

**The Martyrdom of Mosques:  
Imagery and Iconoclasm in Modern Pakistan**

Naveeda Khan  
Department of Anthropology  
Johns Hopkins University  
404 Macauley Hall  
3400 North Charles Street  
Baltimore, MD 21218  
410/516-7274  
[naveeda@jhu.edu](mailto:naveeda@jhu.edu)

## Introduction

The 2001 destruction of the gigantic figures of Buddha in the Bamiyan Valley of Afghanistan by the Taliban sparked considerable debate over iconoclasm within Islam. Some decried what they saw as a fundamental albeit atavistic feature within the tradition, that is, the destruction of religious images and idols. Others attempted to particularize the events of destruction by pointing out that certainly politics, rather than only adherence to the tradition, had something to do with the Taliban's decision to carry out their much publicized threat (Flood 2002). More recently the worldwide uproar over the cartoon representation of the Prophet Muhammad reinforced public perception of Muslim abhorrence of religious imagery. Yet iconoclasm and the abhorrence of imagery are not the same things. Deriving its historical weight from the 7<sup>th</sup> and 8<sup>th</sup> century destruction of sacred images within the Orthodox Eastern Church when it was feared that such images could lead to pagan idol worship, iconoclasm as a practice suggests an awareness of the various ends to which images may be deployed, whereas an abhorrence of imagery is only one of those possible ends (Besancon 2001). That is to say, iconoclasm, however crude a translation it may be for the impulse within the history of Islam towards the destruction of religious images to prevent their culminating in idol worship (see Hawting 1999), entails a prior intimacy with images in order to sense in particular ones the potential for their inappropriate use.<sup>1</sup> I would say further that iconoclasm aims not at the complete eradication of images but rather at their selective deployment and even their re-deployment to new and specified ends. Let me say at the outset that when I use the term

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<sup>1</sup> Barry F. Flood makes a similar point about iconoclasm in Islamic history. In addition he reminds us that western modernity is fundamentally split between iconoclasm and iconophilia. In this paper I have not tried to disentangle the iconoclasm rooted in a religious tradition from the impulse to iconoclasm within modernity. Rather I have assumed that Islam and modernity are made to mutually re-enforce each other within the legal judgment I am to analyze.

“image,” I do not have in mind only those visually manifest but also those that take gestural or acoustical form, represent an arrested action, or exist as a premonitory presence at the shadows of imagination always about to come into view.<sup>2</sup> In this I take “image” to be somewhat distinct from an “idol,” taking idol to be a statue or carved image that is worshipped as a divine being, although images may transmute into idols or aid in their worship. Thus already in this brief introduction we have a sense of how the image may lead to any number of possible actions (e.g. worship), perceptions/sensations (e.g. abhorrence) or states of being (e.g. idols).

In this paper I take up a legal judgment rendered in the Lahore High Court in 1996 in response to a writ petition filed in 1992 that implicated the Province of the Punjab in Pakistan and certain state officials in the demolition of a mosque within the premises of the District Courts in Lahore with the intent to build it elsewhere. While explicating the judgment will require some attention to events of regional import, political and legal developments internal to Pakistan, theological preoccupations within Islam and tendencies within everyday life, I am largely interested in tracking the intimation that the demolished mosque is a martyr across this text. This intimation, I show, is in the nature of a persistent yet unmarked image without which the judgment would carry little affective force. I also elucidate what nature of image it is and wherefrom it derives its

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<sup>2</sup> See Charles Hirschkind “The Ethics of Listening: Cassette-Sermon Audition in Contemporary Egypt” for verbal accounts of heaven and hell that are very imagistic. Also see Michael Sell’s Approaching the Quran for acoustical images within the Quran. I draw my understanding of image from Henri Bergson Matter and Memory in which he writes that we are better able to grasp the relation between body and spirit, with body corresponding to matter in his title and spirit to memory, if we understand the two not to be of two different qualities but rather of the nature of images (as in we form an image of our body in relation to the images of other objects and bodies at every moment of our being and our memory draws upon and tries to make present images from the past within the moment of our being, that is, to bring images of the past into congruence with those emergent. So in a sense our body is the fulcrum of the passing of time from the past to the future).

potency, as in its capacity to grow or develop in the future. Although I show the judgment as relying upon the image of the martyred mosque to make strong its legal and theological demonstration that no mosque should ever be demolished particularly towards “shifting” them, I also show how the judgment worked to curtail the potency of the image. In these processes of deployment and curtailment of images, I see iconoclasm at work. This paper aims not only to suggest a far more complex relationship between imagery and iconoclasm within modern Muslim societies than we have had in the media of late but it also aims to locate an imagination of idolatry within modernist legal reasoning and theological interpretation.

### **The Court Case and the Final Judgment**

Before I provide the specifics of the case and the final judgment, let me say at the risk of stating the obvious that although the text with which I am working is authored by the judge, in this instance Justice Mian Nazir Akhtar, who was certainly guided by legal tradition to write in a particular manner but who also actively sought to arrive at a particular decision, it is a text with many different voices stitched together.<sup>3</sup> We have of course the voices of the petitioners and the defendants through their respective lawyers. We have the bifurcated voice of the state with the judge as a moral instantiation of the state dressing down the nation-state that allows for such events as mosque demolitions to go un-protested and the local government for acting outside its jurisdiction in attempting to “shift” a mosque. Then we have the voices of the various religious scholars, those

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<sup>3</sup> Here I use voice in its most basic sense of the sound box of sentient beings, the means through which speech issues, rather than in any metaphysical sense. And although one might ask how such voices are communicated through a written text, I would say that we would only need to attend to the different modes of inscribing speech by the court translator/typist. However this exercise is beyond the scope of this paper.

approached for a *fatawa* (legal opinions), whose writings are quoted or who gave testimony in court. We will hear some of those voices over the course of the paper and we try to keep them somewhat separate from the final judgment, although this will be hard as the judge's reaction/response often times spills forth prior to the end as if he were providing a running commentary on a court in session.

This case concerned a mosque situated at the northern side of the Office of the District Commissioner (DC), Lahore in the premises of the District Courts, Lahore. It was estimated that although the actual building was only erected in 1961, the site had been in use for prayers by government employees since prior to the Partition of India in 1947, in official parlance, since "times immemorial" (Haq Nawaz v. Province of Punjab, 1997 Monthly Law Digest 299).<sup>4</sup> In 1992, the DC, Lahore, perhaps the most powerful official in greater Lahore as the police, land revenue officers, and district court judges all report to him, decided to shift this mosque from its present site to another a little ways away. The reason given for the shift was the following:

The members of the staff, officers and the Mosque Committee demanded that with the development of District Courts Compound, existing building of mosque does not fit in and as such demanded that a new well-designed mosque should be constructed which should be fully air-conditioned, centrally heated, fitted with modern sound system, equipped with all arrangements to provide hot water in winter and cold drinking water in summer. They unanimously resolved and decided that the existing mosque should be demolished and instead a new mosque be constructed

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<sup>4</sup> Henceforth I will write MLD 1997 to refer to this judgment.

