The 2nd Constitutional Amendment, passed in 1974, paved way for excluding Ahmedi community from the national mainstream. In the larger scheme of things, the second amendment reinforced the policy of state excluding some segments of the society from national mainstream. It transcended the ideological leanings of the parties in power – the left-leaning Bhutto was Prime Minister of Pakistan when this amendment was passed.

In the light of these facts, it is important to understand how state approaches minority issues. This essay tries to do so by exploring the factors behind the Second Amendment, and how it affected the Ahmedi community afterwards.

The Amendment

On September 7, 1974, Pakistan's Parliament passed the Second Amendment to the Constitution, defining the followers of Mirza Ghulam Ahmad, generally known as "the Ahmedis", as non-Muslims.

This brought two changes in the Constitution:

One, Article 106, Clause 3 was amended by including persons of Qadiani or Lahori group, both of whom call themselves Ahmedis, in the list of religious minority communities. The names of these two groups (Lahori and Qadiani) are virtually pejoratives, which were inserted as it is in the Constitution. [1]

Two, Article 260 was inserted in the Constitution, which defined who a Muslim is:

> "A person who does not believe in the absolute and unqualified finality of the Prophethood of Muhammad (Peace be upon him), the last of the Prophets, or claims to be a prophet, in any sense of the word or of any description whatsoever, after Muhammad (Peace be upon him), or recognizes such a claimant as prophet or religious reformer, is not a Muslim for the purposes of the Constitution or law".

Making sense of the Amendment

Bhutto government vacillated on the situation. When the amendment was tabled in the parliament, Z.A.Bhutto asked his party legislators to vote as per their conscience. But with pressure from the clergy, the government's liberal veneer flew off. Bhutto's own ministers started resonating with the street sentiments.

Bhutto government's response can be understood in multiple contexts. One of these was more immediate. His government, which had come into power after a decade-long military rule, was wary of return to such rule. During the height of anti-Ahmedi riots, government officials resisted the move to revert to the situation created in 1953, when similar street riots paved the way for the military. The feeling was that the military was backing the clergy this time.[2] [3]

In a longer frame of events, the government caved in to the clergy which is a sequel of the larger polity in Pakistan since day one. Ever since the inception of Pakistan, Islam was used

as a gluing factor against the disparate ethnic nationalities in the provinces. The demand to Islamize the county took many forms; in Bhutto's time, it was for legally excluding Ahmedi community, which is a relatively smaller community.

Even by these standards, the second amendment was unprecedented. The demand on the street was met with a response in the parliament. Executive and legislature both became party to the conflict.[4]

To many, the amendment was the outcome of what the parliamentarians believed in and it should be accepted that way. This seems valid, but the issue is, the problem did not end with the amendment. It started it off.

Once passed, the amendment started off politics of further exclusion of Ahmedis. Even during Bhutto's time, the clergy was not content with the outcome that wanted more from the government. They asked Prime Minister Bhutto to take all necessary administrative and legislative measures for implementing the amendment in "letter and spirit". The details of how this transpired have been explained as follows:

Islam and Pakistan

Muhammad Qasim Zaman argues that we need to go beyond doctrinal issues in order to understand the severity of the conservative Sunni response to the Ahmedis. "For we would appreciate little of the scope and depth of the Anti-*Ahmedi* sentiments in Pakistan or the ability of the Ulema and the Islamists to harness it to particular goals if we do not recognize how Ahmedi*sm* unsettles the long-established ways in which Muslims have viewed the authority of their Prophet and the theological edifice that rests upon that authority".

What Pakistani parliament did on September 7, 1974, hardly has any precedence in Islamic history. Orthodoxy has largely been a Christian concept, comprising of a centralizing church authority. The concept, according to scholars, has largely been alien to Islam. Yet this move in 1974 came out as a result of the alliance of the religious clergy and political leadership, to designate what, they, thought were "acceptable beliefs" in the Islamic context.

