if it is not satisfied that the issue of the newspaper, or the book or other document, in respect of which the application has been made, contained any such matter as is referred to in Sub-section (1) of Section 95, set aside the declaration of forfeiture.

(5) Where there is a difference of opinion among the Judges forming the Special Bench, the decision shall be in accordance with the opinion of the majority of those judges.

7. Though the Notification does not specifically state which sections of the Indian Penal Code are attracted, it mentions its likely effects such as creation of hatred against Muslims, promoting enmity between classes, likelihood of violence, breach of harmony, peace and public tranquility. The case of the respondents in the written submissions and in the oral arguments of the Advocate General is that the book is forfeited on the ground that it contains matter, the publication of which would constitute offences punishable under Sections 153A, 153B and 295A.

8. The Indian Union Muslim League, Maharashtra, Muslim Lawyers Forum, Islamic Research Foundation, Jamat-e-Islami-e-Hind and Bombay Aman Committee filed intervention applications. Since the meaning and interpretation of the Ayats from the Quran are the subject matter of the submissions made before this Court, on 20/3/2009, we allowed the intervention applications with a view to getting suitable assistance in finding the true meaning and content of the relevant Ayats upon which the central theme of the book is based. Mr. Muchala, senior counsel for the interveners informed the court that he is representing the interveners noted above.

9. Mr. Ishwar Prasad G. Khandelwal, who is stated to be the National President of a Non Governmental Organization known as "the Right to Read Foundation" filed an intervention application. Since, we had allowed intervention applications filed by the aforesaid organizations/associations, we allowed the intervention application of Mr. Khandelwal in the interest of justice, on the same day.

10. Counsel for the petitioner submitted that (i) The applicant was not aware of the Notification till 5/4/2007 when his office was raided. The Notification must be set aside as the applicant was not given a pre-decisional hearing; (ii) The Notification states in substance that in the opinion of the State Government, certain passages of the book as reproduced in the schedule were false and derogatory and "might have been" written without taking into account 'Muslim sentiments'. Counsel submitted that the Notification gives no basis, reason or grounds for the State to come to the aforesaid opinion and the mandate of Section 95 is, therefore, violated; (iii) since 2003, when the book was published, it was in circulation and the Government had found no grounds to act u/s 95 until 9/3/2007 the respondents' action is therefore barred by law of limitation; (iv) The Notification is vague because it does not mention which of the several sections set out in Section 95 have been violated. This has deprived the applicant of his right to fully and fairly exercise his statutory right of making application u/s 96 of the Code; (v) In paragraph 2 of the Notification only certain pages have been stipulated as containing offensive material. The Advocate General culled out certain passages from some of those pages which, according to him, are offensive. There is nothing in the State's affidavit to indicate that even these grounds actually prevailed upon the Government on the date on which the Notification was made. The basic or fundamental precondition for the exercise of power namely, an ex-facie exposition of the Government's reasons is not established; (vi) The Notification does not state Government's reasons to believe how a book published four years" ago can suddenly upset Muslim sentiment in 2007 or how the above mere "likelihood" comes within the ambit of Section 153A and /or Section 295A of the IPC; (vii) The motive of the applicant in writing the book was to bring home to society certain features and facets of Islam of which readers might not have been aware. The book is a historical analysis of certain lesser-known aspects of Islam and is not intended to promote feelings of enmity or hatred among classes of persons or to cause insult to any particular class or community; (viii) The bonafides of the applicant are evident from his statement at page 99 that we are a secular nation and from the fact that he has avoided reference to some of the 'more provocative' Ayats. The book sets out certain views on Islam of which the applicant became aware upon his own research; (ix) In view of the law laid down by the Supreme Court, the respondents are entitled to rely only upon those portions of the book which have been reproduced in the schedule annexed to the Notification. The Notification must be read strictly to see if it sets out not only the opinion of the Government but also the grounds forming the said opinion. The onus is on the respondents to first make out a case u/s 95 of the Code for forfeiting the book. It is only after a reasonable opinion based on objective grounds is shown to exist that the onus of disproving the Government's stand arises. In the present case, there is only an "opinion" but no "objective grounds" supporting them. Certain passages which have been cited by the respondents are taken from printed historical and religious writing. In this connection, reliance was placed on certain passages from the books "The Islamic Invasion" by Robert Morey, "Rongeeela Rasool" by Pandit

Chamupati, "Sex & Violence" by Anwar Shaikh, "Islam & Terrorism" by Anwar Shaikh. "Vedic Civilization" by Anwar Shaikh, "The Islamic Word View" by Sujata Hazarika & Ramya Murlitharan, "Jihad and Jannat in Hadiths" by Dr. K.V. Palival, "Don't say we didn't warn you", "Great Thinkers on Islam" compiled by Rana Pratap Roy, "Islamization of India by the Sufis" by Purshottam, "Hindu Chintan" by Anand Shankar Pandya and "Speeches of Mohammed Ali Jinnah and Dr. B.R. Ambedkar and Anti Hindus" by P. Goradia and K. Phanda; (x) Freedom of expression is not founded on the wisdom of the opinion or the amount of research put in before it is expressed; nor is it dependent on the quality of the literature, the art or the speech. It is founded on the inherent human right to express one's views and is subject to a limited deterrent that this shall not be permitted if it is aimed at social unrest, hatred, etc.; The freedom of expression of the applicant must be protected by quashing the Notification and lifting the ban on the book; (xi) What has been stated in the book is not untrue or unknown and is borne out by the recent events and publication in the media. The concept of global jihad; the desire for Islamisation of India, the belief of Muslim leaders that all Muslims are born Mujahids and they expect all true believers to give completely their possessions and persons to jihad even in this day and age have been published and circulated in newspapers. These are common perceptions of Indian society. If these newspapers have not brought about communal hatred, the respondents must explain how the book with a publication of about 10,000 copies is said to be ostensibly aimed at achieving this objective. (xii) With the advent of the internet, all information is available to everyone. Banning a book would not achieve the desired effect and, it would be a pointless exercise. Reliance was placed on the judgment of the Supreme Court in [Ajay Goswami Vs. Union of India \(UOI\) and Others](#), .

11. In support of his submissions, Counsel relied on the Supreme Court's judgments in [Ramji Lal Modi Vs. The State of U.P.](#), ; [Harnam Das Vs. State of Uttar Pradesh](#), ; [Narayan Dass Indurakhya Vs. State of Madhya Pradesh](#), ; [Nawabkhan Abbaskhan Vs. The State of Gujarat](#), ; [The State of Uttar Pradesh Vs. Lalai Singh Yadav](#), ; [Balwant Singh and another Vs. State of Punjab](#), ; [Manzar Sayeed Khan Vs. State of Maharashtra and Another](#), and [Sri Baragur Ramachandrappa and Others Vs. State of Karnataka and Others](#), and on the judgment of the Nagpur High Court in AIR 1947 1 (Nagpur) . Reliance was placed on the judgments of this Court in [Gopal Vinayak Godse Vs. The Union of India and Others](#), ; [Varsha Publications Pvt. Ltd. and Another Vs. State of Maharashtra and Others](#), and [Anand Chintamani Dighe and Another Vs. State of Maharashtra and Others](#), and in Sangharaj Rupawate and Ors. v. Nitin Gadre and Ors. in Writ Petition No. 1721 of 2004 decided on 26/4/2007.

12. The Advocate General submitted that (i) There are three facets of a valid notification. They are (a) The forfeited book must contain any matter; (b) Such matter must promote or must be intended to promote feelings of enmity or hatred between different classes of people; and (c) The notification must contain a statement of the grounds of the Government's opinion. The first and the second



requirements are set out in the second last paragraph of the Notification. The Notification promotes enmity between Muslims and Non-Muslims and which may outrage the feelings of the Muslims resulting in a breach of peace and acts of violence; (ii) The grounds of the opinion are stated in the Notification. The Notification satisfies all the requirements. It is not necessary to quote verbatim the offending paragraphs in the notification. Hence, the applicant cannot contend that matters not specified in the Notification cannot be relied upon by the respondents to substantiate their case; (iii) Grounds of opinion mean the conclusions of facts on which the opinion is based. Grounds can be brief and the Notification clearly indicates the grounds on which the respondent formed an opinion that the book contains matter which attracts the penal provisions of the IPC; (iv) The strict requirement of proving mens rea in criminal proceedings initiated u/s 153A or 295A will not apply to a notification u/s 95 because Section 95 only states that it has "to appear" to the Government that a particular book contains matter punishable under the IPC; (v) After the respondent shows that the requirements of a valid notification are met, the onus shifts to the applicant. The applicant is bound to dislodge the opinion of the Government and if he fails to do so, the Notification must be sustained; (vi) The intention prescribed by the relevant Sections of the IPC can be gathered from the language, contents and import of the offending material and standard of proof is of lesser strictness; (vii) The test is whether the book read as a whole attracts the relevant penal provisions of the IPC. Throughout the book scurrilous and malicious statements have been made by the applicant to outrage the religious feelings of the Muslim community; (viii) The two classes in the Notification are identified as Muslims and Non-Muslims and hence Section 153A of the IPC is attracted. The applicant calls upon Hindus to protect themselves against the alleged ordainment of Islam upon all Muslims to kill or convert Non-Muslims. Hence, the book clearly attracts Section 153B(1)(b) and (c) of the IPC; (ix) The applicant's case that the book contains matter which is part of folklore, tradition, history; that the author has merely relied on contents of other books to substantiate his view; that his interpretation is supported by several Ayats in the Holy Quran must be rejected because the passages of the Quran are torn out of context and the book is a deliberate misreading of the Quran solely to promote feelings of ill-will through publication in the guise of political thesis or historical truth. Even truth is no defence to a charge u/s 153A, 153B or 295A of the IPC; (x) The plea that the book was published in 2003 and till its forfeiture there has not been a single instance of violence or disturbance of law and order so as to warrant forfeiture is not tenable; (xi) the applicant not having raised the plea of limitation in the application, he may not be permitted to raise it at this stage; [Narane Murthy v. Ravula (2005) 6 SCC 614 and [Municipal Corporation Vs. Sri Niyamatullah,](#)] (xii) The validity of Section 95 of the Code has been upheld by the Supreme Court in Baragur and the contention that there has been a violation of the principles of natural justice must be rejected. The power u/s 95 of the Code is preventive and not punitive. Section 95 does not contemplate any hearing prior to the taking of a decision, for

that may defeat the purpose of Section 95 of the Code. Section 96 of the Code provides a post decisional challenge. The aggrieved person has an opportunity to assail the order of forfeiture; (xiii) The restrictions placed on the exercise of powers u/s 95 of the Code are reasonable restrictions under Article 19(2) of the Constitution. The term 'in the interest of public order' as mentioned in Article 19(2) is of a very wide amplitude and includes restrictions imposed by Section 95 of the Code; (xiv) The constitutional validity of Section 295A of the IPC has been upheld by the Supreme Court in *Ramji Lal Modi*, The doctrine of 'clear and present danger' invoked by the applicant cannot be imported in the Indian Constitution; (xv) The petitioner's reliance on *Balwant Singh* and *Manzhar Khan* is misplaced because they were cases where offence was registered u/s 153A of the IPC wherein the degree of proof required to establish mens rea is greater than in cases where a publication is forfeited u/s 95 of the Code. Considering the constitutional mandate of adherence to the principles of secularism, this Court should strike a balance between protecting the fundamental right of freedom of speech on one hand and public interest on the other and dismiss the application.

13. Since the interveners were allowed to intervene for a limited purpose, we do not propose to deal with the submissions which travel beyond the scope of intervention. It is urged that the courts may refer to religious scriptures but should not put its own interpretation over the text or scriptures. The Constitution protects freedom of conscience and when a question arises as to what constitutes essential part of religion, the same should be primarily ascertained with reference to the doctrine of that religion.

14. When this Court has to perform its duty in terms of Section 95(1) read with Section 96(4), to consider whether a declaration of forfeiture of any book is to be set aside or not and when that book happens to be a critical analysis of a religion, an overview of religious tenets and philosophy by the court becomes inevitable. We are not for a moment contemplating importing our own views on the scriptures. We shall deal with the rival submissions keeping in mind the judgments cited by Mr. Muchhala. Mr. Muchhala has taken us through the relevant Ayats and explained their context. As and when necessary, we shall refer to Mr. Muchhala's submissions.