(Quote from the response to Writ Petition No. 9487 of 1992, MLD 1997, 310-311).

When lawyers associated with the District Courts and residents of the adjoining locality got word that the present mosque was to be demolished they protested and the DC assured them that no such action would be taken. However, the building was secretly razed on the night of 5<sup>th</sup> of October 1992. Agitation grew and coalesced into a movement headed by an organization that called itself “Movement for the Protection and Construction of Jamia Mosque, District Court, Lahore.” This organization sent petitions to every influential government official including the Prime Minister of Pakistan stating:

The Indian Radio had made comments regarding the controversy of Babri Mosque with reference to the demolition of the mosque located at District Courts, Lahore (MLD 1997: 309).

The text of the judgment further reported:

The Indian Press and the electronic media is said to have highlighted the demolition of the Lahore mosque to incense the extremist Hindus to execute their plan of destroying the historic Babri Mosque (310).

Although Pakistani’s Prime Ministers Nawaz Sharif and, later, Benazir Bhutto condemned the demolition of Babri Masjid in India as an “abhorrent act of extreme fanaticism,” at this point the judge piped up in the text to say “unfortunately, Islamabad failed to rise equal to the task, both in the matter of destruction of the Babri mosque as well as demolition of the Lahore mosque” (310). Although the text did not record any efforts to verify the claims of the petitioners, by introducing these claims into the body of the text the judge appeared to have accepted the connection between the local incident of

mosque demolition in Lahore to the greatly publicized mosque demolition in Ayodhya, India by Hindu nationalists in 1992 that convulsed regional politics. In invoking this scenario of possibly conjoined mosque demolitions, he made explicit his intention to use the judgment to send out a strong message about Pakistan's protection of mosques while castigating the national and local governments in the process.

The court presentations by either side were summarized in the text of the judgment. We hear the counsel for the petitioners tell us that the mosque was constructed with the permission of the Pakistani Government. The Government gave both land and funds as part of a policy to promote the construction of mosques in governmental complexes in the late 1950s. The mosque was therefore a valid *waqf*, that is, it had been endowed in the proper manner. As according to the Anglo-Muhammadan law on religious endowments, now within the rubric of Pakistan's eclectic legal system, it was a mosque for perpetuity. Its destruction amounted to breaking the law of the land.

Moreover, in addition to being a valid *waqf*, the mosque was also a "house of Allah" and to have demolished it was to have committed a grave moral offense. At this point one would think that the counsel would say that it was an offense against Allah, that is, *gunnah* (sin). Instead he grounded the offense in the Pakistan Penal Code (PPC), "the respondents and all other persons engaged in the demolition of the mosque had committed an offence under section 295 of PPC for which a criminal case be ordered to be registered against them" (312).<sup>5</sup> That is, a moral offense called forth a criminal

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<sup>5</sup> Section 295 of the P.P.P. reads as follows:

Injuring or defiling place of worship, with intent to insult the religion of any class.  
Whoever, destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punished with

charge. The second counsel for the petitioners added only that the act of demolition be considered an act of treason:

The Deputy Commissioner had acted like an enemy agent; that the mosque was demolished on 6-10-1992 and thereafter the Babri Mosque was demolished on 6-12-1992; that by asserting that a new mosque would be built at another nearby place, an argument had been provided to the enemy that the premises of any mosque could be shifted elsewhere (MLD 313).

Given that the legal and the religious were intertwined in the case being built by the petitioners, the defendants, that is, the counsel for the Government, defended the act of demolition by questioning the assumption of the “Shar’ ai” (religiously legal) status of the mosque. He claimed that without the Government’s express dedication of the land for religious purposes, that is, without the actual document of the *waqfnama*, and all the legal procedures pertaining to the maintenance of the mosque, that is, the proper registration of a mosque committee the users of the mosque could not assume its legality. We will see later why the defendants took recourse to the language of legality/illegality to get around the permanence attributed to mosques endowed in the name of God.

Ultimately the judge accepted the petitioners’ counter argument that the fact that the Government did not take action against the unlawful assembly for worship in the years of the mosque’s existence prior to its demolition in 1992 (that is, between 1961-1992) amounted to an expression of dedication on the Government’s part. He accepted

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imprisonment of either description for a term which may extend to two years, or with fine, or with both. *The Major Acts* (1998: 281).

the mosque as being waqf property with the judgment stating that it was not permitted to demolish such mosques:

The necessary corollary of the principle, ‘once a mosque always a mosque’ is that the site of a mosque remains Waqf perpetually which can never be abandoned, alienated or put to any other private or public use (346).

Yet the judge did not just uphold the permanence of the mosque, or rather its permanence in a specific location, on grounds that it was a religious endowment. He also set himself the task of adjudicating the veracity of a *hadis* (Prophetic Tradition) in which it was narrated that in the seventh century Hazrat Umar, one of the Prophet’s closest companions and subsequently his successor, had a mosque shifted in Kufa, Arabia. There had been a robbery in the Baital Maal (treasury). Consequently Umar is said to have shifted the mosque to bring it within eyeshot of the treasury, presumably to bring the treasury within the moral influence of the mosque or perhaps the watchful eyes of the worshippers (we will see later on how the question of this seventh century mosque even entered the judge’s purview). The judge discounted the *hadis* by showing it to be weak due to the presence of an unreliable religious scholar within the *isnad* (chain of transmitters) attributed to it.

He ended his analysis by saying that if shifting were indeed allowed the Holy Prophet would have agitated to move the Kaaba from Mecca to Medina to protect it from Islam’s enemies who were defiling it with their idol worship. Instead,

The Holy Prophet (s.a.w.s.) and his companions, despite grave apprehensions of harm at the hands of their enemies, traveled towards

Makkah for performing Umra. This Sunnah of the Holy Prophet (s.a.w.s.) also established that the site of the Holy Kaaba could not be shifted” (345).

Let me pause here to mull over the unusualness of this mode of argumentation. Judges in Pakistan are bound to adhere only to the law that is given, which is an eclectic body of law combining Anglo-Muhammadan Law with British jurisprudence (see Weiss 1986). If they have introduced Islamic jurisprudence or invoked Islamic principles they have gone beyond what is given/permissible but have felt justified in doing so by the Objectives Resolution, which was appended as a preamble to the Constitution of Pakistan in 1949 and was later integrated into the body of the Constitution in 1985, in which it is stated that Islam is the state religion and that the state must strive to enable its Muslim citizens to live as such (Lau 2006).<sup>6</sup> However, this judge did something other than bring

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<sup>6</sup> In 1949 the Constituent Assembly of Pakistan adopted the Objectives Resolution, which summarized the tenets of Islam important for the ideological framework of the new nation-state. Although it was only incorporated into the main body of the Constitution in 1985, its incorporation effectively sacralized the state. In other words, it ensured that the State of Pakistan could now consider itself as Allah’s representative, to exercise His authority delegated by Him. The judge, perhaps defensive about the ambiguous wording of the Objectives Resolution, stated, “instead of finding fault with the language employed in the Objectives Resolution, we should adopt ‘purposeful approach’ (in the words of Lord Diplock) to give effect to the legislative intent” (373):

One of the important principles embodied in the Resolution is that the sovereignty over the entire universe belongs to Allah alone and that the State of Pakistan shall exercise its powers and delegated authority through the chosen representatives of the people within the limits prescribed by Almighty Allah. ‘It is important to distinguish between the Constitution and the principles which underlie it. The principles are in one sense more important than the Constitution itself. The form of the Constitution changes but the principles remain.’ (British Parliamentary Democracy by Sydney D. Bailey, page 5 of the Third Edition) (374).