The orthodoxy constructed and inserted into the legal system by the legislative branch of the State in 1974 borrowed heavily from the victim community's theological techniques. In the more than 400 pages of cross examination of the leader of Ahmedi community, Mirza Nasir, Pakistan's Attorney General used Ahmedi community's concept of excommunication of majority Muslims from the folds of Islam to bring home the point that the victim community could as well be pushed out of the ambit of Islam on theological ground in the same manner. During cross examination, the Attorney General Yahya Bakhtiar repeatedly asked the leader of the Ahmedi community his opinion about the theological concept of *Takfir*, and in the process, attempted to justify legislature pronouncing *Takfir* on Ahmedi community.[5]

The passage of 2nd Amendment was a clear indication that the modernist class which dominated the political system of the country was conceding ground to the religious clergy. Bhutto regime was forced to shift from a quasi-secular outlook to a position where it had to

sponsor an amendment in the Constitution that created a new division, based on religious beliefs in the society.

Events leading to the passage of the 2nd Amendment:

On May 22, a group of 160 students from Multan boarded a train to Peshawar on a study tour. As the train stopped at Rabwah, predominantly an Ahmedi town that housed the community's spiritual and organizational headquarters, the students came out and shouted slurs and offensive slogans at the people present at the Railway Station. Upon their return from Peshawar on May 29, they stopped at Rabwah again. This time the Ahmedis were ready. Hundreds of them, armed with knives and sticks, fell upon the students and injured more than 30.

Several members of the religious parties brought the issue of violence at Rabwah Railyway Station to the notice of the ongoing session of Punjab Provincial Assembly and the National Assembly. And with it the campaign to exclude the Ahmedis from national mainstream was set in motion. In reaction, the religious clergy went on the rampage. The news spread like a wild fire. Mob violence gripped Pakistan in the summer of 1974.

The violence was led by religious groups, Jamat-e-Islami, Jamiat Ulema-e-Islam, Tehrik-e-Khatim-e-Nabuwat, and Majlis-e-Amal, which was campaigning against Ahmedi community and its high profile presence in the national life of the country.

In response, the Punjab government, asking for calm, arrested more than 71 people from Rabwah and appointed K.M Samdani, a judge of Lahore High Court, to investigate the incident.[6]

On June 1st, the National Assembly discussed for half an hour the question of admissibility of three adjournment motions over the move to discuss the *Rabwah* incident. The motions were moved by Chaudhry Zahoor Ellahi, Professor Ghafoor Ahmed and Ghulam Ghous Hazarvi. However, Speaker N.A., Shabizada Farooq Ali, ruled the adjournment motion out of order that was to discuss the *Rabwah* incident and related issues in the National Assembly. Bhutto opposed the motion, saying that further discussion on the subject will add fuel to the fire and would not serve any useful purpose.[7]

After initial reluctance, the Speaker and the government allowed debate in an In-camera session. On June 3rd, Prime Minister Bhutto, again addressed the National Assembly. "Are we to allow cannibalism among the citizens of the country?" he inquired. He said that there was no difference of opinion at this point and that this issue has to be resolved. There are allegations that the government was directly involved in the unrest following the Rabwah incident. Bhutto said that had this been the case, in response, the government would have taken a partisan approach, but it did not. Prime Minister said that the categories of minorities had been defined in the Constitution and these principles were agreed upon and all the religious leaders signed the constitutional document.[8] Thus the religious leaders of the Ahmedi community were cross-questioned for several days. The minutes of this debate remain classified to this day.

Meanwhile, the domestic situation related to the Ahmedi issue was worsening. *Nawa-e-Waqt* reported that in Mardan local traders brought out a protest rally to protest against the incident of Rabwah. The traders were supported by local religious scholars and Islami Jamiat Tulba. They were demanding that Ahmedis should be declared as non-Muslims. The resolution passed during the rally said that the government should rescind the special status of Rabwah, recover the weapons stored in Rabwah and arrest Mirza Nasir, leader of Ahmedi s, still residing in Pakistan at that time. *Nawa-e-Waqt* reported that a Shia religious organization by the name of Shia Mutalbaat Committee stated that the community which didn't believe in the finality of the Prophethood had no right to remain within the folds of Islam.