15. Another intervenor, Mr. Khandelwal, who is appearing in person has raised an objection to our allowing Mr. Muchhala to intervene. In this connection, he has relied on an unreported judgment of the Supreme Court dated 30/8/1999 in *Shiv Kumar v. Hukum Chand and Anr.* In that case, the appellant/complainant wanted the counsel appointed by him to conduct the prosecution in the Sessions Court. The public prosecutor had consented to it. The High Court rejected the prayer. After considering the relevant provisions of the Code, particularly Section 301 thereof, the Supreme Court endorsed the High Court's view after observing that the prosecution in a Sessions Case cannot be conducted by anyone other than the public prosecutor. The Supreme Court observed that if a private counsel is allowed a free hand to

conduct a prosecution he would focus on bringing the case to conviction even if it is not a fit case where the accused could be convicted. That is the reason why Parliament has subjected his role strictly to the instructions given by the public prosecutor. This Judgment has no application to the present case. Here we are not concerned with Sessions trial, nor have we allowed Mr. Muchhala to intervene so as to act as counsel for the State. We have already clarified that we have allowed Mr. Muchhala to intervene with a view to getting suitable assistance in finding out the true meaning and content of the relevant Ayats. Beyond that, he has no role to play. It is pertinent to note that since we allowed the intervention of the organizations represented by Mr. Muchhala, in the interest of justice, we also allowed the intervention application of Mr. Khandelwal. The objection raised by Mr. Khandelwal is, therefore, rejected.

16. Mr. Khandelwal has tendered written submissions. They are in tune with Mr. Cama's submissions. Mr. Khandelwal has inter alia contended that in the book, not a word is stated by the author to instigate Hindus to violence. According to Mr. Khandelwal, the book is banned by self appointed arbiters who have decided what to read and what not to read. He submitted that the book contains fair criticism of Islam. Mr. Khandelwal has cited instances of books like "Shivaji the Hindu King in Islamic India" and "Da Vinci Code" and films like "Jodha Akbar", "War and Peace" and "Chand Bujh Gaya" where the High Court and the Supreme Court have zealously guarded freedom of speech and expression of people by not approving bans on those books or films. According to Mr. Khandelwal, in the present case, the ban has not been imposed on valid constitutional grounds, but is imposed to serve the interests of different political and religious groups.

17. Before we examine the present case in the light of the judgments cited before us, it is necessary to deal with the point of limitation which was raised by counsel for the applicant during the course of hearing. He submitted that the book was published in 2002. Hence, the prosecution of the applicant is barred u/s 468 of the Code. This point is not raised in the application nor is it taken in the written submissions. Though Section 468 of the Code prescribes period of limitation, u/s 473 of the Code, cognizance of the offence can be taken after the expiry of period of limitation, if the court is satisfied in the facts and circumstances of the case that the delay is properly explained. In this case, the point having not been raised, the respondents could not have explained the delay. We find substance in learned Advocate General's submissions based on judgments of the Supreme Court in Narne Murthy and Sri Niyamatullah, that the question of limitation being a mixed question of law and fact the plea must be pleaded and raised at the outset. In the circumstances, we reject this submission.

18. We must also reject the submission based on Nawabkhan that action u/s 95 of the Code was taken in violation of principles of natural justice. In Nawabkhan, the Supreme Court set aside the externment order passed against the accused on the

ground that there was a failure to give him a hearing u/s 59 of the Bombay Police Act. Section 59 of the Bombay Police Act contemplates a hearing. Section 95 of the Code does not provide for a hearing. Therefore, Nawabkhan cannot be applied to the present case. Moreover, the legislature has taken care to protect the aggrieved person from arbitrary orders of forfeiture by providing a post-decisional challenge u/s 96 of the Code. The intention of the legislature in enacting Section 95 is to empower the State Government to deal with an emergent situation which is likely to lead to breach of public order. If the submission of the applicant is accepted that will frustrate the object behind Section 95. This submission of must, therefore, fail.

19. We shall now turn to the judgments cited by learned Counsel.

20. In *Ramji Modi*, the Supreme Court was dealing with a challenge to the constitutional validity of Section 295A of the IPC. It was, inter alia, argued that insults to religion or the religious beliefs of a class of citizens of India may lead to public disorder in some cases but in many cases they may not do so and, therefore, a law which imposes restrictions on the citizens' freedom of speech and expression by simply making insult to religion an offence will cover both varieties of insults i.e. those which may lead to public disorders as well as those which may not. It was argued that the law insofar as it covers the first variety may be said to have been enacted in the interests of public order within the meaning of Clause (2) of Article 19, but insofar as it covers the remaining variety will not fall within that clause. The Supreme Court rejected this submission and observed that in the first place, Clause (2) of Article 19 protects a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression "in the interest of public order", which is much wider than "for maintenance of public order". If, therefore, certain activities have a tendency to cause public disorder, a law penalising such activities as an offence cannot but be held to be a law imposing reasonable restriction "in the interest of order" although in some cases those activities may not actually lead to a breach of public order. The Supreme Court observed that Section 295A does not penalize any and every act of insult to or attempt to insult the religion or the religious beliefs of a class of citizens but it penalises only those acts of insults to or those varieties of attempts to insult the religion or the religious beliefs of a class of citizens which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class. It was further observed that insults to religion offered unwittingly or carelessly or without any deliberate or malicious intention to outrage the religious feelings of that class do not come within the section. It only punishes the aggravated form of insult to religion when it is perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class.

21. In *Harnam*, a Constitution Bench of the Supreme Court was considering somewhat similar provisions of the Code of Criminal Procedure, 1898 ("the Code of 1898"). The Government of U.P. had passed an order u/s 99-A of the Code of 1898

forfeiting two books on the ground that they contained matter, the publication of which was punishable under Sections 153A and 295A of the IPC. The Supreme Court set aside the notification on the ground that for a forfeiture notification to be valid, there must be an opinion of the Government and the Government has to state the grounds of its opinion. The Supreme Court observed that the notification did not state the grounds of the Government's opinion. It was not known which communities were alienated from each other or whose religious beliefs had been wounded and why the Government thought that such alienation or offence to religion had been caused. The Supreme Court observed that if the grounds of opinion are not stated, the order of forfeiture must be set aside, because then the Court cannot be satisfied that the grounds given by the Government justified the order. The Supreme Court clarified that it is the duty of the High Court to set aside an order of forfeiture if it is not satisfied that the grounds on which the Government formed its opinion could justify that opinion, but it is not the duty of the High Court to find for itself whether the book contained any such matter whatsoever. The Supreme Court observed that whether the order was proper or not would depend only on the merits of the grounds on which it was based because if it could be upheld on the grounds other than those on which the Government based its opinion there would have been no need to provide that the grounds of the Government's opinion should be stated; such grounds would then have been wholly irrelevant in judging the validity of the order. The Supreme Court set aside Allahabad High Court's order which had proceeded to examine the book in question for itself and come to its own conclusion dehors the notification as to why the contents of the book were objectionable.

22. In *Narayan Das*, the appellant, a proprietor of a printing press had published a book entitled "Madhyamic Bhoogol" written by one Mr. Saxena. The State Government passed an order u/s 2 of the Criminal Law Amendment Act, 1961 in respect of the said book and two other books stating that the books question the territorial integrity and frontiers of India in a manner which is likely to be prejudicial to the interest of the safety and security of India and, hence, the State Government declares every copy of the said books to be forfeited in favour of the Government. The books were specified in the schedule. In respect of the appellant's books it was stated inter alia that the books contain maps which show incorrect external boundaries of India and some parts of India were even omitted from the said maps. Section 4(1) of the Criminal Law Amendment Act, 1961, also required the State Government to declare grounds of its opinion in the order. The Supreme Court set aside the said order. The Supreme Court observed that grounds must be distinguished from the opinion as grounds of the opinion must mean conclusion of facts on which the opinion is based and there can be no conclusion of facts which has no reference to or is not ex facie based on any facts. The Supreme Court observed that mere repetition of an opinion or reproduction of the section without giving any indication of the facts will not answer the requirements of a valid

notification. The Supreme Court referred, with approval, to the judgment of the Calcutta High Court in *Arun Ranjan Ghose v. State of West Bengal* 59 EWN 495, where the Calcutta High Court has observed that formation of an opinion by Government is undoubtedly the ground for the action taken by it, but the grounds of opinion are obviously different. Grounds must necessarily be the import or the effect or the tendency of the matters contained in the offending publication, either as a whole or in portions of it, as illustrated by passages which Government may choose. Relying on its judgment in *Harnam*, the Supreme Court set aside the forfeiture order on the ground that the State Government had given its opinion and not the grounds of its opinion.

23. In *Lalai Singh Yadav*, the Government of Uttar Pradesh by an order passed u/s 99A of the Code of 1898 forfeited a book captioned "Ramayan : A True Reading" on the ground that it was sacrilegiously, outrageously objectionable being deliberately and maliciously intended to outrage the religious feelings of a class of citizens of India i.e. Hindus by insulting their religion and religious beliefs and publication whereof is punishable u/s 295A of the IPC. This notification contained an appendix setting out in tabular form, the particulars of the relevant pages and lines in the English and Hindi versions which presumably, were the materials which were regarded as scandalizing. An application was made by the respondent who was the publisher u/s 99C of the Code of 1898 to the High Court. The Special Bench of the High Court allowed the application and quashed the notification on the ground that the State Government did not state the grounds of its opinion as required by Section 99A. The State of U.P. approached the Supreme Court. It was argued before the Supreme Court that though there is no express enunciation of the grounds of the Government's opinion, the appendix makes up for it. It was argued that the number of the pages and lines of the offending publication supply both the matter and the grounds, the latter being so patent, the omission is inconsequential. The Supreme Court held that when the section says that you must state the grounds, it is no answer to say that they need not be stated because they are implied. The Supreme Court clarified that a formal authoritative setting forth of the grounds is statutorily mandatory and the Court cannot make a roving enquiry beyond the grounds set forth in the order and if the grounds are left out altogether then there is nothing available to the court to examine, and the notification must fail. The Supreme Court observed that the grounds need not be stated at 'learned length'. In certain cases, a laconic statement may be enough while in others more detailed reasons may be required. The Supreme Court further observed that while the order may be brief, it cannot be completely blank as to the grounds which form the basis of the opinion on which the Government relies. The Supreme Court held that an order of forfeiture constituted a drastic restriction on the rights of a citizen and hence the relevant provisions of the Code must be strictly construed. The Supreme Court observed that the relevant provisions of the Code compel the Government to look into the matter "which calls for action to consider it as to the clear and present danger it constitutes

in the shape of promoting feelings of enmity and hatred between the different segments of citizens or as to its strong tendency or intendment to outrage the religious feelings of such segments" and to exercise such power it is necessary for the State to set out the grounds of its opinion.

24. In *Balwant Singh*, the Supreme Court was dealing with a criminal appeal filed by the appellants challenging the conviction u/s 124A and Section 153A of the IPC. The Supreme Court acquitted the appellants. Counsel for the applicant relied on the observations of the Supreme Court in regard to Section 153A of the IPC that the intention to cause disorder or to incite people to violence is the sine qua non of the offence u/s 153A of the IPC and the prosecution has to prove the existence of mens rea in order to succeed. Counsel submitted that it is for the respondents to first prove existence of mens rea. He submitted that here there is total absence of mens rea and, hence, the Notification must be set aside.

25. In *Manzar Khan*, Manzar Khan the appellant was a constituted attorney of Oxford University Press India which published a book entitled *Shivaji Hindu King in Islamic India* authored by Prof. Laine. The police registered FIR against the appellant and Prof. Laine under Sections 153, 153A read with Section 34 of the IPC inter alia on the ground that the offensive paragraphs of the said book contained scurrilous attack on Shivaji Maharaj and the circulation of the said book has resulted in causing enmity between various communities and has led to violence and disharmony. While quashing the FIR, the Supreme Court observed that the gist of the offence u/s 153A of the IPC is the intention to promote feelings of enmity or hatred between different classes of people. The intention to cause disorder or incite the people to violence is the sine qua non of the offence u/s 153A of the IPC and the prosecution has to prove prima facie the existence of mens rea on the part of the accused. The Supreme Court further observed that the intention has to be judged primarily by the language of the book and the circumstances in which the book was written and published. The Supreme Court further observed that the matter complained of must be read as a whole. One cannot rely on strongly worded and isolated passages for proving the charge nor indeed can one take a sentence here and a sentence there and connect them by a meticulous process of inferential reasoning. The Supreme Court quoted with approval the observations of the Nagpur High Court in *Bhagwati Charan Shukla* that the effect of the words in the offending publication must be judged from the point of view of a reasonable man, and not a weak or a hypersensitive man who senses hostility in every point of view that does not agree with his own.

26. In *Baragur*, the State of Karnataka had issued a notification forfeiting all copies of novel "*Dharmakaarma*" u/s 95 of the Code on the ground that some of the statements made therein were objectionable and insulting to the sentiments and feelings of the followers of Basaveshwara, a great saint. The forfeiture was upheld by the Supreme Court by observing that some portions of the book were clearly an

affront to the sentiments of Veerashaivas followers of Basaveshwara. The Supreme Court observed that Section 95 of the Code exemplifies the principle that the freedom of speech and expression is not unfettered. This freedom must be available to all and no person has a right to impinge on the feeling of others on the premise that his right to freedom of speech remains unrestricted and unfettered. The Supreme Court observed that India is a country with vast disparities in language, culture and religion and unwanted and malicious criticism or interference in the faith of others cannot be accepted. The Supreme Court observed that prior to the issuance of a notification, it must appear to the State Government that the ingredients of the offence under the relevant provisions of the IPC exist. Only thereafter does the onus shift on the author. The Supreme Court made it clear that the State cannot extract stray sentences of portions of the book and come to a finding that the book as a whole ought to be forfeited. The Supreme Court observed that if the allegations made in the allegedly offending portions of the publication were based on folklore, tradition or history, something in extenuation could be said for the author. However, on facts, the Supreme Court found that Chapter 12 of the book was not in sync with the rest of the novel and had been deliberately designed to be hurtful and to bring the Basaveshwara family to shame.