Consequently, the Pakistani Legislature did not enjoy unfettered sovereignty like the British Parliament, as it was limited to the laws expounded by the Quran and *Ahadis*. However, the judge wrote, quoting William Blackstone from *Commentary on the Laws of England*, “with regard to matters that are in themselves indifferent, and are not commanded or forbidden by these superior laws; here the inferior Legislature has scope and opportunity to interpose, and to make that action unlawful which before was not so” (375). Since “the freedom to profess religion and to manage religious institutions” was one of those matters on which the superior law was silent but was one of the fundamental rights incorporated into the Constitution of Pakistan, its violation called forth a punishment from “manmade laws.” That is how a moral wrongdoing came to be punishable by manmade criminal laws.

in Islam by the backdoor. He relied upon the Objectives Resolution to make his judgment impinge upon Islamic debates. He in effect attempted a definitive theological interpretation of a hadis via the medium of the legal judgment. Although this move deserves more elaboration and analysis than this paper can provide we take note of it in order to highlight that the judge utilized both legal reasoning and theological interpretation in arriving at the final judgment. Further on we will speculate why the judge may have taken recourse to such theological arguments.

The final judgment read as follows:

I, therefore, direct the S.H.O, P.S., Lower Mall, Lahore to register a criminal case under sections 295 and 297, P.P.C...against Javed Mahmood, the then Deputy Commissioner, Lahore and Chairman of the Mosque Committee...and all other persons who had either committed or abetted the offences of trespass into or demolition of the mosque with the knowledge that by their wrongful acts religious feelings of the petitioners and other Muslims would be injured (381).

Unsatisfied with the punishment meted out under this charge, a puny two years, the judge complained, “In my view, the sentence for offence under section 295 of the PPC deserves to be raised to death or imprisonment for life and fine.”

**Yet...**

Let me introduce the state of mosque construction and maintenance in Pakistan so that we are better able to understand the unusualness of this forceful statement against demolishing mosques towards shifting them. This section will also help us to understand

why the counsel for the Government tried to nitpick over the issue of the legality of the demolished mosque in the District Courts of Lahore (see above). It will also introduce the problem of why the judge did not take intent into consideration although the DC had clearly intended to rebuild the mosque and not just demolish it for the sake for demolition. With demographic change, population growth, and the strengthening of sectarian politics, mosques are the most commonly constructed buildings in Pakistan today. The state has a troubled history with this growth industry. After Partition, the state enacted urban planning which rendered previously built mosques “illegal.” While some have been “regularized,” that is, their presence has been accepted within the planning maps or, in some cases, their physical form have been altered so as to match their surroundings, others continue on as illegal.<sup>7</sup> Moreover, people continue to build mosques flouting urban planning principles and zoning regulations. This is particularly true in squatter settlements on government land, e.g., along railways or highways, where the presence of a mosque goes a long way towards securing tenuous claims on land.

On the other hand, town planning has also encouraged a new kind of illegality. Once maps of new settlements are published, they are distributed to agencies to sell circumscribed plots of land to customers. These maps indicate the area put aside for “civic amenities,” such as mosques, parks, schools, etc. Once these maps are in circulation, people lay claim on empty plots earmarked for mosques or parks by building mosques there with the confidence that the government will not be able to remove them.

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<sup>7</sup> In one of the neighborhoods I studied, Gauhar Town, an old village mosque had fallen within the newly drawn boundaries of an urban settlement. Since the mosque was quite a bit lower than the newly built street that now ran alongside it, the floor of the mosque was raised to meet the street. Consequently, the mosque has shrunk with people having to duck to enter the prayer hall.

In a sense these mosques are “legally illegal,” that is, they are illegal structures on land legally put aside for this purpose.

The arrival of mosque committees, neighborhood based mosque maintenance groups, dating back to at least the early nineteenth century in South Asia, inaugurated the presence of the bureaucrat within mosques. These bureaucrats, usually employed in various levels of government, have been active in legalizing their mosques through the production and circulation of papers. Most mosques, whether legal or illegal, are now able to produce fat files of documents asserting their legality as, theoretically, the state only recognizes mosques that have been registered by mosque committees that are themselves registered.

The above has meant that all mosques can more or less prove that they are either properly endowed or legal depending on whether one invokes the Anglo-Muhammadan strictures of waqf or the principles of urban planning respectively. However it is difficult for many mosques to argue that they are both. With this background it should not surprise us that the counsel for the Government was leery of the petitioners’ assertion that the mosque was both properly endowed and legal. However, as we saw, the judge prioritized the principle of endowment in deeming unlawful the demolition of the mosque in the District Court.

But what are we to make of the assertion of the counsel of the Government that the intent of demolishing the mosque was none other than to build it anew? In other words the intent was not destruction but shifting towards renovation and improvement. In some ways we can argue the DC’s actions are in keeping with customary practice. Whereas the judgment would like to present mosques as permanent fixtures on the

landscape, considerable negotiations go into building a mosque and keeping it there in a crowded city like Lahore where the topography is continually changing. A *potwari* (land registrar) from the Lahore Development Authority (LDA) told me that someone built a shack on his friend's plot in a new part of town and started holding prayers there. Since his friend was too frightened to demolish the structure outright, although it was within his rights as the property owner to do so, he and his friend needed the *imam* (prayer leader) to consider "shifting" his mosque two plots down to an area the potwari knew from a planning map had been put aside for building a neighborhood mosque.

Similarly government departments are continually in negotiation with mosque committee members. Road development often requires the demolition of long stretches of buildings. The Traffic Engineering and Planning Agency (TEPA) recently had to relocate not only a mosque but also a *mazhar* (tomb of a holy man). After months of intense negotiations, the committee members of the mosque decided to move their mosque on grounds of "public interest." They moved it to a better location provided by TEPA, which allowed them to build a bigger mosque and shops in the vicinity to provide for its maintenance. Often times, for instance during military rule, people know that they do not have a choice or much time to negotiate and have to strike deals swiftly.<sup>8</sup> I

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<sup>8</sup> In the many conversations I had with my informants, all were aware of state practices of shifting mosques, of even demolishing them outright, in the public interest. However, I rarely heard of any large or sustained protests against such maneuverings, except for a few instances. In one instance in the summer of 1998 in Lahore, I saw people take to the streets for a few hours to pelt workers and security guards at the construction site of a bridge. Apparently, a body of a holy person, whose grave fell within the construction site, had been secretly removed in the dead of night and re-buried at an unmarked grave. I was told that the Frontier Works Agency (FWA), a outfit of military engineers who sell their services to local governments and who were in charge of the project, have a reputation for such "insensitive" action. They get away with it because of the threat of possible army intervention they bring with them. In another instance in 1999 there was a protest of young students of a local *madrasa* (religious seminary) in Multan over the demolition of a part of their mosque. The newspaper reported that once it was understood that they were protesting the loss of a bathroom due to this demolition, the local government promised to build them one nearby.

provide these brief incidents to indicate the almost humdrum nature of the shifting of mosques.