By the end of June, Bhutto government started to tilt towards the Sunni orthodox position. *Dawn* reported that Prime Minister Bhutto had started discussion with religious scholars and journalists on the situation arising out of the Rabwah incident. Bhutto continued meetings with religious scholars for at least one week. Punjab's CM Ramay said that the government is looking for a long term solution of the situation arising out of the Rabwah incident and the government hoped that people would not allow the search for solutions to be disrupted.

In an address to the nation on TV and Radio, Bhutto said that he would present Ahmedi issue before the National Assembly immediately after the budget session. He pleaded patience and tolerance and asked people not to take the law into their own hands under any circumstances. Prime Minister said that the decision on Ahmedi issue would be made during his tenure in office.

Nawa-e-Waqt reported a speech of IJT leader in Lahore in which he said that if Bhutto government would facilitate declaring Ahmedis as non-Muslims then they would support the government, if it didn't, then he would not be in the government for long.

On June 14, *Dawn* reported another speech of Prime Minister Bhutto saying he will place Ahmedi issue before the National Assembly immediately after passing of the budget. He said that the PPP MNAs were not bound by party discipline on the issue. They could vote as they deemed fit. He also linked the issue with the deteriorating situation in South Asia, saying it happened on the backdrop of three international events: Indian nuclear explosion; visit of Afghan President Daud to Moscow; and presence of Pakistani political leaders in Kabul as state guests.[13] He also said that if Ulema desired so, he was ready to refer this issue to the Islamic Advisory Council.

Incidents of uncontrolled violence in Punjab and the then NWFP were on the rise. On June 14, Khatum-e-Nabawat and joint opposition, called a countrywide strike. *Nawa-e-Waqt* reported that the protestors were demanding Ahmedis to be declared as non-Muslims. Police was deployed in all the major cities including Rawalpindi, Karachi, Peshawar, Haripur, and Chakwal. In Haripur, the local police prevented a mob from entering a house and burning its belongings whereas a house was burned by the mob, which belonged to laborers. The next day, on June 15, *Nawa-e-Waqt* reported a speech of Senior Minister, Doctor Abdul Khaliq in which he said that PPP believes in the finality of the Prophethood and that it believes that those who donot believe in the finality of the Prophethood are not Muslims. On the same day, Nawa-e-Waqt, continued with its campaign of declaring Ahmedis as non-

When the element of penalty was introduced into the laws related to the Ahmedi issue, there started to emerge a visible conflict between the superior court's verdicts. Two such conflicting verdicts are explained below. Issued within a gap of 15 years from each other, these two judgments provided the basis for legal framework within which persecution of Ahmedi community took place in the Pakistani society.

Judgment 1:

In March 1989, Ahmedi community decided to celebrate the centenary of their religion on 23rd March, 1989. But they were asked not to do so: on 20th March, 1989, the Home Secretary, Government of Punjab, banned the centenary celebrations. The next day, the district magistrate of Jhang also passed another order prohibiting the Qadianis of Jhang district, from illuminating buildings and premises, erecting of decorative gates, holding of processions and meetings, usage of loudspeakers and megaphones; and raising of slogans. Likewise, the Resident Magistrate, Rabwah, informed the Ahmedi Community to remove ceremonial gates, banners and illuminations and also ensure that no more writings will be done on the walls.