27. We must also refer to Bhagwati Charan Shukla. In that case, orders of forfeiture were made in respect of certain matters which appeared in Nagpur Times. The question was whether it directly or indirectly brought into hatred or contempt the Government established by law in British India or excited disaffection towards the said Government. The Nagpur High Court set aside the order of forfeiture. The Nagpur High Court observed that the words of the relevant section are words of wide import and that unless they are applied with restraint and care almost every criticism of Government would fall within their purview. The Nagpur High Court observed that it is not sedition to merely criticize the Government and it is not sedition to seek its overthrow by constitutional means in order that another Government equally constitutional may be substituted in its place in a constitutional way. In order to constitute the offence of sedition, the intention or the attempt to induce people to cease to obey the law and to cease to uphold the lawful authority must be present. While considering whether the published material was intended to excite disaffection towards the Government, the Nagpur High Court considered the fact that the matter appeared in a local daily written in English with a small and distinctly limited circulation. It was observed that the paper was read by those who understand English and who, therefore, have a certain degree of education. It was not meant for an ignorant illiterate and inflammable mob. In relation to the right to criticize the Government, learned Judges observed that they did not necessarily say that the criticisms were well founded, but it must be acknowledged that there was a constitutional right to put forth such criticisms.

28. In *Gopal v. Godse*, G.V. Godse, the petitioner was the brother of Nathuram Godse, assassin of Mahatma Gandhi. The petitioner was arrested along with



Nathuram Godse for murder of Mahatma Gandhi and was tried along with him. He was sentenced to life imprisonment. He was released from jail on 13/10/1964. He wrote and published a book titled "Gandhi-hatya Ani Mee". On 6/12/1967, Governor of Delhi issued a notification u/s 99-A of the Code of 1898 forfeiting every copy of the said book on the ground that it contains matter which promotes feelings of enmity and hatred between Hindus and Muslims, the publication of which is punishable u/s 153A of the IPC. On 1/2/1968, the Government of Maharashtra republished the notification of the Delhi Administration. The petitioner challenged the said notification under Article 226 of the Constitution of India and u/s 99-D of the Code of 1898. The Special Bench set aside the notification. The Special Bench observed that the High Court cannot sustain an order of forfeiture on grounds other than those mentioned in the said order. The High Court cannot add to the grounds given by the State in the notification, but can simply review the book on merits, to determine if it is satisfied with the grounds given in the order of forfeiture. Following are the points which according to the Special Bench must be kept in mind before inquiring whether a charge can be sustained on the date disclosed in the order of forfeiture.

64. While inquiring whether such a charge can be sustained on the date disclosed in the order of forfeiture, namely the offending passages read in the context of the book as a whole, it is important to remember that : (1) u/s 153A it is not necessary to prove that as a result of the objectionable matter, enmity or hatred was in fact caused between the different classes. (2) Intention to promote enmity or hatred apart from what appears from the writing itself, is not a necessary ingredient of the offence. It is enough to show that the language of the writing is of a nature calculated to promote feelings of enmity or hatred for, a person must be presumed to intend the natural consequences of his act. (3) The matter charged as being within the mischief of Section 153A must be read as a whole. One cannot rely on stray, isolated passages for proving the charge nor indeed can one take a sentence here and a sentence there and connect them by a meticulous process of inferential reasoning. (4) For judging what are the natural or probable consequences of the writing, it is permissible to take into consideration the class of readers for whom the book is primarily meant as also the state of feelings between the different classes or communities at the relevant time. (5) If the writing is calculated to promote feelings of enmity or hatred, it is no defence to a charge u/s 153A that the writing contains a truthful account of past events or is otherwise supported by good authority. If a writer is disloyal to history, it might be easier to prove that history was distorted in order to achieve a particular end as e.g. to promote feelings of enmity or hatred between different classes or communities. But adherence to the strict path of history is not by itself a complete defence to a charge u/s 153A. In fact, greater the truth, greater the impact of the writing on the minds of its readers, if the writing is otherwise calculated to produce mischief.

29. In *M/s. Varsha Publications Pvt. Ltd.*, the State of Maharashtra issued Notification dated 31/7/1982 u/s 92 of the Code of Criminal Procedure (2 of 1974) (for short, "Code of 1974") declaring the issue of a popular Marathi Daily "Shree" forfeited on the ground that it contained matters which would be punishable u/s 153A of the IPC. The notification stated that the said publication and its cover contain matter which purports to prove that in Pre-Islamic times the ancient Indian culture and Hindu religion were in vogue in Arabia and that the Islamic religion, culture and art were greatly influenced by the Indian culture and religion and which thereby promotes on the grounds of religion and race disharmony or ill-will between the Muslim and Hindu communities and commits an act which is prejudicial to the maintenance of harmony between the said two communities and which is likely to disturb the public tranquility. The publisher of the said publication challenged the notification. It was argued that the notification must state the grounds on the basis of which the State Government has formed its opinion that the issue in question contained matter which is punishable u/s 153A of the IPC. In the absence of such grounds, the Notification will be bad in law.

30. The Special Bench of this Court referred to the judgments of the Supreme Court in *Harnam Das* and in *Lalai Singh Yadav* and held that the notification in question did not contain any grounds; that mere mention of the article or a part thereof in the notification would not constitute grounds contemplated by Section 95 and therefore, it would be difficult for the State to contend that the notification stated grounds and had complied with the mandatory provisions of law. The Special Bench took note of the fact that it was stated in the petition that just below the printed article, there was a list containing various books to which the author has made a reference. It was contended that the article was a historical and literary composition made in a temperate language. Truth of the averments made in the petition were not denied. After analyzing the article, the Special Bench held that it will be very difficult for the State to contend that a narration of history would promote violence, enmity and hatred. The Special Bench observed that if such a contention is accepted, a day will come when that part of history which is unpalatable to a particular religion will have to be kept in cold storage on the pretext that publication of such history would constitute an offence punishable u/s 153A of the IPC. A nation would have to forget its own history and in due course nation will have no history at all. The writing being a historical research, observed this Court, it cannot be allowed to be thwarted on a plea that publication of such material would be hit by Section 153A of the IPC. This Court in the circumstances, quashed the notification.

31. In *Anant Dighe*, the Government of Maharashtra issued notification u/s 95(1) of the Code declaring that every copy of the Marathi play entitled "Mee Nathuram Godse Bolto" be forfeited to the Government. The notification inter alia stated that the play in question contained derogatory references towards Mahatma Gandhi and certain communities and was likely to disturb public tranquility and that it was written with a deliberate and malicious intention to outrage feelings of the followers

of Mahatma Gandhi and therefore, the publication would be punishable u/s 153A and 295A of the IPC. The challenge to the notification was repelled by the Special Bench of this Court, to which one of us (D.Y. Chandrachud, J.) was a party. After considering the relevant judgments, this Court observed that the notification did not contain grounds of the Government's opinion. The notification did not state what part of the play would render the printed material punishable u/s 153A or the groups between whom feeling of enmity is likely to be created. The notification had merely employed statutory language. There was no reference in the notification of there being any deliberate or malicious intention of outraging the religious feelings of any class of citizens. This Court noted that lacunae in the notification cannot be permitted to be supplemented in the affidavits filed in the course of proceedings. While stressing the importance of the guarantee of freedom of speech and expression under Article 19(1)(a) of the Constitution, this Court observed as under:

But, it is important to realize that there are eternal values on which the Constitution of a democracy is founded. Tolerance of a diversity of view points and the acceptance of the freedom to express of those whose thinking may not accord with the mainstream are cardinal values which lie at the very foundation of a democratic form of Government. A society wedded to the Rule of law, cannot trample upon the rights of those who assert views which may be regarded as unpopular or contrary to the views shared by a majority. The law does not have to accept the views which have been expressed by the petitioner in the play in order to respect the right of the petitioner as a playwright to express those views. Respect for and tolerance of a diversity of viewpoints is what ultimately sustains a democratic society and Government. The right of the playwright, of the artist, writer and of the poet will be reduced to husk if the freedom to portray a message - whether it be in canvas, prose or verse is to depend upon the popular perception of the acceptability of that message. Popular perceptions, however strong cannot override values which the Constitution embodies as guarantees of freedom in what was always intended to be a free society.

32. Reference was also made to the judgment of the Special Bench of this Court in *Sangharaj Rupawate and Ors. v. Nitin Gadre and Ors.* in Writ Petition No. 1721 of 2004 decided on 26/4/2007. In that case, notification was issued by the Government of Maharashtra forfeiting every copy of the book captioned "Shivaji-Hindu King in Islamic India" written by Prof. Laine on the ground that publication of the book was punishable u/s 153A of the IPC. After the petition was heard by this Court, the Supreme Court held that the writings in the said book did not constitute an offence u/s 153A of the IPC. In view of this observation of the Supreme Court, this Court held that the notification has to be struck down. This Court also held that there was nothing on record to show that the publication was likely to promote disharmony or feeling of enmity between various groups as likely to cause disturbance of public tranquility and maintenance of harmony between various groups.

33. Before we deal with the rival contentions, it is necessary to deduce the legal principles from the above judgments. Following are the said principles.

a) The Notification must state the grounds of the Government's opinion.

(Harnam, Narayan Das, Lalai Singh Yadav)

b) A formal authoritative setting forth of the grounds is statutorily mandatory. Appendix cannot make up for grounds of opinion.

(Lalai Singh Yadav)

c) Mere repetition of an opinion or reproduction of the Section will not answer the requirement of a valid notification.

(Narayan Das)

d) Grounds must not be stated at learned length. In certain cases a laconic statement may be enough while in others more detailed reasons may be required. Grounds may be brief but cannot be blank.

(Lalai Singh Yadav)

e) Grounds of opinion must mean conclusion of facts on which the opinion is based. Grounds must necessarily be the import or the effect or the tendency of the matters contained in the offending publication either as a whole or in portions of it, as illustrated by passages which Government may choose,

(Narayan Das's case where the Supreme

Court referred to the Calcutta High Court's judgment in Arun Ranjan Ghose with approval).

f) The High Court must set aside an order of forfeiture if there are no grounds of opinion because if there are no grounds of opinion, it cannot be satisfied that the grounds given by the Government justified the order. If in such case, the High Court upholds the order, it would mean that the High Court itself made the order which the High Court cannot do.

(Harnam)

g) The High Court must set aside the order of forfeiture if it is not satisfied that the grounds on which the Government formed its opinion justify that opinion.

(Harnam)

h) The validity of the order of forfeiture would depend on the merits of the grounds. It is not the duty of the High Court to find out for itself whether the book contained any such matter whatsoever. The High Court cannot make a roving enquiry beyond the grounds set forth in the order.

(Harnam)

i) The State cannot extract stray sentences of portions of the book and come to a finding that the said book as a whole ought to be forfeited.

(Baragur)

j) The matter charged as being within the mischief of the relevant sections of the IPC must be read as a whole. One cannot rely on stray, isolated passages for proving the charge nor indeed can one take a sentence here and a sentence there and connect them by a meticulous process of inferential reasoning.

(Gopal Godse, Special Bench, Bombay High Court.)

k) Section 295A of the IPC does not penalize any and every act of insult to or attempt to insult the religion or religious beliefs of a class of citizens. There must be a malicious or deliberate intention to outrage the religious feelings of a class of citizens.

(Ramji Modi, Balwant Singh, Manzar Khan, Bhagwati Charan Sharma Nagpur High Court, Gopal Godse Special Bench, Bombay High Court.)

l) Intention of the author has to be gathered from the language, contents and import of the offending material.

(Baragur, Gopal Godse Special Bench, Bombay High Court).

m) If the purpose of writing the book was a historical research based on a number of reference books and other material, it would be difficult for the State to contend that simple narration of history would promote violence, enmity or hatred.

(Varsha Publications, Special Bench, Bombay High Court.)

n) If the allegations made in the offending article is based on folklore, tradition or history something in extenuation could perhaps be said for the author.

(Baragur)

o) If the writing is calculated to promote feelings of enmity or hatred, it is no defence to a charge u/s 153A of the IPC that the writing contains a truthful account of past events or is otherwise supported by good authority. Adherence to the strict path of history is not by itself a complete defence to a charge u/s 153A.

(Gopal Godse, Special Bench, Bombay High Court).

p) Section 95(1) of the Code requires that the ingredients of the offences should appear to the Government to be present. Section 95 does not require that it should be proved to the satisfaction of the Government that all requirements of punishing sections including mens rea were fully established.