### **Caveats within the Judgment**

All too aware of how such an argument for shifting a mosque either from historical/theological precedent or customary practice rendered vulnerable the fates of mosques the world over, the judgment would not truck with any intentions, however benign, behind the DC's shifting of the mosque. In fact it read the DC's intent as malicious for deliberating neglecting the feelings of those concerned Muslims who had approached him on behalf of the mosque. And it did recognize the differential play of intentions in the building of mosques and the necessity to demolish them if the intent was faulty or bad. As the judge wrote: "The answer to the third question: whether a mosque or building called or built as a mosque, can be demolished, is in the affirmative" (350). The list he provided of mosques that may be demolished was a blend of pragmatism, concern for state security, and theological preoccupations. It is important to consider these caveats within the judgment in order to later pose the question as to how such a qualified judgment derived its affective force, that is, how did it gather confidence of its reach into the future other than as sheer precedent?

The judge wrote that a mosque might be demolished if its structure was old and dangerous and needed to be replaced by a new one. It might be demolished in part or whole to expand its capacity for seating an increased numbers of worshippers. If two or more mosques were located close to each other and the land between the two had also been dedicated for the mosques then the structures might be pulled down to make a large

structure encompassing the lands on which the previous mosques stood, including the land between the two. In wartime, a mosque might suffer demolition accidentally or for the cause of “national security” (351).

If the owner of land allowed the land to be used temporarily for prayers or if rented property was used for prayers then once the owner withdrew his permission or the lease expired, then the property reverted to its previous form. “In such cases, the property does not lawfully become a mosque and can be put to any other use as desired by the owner” (353). And, in a final blow to the hopes of the majority of mosques that have been built or are being built illegally in Pakistan, “if the property is not permanently dedicated by the owner in the name of Allah but unauthorized construction is raised thereon in the shape of a mosque, it can be pulled down” (353). However, so as not to put all mosques, such as the one involved in the case, in the defensive:

if the owner does not object to the use of the property as a mosque for a fairly long period, then it may imply his permission and dedication of the property as a mosque and deprive him of his right to reassert his own title. The question whether the title of the owner is extinguished by the long user of the property as a mosque depends on the peculiar facts and circumstances of each case (353).

The final category of mosques that may be demolished were those he considered “Masjid-e-Zarrar.” Masjid Zarar was the mosque spoken of in the Quran that was built by the hypocrites during the Prophet’s time.<sup>9</sup> Allah ordered him to destroy it because of its use in creating divisions among Muslims. Here, as above in which the judge takes up

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<sup>9</sup> Masjid-e Zarar is a term used in everyday discourse to describe those mosques that are somewhat awry, about which people have some disquiet. I have heard the term used to describe mosques that have been built illegally or mosques that have been built in sectarian competition with a neighborhood mosque.

the case of Hazrat Umar allegedly shifting a mosque (through the same prompter as we shall see further on), the judge took up a theological preoccupation, in this case over ascertaining the proper intent behind the building of mosques towards determining if they should be demolished.<sup>10</sup> In the first instance of interpretation, the judge adjudicated the claims for the shifting of the mosque through challenging the veracity of certain human transmitters within the *isnad* attributed to that particular hadis. That is, he circumscribed the reach of that hadis into the present. Here the judge adjudicated the claims of there being mosques that are other than what they seem to be by finding a legal equivalence between a Quranic event and contemporary practices. That is, he extended the reach of Quranic events into the present.<sup>11</sup>

If a non-Muslim builds a structure like a mosque, announces the call for prayers through Azaan, prayers are led by a non-Muslim Imam though having Muslim trappings, it would be an obvious deception and prayers offered behind such a non-Muslim Imam would go waste. This would be the worst kind of Zarrar to Muslims...To avoid such a situation, persons belonging to Qadiani or Lahori Groups (who call themselves Ahmadis) have been prohibited from reciting Azaan used by Muslims or calling their place of worship as a Masjid. If they do so they can be punished under section 298-B of the P.P.C. (352).

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<sup>10</sup> That this preoccupation has been around in Pakistan's recent past is hinted at by Maulana Ashraf Ali Thanawi's response to an *ifta* (query) in early twentieth century colonial India whether a contemporary mosque could be labeled Masjid-e Zarar: "Only Allah knows the real intent [of the person who built the mosque]. It is not permitted for anyone else to render this judgment onto others" (Thanawi n.d.: 114).

<sup>11</sup> Of course he wasn't unique in doing so. See my "Trespasses of the State: Ministering to Theological Dilemmas through the Copyright/Trademark" in Sarai Reader 2005: Bare Acts ([www.sarai.org](http://www.sarai.org)) for an examination of the legal problems posed by considering/attempting to declare the Ahmadis non-Muslims/heretics and the manifold legal solutions in trying to render heresy in modern terms.

## **The Image of the Martyred Mosque**

We can now say with confidence that the judgment's ambition was to decry the act of demolition undertaken by the District Commissioner. The primary argument the judgment employed was that the property was waqf. However this was not an airtight argument, given the play between legality and illegality on one hand and multiple intentions on the other. Certainly the judgment went a long way towards securing theological justifications for the condemnation of the act. Yet, there are these long descriptions of mosques included in the judgment that neither cleave to the argument for waqf nor add to the theological interpretation. In trying to understand their inclusion within the judgment I realized that they were quite mystical descriptions of mosques. Their elegiac nature was to cause to mourn. Yet it was unclear what one was to mourn. I had a hard time conjuring an emotive image of a demolished mosque in my head. It was at this point of trying to form a mental image that I realized that the judgment was replete with images, that there *was* an image of the demolished mosque that the judgment was trying to forge.

Consider the two events that called forth theological interpretation, the seventh century shifting of a mosque by a successor of the Prophet and the demolition of the mosque of hypocrites within the Quran. What distinguishes these events from the customary practices of shifting or demolishing them outlined above is their historical/theological singularity *yet* their continuing significance for the present. These events have well known persons in particular configurations within detailed settings that may be conjured visually, communicate affects of varying intensity, and suggest possible outcomes. They amount to images that have the potential to reach up to meet and make

recognizable emergent images to make likely certain actions from a particular identification of these upcoming images. Thus a fine-tuning of such images given by the past goes hand in hand with its textual interpretation to make present this past, considered encrypted by lapsed time and the prevarications of history.