Zaheeruddin, the appellant, a resident of Rabwah and Ahmedi by faith, challenged the vires of the Anti-Qadiyaniat Ordinance 1984 in the Supreme Court, claiming that the said ordinance violated the fundamental rights provided in the Constitution. The judgment that is to be announced later stated:

> "The appellants challenged the Ordinance seeking declaration that their right to recount the important events of the last hundred years of their community and to celebrate the same 'in a befitting manner could not be denied to them. It was stated that they had planned to do that by wearing new clothes, offering thanksgiving prayers, distributing sweets among children, serving food to the poor and to assemble for meetings, to express their gratitude to God Almighty for favors and bounties bestowed by Him in the last hundred years".[15]

In July 1993, a five-member bench of Supreme Court considered eight appeals against the decision of the Lahore High Court and Federal Shariat Court that had earlier dismissed the petitions of members of Ahmedi community against their conviction under different sections of Anti-Qadiyaniat Ordinance 1984. In seven other petitions, the court was asked to declare the said Ordinance as null and void and to suspend the sentence awarded to members of the Ahmedi community under the ordinance. This came to be known as *Zaheeruddin vs State of Pakistan* case.

On July 3, 1993, the Supreme Court dismissed eight appeals brought by members of the Ahmedi Community. The five Ahmedi criminal defendants, charged for wearing the "*Kalima*" on their persons and claiming to be Muslims, were returned to jail for the remainder of their sentences. The Pakistan Court, in *Zaheeruddin vs State of Pakistan*, held that laws restricting the religious practices of Ahmedis are constitutional. The Court ruled that because Ahmedis are non-Muslims, any Ahmedi representation as a Muslim is fraud and deception upon the public.

According to the Pakistani Court, because Muslims have exclusive use of their Islamic epithets and practices under the company and trademark laws of various countries,

including England and the United States, the Ahmedi use of Islamic epithets and practices are constitutionally prohibited. The Court made this statement although these epithets and practices are not actually registered. The Pakistan Court found that Ahmedi representations as Muslims offend and outrage the religious feelings of Pakistan's Muslim majority."[16]

Judgment 2:

The judgment of the five members bench was, however, not unanimous. Justice Shafique Ur Rehman wrote a dissenting note and partially declared Anti-Qadiyaniat Ordinance to be *ultra-vires* of the Constitution. On the reasoning that has been adopted in interpreting these relevant articles of the Constitution, "clauses (c) and (d) of section 298C of P.P.C. as reproduced above standing by themselves, individually or the two together would be in violation of the fundamental right of religion's freedom and of equality and of the speech in so far as they prohibit and penalize only the Ahmedis and Qadianis from preaching or propagating their faith by words written or spoken or by visible representation. Invitation to One's own faith when it is not accompanied by any other objectionable feature cannot be condemned," reads Justice Shafique-Ur-Rehman's dissenting note.

Separately, two judges of the Lahore High Court, Justice Aftab Hussein and Justice K.M.A Samadani provided relief to the Ahmedi community in a case of dispute over an old mosque in Dera Ghazi Khan. The court rejected the plea of the two activists of a religious group to restrain Ahmaedis from using a mosque as a place of worship and to prevent them from calling out *Azan* from that old building, "It is not clear to me how by the use of their old place of worship or by offering their prayer or calling *Azan* in it the Muslims can feel aggrieved. This is a point showing that the plaintiffs have no prima facie case".

The court in this case rejected the argument of religious groups that by adopting the Muslim religious practices, Ahmedi community violate the religious feelings of the Muslim majority.[17]

Many of the senior lawyers among Pakistan's legal fraternity believe that it was with the aim of making this judgment of Lahore High Court ineffective that the Anti-Qadiani Ordinance 1984 was promulgated by the military government, which was in the process of coopting religious clergy.[18]

Conclusion

Religious diversity is not something new in this part of the world. The lands that now form part of Pakistan have hosted multiple religious belief systems for centuries. And people and communities adhering to these diverse belief systems have been practicing their distinct belief systems from time immemorial. But what is indeed an aberration in the religious tradition of these lands are laws that have been imposed on the society to differentiate between people of different faiths. Such laws have reinforced the tradition of the post-colonial state to discriminate against indigenous communities and to exclude these communities from national mainstream, paving the way for formation of a highly fractured society.