(Baragur, Nandkishore, Special Bench of Patna High Court).

q) The onus to dislodge the prima facie opinion of the Government that the offending publication comes within the relevant offence including its requirement of intent is on the applicant and such intention has to be gathered from the language, contents and import thereof.

(Nandkishore, Special Bench of Patna High Court, approved in Baragur.)

r) It is not necessary to prove that as a result of the objectionable matter enmity or hatred was in fact caused between the different classes. It is enough to show that the language of the writing is of a nature calculated to promote feelings of enmity or hatred.

(Gopal Godse, Special Bench, Bombay High Court.).

s) For judging what are the natural or probable consequences of the writing, it is permissible to take into consideration the class of readers for whom the book is primarily meant as also the state of feelings between the different classes or communities at the relevant time.

(Gopal Godse, Special Bench, Bombay High Court.).

t) Whether the objectionable matter is meant for limited circulation, whether it is to cater to ignorant, illiterate inflammable mob or educated people would be a relevant consideration.

(Bhagwati Charan Sharma - Nagpur High Court).

u) The effect of the words must be judged from the standards of reasonable strong-minded, firm and courageous men and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view.

( [Ramesh Dalal Vs. Union of India \(UOI\) and Others, .](#) )

34. We need to examine the present case in the light of above principles. We shall first deal with the grievance that because the penal provisions have not been stated in the Notification, the applicant's right to challenge it is adversely affected. We have already noted that learned Advocate General has contended that the book contains matter, the publication of which would constitute offences punishable under Sections 153A, 153B and Section 295A of the IPC. We shall, therefore, quote the said provisions to the extent they are relevant to the present case.

153A Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc. and doing acts prejudicial to maintenance of harmony.

(1) 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, place of

birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial language or regional groups or castes or communities, or

(b) commits any act, which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities and which disturbs or is likely to disturb the public tranquility, [or]"

Section 153B so far as it relevant reads thus:

Section 153B - Imputations, assertions, prejudicial to national integration.

(1) Whoever by words either spoken or written or by signs or by visible representations or otherwise -

(a) makes or publishes any imputation that any class of persons cannot by reason of their being members of any religious, racial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India or

(b) xxx xxx xxx

(c) makes or publishes any assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feeling of enmity or hatred or ill-will between such members and other persons, S. 295A Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs - Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of [citizens of India], by words, either spoken or written or by signs or by visible representations or otherwise], insults or attempts to insult the religion or the religious beliefs or that class, shall be punished with imprisonment of either description for a term which may extend to [three years], or with fine or with both.

If we peruse the Notification, we find that though the sections of the IPC are not mentioned, there is a direct reference to the ingredients of Sections 153A and 295A in the recitals contained in the Notification. The relevant portion of the Notification reads thus:

AND WHEREAS for the reasons aforesaid the Government of Maharashtra is of the opinion that the circulation and sale of the said Book and relevant translation thereof as the translated Book contain abusive language bringing meanness to Jihaad, Quaran, Mohammed Paigambar, Indian Muslims and conversion, as well as derogatory and false references therein is likely to create hatred against Muslims in the minds of non-Muslims thereby promoting enmity between classes so also the said Book and relevant translation thereof as the translated Book outrages the

fillings of a Muslim section of society and maliciously insulting the religion and religious beliefs of Muslims and likely to lead to acts of violence and disharmony and that any further circulation and sale of the said Book and relevant translation thereof as a translated Book is likely to result in breach of peace and public tranquility between classes and groups, as such the said Book and relevant translated Book should be forfeited;

35. Ideally, the relevant sections should be clearly stated in the notification. But, in our opinion, the absence of a clear statement of penal provisions is not fatal to the notification in view of the express mention of their ingredients in the Notification. The Supreme Court has made it clear that the notification must state the grounds of the Government's opinion and a formal authoritative setting forth of the grounds is statutorily mandatory. But the Supreme Court has also clarified that a mere repetition of an opinion or reproduction of section will not answer the requirement of valid notification (Narayan Das). It is also made clear by the Supreme Court that the grounds of opinion must mean conclusion of facts on which the opinion is based. Grounds must necessarily be the import or the effect or the tendency of the matters contained in the offending publication either as a whole or in portions of it, as illustrated by passages which Government may choose (Narayan Das). Therefore, if from conclusions of facts, there is a fair idea of what is taken against the author that may suffice in the circumstances of a case. The mere non-mention of penal sections in the Notification by itself is not sufficient to throw it overboard.

36. We will now examine whether grounds of opinion are stated in the Notification and whether they contain conclusions of facts which give sufficient outline of what is held against the applicant. We have already reproduced the Notification. It is necessary to quote recital 8 again. It states that "for the reasons aforesaid, the Government of Maharashtra is of the opinion (emphasis supplied) that the circulation and sale of the book and the relevant translation thereof as the translated book contain abusive language bringing meanness to Jihaad, Quaran, Mohammed, Paigambar, Indian Muslims and Conversions, as well as derogatory and false references therein is likely to create hatred against Muslims in the minds of non-Muslims thereby promoting enmity between classes so also the book and relevant translation thereof as the translated book outrages the feelings of a Muslim section of society and maliciously insulting the religion and religious belief of Muslims and likely to lead to acts of violence and disharmony and that any further circulation and sale of the book and relevant translation thereof as a translated book is likely to result in breach of peace and public tranquility between classes and groups, as such the book and the relevant translated book should be forfeited".

37. It is evident that recital 8 contains the opinion and the earlier recitals 1 to 7 contain reasons or grounds of opinion to which we shall soon come. The Notification therefore cannot be accused of not containing the required opinion.



38. We shall now turn to the grounds of opinion. Recital 2 states that the author of the book has made several derogatory and false statements about Muslim religion, community, priests and Mohammed Paigambar as specified in Schedule appended thereto. Recital 3 quotes the gist of the false statements and gives the relevant page numbers. Similarly, in the 4th recital, reference is made to derogatory and false statements about Jihaad, Quaran, Mohammed Paigambar, Indian Muslims and Conversions and recital 4 refers to Khatme Nawabac as being Muslim sentiment. In both these recitals, relevant page numbers are given. The 5th recital is very important. It states that "this might raise a question mark about the basic aim and objective behind writing the book without taking the Muslim sentiments into consideration and without giving thorough consideration to the subject and that the Government has taken serious note of this derogatory, tasteless and malicious writings". This paragraph, in our opinion, contains the conclusions of facts. The 6th recital refers to the article published in a newspaper making reference to the book and action taken inter alia against the author under Sections 153A, 295A read with Section 34 of the IPC.

39. The grounds do not merely quote the pages or rely on the Schedule. The grounds give the gist of the derogatory remarks and to help identify those remarks page numbers are given. The Schedule merely supplements the grounds. The Notification does not entirely rest on the Schedule. In our opinion, the Notification answers the test of a valid notification inasmuch as it states the opinion of the Government, it states the grounds of the Government's opinion and outlines the ingredients of the penal provisions which are attracted to the present case. The grounds may be called brief. They are certainly not blank. We, therefore, reject these submissions of the applicant.

40. Relying on the judgment of the Nagpur High Court in Bhagwati Charan Shukla, Counsel submitted that Section 295A and Section 153A of the IPC cannot be applied unless language employed is strictly in terms of these sections. Relying on Gopal Godse's judgment, Counsel submitted that the order of forfeiture must at the very best show that the language of the writing is of a nature calculated to promote feelings of enmity and hatred. Counsel submitted that the Notification falls short of this requirement and, hence, must be set aside.

41. There can be no debate over the legal propositions. But, the law does not require verbatim reproduction of the section. In our opinion, the Notification does not lack the basic ingredients. The Notification identifies the classes of people who are likely to be affected by the book as Muslims and non-Muslims. It quotes the derogatory references to Muslim religion and inter alia states that the said references are likely to create hatred against Muslims in the minds of non-Muslims thereby promoting enmity between classes. It further states that the book maliciously insults Muslim religion which is likely to lead to acts of violence and disharmony and breach of peace and public tranquility between classes. In view of

these averments, it is not possible for us to accept this submission of the applicant.

42. Connected with this is the submission that mens rea or intention to cause disorder or to incite people being the sine qua non for the relevant offences it is the respondents, who have to prove the mens rea. Reliance was placed by Counsel on Balwant Singh where the Supreme Court has observed that the intention to cause disorder or to incite people to violence being the sine qua non of the offence u/s 153A of the IPC, the prosecution has to prove mens rea in order to succeed. Reliance was also placed on Manzar Khan for this proposition. In our opinion, reliance placed on the above judgments is misplaced.

43. Balwant Singh will not be applicable to the present case because there the Supreme Court was dealing with a criminal appeal filed by the appellants challenging their conviction u/s 124A and Section 153A of the IPC. The Supreme Court acquitted the appellants. Standard of proof required in a criminal trial can never be equated to the requirement of presence of mens rea or malicious intention to sustain an order of forfeiture issued u/s 95 of the Code. In this connection, reference must be made to the judgment of the Special Bench of Patna High Court in [Nand Kishore Singh and etc. Vs. State of Bihar and Another](#), . In that case, the Government of Bihar had issued a notification u/s 95(1) of the Code banning copies of a book on the ground that it contained objectionable matters and derogatory references about Prophet Mohammed which outraged the religious feelings of the Muslim community which was an offence punishable u/s 295A of the IPC. The petitioner who challenged the notification was the publisher of the book. It was argued that to be an offence u/s 295A, the publication must be with a deliberate and malafide intention. The mens rea or deliberate and mala fide intention must be first established. Negativating this submission, the Patna High Court observed as under: ...it would be somewhat fallacious to mathematically equate the proceedings under Sections 95 and 96 of the Code with a trial u/s 295A of the Penal Code with the accused in the dock. The stringent requirement of the mens rea to be proved and established are for the purpose of a conviction under this offence which carried a sentence upto three years and fine.

The Patna High Court further observed:

Indeed to require that a deliberate and malicious intention must be proved at the threshold stage before the Government by evidence (including any rebuttal thereof) as a condition for acting u/s 95(1), as if an accused person who was in the dock, would in effect virtually frustrate the preventive purpose of the said section.

It was further observed:

The onus to dislodge and rebut the prima facie opinion of the Government that the offending publication comes within the ambit of the relevant offence including its requirement of intent is on the applicant and such intention has to be gathered

from the language, contents and import thereof.

44. It may be stated here that in Baragur, the Supreme Court has quoted the above observations with approval and observed that Sections 95 and 96 of the Code are preventive in nature. Section 95 does not by itself create a criminal offence and the reference to various sections of the IPC is merely descriptive of the kind of offence which need to be prevented by a declaration u/s 95.

45. For the same reasons, judgment of the Supreme Court in Manzar Khan will not be applicable to the present case. In that case, the police had registered FIR under Sections 153, 153A read with Section 34 of the IPC against the author and the publisher of a book which allegedly contained scurrilous attack on Shivaji Maharaj, a historical hero. The Supreme Court observed that the prosecution has to prima facie prove the existence of mens rea on the part of the accused. The Supreme Court referred to its judgment in [State of Haryana and others Vs. Ch. Bhajan Lal and others](#), where it is laid down that an FIR can be quashed if it does not disclose an offence and obviously after coming to the conclusion that the FIR did not disclose any offence at all, the Supreme Court, quashed it. Facts of this case materially differ from the facts of the present case. Parameters of a criminal trial or of requirements of the FIR on which investigation can be set into motion cannot be applied to this case. As stated by the Special Bench of the Patna High Court in Nand Kishore Singh, all that Section 95(1) requires is that the ingredients of the offence should appear to the Government to be present and not that they should be proved at the threshold or that the Government should be inflexibly satisfied about them. Therefore, the prima facie opinion of the Government that the offending publication would come within the relevant section of the penal code with its requirements of intent would be adequate to enable it to act u/s 95(1). We respectfully agree with the view of the Patna High Court which is endorsed by the Supreme Court in Baragur that the onus to dislodge and rebut the prima facie opinion of the Government that the offending publication comes within the ambit of the relevant section is on the applicant. This submission of the applicant must, therefore, fail.