I speculate that the judgment had stakes in rendering images of the past alongside interpreting the past. However it did not only deploy and delineate certain images for the sake of bringing the past and present into congruence. It aimed to endow generic mosques with imagistic qualities borrowing from this mode of theological interpretation. In other words, distinct from those abovementioned images of mosques that it inherited and delineated, the judgment attempted to birth a new image, that of the martyred mosque. But before we go into an examination of how this image emerges within the judgment, let us first consider what is it in the nature of mosques and in the nature of martyrdom that allows for their coming together? In other words, what nature of image is that of the martyred mosque before we go on to consider the newness of the image as it appears within the judgment?

Let me first outline two aspects of mosques detailed in the Ahadis that are significant for an understanding of the availability of the mosque for this image. Firstly, we have the duties incumbent upon a Muslim to uphold the honor of a mosque. Secondly, we have the indistinct location of the mosque between this world and the divine realm (see Karim *passim*). Ahadis instructs that one is to conduct oneself properly in the mosque. The narrative tradition hints of times past when men, accustomed to a rough way of life, had to be taught to reign in their behavior.<sup>12</sup> But it is only in the hadis

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<sup>12</sup> Bringing animals into the place of prayer, speaking loudly, and making announcements for lost animals or of vegetables for sale were forbidden within the mosque. One was to treat one's fellow worshippers

relating to spitting that one gets a hint of the enchanted space of the mosque and how it is vectored. The Prophet urged worshippers not to spit in the mosque. Should they feel so compelled, they should do so on their left side covering up the offensive matter with their foot. This is because Allah is present before them in the direction of the *qibla* and angels are present on their right side. And, the worshipper has to arrange his body accordingly.<sup>13</sup> Thus the individual's duties towards the mosque suggest an enchanted place protected by ritual prayer and proper conduct.

Secondly we are repeatedly told that the mosque is the place to meet God. In one hadith it has been likened to a garden in Paradise. In another it has been called a paradise itself. This suggests something of the in-between nature of the mosque, located between this world and the next. Another hadith articulates a hierarchy of prayers, with prayer in the Kaaba at Mecca considered the best kind of prayer as being closest to God, followed by prayer in the Prophet's mosque in Medina, until we reach prayer in the neighborhood mosque down the list, which is much preferred over that performed at home.<sup>14</sup> There is yet another hadith stipulating that one need not be restricted to mosques proper when the time of prayer comes as the world has been made a mosque.

The enchanted space of the mosque on one hand, with some higher up in the hierarchy than others in terms of degrees of closeness to God, and the equation of the world to the mosque on the other suggest I believe a fundamental ambiguity that attends mosques. The ambiguity is whether the mosque is of this world or the other or in

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with respect, that is, not to take up arms or extract revenge within the walls of the mosque. One was to tread and speak softly, not rush into the mosque to catch a prayer in progress.

<sup>13</sup> In recognition of its sacred spatiality, one is encouraged to recite a little formula before entering mosque premises. One should enter with one's right foot first. One should say two *rakahs* (rotations) of prayers in thanksgiving upon entering should time permit. And, one should greet one's fellow worshippers warmly.

<sup>14</sup> I have seen genealogical maps that show the mosque in Mecca to be the mother of all mosques with generic mosques being kin to one another as sisters that suggest a different relationship of proximity to God than one of hierarchy.

between. I think this ambiguity comes into play when a mosque is demolished because it is uncertain what exactly is lost/what escapes and what is left behind.

Let us explore this problematic of what is left behind from the perspective of martyrdom. What happens in the case of the person who is put to death forcibly or embraces death in defence of his/her faith in such a manner as to be considered a martyr? The original martyrdom in Islamic history is that of Hazrat Husain b. Ali, grandson of the Prophet, in 680 B.E. in the hands of the generals of Yazid, the head of the Islamic caliphate at the time. This death tore the Muslim community asunder, giving rise to the Sunni and Shia sects although both Shias and Sunnis commemorate Husain's death (with Sunni participation waning of late with the politicization of the divide between the two sects) (see Hyder 2006). And *shuhuda* has acquired the full historical weight of the meaning of the word in terms of bearing witness to an act of oppression.

Yet the term has an additional aspect within Islam that bears consideration. Let us consider an encyclopedic entry under martyr:

MARTYR. The Arabic word for "martyr" in the Qur'an, and in Muslim theology, is *shahid*, pl. *shuhuda*, the literal meaning of which is "present as a witness." It implies all that is understood by the Greek, and the English martyr; but it is also a much more comprehensive term, for, according to Muhammadan law, not only those who die in witness of, or in defence [sic] of the faith, are martyrs, but *all those who die such deaths as are calculated to excite the compassion and pity of their fellow men* (Hughes 1885: 327, my emphasis in italics).

In other words the figure of the *shaheed* (martyr) is a dynamic one, moving those beholding the figure from the actual event of martyrdom into a suggested state of sympathy with the martyr. In thus emotionally reaching out to the martyr, martyrdom is rendered a collective experience of suffering and bearing witness.<sup>15</sup>

What arises when we put mosque together with martyrdom? Given its enchanted interiority and its in-between status, its demolition would suggest its transference to the court of God, or at least to *barzakh* waiting judgment day, whereupon it will bear testimony to its demolition as an act of oppression.<sup>16</sup> But here it could only speak of its own suffering. Yet add *shaheed* to the appellation of mosque and suddenly we have an image. It is not a visual one as in the two images we had earlier (the mosque in Kufa and Masjid-e-Zarrar) for there isn't an apocryphal event of the martyrdom of a mosque that we can visualize. Instead we have an image of becoming for, even in the absence of a mental picture, we are pulled into experiencing the act of demolition as grave oppression, of feeling an upsurge of compassion and pity within our breasts, and of conjoining in collective suffering, witnessing and possible agitation.<sup>17</sup>

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<sup>15</sup> Interestingly martyrs too exhibit the same in-between quality as that of the mosque. The funereal procedures for martyrs require that one not bath the body prior to its burial, that one meet one's maker in the same conditions in which one was struck down. One of the keenest theological debates that I encountered in Pakistan during the course of my fieldwork between 1998-2002 was that of the life of the martyr in his grave. Some considered the martyr dead and buried awaiting judgment day like any other deceased person. Others considered the martyrs to be still living in their grave and able to hear and transmit people's entreaties to the Prophet.

<sup>16</sup> Nor is this privilege that of the mosque alone. All creatures, animal and human, and venerated objects have this right according to the Ahadis.

<sup>17</sup> An overt identification with the mosque may also be analyzed by means of Henry Corbin's "science of correspondence." I briefly present Corbin's insight into Shia Muslim eschatology through its preoccupation with the material form of the Kaaba. This insight allows me to speculate whether ordinary Muslims have a similar preoccupation with the body of the mosque. Corbin writes:

Hence, when Qadi Sa'id Qummi [a 17<sup>th</sup> century Persian Shia scholar] invites us to reflect upon the general form of the Temple as the figuration of a human Person, the *Anthropos* or "Perfect Man", first divine Emanation and God's Vicar (*Khilat Allah*) over all Creation, he specifies that by this we should understand him who was the final Seal of legislative prophecy (*Khatim al-nubuwwah*) (1986: 204).