46. The submission that the power to ban a book is exercisable only when a clear and present danger exists and not on mere apprehension of danger, must also be rejected. In this connection, Counsel laid emphasis on the observations of the Supreme Court in Lalai Singh that the relevant section of the Code compels the Government to look into the matter "which calls for action to consider it as to the clear and present danger it constitutes in the shape of promoting feeling of enmity and hatred between different groups of citizens ..... " Counsel submitted that the State Government has not examined the case from the clear and present danger angle. On this aspect, it is necessary to refer to [Babulal Parate Vs. State of Maharashtra and Others](#), where the Supreme Court was dealing with challenge to the constitutional validity of Section 144 of the Code. It was argued that Section 144 adopts "likelihood" or "tendency" as tests for judging criminality; the test of

determining the criminality in advance is unreasonable. The Supreme Court observed that the doctrine of clear and present danger enumerated in *Schenk v. United States* (1919) 249 US 47 cannot be imported under our Constitution because the fundamental rights guaranteed under Article 19(1) of the Constitution are not absolute rights. Similar view was taken by the Supreme Court in [S. Rangarajan Vs. P. Jagjevan Ram and Others,](#) . The Supreme Court held that the First Amendment of the U.S. Constitution provides for absolute right of freedom of speech and of press. It contains no exception for exercise of the right. Therefore, the decisions bearing on the First Amendment are not useful to us except the broad principles and the purpose of the guarantee. Counsel pointed out that in *Ajay Goswami*, the Supreme Court has referred to its judgment in *S. Rangrajan* and observed that in that case while interpreting Article 19(2), it had borrowed from the American test of clear and present danger and, therefore, that test is still applicable. We do not see any conflict in this. While clarifying that the decisions bearing on the First Amendment are not useful to us except the broad principles and the purpose of the guarantee, while considering whether "U" certificate of a feature film on reservation policy was rightly revoked, the Supreme Court observed that the anticipated danger should not be remote, conjectural and far-fetched, it should have proximate and direct nexus with the expression of thought and the expression of thought should be intrinsically dangerous to the public interest. In our opinion, therefore the doctrine of clear and present danger has been modulated by the Supreme Court to be in tune with Article 19(1) and (2) to mean that ban can be imposed on apprehended danger but it has not to be remote, conjectural or far-fetched and should be intrinsically dangerous to the public interest.

47. We shall now turn to the gravamen of Counsel's argument that the applicant is deprived of his fundamental right of freedom of speech and expression guaranteed to him under the Constitution.

48. Freedom of speech and expression is a cherished right of every citizen. Every person has a right to express what he/she feels about any issue which according to him/her needs to be debated upon or brought before the public eye. Freedom of expression would also include freedom to criticize. Indian democracy has survived because of the protection its Constitution has granted to its people to express freely their views on affairs of the State and on other issues concerning religion, culture, civilization, literature and personalities, which are beyond the mundane affairs of the State. This list is merely illustrative and not exhaustive. Fearlessness is the hallmark of a vibrant, democratic and secular society like ours. We are an amazing mix of people coming from different social and cultural background, people professing different religions and people who speak different languages. While we have a right to criticize each other, the criticism has to be healthy and not malicious. It must not lead to creating ill-will and hatred between different communities. Freedom of expression must be well utilized, it must lead to sensible dialogue but not senseless destruction of lives and property and breach of public order. The

Constitution, therefore, while granting freedom of speech and expression under Article 19(1)(a) places reasonable restriction thereon. Under Article 19(2), while protecting a citizen's fundamental right of freedom of speech and expression, the courts have always tried to strike a balance between this right and measure of restriction to be placed on it to prevent hurting religious and other sensibilities of people. It is a delicate and difficult task. We have only to revisit certain paragraphs of the judgments cited before us to ascertain how the balance has to be struck.

49. In *Lalai Singh*, the Supreme Court while stressing the importance of freedom of speech and expression observed that our Constitution makers respected Mill's famous statement from his essay "On Liberty" as under:

If all mankind minus one were of one opinion and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person than he, if he had the power would be justified in silencing mankind.

The Supreme Court then quoted Voltair's inspired assertion:

I disapprove of what you say, but I will defend to the death your right to say it.

(Attributed to Voltair in S.G. Tallentyre. *The Friends of Voltair* 1907).

50. Having quoted the above passages, the Supreme Court turned to passages from *Gitlow v. New York* (1924) 69 Law ed 1138, which were quoted by Dr. Ambedkar in the Constituent Assembly. We may reproduce them:

It is a fundamental principle long established, that the freedom of speech and of the press, which is secured by the Constitution does not confer an absolute right to speak or publish, without responsibility, whatever one may choose or an unrestricted and unbridled licence that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom.

That a State in the exercise of its police power may punish those who abuse this freedom by utterances inimical to the public welfare, finding to correct public morals, invite to crime or disturb the public peace, is not open to question....

51. The Supreme Court's further observations which are material need to be quoted.

The State, in India is secular and does not take sides with one religion or other prevalent in our pluralistic society. It has no direct concern with the faiths of the people but is deeply obligated not merely to preserve and protect society against breaches of the peace and violations of public order but also to create conditions where the sentiments and feelings of people of diverse and opposing beliefs and bigotries are not so molested by ribald writings or offensive publications as to provoke or outrage groups into possible violent action. Essentially good government necessitates peace and security and whoever violates by bombs or books social tranquility will become target of legal interdict by the State."

52. The Supreme Court acknowledged that a drastic restriction on the right of a citizen when imposed by statute calls for a strict construction, especially when quasi-penal consequences also ensue. As regards balance to be struck between the right to freedom of speech and expression and the reasonable restriction to be placed on it, the Supreme Court observed that "the balance is struck by governmental wisdom overseen by judicial review."

53. In *Baragur*, the Supreme Court observed that freedom of speech and expression is not unfettered and Section 95 of the Code exemplifies this principle on the understanding that this freedom must be available to all and no one has a right to impinge on the feelings of others on the premise that his right to freedom of speech remains unrestricted and unfettered. The Supreme Court observed that it cannot be ignored that India is a country with vast disparities in language, culture and religion and unwarranted and malicious criticism or interference in the faith of others cannot be accepted. The Supreme Court quoted extensively from its judgment in *Lalai Singh*, reaffirmed the view taken therein and observed that Section 95 of the Code is not violative of Article 19(1)(a) of the Constitution as the action taken thereunder is of a preventive nature and Section 96 provides an efficacious remedy for the aggrieved party. The Supreme Court observed that most of the matters pertain to attacks on minorities or religious or social groups or individuals who are perceived as being prodigals or heretics and therefore unacceptable to the conservatives amongst the mainstream. The Supreme Court further observed that it cannot ever be overemphasized that India is a country with huge diversities in language and religion and the weaker amongst them must be shown extra care and consideration.

54. In our constitutional set up, everything is open to criticism and religion is no exception to it. Every religion, whether it is Islam, Hinduism, Christianity or any other religion, can be criticized. Freedom of speech and expression covers criticism of a religion and no person can be sensitive about it. Healthy criticism provokes thought, encourages debate and helps us to evolve. Counsel submitted that the author has through the book placed his perception of Islam before people. He submitted that the book brings the lesser known aspects of Islam before the public eye. He submitted that the book gives correct insight into Islam, but assuming the author is wrong, he has a right to be wrong.

55. We do not want to join issue with Counsel on this aspect. The author has undoubtedly a right to be wrong. The author can say what he feels is right and if it is wrong, he cannot be punished for it. But what needs to be seen is whether the author has done this exercise bona fide with a real desire to explore the tenets of Islam and give his exposition thereof.

56. An author has a right to put forth a perspective that a particular religion is not secular. This is a view point which one has a right to assert. However, if a book reeks of hatred for a particular community, if it contains rabid material and there appears

to be no sincere handling of the subject but a malafide exercise to stir communal passions one must pause and consider whether it is in the interest of general public to allow its circulation. In such a situation restriction imposed on the freedom of speech and expression by the Constitution must spring into action. It is necessary once again to remind ourselves that in Baragur, the Supreme Court has made it clear that no one has a right to impinge on the feelings of others on the premise that his right to freedom of speech remains unrestricted and unfettered and that it cannot be ignored that India is a country with vast disparities in language, culture and religion and unwarranted and malicious criticism or interference in the faith of others cannot be accepted.

57. Counsel submitted that so many books containing vituperative articles against different religions are available in the market and in the age of the internet everything is available at the click of a mouse and therefore, there is no point in banning books. This argument is totally unacceptable. The courts deal with books or films which are brought before it through accepted legal procedure. That such material is freely available in the market is no argument against the ban. It is for the State, if it so desires, to take steps to stop circulation of such books or material. If the courts adopt such an approach the relevant provisions of the Code and the IPC would be rendered redundant. Ajay Goswami is not applicable to the present case because in that case the Supreme Court was dealing with obscene material printed in newspapers against the background of contemporary mores and national standards. It was dealing with contemporary standards as test. It was not dealing with a book containing an attack on a religion. In any case, the Supreme Court did not completely discard the test. The Supreme Court observed that due to internet facilities, it has become somewhat outdated. We must, therefore, proceed to examine whether the ban is justified or not.

58. From the relevant judgments of the Supreme Court, of this Court and other High Courts we have deduced principles which will guide us while dealing with this case. We are aware that it is not our duty to find out whether the book contains any matter which calls for its forfeiture. We must concentrate on the grounds on which the Government formed its opinion and if the grounds justify that opinion the forfeiture must be upheld. We cannot make a roving enquiry beyond the grounds set forth in the Notification. We shall therefore reproduce the contents of the book which have persuaded the Government to ban it. Those are the grounds. We must see whether the opinion of the Government that the book must be forfeited is justified on the basis thereof.

59. Certain pages are cited in the Notification which are stated to contain derogatory and false statements about Jihad, Quaran, Mohammad Paigamber, Indian Muslims and Conversions. The Notification further states that the author has made several derogatory and false statements about Islam, the Muslim community, Mohammad Paigambar and Muslim priests as specified in the Schedule appended thereto. The

attack is broadly against Mohammad Paigambar, Quran, Muslim religion and Muslim community with particular reference to Indian Muslims. We must give the gist of what is stated against each of them which has weighed with the State Government while imposing the ban.

The contents of the book found by the State to be objectionable.

#### 60. Mohammad Paigambar.

a) Mohammad grew up in his early childhood under queer circumstances as he was born as a posthumous child. Ayesha his wife has recorded some facts known to her about Mohammad. According to her, Mohammad was greatly fond of women and perfumes. He is said to have made one of his followers divorce his wife so that he could marry her since he said, he had an ilham from the God Almighty that she was born on the earth for him only. In course of 10 years of Mohammad's life from the age of 52 to 62 Mohammad, as a widower, after the death of his wife Khadija is said to have taken 11 more wives. At the age of about 52, he married a Jewish widow who was converted to Islam. After moving to Medina, he directed his friend and comrade Abu Bakr to marry his seven year old daughter Ayesha to him when he himself was about 52 years of age. It is said that Abu Bakr declined to do so saying that his daughter by the name of Ayesha was too young and was also engaged to some one else. This being a promise could not be broken. In relationship Ayesha was the niece of Mohammad who put aside the objection of Abu Bakr saying that he had an ilham from Allah that he had given birth to Ayesha to become his wife. The sixth wife of Mohammad was said to be the mother of four children and was a Hindu who was converted for this purpose to accept Islam. The seventh wife was Zarnab. She was Zainab wife of a slave by name Jaid whom Mohammad took as his adopted son and made him divorce his wife so that she could marry Mohammad. She is said to have been a very beautiful woman who took the fancy of Mohammad who had seen her naked when she was once bathing. Here too, Mohammad is said to have stated that he had another ilham from Allah that he should marry her and that she was given birth on the earth for this purpose. Many writers have stated that besides the above, Mohammad also had more than 11 wives both religiously married and otherwise.

b) It is said that Mohammad used to have strange attacks of some disease for which he used to retire to a cave near Mecca. He announced to the world that in the cave he used to meet God's messenger Gabriel who gave Mohammad God's own messages which he called as Ilhams.

c) He is said to have recorded himself issuing a Fatwa calling upon his followers not to resort to murders for forcing anyone to convert from his faith to faith professed by Mohammad. As can also be seen this Ayat (included in the holy book of Quran) is the only single Ayat that is quoted by the Muslims as their faith in peace and tolerance of other religions. This was forced on account of important political



reasons because there is no other Ayat in any Sura of Quaran ever said later in time repeating the spirit of this Ayat.

61. According to us, the lurid details allegedly of Mohammad Paigambar's life, the authenticity of which may be challenged by some, could have been avoided by the author. Source material for this is a book by name "Rangeela Rasool" written by Pandit Chamupati. Extracts from the book "Islam & Terrorism" and the book "Sex and Violence" written by Answar Shaikh are also relied upon. It is difficult for us to hold that the alleged details of the personal life of Mohammad Paigambar are based on any folklore or history. It is not possible for us to conclude that they are in the nature of historical research. We feel that the attempt is to show Mohammad Paigambar in poor light to hurt Muslim sentiments. In any case, it is well settled that if the writing is calculated to promote feelings of enmity or hatred it is no defence to a charge u/s 153A of the IPC that the writing contains a truthful account of past events or is otherwise supported by good authority. Adherence to strict path of history is not by itself a complete defence to a charge u/s 153A of the IPC. The Author has referred to an Ayat which calls upon the followers of Mohammad Paigambar not to resort to murders for forcing anyone to convert to his faith. This Ayat according to the author was forced on account of important political reasons because there is no other Ayat in any Sura or Quaran ever said later in point of time repeating the spirit of this Ayat. Thus, Mohammad Paigambar is designedly painted as a debauched person and anything which can be said in his favour is discounted. The details of the alleged personal life of Mohammad Paigambar will have to be read along with other material to get its true import.

62. Quaran and Muslim religion.

a) The Muslims are ordained by their holy religious text to eliminate Kafr and the Kafirs from the surface of the earth. Any bloody war that is fought by the believers against the non-believers carries the religious sanction of Islam. Those who do not believe as above are the non-believers. They are Kafirs. What is not in accordance with Koran and Hadith is called Kafr. A Muslim is further ordained to wage a Jihad against non-believers even at the cost of his life. Should he die in this pursuit, the God assumed Almighty as per Quaranic statements assures to such pursuer of faith, an assured life of joy and pleasure in the heavens where he is promised to be served by 72 beautiful maidens and 72 young male children to beget pleasures. Such a person is called a Shaheed. Should he survive while pursuing this aim and live on the earth, Quaran promises on behalf of the God almighty Allah to enjoy the life on earth by using all that he gets by way of victory over the Kafirs.

b) States not managed and controlled by Islamic believers are called Darul-Herb. States that are under the political control of the Islamic believers are called Darul-Islam. Islam declares to its followers where political governance is in the hands of the believer, they are to act and crush any counter idea and where it still lacks political control then to lie in wait for the moment when through all other

means Darul-Herb gets converted into Darul-Islam. This is one religion that supports it's spread by waging Jehads including justifying conducts of terrorism when it says "show no mercy to the non-believers (Kafirs) or the idol worshipers and lie in wait for them to behead them when they appear before you."

c) Islam sanctions to its followers four wives instead of one. Islam considers weaker sex of woman as a commodity meant for the use and pleasure of men owing allegiance to Islam. A chapter in Quaran deals with social system and practices. What is said therein is by the sanction of Allah told by him through Prophet Mohammad. He is the last and final messenger sent to the world by Allah and after him, none shall ever follow for any purpose whatsoever. This is called as 'Khatme Nawabac'. None must think or amend, add or delete anything contained in the holy Quaran which is the last and final message of Allah that must bind all. Islam advocates unabashedly Muslims' belief in violence to spread itself over the whole world. The important reason of Islam's spread in India is its belief in rejecting humanness and accepting and enforcing cruelty in its place. Unlike human values of sacrifice and truthfulness followed in Hinduism, Islam sacrifices and disregards all such human values and proceeds to enforce at all costs, the message of Islam as set out in Koran.

d) The recent attack on the Parliament of India is a clear reassertion of Islam's unaltered attitudes. India cannot afford to ignore or neglect to take note of this attitude of Islam that threatens Hindu way of life in India.

e) Islam does not accord equality to any other system, political, religious, social or cultural and directs world's social and economic system to follow the original plan as was announced by Mohammad and is recorded in the Quaran and the Hadiths.

f) No non-Muslim is equal to a Muslim and all Muslims are ordained never to trust any non-Muslim or to even befriend them. The non-Muslims must be subjected to special taxes and are ordained to be treated with cruelty as a matter of rule. They are treated as Zimmis by which word is implied the hated non-believer.

g) It is pertinent to record that Quaran directs the believers to die and/or to cause death in the name of Islam. Hence, continuing communal clashes in India is no surprise.

63. All these conclusions are mostly drawn from certain Ayats of Surahs. The Author has described them as provocative Ayats. To ascertain their meanings, we have taken assistance from Abdullah Yusuf Ali's book "The Holy Quran", New Revised Edition and "The Message of the Quran" by Muhammad Asad to which our attention is drawn by Mr. Muchhala. Both the authors are known for their deep study of the Quaran. It is necessary to reproduce the Surahs referred to by the applicant.

a) Surah 2 Ayat 191.

And slay them  
wherever ye catch them,  
And turn them out  
From where they have  
Turned you out  
For tumult and oppression  
Are worse than slaughter;  
But fight them not  
At the Sacred Mosque,  
Unless they (first)  
Fight you there;  
But if they fight you,  
Slay them  
Such is the reward  
Of those who suppress faith.

According to the author, this Ayat sanctions murders of non-believers.

Abdullah Yusuf Ali explains that this passage is illustrated by the events that happened at Hydaybiyyah when the Pagans had established an intolerant autocracy in Mecca, Muslims were prevented from visiting their homes. They were not allowed to perform pilgrimage. At Hydaybiyyah a peaceful agreement was arrived at which the Muslims followed. The Pagans committed breach of the agreement. The spirit of the Ayat has to be understood against the backdrop of above facts. According to Muhammad Asad, the injunction contained in the Ayat is only valid during hostilities.

b) Surah 2 Ayat 216.

Fighting is prescribed  
Upon you, and ye dislike it.  
But, it is possible  
That ye dislike a thing  
Which is good for you,  
And that ye love a thing  
Which is bad for you  
But Allah Knoweth And ye Know not.

According to the author, this Ayat states that idol- worship is worse than slaughter.

Abdullah Yusuf Ali explains this Ayat as under:

To fight in the cause of Truth is one of the highest forms of charity. What can you offer that is more precious than your own life? But here again the limitations come in. If you are a mere brawler, or a selfish aggressive person, or a vainglorious bully, you deserve the highest censure. Allah knows the value of things better than you.

c) Surah 3 Ayat 118.

Ye who believe!  
Take not into your intimacy  
Those outside your ranks;  
They will not fail  
To corrupt you - They  
only desire your ruin:  
Rank hatred has already  
Appeared from their mouths  
What their hearts conceal  
Is far worse  
We have made plain  
To you the signs  
If ye have wisdom.

According to the author, this Ayat states that a Muslim may not ever befriend another from any other religion.

Muhammad Asad says that this Ayat refers to only those people whose enmity to Islam and its followers has become apparent from their behaviour and their utterances. If all non-Muslims are to be included as persons with whom believers are not to form friendship that will conflict with Surah 60 Ayat 8 - 9. It would be advantageous to quote those Ayats.

Surah 60 Ayat 8.

As for such (of the unbelievers) as do not fight against you on account of (your) faith, and neither drive you forth from your homelands, God does not forbid you to show them kindness and to behave towards them with full equity : for verily, God loves those who act equitably.

Surah 60 Ayat 9.

God only forbids you to turn in friendship towards such as fight against you because of (your) faith, and drive you forth from your homelands, or aid (others) in driving you forth : and for those (from among you) who turn towards them in friendship, it is they, they who are truly wrongdoers!

64. Abdullah Yusuf Ali states that Surah 4 deals with the social problems which the Muslim community had to face immediately after the battle of Uhud in which Muslims suffered a defeat at the hands of Makkans who had lost the battle against them at Badr. It deals inter alia with recalcitrant's in the community at Madinah i.e. the Hypocrites and their accomplices.

a) Surah 4 Ayat 15 .

If any of your women  
Are guilty of lewdness,

Take the evidence of four  
(Reliable) witnesses from amongst you,  
Against them; and if they testify,  
Confine them to houses until  
Death do claim them,  
Or Allah ordain for them  
Some (Other) way.

While the author suggests that this Ayat indicates the unequal and cruel treatment given to women by Islam, Abdullah Yusuf Ali states that this Ayat refers to unnatural crime between women and to protect the honour of women it requires stricter evidence for four instead of the usual two witnesses.

b) Surah 4 Ayat 56.

Those who reject  
Our signs, we shall soon  
Cast into the Fire;  
As often as their skins  
Are roasted through  
We shall change them  
For fresh skins,  
That they may taste  
The penalty : for Allah  
Is Exalted in Power, Wise.

Muhammad Asad explains this Ayat as containing awesome allegory of suffering in the life to come meant to bring out long lasting nature of that suffering.

c) Surah 4 Ayat 101.

When ye travel  
Through the earth,  
There is no blame on you,  
If ye shorten your prayers,  
For fear the Unbelievers  
May attack you :  
For the Unbelievers are  
Unto you open enemies.

Abdullah Yusuf Ali states that this Ayat gives permission to shorten congregational prayers when people are on journey.

d) Surah 4 Ayat 102.

When thou (O Messenger)  
Art with them, and sandiest

To lead them in prayer,  
Let one party of them  
Stand up (in prayer) with them,  
Taking their arms with them;  
When they finish  
Their prostrations, let them  
Take their position in the rear,  
And let the other party come up  
Which hath not yet prayed -  
And let them pray with thee  
Taking all precautions,  
And bearing arms,  
The unbelievers wish,  
If you were negligent  
Of your arms and baggage,  
To assault you in a single rush,  
But there is no blame on you  
If ye put away your arms  
Because of the inconvenience  
Of rain or because ye are ill;  
But take (every) precaution  
For yourselves. For the Unbelievers  
Allah hath prepared  
A humiliating punishment.

From the explanation offered by Abdullah Yusuf Ali, it appears that this Ayat guides the believers how to conduct congregational prayers in danger in face of the enemy.

e) Surah 4 Ayat 104.

And slacken not  
In following up the enemy :  
If ye are suffering hardships,  
They are suffering similar  
Hardships; but ye have  
Hope from Allah, while they  
Have none. And Allah  
Is full of Knowledge and Wisdom.

Abdullah Yusuf Ali explains this Ayat as under:

Religion should be a source of strength and not of weakness in all our affairs. If we have to struggle hard and suffer hardships those without faith have to do the same, with this difference, that the man of Faith is full of hope in Allah, whereas the man without faith has nothing to sustain him.

f) Surah 4 Ayat 116.

Allah forgiveth not  
(The sin of) joining other gods  
With him; but He forgiveth  
Whom He pleaseth other sins  
Than this : one who joins  
Other gods with Allah,  
Hath strayed far, far away  
(From the Right)

According to the author, this Surah states that Allah shall never pardon idol-worship.

Abdullah Yusuf Ali's note on this Ayat reads as:

Blasphemy in the spiritual kingdom is like treason in the political kingdom.

g) Surah 5 Ayat 54.

Ye who believe !  
If any from among you  
Turn back from his Faith  
Soon will Allah produce  
A people whom He will love  
As they will love Him -  
Lowly with the Believers  
Mighty against the Rejecters  
Fighting in the way of Allah,  
And never afraid  
Of the reproaches  
Of such as find fault  
That is the Grace of Allah  
Which He will bestow  
On whom He pleaseth  
And Allah encompasseth all  
And He knoweth all things

According to the author, this Ayat states that the believers have not to befriend the Jews and the Christians.

Abdullah Yusuf Ali states that Surah 5 deals by way of recapitulation, with the backsliding of the Jews and Christians from their pure religion, to which the coping stone was placed by Islam.

Abdullah Yusuf Ali states that this Ayat contains a warning to the Muslim body that they should not repeat the history of Jews and become so self satisfied or arrogant as to depart from the spirit of Allah's teaching. If they do, the loss will be their own.

Allah's bounty is not confined to one group or section of humanity. He can always raise up people who will follow the true spirit of Islam. That spirit is defined in two ways first in general terms; they will love Allah and Allah will love them, and secondly they will offer no mealy mouthed compromises; they will always strive and fight for truth and right, they will know no fear.

65. In his introduction to Surah 8, Abdullah Yusuf Ali states that the date of this Surah is shortly after the battle of Badr. According to him, in this chapter, there are the lessons of the battle of Badr enforced in their larger aspects : (1) the question of war booty; (2) the true virtues necessary for fighting the good fight (3) victory against odds, (4) clemency and consideration for one's own and for others in the hour of victory.

a) Surah 8 Ayat 65 .

Prophet! Rouse the Believers  
To the fight. If there are  
Twenty amongst you, patient  
And persevering, they will  
Vanguish two hundred, if a hundred,  
They will vanguish a thousand  
Of the unbelievers for these  
Are a people without understanding.

Abdullah Yusuf Ali explains this Ayat as under:

In a fight, odds of ten-to-one against anyone are appalling. But they do not daunt the men of faith. Whether they personally win or die, their cause prevails. They are sure to win, because (1) they have divine aid and (2) even humanly speaking, those who take up arms against truth and righteousness are fools and their seeming power is but a broken reed. According to the author, this Ayat calls upon the believers to rise to the fight and states that they will vanguish a thousand of the unbelievers.

66. In his introduction to Surah 9, Abdullah Yusuf Ali states:

We pass on in this Surah to deal with the question what is to be done if the enemy breaks faith and is guilty of teaching? No nation can go on with a treaty if the other party violates it at will, but it is laid down that a period of four months should be allowed by way of notice after denunciation of the treaty; that due protection should be accorded in the intervening period; that there should always be open the door to repentance and reunion with the people of Allah; and that if all these fail, and war must be undertaken it must be pushed with utmost vigour.

a) Surah 9 Ayat 5 .



But when the forbidden months  
Are past, then fight and slay,  
The Pagans wherever ye find themselves  
And seize them, beleaguer themselves  
And lie in wait for them  
In every stratagem (of war)  
But if they repent,  
And establish regular prayers  
And practice regular charity,  
Then open the way for them  
For Allah is Oft-Forgiving  
Most Merciful

Abdullah Yusuf Ali in his commentary explains this Ayat as follows:

It is only when the four months of grace are past, and the other party shows no sign of desisting from their treacherous designs by right conduct, that the state of war supervenes - between Faith & Unfaith.