## Birthing the Image in the Judgment

The use of “shaheed” for demolished mosques is quite common in everyday life. In Lahore in the late 1990s I frequently heard shaheed with reference not only to demolished mosques, but also to Qurans in great disrepair that are burnt or drowned in water to put them out of circulation or, any object with the names of Allah and the Prophet or excerpts of the Quran inscribed on it that has been destroyed. More often than not, the use of the term shaheed suggested that the venerated object had been put to its rightful death in a respectful manner. Yet I would argue that the martyred objects still retain their dynamism of the kind spoken of earlier, even being thus reprised within everyday life. In a few occasions the sense of overt identification with these objects has intensified into agitation or possibly violence.<sup>18</sup> Incidentally the term shaheed is never

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If the Kaaba is imagined as a figuration of the Prophet Muhammad, a means to commence on a mystical journey to God, then is it conceivable that the mosque can be imagined as a figure of the ordinary Muslim? Furthermore, Corbin writes, according to the principle of correspondence:

Everything in the lower world is a projection and an image of something in the higher world; everything in the higher world is the Spirit (*ruh*) and the essence-archetype (*haqiqah*) of something in the world below (ibid)

Can we then see Muslims as pushing the normative relations to the mosque beyond the material to the “imaginal”<sup>17</sup> world, to imagine a world in which the boundaries between the here and the hereafter are blurred, and in which the mosque is also a Muslim, a pious subject in a state of submission like each of them. This image of the mosque allowed one to mourn the mosque as a martyr in the event of its demolition. And much like a martyr struck down in battle, a demolished mosque called attention to the violent conditions of its death, “*to excite the compassion and pity of their fellow men.*”

<sup>18</sup> Let me describe an encounter during the course of my fieldwork in Lahore in the late 1990s which brought home to me the various possibilities for politics encapsulated by a martyred mosque, that which makes its absence/partial presence disturbing. Around the corner from my house in Lahore stood a half-shorn mosque. One could literally look into the heart of the mosque with its assembled worshippers. I had heard the story of its demolition from my friends. Nawaz Sharif’s brother, Shahbaz Sharif (but who is now exiled with Nawaz Sharif in Saudi Arabia) had had the army demolish the mosque as part of a road expansion project. He had undertaken this project for the beautification of Lahore in his capacity as governor of Punjab. It was in his right, he stated, as the mosque had been built illegally, that is, without prior permission from the relevant departments. At any rate he had it from respectable religious scholars that a mosque could be sacrificed for the greater public good, in this case, for better roads to ease the flow of traffic. One afternoon, I met the imam of the mosque who too related to the story of the demolition. What was different in his narrative was his tone of disappointment, even dismay, at the public who had watched impassively as the army systematically took apart the mosque. As I took leave off him he asked me: Why would the army come late at night if they were not scared of public reaction? Why would the public watch if it were not going to protest this act of desecration? And why would it not simply plunder the mosque as bricks, stones, and wire were pried out of it? Surely, the fact that the public deterred from

used in the legal judgment under consideration. Given the valence shaheed has in everyday life and its explicit absence from the judgment, what would lead me to say that the judgment attempted to forge the image of the martyred mosque?

In this section, I explore the elegiac paragraphs on mosques nestled within the judgment to show how they brim with an awareness of those aspects of mosques and those of martyrdom within Islam that make so potent the image of the martyred mosque in everyday life. I also explore how the judgment stilled that potency so as to effectively give birth to something altogether different, the image of the martyred mosque not as a zone of becoming in itself but as a symbol of an oppressed people. That is, the judgment disallowed overt identification with the image instead encouraging us to peer around it, to imagine the people of whom the mosque, and by extension the martyred mosque, was a representation.<sup>19</sup>

At one point in the judgment the judge said he needed more assistance in preparing his judgment and invited four advocates to his court in the role of *amicus curiae* (friends of the court). We are not told what technical expertise each provided but

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plundering was a sign that it felt something was deeply wrong with this picture. What, the *imam* wondered, had happened to the *jizba-e deen* (passion for one's faith) for which Muslims of this region were so well known? What then were the potentialities of the mosque to which the *imam* gave voice? He spoke of the possibility for action that was present in that disappointing moment when no one would pick up a stone to throw at the soldiers. Even if it did not come to pass, his disappointment speaks to the potential that existed albeit not taken up at that moment. Nor did he read the moment incorrectly when he felt that the public was itself saddened by what it was witnessing. Long after Shahbaz Sharif had been de-throned, sent into exile with his brother, people still speak of how the mosque returned to extract its revenge off him.

<sup>19</sup> However I want to be clear that I am not making an argument about the logic of abstraction in modernity, one that concedes immediacy to imagery in everyday discourse but sees imagery transmuted to representation within languages of expertise. I would think that imagery and representations are co-mingled within all spheres of life along with the modes of thinking that give rise to them. My point is rather about two strategies of making a people. On one hand there is the people who are produced from sympathetic suffering, in other words, the event of suffering precedes the emergence of a people. And a people are produced anew with each new event of suffering. On the other hand, a people stand both before and behind an event of suffering, the suffering simply pointing to the constancy of their presence. In the later there is the attribution of a stable representation to a people and fewer opportunities for a people to remake itself as it were.

the gist of their presentations would suggest that they weighed-in on the side of protecting mosques. While the statements attributed to them sound strikingly similar, we actually find a wealth of diversity in their conceptions of mosques in the small differences among them. It is worth outlining their differences as the judge clearly sifted through their speeches to highlight these points.

The first friend of the court said that the governmental records established the land had been dedicated for a mosque. “He submitted that once it was admitted that an existing mosque could be demolished and instead another one built at another place then no mosque in the world would be safe” (314). His comment spoke to the contemporary geopolitical space in which Muslims found themselves, in which the media forced them into an intimacy with the world, making them take responsibility for the widest reach of their actions. The mosque functioned as a pointer to the inter-connectedness of a fragile *ummah* (moral community). Therefore, demolishing a mosque in Lahore would definitely have consequences for mosques everywhere.

The second friend of the court spoke of the transformation land underwent once it became a mosque: “After dedication the nature and character of the land undergoes a change. It becomes a house of Allah on which the blessings of Allah are showered (314).” Here we enter into an imaginary of sacralized space. While mosques are (legally) created through the joint expression of dedication (for waqf) and the practice of congregational prayer, in this particular conception a mosque is sanctified, that is, it acquired *baraka* through the showering of Allah’s blessings. Its primary link was to Allah. This put the mosque outside of a geopolitical or even legal-rational organization

of space and locatable only in sacred geography.<sup>20</sup> Between these speakers we have the two main conceptions of a mosque as located in the worldly and in the divine realms.

The third friend of the court reminded us of the hadis on mosques: “he submitted that on the Day of Judgment when everything in the universe would be destroyed, mosques would be taken to paradise (Jannah)” (316). This was the first hint of the mosque’s status beyond material destruction. As a place beloved of Allah it would go straight to heaven. However, given its relation to other mosques in the world and the transformed nature of the land on which it stood, it would leave an absence.

The fourth friend of the court complicated the picture by introducing differentiation among mosques. One wonders if he went beyond the call of duty when he introduced more nuances into the case than there were at the offset, thus forcing the judge to respond to him. Or, did his intervention provide the judge the opportunity to deal with a variety of theological controversies relating to mosques in one fell swoop? It is worth quoting him in full to understand the ramifications of his contribution, that is, how the final judgment was made to bear upon the verification of events in the Islamic past and controversies in the present:

He submitted that during the period of the Holy Prophet (s.a.w.s.) only Masjid Zarar was ordered to be razed to the ground because it was not really built for offering prayers but was meant to create division in the Muslim Ummah and for hatching conspiracies against them. He submitted that even the house of an ordinary person could not be illegally

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<sup>20</sup> There is a long tradition of adulation of material space associated with the *auliya* (holy men, literally friends of Allah). The bodies of the *auliya* are seen as the conduit of *baraka* (blessings, grace) from Allah to the people who come to pray there. Sometimes there are mosques in such compounds. However in this instance the speaker singles out mosques as the sole recipient of Allah’s blessings.

demolished muchless [sic] the house of Allah. He submitted that during the reign of the Second Caliph Hazrat Umar (r.a.a.) only one incident was reported in which the mosque and Baitul Maal, were adjacent, a theft was committed in the Baitul Maal, whereupon Hazrat Umar (r.a.a.) ordered that Baitul Maal be established towards Qibla of the mosque and the mosque be shifted. However, he urged, in the case in hand, there was no Shar'ai justification for shifting the mosque (316).

And it is in the judge's final statement that we get a sense of the judgment's awareness of the effects of demolition, of the mosque's foreshortened life and subsequent absence, upon people's feelings:

I, therefore, direct the S.H.O, P.S., Lower Mall, Lahore to register a criminal case under sections 295 and 297, P.P.C...against Javed Mahmood, the then Deputy Commissioner, Lahore and Chairman of the Mosque Committee...and all other persons who had either committed or abetted the offences of trespass into or demolition of the mosque with the knowledge that by their wrongful acts *religious feelings of the petitioners and other Muslims would be injured* (381, emphasis mine).

We thus see the martyrdom of mosques hinted at. Yet, it would not do to invoke an image with such dynamism within the judgment. After all martyrdom entails the release of energy over which few have control. Regardless of all manner of police measures, Shia mourning over Husain's martyrdom is convulsed by great violence in Pakistan every year. Moreover the evocation of martyrdom ran the risk of upsetting the public given the contemporary "martyrdom" of Pakistani men in Kashmir's war for

independence from India. Then there were those little martyrdoms that course through everyday life that were like little sparks to further actions of which we have spoken. Let us see how mosques, and by extension the martyrdom of the mosque, is recast as a symbol of God, Islam and the Muslim community simultaneously, and their protection assured by the Constitution of Pakistan.

The judge wrote:

I may now advert to the question as to what is meant by “shairallah” whether mosques fall within the meaning of the said expression and deserve to be respected as ordained in Verse No.2 of Sura Al-Maida (No.5) and Verse No.32 of Sura Al-Haj (No.22) (330).

Quoting from Islamic scholars of the distant and recent past in South Asia, he stated:

It has been explained that anything which is a symbol for some virtuous act meant for taking a person nearer the Almighty Allah, like Salatt or Dua’a or Zabeeha (slaughtering an animal in the name of Allah) is “shaira” and included in the expression “shaariallah. In “Mayatum Al-Tazeel” (Vol. I, p. 111), it has been stated that mosque being a symbol of prayers is included in the expression “shaariallah” (331).

By prioritizing prayers, the judge made mosque both a “shaariallah,” that is, a sign of God *and* a symbol of the act of saying prayers. As such the mosque was able to partake equally of the divine, in so far as prayers is a privilege bestowed by God to all Muslims, and of the world, in so far as prayers were to be undertaken by Muslims.<sup>21</sup> This is an interesting reformulation of the ambivalent quality of mosques of which we spoke earlier,

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<sup>21</sup> Moreover the above articulation interestingly conjures the image of the mosque as an arrested action, “a symbol of some virtuous act meant for taking a person nearer the Almighty Allah.” To parse it out further, the mosque is the symbol of the means of getting closer to God.

one that avoids having to tarry much upon its enchanted interiority, its status as beloved of God, and its in-between location. Rather our eyes are drawn to the community that stands behind the image.

Mosques... signify the inherent strength of the Muslim Ummah, its determination to live and abide by the commands of Allah and his Holy Prophet (s.a.w.s.).

Furthermore, in the event of any harm falling a mosque, we are drawn not to the sorrowful figure that is left behind but rather to the condition of oppression of the community of which the martyred mosque is now a stand-in and to the oppressor who stands in front of it:

To the staunch opponents of Islam, mosques appear to be embodiments of Islamic fundamentalism which they are not prepared to tolerate. Hence, they always endeavor to desecrate, demolish and destroy mosques (320).

no one is [*sic*] greater wrongdoer or more unjust than the one who forbids people from worshipping Allah and celebrating his name therein, spoils a mosque or makes it a deserted place (MLD 324).

Thus we see the potent image of a mosque in ruins raised but recast as a symbol of the violence perpetrated on a people. Moreover, our attention is displaced from the power of ruins, which may excite emotions that cannot be channeled, to the perpetrator, the possible apostate, who destroyed the mosque and deserves punishment.

Finally, it was the judgment's inclusion of the long quote from the famous twentieth century Islamic scholar and politician, Abul Ala Maududi that placed the

protection of shaairallah within the jurisdiction of the nation-state. Maududi wrote that just as nations, peoples, and sects had symbols that represented them, Allah also had symbols that represented His presence in the world. And just as showing disrespect to symbols indicated that one was an enemy of the people for whom these symbols were meaningful, so did showing disrespect to shaairallah make one an enemy of Islam (332). And as the sovereignty of Allah had been entrusted to the nation-state of Pakistan through the medium of its people, the protection of mosques as shaairallah and the appropriate punishment in the event of its harm belonged to the state alone.

### **Images in the Background**

Thus far we have considered visual images given from the Islamic past that the judgment attempted to relay in a particular fashion. We have encountered images of becoming in expositing what nature of image is that of a martyred mosque. We have also considered how the judgment attempted to forge a new image, image as representation, through making the martyred mosque stand in for a people oppressed. It is in and through these processes of sifting through images that I see modern day iconoclasm at work. Now let us consider images that crowd around this judgment but that remain out of view. I hope to excavate the imagination of idolatry that informs this mode of iconoclasm.

It is quite marked how the judgment steered clear of very well known case heard within the colonial courts, which was that of a demolished mosque demanding back its material form. This was the case of Masjid Shahidganj that was located in none other than in Lahore. It suggested a complicated relationship between colonial Muslims and

their material setting that the case further complicated by bringing mosques into contiguity with the idol of the Hindu deity through the legal form of the juristic person. One might even say that the postcolonial legal judgment constituted an important lesson in re-educating Pakistani Muslims on how to put aside their sociality with objects and correctly experience their material surroundings without this underlying threat of idolatry.