When war becomes inevitable it must be prosecuted with vigour ..... The fighting may take the form of slaughter or capture or siege or ambush and other stratagems. But, even then there is room for repentance and amendment on the part of the guilty party, and if that takes place, our duty is forgiveness and the establishment of peace.

b) Surah 9 Ayat 23.

Ye who believe! Take not  
For protectors your fathers  
And your brothers if they  
love infidelity above faith,  
If any of you do so,  
They do wrong.

Muhammad Asad states that this Ayat contains no exhortations to be bad to parents and kinsfolk because there are many exhortations in the Quran to be good to them and the believers are reminded that friendly relations with unbelievers who are not hostile to the Muslim community are permissible and even desirable. Muhammad Asad has given references of those exhortations.

c) Surah 9 Ayat 28.

Ye who believe! Truly  
The Pagans are unclean,  
So let them not,  
After this year of theirs,  
Approach the Sacred Mosque

And if ye fear poverty,  
Soon will Allah enrich you,  
If He wills, out of this bounty,  
For Allah is All-knowing, All wise.

Abdullah Yusuf Ali explains this as under:

Unclean : Both literally and metaphorically, because Muslims are enjoined to be strict in ablutions and physical cleanliness, as well as purity in mind and heart, so that their word can be relied upon.

The year of theirs : There is two fold meaning -

(1) Now that you have complete control of Mecca, and are charged with the purity of worship there, shut out all impurity from this year;

(2) you have seen how the Pagans have behaved this year; their year of power and misuse of that power may be called their year, it is over, and now You Muslims are responsible.

The concourse in Mecca added to the profits of trade and commerce "But fear not", we are told "that Pagans area waning power, bound to disappear, and you should strengthen your own community, that they may more than counterbalance the apparent loss of custom, and Allah has other means of improving your economic position". This actually happened.

The Pagans were extinguished from Arabia and the concourse of Pilgrims from all parts of the world increased the numbers more than a hundred fold. Here is commonsense, wisdom and statesmanship, even if we look at from a purely human point of view.

d) Surah 9 Ayat 68.

Allah hath promised the Hypocrites  
Men and Women, and the rejecters,  
Of Faith, the fire of Hell  
Therein shall they dwell:  
Sufficient is it for them:  
For them is the curse of Allah  
And an enduring punishment.

Abdullah Yusuf Ali states that "Curse" here as elsewhere, is deprivation of grace and mercy, brought about by the rejection of Allah by non-believers.

e) Surah 9 Ayat 111.

Allah hath purchased of the Believers  
Their persons and their goods;  
For theirs (in return)

Is the Garden (of Paradise)  
They fight in His Cause  
And slay and are slain;  
A promise binding on Him  
In Truth, through the hand,  
The Gospel, and the Quran;  
And who is more faithful  
To his covenant than Allah?  
Then rejoice in the bargain  
Which ye have concluded;  
That is the achievement supreme.

Abdullah Yusuf Ali explains this Ayat as under:

In a human bargain both sides give something and receive some advantage. In the divine bargain of Allah with man, Allah takes man's will and soul and his wealth and goods and gives him in return everlasting felicity. Man fights in Allah's course and carries out His will. All that he has to give up is the ephemeral things of this world, while he gains eternal salvation, the fulfillment of his higher spiritual hopes - a supreme achievement included."

f) Surah 9 Ayat 123.

Ye who believe! Fight  
The Unbelievers who gird you about,  
And let them find firmness  
In you : and know that Allah  
Is with those who fear Him.

Abdullah Yusuf Ali explains this as under:

When conflicts become inevitable, the first thing is to clear our surroundings of all evil, for it is only evil that we can rightly fight. To evil we must put a stout and stiff resistance. Mealy mouthed compromises are not right for soldiers of truth and righteousness. They are often a compound of cowardice, weariness, greed and compatibility.

67. Surah 21 Ayat 98.

Verily ye (Unbelievers)  
And the (false) goods that  
Ye worship besides Allah,  
Are (but) fuel for Hell!  
To it will ye (surely) come!

According to the author, this Surah states that `you and your idols deserve condemnation".

In the introduction to this Surah, Abdullah Yusuf Ali has stated that this Surah deals with the individual story (spiritual) of Moses and Aaron. This Surah gives the assurance of Allah's power to defend men, illustrating it with reference to Abraham's fight against idolatry.

68. According to the author, Surah 16 Ayat 46 states that idol worship is a great sin. We do not find any such exhortation in that Ayat. Author is also not right when he says that Ayat 22 of Surah 18 ordains a new convert to abandon connections with his kith and kin including father and brother unless they too follow the new convert into Islamic faith. This Ayat does not say so.

69. Surah 21 Ayat 67.

Fie upon you, and upon  
The things that ye worship  
Besides Allah! Have ye  
No sense?

According to the author, this Ayat states that you and your idols deserve condemnation. In the introduction to this Surah, Abdullah Yusuf Ali has stated that this Surah deals with the individual story (spiritual) of Moses and Aaron. Thus Surah gives the assurance of Allah's power to defend men, illustrating it with reference to Abraham's fight against idolatry.

70. Surah 32 Ayat 22.

And who does more wrong  
Than one to whom are recited  
The signs of his Lord  
And who then turns away  
There from? Verily from those  
who transgress we shall exact  
(Due) Retribution.

Abdullah Yusuf Ali explains this as:

The worst and most hardened sinner is the man to whom Allah's signs are actually brought home and who yet prefers Evil and turns away from the light of Allah. The signs may be in the words and guidance of a great Teacher or in some minor sorrow or warning which he disregards with contumely - Or it may be a catastrophic blow to his conscience, which should open his eyes, but from which he deliberately refuses to profit. The penalty - the Nemesis - must necessarily come eventually.

71. Surah 48 Ayat 20.

Allah has promised you  
Many gains that ye shall  
Acquire, and He has given

You these beforehand, and  
He has restrained the hands  
Of men from you, that it  
May be a sign for  
The Believers, and that  
He may guide you  
To a straight path,

Abdullah Yusuf Ali explains:

The gains so far seen from the Bayah (the Fealty of Allah's good pleasure) and their calm and disciplined behaviour were certainly great; but greater still were to follow in the spiritual sense, in the rapid spread of Islam, in the clearance from the sacred House of the idolatrous autocracy, and in the universal acceptance of the Message of Allah in Arabia. Abdullah Yusuf Ali states that this Surah pertains to the period when the Pagans tried to prevent peaceful party led by the Prophet from performing the rites of pilgrimage in Mecca. There was a treaty between the two sides which was broken by the Pagans. Ultimately Mecca was conquered and Pagan autocracy was swept away.

72. Surah 60 Ayat 4.

There is for you  
An excellent example (to follow)  
In Abraham and those with him,  
When they said  
To their people  
"We are clear of you  
And of whatever ye worship  
Besides Allah: We have rejected  
You, and there has arisen  
Between us and you, enmity  
And hatred forever - unless  
Ye believe in Allah  
And Him alone  
But not when Abraham  
Said to his father;  
"I will pray for forgiveness  
For thee, though I have  
No power (to get) aught  
On thy behalf from Allah  
(They prayed) : Our Lord!  
In Thee do we trust,  
And to Thee do we turn  
In repentance : to Thee

Is (our) final Goal.

According to the author, in this Ayat Islam openly builds feelings of hatred towards the Christians. As a matter of fact there is no reference to Christians in this Ayat. According to Abdullah Yusuf Ali, the date of this Surah is after the Pagans had broken the treaty of Hdaybiyah. This Ayat refers to Abrahams resistance to his father and his people and their belief in idolatry.

73. Author states that Jihad is a Muslims foremost religious duty. Item 3 in the Schedule describes the pleasures a believer gets as per Quran should he die in this pursuit. Such a person is called a Shaheed and in the heaven he is promised to be served by 72 beautiful maidens and 72 young male children to beget pleasure. Should he survive, Quran promises such person on behalf of Allah to enjoy life on earth by using all that he gets by way of victory over Kafirs.

74. On behalf of intervenors it is pointed out that such descriptions refer to spiritual bliss and contentment Quran promises to all good conscious people who have accepted the Divine Message, the spiritual elevation of soul to the state of bliss. Certain Ayats are cited in support of this.

75. We must refer to certain other Ayats to which our attention is drawn by Mr. Muchhala, counsel for the intervenor. We have reproduced them from Muhammad Asad's book "The Message of the Quran". We have also reproduced the gist of the commentary of Muhammad Asad.

a) Surah 5 Ayat 32 .

Because of this did we ordain unto the children of Israel that if anyone slays a human being - unless it be (in punishment) for murder or for spreading corruption of earth - it shall be as through he had slain all mankind; whereas, if anyone saves a life, it shall be as through he had saved the lives of all mankind. And, indeed, there came unto them our apostles with all evidence of the truth; yet behold, notwithstanding all this, many of them go on committing all manner of excesses on earth.

b) Surah 7 Ayat 151.

Say : "Come, let me convey unto you what God has (really) forbidden to you": "Do not ascribe divinity, in any way, to aught beside Him; and [do not offend against but, rather] do good unto your parents; and do not kill your children for fear of poverty - (for) it is We who shall provide sustenance for you as well as for them; and do not commit any shameful deeds, be they open or secret; and do not take any human being's life (the life) which God has declared to be sacred - otherwise than in [the pursuit of] justice; this has been enjoined upon you so that you might use your reason.

c) Surah 42 Ayat 40.

But remember that an attempt at requiting evil may, too became an evil. Hence, whoever pardons [his foe] and makes peace, his reward rests with God-for, verily, He does not love evildoers.

d) Surah 42 Ayat 41.

Yet indeed, as for any who defend themselves after having been wronged - no blame whatever attaches to them.

e Surah 42 Ayat 42.

Blame attaches but to those who oppress (other) people and behave outrageously on earth, offending against all right: for them there is grievous suffering in store.

f) Surah 42 Ayat 43.

But withal, if one is patient in adversity and forgives - this, behold, is indeed something to set one's heart upon!

g) Surah 49 Ayat 13.

O men! Behold, we have created you all out of a male and a female, and have made you into nations and tribes, so that you might come to know one another. Verily, the noblest of you in the sight of God is the one who is most deeply consciousness of Him. Behold, God is all-knowing, all-aware.

This Ayat contains the idea of essential human oneness.

h) Surah 13 Ayat 7.

However, they who are bent on denying the truth [refuse to believe and] say "Why has no miraculous sign ever been bestowed on him on high by his sustainer? [But] thou art only a warner; and [in God] all people have a guide.

According to the classical commentators, the sentence "[But] thou art only a warner; and [in God] all people have a guide" lends itself several interpretations and one of the interpretations is that Thou art only a warner bound to do no more than deliver the message entrusted to thee, while it is God alone who can truly guide men's hearts towards faith.

i) Surah 8 Verse 48 .

And unto thee.... Unto every one of you we appointed a [different] law and way of life. And if God has so willed, He could surely have made you all one single community : But [He willed it otherwise] in order to test you by means of what He has vouchsafed unto you, Vie then, with one another in doing good works! Unto God you all must return; and then He will make you truly understand all that on which you were want to differ.

The Quran impresses upon all who believe in God-Muslims and non-Muslims alike - that the differences in their religious practices should make them "vie with one another in doing good works" rather than lose themselves in mutual hostility.

j) Surah 6 Ayat 188.

But do not revile those [beings] whom they invoke instead of God, lest they revile God out of spite, and in ignorance, for goodly indeed have we made their own doings appear unto every community. In time, [however] unto their sustainer they must return and then He will make them [truly] understand all that they were doing.

While Muslims are expected to argue against false beliefs of others, they are not allowed to abuse the objects of those beliefs and to hurt thereby the feelings of their erring fellow-men.

k) Surah 14 Ayat 4 .

AND NEVER have we set forth any apostle otherwise than [with a message] in his own people's tongue, so that he might make [the truth] clear unto them; but God lets go astray him that wills [to go astray] and guides him that wills [to be guided] - for He alone is almighty truly wise. God bestows His favour upon him who, as he knows, will choose faith; which means that He makes the issue dependent on [man's] free choice.

l) Surah 11 Ayat 117.

For never would thy sustainer destroy a community for wrong [beliefs alone] so long as its people behave righteously [towards one another].

m) Surah 11 Ayat 118.

And had thy sustainer so willed, He could surely have made all mankind one single community: but [He willed it otherwise, and so] they continue to hold divergent views.

n) Surah 2 Ayat 256.

THERE SHALL BE no coercion in matters of faith. Distinct has now become the right way from [the way of] error: hence, he who rejects the powers of evil and believes in God has indeed taken hold of a support most unfailing, which shall never give way : for God is all hearing, all-knowing.

...all Islamic jurists, without exception, hold that forcible conversion is under all circumstances null and void, and that any attempt at coercing a non-believer to accept the faith of Islam is a grievous sin : a verdict which disposes of the widespread fallacy that Islam plans before the unbelievers the alternative of "conversion by sword".



76. On polygamy and treatment to women, our attention is drawn to following Ayats.

a) Surah 4 Ayat 3 .

And if you have reason to fear that you might not act equitably towards orphans, then many from among [other] women such as are lawful to you - [even] two, or three, or four : but if you have reason to fear that you might not be able to treat them with equal fairness, then [only] one - or [from among] those whom you rightfully possess. This will make it more likely that you will not deviate from the right course.

Islam gives permission to marry, two, three or four women, only on the condition that he deals justly with them.

b) Surah 4 Ayat 129.

And it will not be within your power to treat your wives with equal fairness, however much you may desire it, and so, do not allow yourselves to incline towards one to the exclusion of the other leaving her in a State, as it were, of having and not having a husband. But if you put things to right and are conscious of Him - behold, God is indeed much-forgiving, a dispenser of grace.

These Ayats impose a moral restriction on plural marriages.

c) Surah 33 Ayat 35 .

Verily, for all men and women who have surrendered themselves unto God, and all believing men and believing women and all truly devout men and truly devout women, and all men and women who are true to their word, and all men and women who are patient in adversity, and all men and women who humble themselves [before God], and all men and women who give in charity, and all self-denying men and self-denying women, and all men and women who are mindful of their chastity, and all men and women who remember God unceasingly : for [all of] them has God readied forgiveness of sins and a mighty reward.

This Ayat indicates that Quran addresses both the genders and gives them spiritual benefits.

d) Surah 9 Ayat 71.

And [as for] the believers, both men and women - they are close unto one another : they [all] enjoin the doing of what is right and forbid the doing of what is wrong, and are constant in prayer, and render the purifying dues, and pay heed unto God and His

Apostle. It is they upon whom God will bestow His grace: verily, God is almighty, wise!

Role of men and women towards each other is complementary. They are protectors of each other.

e) Surah 4 Ayat 19.

O. You who have attained to faith ! It is not lawful for you to [try to] become heirs to your wives [by holding onto them] against their will; and neither shall you keep them under constraint with a view to taking away anything of what you may have given them, unless it be that they have become guilty, in an obvious manner, of immoral conduct.

And consort with your wives in a good manner; for if you dislike them, it may well be that you dislike something which God might yet make a source of abundant good.

The Quaran does not regard woman as a commodity but as human being with her own individuality with bundle of spiritual social, economic and legal rights.

77. We have seen how the relevant Ayats have been interpreted by the author and by Abdullah Yusuf Ali and Muhammad Asad. As we have already stated the author has a right to express his views on a religion. But having examined different interpretations of the same Ayats, we feel that the author's interpretation may not necessarily be the correct and final interpretation.

78. We do not want to embark upon the difficult task of interpreting the Quaran. But anyone who ventures to do so must read what Muhammad Asad has said in his forward to his book "The Message of the Al-Quran". He states -

Firstly, the Quaran must not be viewed as a compilation of individual injunctions and exhortations but as one integral whole: that is, as an exposition of an ethical doctrine in which every verse and sentence has an intimate bearing on another. Consequently, its real meaning can be grasped only if we correlate every one of its statements with what has been stated elsewhere in its pages, and try to explain its ideas by means of frequent cross references, always subordinating the particular to the general and the incidental to the intrinsic. Whenever this rule is faithfully followed, we realize that the Quaran is - in the words of Muhammad Abduh - "its own best commentary.

Secondly, no part of the Quaran should be viewed from purely historical point of view: that is to say, all its reference to historical circumstance and events - both at the time of Prophet and in earlier times - must be regarded as illustrations of the historical occasion on which a particular verses was revealed - a pursuit so dear, and legitimately so, to the hearts of the classical commentators - must never be allowed to obscure the underling purport of that verse and its inner relevance to the ethical teaching which the Quaran, taken as a whole, propounds.

79. It appears to us therefore that after reading the Quaran as a whole, its Ayats will have to be correlated. Some of the Ayats are indeed strongly worded and appear to

have been directed against idol worshipers. Having read the commentaries we feel that perhaps it is possible to urge that they relate to an era when the Muslims were attacked by the Pagans. The reference to the battle of Badr, to the battle of Uhud, the breach of the treaty of Hudaibiyah, the incidents at Mecca and Medina indicate this. The call for war, the punishment to be imposed on non-believers, the violence can be perhaps related to those troubled times. We have reproduced several Ayats where importance of peace, tolerance, brotherhood, equal treatment to women aversion to forceful conversions is reflected. On the author's view that spread of Islam was due to the fear of sword, we have been taken through extract from books of several authors, which state that Islam's spread in Indonesia, Malaysia, East coast of Africa was peaceful. It would be appropriate to name a few. "Islam at the Crossroads" by De Lacy Oheary Ricklefs, "A History of Modern Indonesia" 2nd Edition London : McMillan, Van Nieu Wenhuize C.A.O. (1958) Aspects of Islam in Post-Colonial Indonesia.

80. We must also note that the author has quoted the views of Dr. Babasaheb Ambedkar, Mahatma Gandhi, Ramkrishna Paramhans, Swami Vivekananda and other thinkers which are compiled by Rana Pratap Roy which support him. We must also state that several other Ayats were referred to by Counsel which are also strongly worded against idolaters. But then two views are always possible of every Ayat. The Supreme Court has cautioned us not to import our views while dealing with scriptures. ( [Shri Krishna Singh Vs. Mathura Ahir and Others](#), ). The Calcutta High Court has taken a similar view (Aga Mahomed Jaffer Bindanim v. Koolsom Beebee and Ors. (1898) ILR XXV Cal.9). We, therefore, do not want to import our own views. But, in the ultimate analysis, we feel that several view points are in the field about Islam as there are about other religions and we cannot stop people from expressing their views. As said by one of us Chandrachud, J. in Anant Dighe "... it is important to realise that there are eternal values on which the Constitution of a democracy is founded. Tolerance of a diversity of view points and the acceptance of the freedom to express of those whose thinking may not accord with the mainstream are cardinal values which lie at the very foundation of a democratic form of Government". The Supreme Court has also clarified that Section 295A of the IPC does not penalize any and every act of insult or attempt to insult the religion or the religious beliefs of a class of citizens. There must be a malicious intention to outrage the religious feelings of that class of citizens. That is the reason Counsel submitted that assuming the book contains material which insults religious beliefs of Muslims, it is not aggravated form of insult.

81. It is not possible for us to agree with Counsel. We have no doubt that the author must be allowed to criticize Islam. Pure and simple criticism without any intention to hurt religious feelings of a particular community must be allowed. But, here the criticism is not academic. The author has gone on to pass insulting comments on Muslims with particular reference to Indian Muslims. That is most objectionable. We shall now turn to those comments.

## 82. Muslim community with particular reference to Indian Muslims.

a) Islam advocates unabashedly Muslim's belief in violence to spread itself over the whole world. Nothing short of it has been the aim of any Musalman, a true believer of Islam.

b) The Muslims believe and are ordained by their holy religious texts to eliminate Kufr and the Kafirs from the surface of the earth.

c) Muslims do not and cannot accept any non-believer as equal to them and hence Modi of Gujarat is too right when he cautions Indian people to unite to safeguard themselves from Muslim invasion who are waiting only to convert India from Darul-Herb to Darul-Islam and now openly say and believe in Ham Panch, Hamare Pacchis.

d) Chapter XXIV - Indian Muslims call for Mughalstan from out of India.

e) It is in the annals of history that the Muslims infact considered even conspiring against the soil of India.

f) The Muslims within India after 1947 have recommended a plan of action for all Muslims in India to use following 10 methods for immediate implementation.

1. Convert Hindus by every means to embrace Islam.
2. By polygamy God himself divinely allows you this.
3. By thwarting any family planning programme.
4. Infiltrate into India from all directions to grow fast as servants of Allah.
5. Form Muslim majority geo-political areas within India.
6. Force Mass expulsion of Hindus when they come close to being a religious minority.
7. Jihad is the duty of every Muslim. Be Allaha's own soldiers to fight and kill those who oppose his diction as said in Quaran.
8. Let no non-believer dare settle where you have come into close majority.
9. Abduct women of Hindus to breed out of them your children. Hindu abducted women are delivered to you as male Ganimat.
10. Attack the foundation of Hindu culture in India, their temples and their books. They will then automatically follow Allahs ordainment and convert to Islam. Know this, that India is under attack of Islam.

g) The real reason of creating India and Pakistan as two independent nations has its roots in the religious belief of the Muslims who spoke through their leaders Mohammad Ali Jinnah that Hindus and Muslims of the Indian sub-continent were

distinctly two different nations, politically, socially, culturally and religiously.

h) Those who embraced Islam in India mostly did so under the threat of sword or were lured into it for its easy promise of heavens where beautiful women and young kinds were promised as rewards to the believers.

83. Whatever be the author's perception of Islam, to conclude that all Muslims want to eliminate all non-Muslims; that they want to spread Islam all over the world by violence is highly objectionable. The author has gone a step further and said that Indian Muslims have given a call for Mughalstan from out of India and that all Indian Muslims believe that Hindus and Muslims are distinctly two different nations politically, socially, culturally and religiously. The author has stated that the Indian Muslims have recommended a plan of action which inter alia includes converting every Hindu to Islam, attacking Hindu temples, abducting Hindu women, thwarting family planning programme, etc. It is these statements which are likely to incite people to violence and which may promote violence, enmity or hatred. The author has referred to inflammatory statements of Osama Bin Laden. He has made reference to speech made by Sayeed Abdul Bukhari in 1986 that Secularism has no place in Islam. He has made reference to speech made by General Zia-ul- Haq that Islam can never be secular. He has referred to extract from Dr. Ali Mohd. Naqvis book "Islam and Nationalism" to the effect that nationalism is incompatible with Islam. He has made reference to similar extracts from books written by Sayeed Abdullah Naudood and Sayeed Ahmed Hussain. He has quoted extract from the book "Islam in Secular India" by Dr. Mushir-ul-Haq where he has said that leaving aside a small section of Indian Muslims, the majority is by no means secular and main reason for their resistance of secularism appears to be their conception of Islam. These may be views of individuals on which we do not want to comment. They are not the subject matter of this application. But, we feel that the author cannot comment on all Muslims, and the Indian Muslims in particular and paint them as villains. The author has said that the Muslims in fact considered even conspiring against the soil of India, forgetting the role played by several Muslim leaders in the freedom struggle of India as followers of Mahatma Gandhi. It cannot be denied that misguided Muslim youth have indulged in acts of terrorism. But misguided youth are there in other religions and there are instances where they have indulged in acts of violence. Because of such instances the entire Muslim community cannot be branded as terrorists. The author could not have painted the entire Muslim community with the same brush. The author has insulted a large section of Indian Muslims who are part of the mainstream of the nation's life and who are contributing to India's development in all fields.

84. What is more disturbing is the author's wishful thinking that a war between Muslim and others is impending. He writes:

To me, a war between the Islamic fundamentalists and those who do not accept it, is a must. Not only can one look back to the prediction of French philosopher

Nosterdamis made in 15th century, one can also read Prof. Hattington's analysis with declaration of world itself polarizing into two camps in order to fight a decisive war once for all. A war between two civilizations.

85. The author further writes:

The worlds political and religious leaders must immediately look into the real cause of terrorism that clearly finds its roots in the Islamic philosophy contained in the holy Quaran. It is this question which is posed to the whole world that must unite to finally create a war out of it that must include if necessary, facing a war, that may be thrust by the believers upon non-believers.

86. With such exhortations can we say that the book will not promote enmity between two religions or that it is not intended to outrage the religious feelings of Muslims or that it is not likely to create dis-harmony or feelings of enmity, hatred or ill-will between Hindus and Muslims?

87. It is argued that nothing has happened so far though the book was in circulation for a long time. It is well settled that it is not necessary to prove that as a result of the objectionable matter enmity or hatred was in fact caused between different classes. It is enough to show that the language of the writing is of a nature calculated to promote feelings of enmity or hatred. (Gopal Godse).

88. It is true that whether the objectionable matter is meant for limited circulation, whether it is to cater to an ignorant, illiterate inflammable mob or educated people would be a relevant consideration and the effect of the words must be judged from the standards of reasonable strong minded firm and courageous men and not those who scent danger in every hostile point of view. It is therefore, necessary to consider who will read the book.

89. The translation of the book is available. The possibility of its falling in the hands of an inflammable mob cannot be ruled out. The way this sensitive topic is handled by the author, it is likely to arouse the emotions or sensibilities of even strong minded people. We have held that criticism of Islam is permissible like criticism of any other religion and the book cannot be banned on that ground. But we have also held that the criticism of Islam is not academic. The author has gone on to pass insulting comments on Islam, Muslim community with particular reference to Indian Muslims. It is an aggravated form of criticism made with a malicious and deliberate intention to outrage the religious feelings of Muslims. The contents are so interwoven that it is not possible to excise certain portions and permit circulation of the book. We may also mention that at one point of time, when this was discussed, the author declined to excise the book.

90. In view of the above, in our considered opinion the State Government is justified in imposing a ban on the circulation of the book. The application is therefore dismissed.