The facts of the Masjid Shahidganj case are as follows. In 1722, a mosque was built in Lahore. In 1762, after the Sikhs established their rule in Lahore they forcibly took over the mosque. Descendants of the original guardian of the mosque took legal action to have the mosque returned to Muslims in 1854 and in 1855. However, the mosque had been under Sikh possession for a long enough period for it to be considered their property under the Law of Adverse Possession. Moreover, the time allowed by the Act of Limitation to dispute adverse possession had lapsed. In 1935, Anjuman Islamia of Lahore, a registered society that worked for Muslim issues, filed a petition on behalf of the mosque and all Muslims stating that, as the mosque was the product of waqf, it could not be used for any other purpose other than that for which it was originally endowed. Furthermore, as it was a mosque, all Muslims had the right to worship within it.

While the District Judge at a lower court decided that this petition could not be made on behalf of all Muslims because it was not filed within the required time period to dispute possession, he did however recognize that the mosque was a “juristic person” capable of suing through its friend. Or, that the mosque existed as a person separate from the physical structure of the mosque. So even if the physical structure had been destroyed or fallen into disrepair, the mosque would continue to exist in abstract. This

made the physical property immaterial. It was this claim that the High Court and, ultimately, the Privy Council in London had to deliberate.

In *Masjid Shahid Ganj v. S. G. P. Committee* ([1938] All India Report, Lahore, 369),<sup>22</sup> the High Court could not find any precedent to support the claim that the mosque was sacred for perpetuity for which no adverse possession or law of limitation could hold. Secondly, the Justices of the High Court tried to understand the mosque's claim to an existence beyond its material form. They did so by drawing an analogy between a mosque and a Hindu deity.

It is true that 'God' as a deity has a perpetual existence and cannot be subject to possession of any kind...but there are authorities to the effect that the wood or stone idol of a Hindu deity is property and therefore subject to adverse possession.

In any event there is no analogy between a Hindu or—any other deity and a mosque. A mosque is the house of God but is not the deity (AIR 1938: 375).<sup>23</sup>

After dismissing its claim to sacredness, the Justices decided that the mosque as a juristic person could not be divorced from the physical structure of the mosque, because without the structure the juristic person, as “a legal fiction,” ceased to exist. In other words, the plaintiffs could not make claims on behalf of a juristic person that had ceased

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<sup>22</sup> Henceforth I will refer to this judgment as AIR 1938.

<sup>23</sup> It is noteworthy that an idol is not divine in perpetuity but requires proper ceremonial attention and the devoted care of its worshippers for the divine to stay within the carved form. In the event that an idol has fallen into neglect, the divine in it is released through piercing the eyes of the material form (Eck 1998). What is really interesting and speaks to my argument that iconoclasm as a practice is premised on a great intimacy with iconophilia or even idol worship is that Flood records that Muslim conquests in India often resulted in piercing the eyes of idols rather than their complete destruction.

to exist with Sikh demolition of the mosque. Conversely, the Justices decided, the mosque did not have the right as a juristic person to demand that its property not be demolished, that is, it be restored to its original form as if demolition had not taken place. For, the Justices argued, to get a non-Muhammadan party to recognize and uphold tenets of a religion not their own was not conceivable. For instance, they said, a Muslim may be stopped from sacrificing a cow in public to prevent a law and order problem but he could not be expected to recognize the sacredness of a cow and, thus, keep it alive. In the final count, they reaffirmed that the Limitation Act modified Muhammadan personal law. Consequently, the Sikhs had full rights over the mosque as its owners, having had it in their possession for over 173 years. Other than one dissenting member, the Full Bench dismissed the suit.

The High Court's decision went on appeal to the Privy Council in London who gave its decision in 1940 (*Shahid Ganj v. S. G. P. Committee*, All India Report, Privy Council, 116).<sup>24</sup> It agreed with the High Court's decision, seeing a misconception, even mischievous cunning, at work in the suit's claim to represent the mosque as a juristic person in its own rights. Distinguishing previous cases in Punjab in which the mosque was represented as a juristic person from this particular case, the Privy Council claimed that in the previous cases the phrase "juristic person" was used to speak of mosque as an institution but never as a party in a suit. Consequently, these cases were substantively different "from conferring personality upon a building so as to deprive it of its character as immovable property," as in the case with *Masjid Shahidganj*. The Privy Council dismissed the appeal.

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<sup>24</sup>Henceforth I will refer to this as AIR 1940.

Here we are witness to a colonial legal system trying to take measure of an extraordinary claim being made on behalf of a physical object, which to the Justices' mind was simply an immovable property. They were puzzled as to why the building should have a "personality" conferred upon it and why claims were being made from a subject position imputed to this fictive personality, as if the personality was asking for its body back. The main legal point, as they saw it, was whether a mosque remained a mosque once rights of prayer were extinguished within it. Yet through their various modes of reasoning and for however limited period of time the Justices made the mosque contiguous with the idol of the Hindu deity through the legal genre of the juristic person. Even though one did not become the other, that is, a mosque did not become an idol, it did raise the possibility that the way Muslims attend to mosques may share in the nature of the way Hindus and others attend to their deities, that perhaps mourning the loss of a mosque may be like mourning the destroyed form of a deity? And it took only an analogy between a demolished mosque and a Hindu diety through the mediation of the "juristic person" to raise this possibility. Such are the risks of legal reasoning and theological interpretation within the context of a shared colonial legacy.

## **Bibliography**

### *Court Cases*

Masjid Shahid Ganj v. S. G. P. Committee [1938] All India Report, Lahore, 369

Shahid Ganj v. S. G. P. Committee [1940] All India Report, Privy Council, 116

Haq Nawaz and others v. Province of Punjab [1997] Monthly Law Digest, 299

### *Articles and Books*

Bergson, Henri 1991 Matter and Memory Trans. N.M. Paul and W.S. Palmer. New York: Zone Books.

Besancon, Alain 2001 The Forbidden Image: An Intellectual History of Iconoclasm Trans. Jane Marie Todd. Chicago: University of Chicago.

Corbin, Henry 1986 “The Configuration of the Temple of the Ka’bah as the Secret of the Spiritual Life”. In Temple and Configuration London: Islamic Publishers Ltd.

Eck, Diane 1998 Darsan New York: Columbia University Press.

Flood, Finbarr Barry 2002 “Between Cult and Culture: Bamiyan, Islamic Iconoclasm, and the Museum.” *The Art Bulletin*, Vol. 84, pp.

Hawting, Gerald R. 1999 The Idea of Idolatry and the Emergence of Islam Cambridge: Cambridge University Press.

Hirschkind, Charles 2001 “The Ethics of Listening: Cassette-Sermon Audition in Contemporary Egypt.” In *American Ethnologist* 28(3), pp. 623-649.

Hughes, Peters 1885/n.d. A Dictionary of Islam: A Cyclopaedia of the Doctrines, Rites, Ceremonies, and Customs Together with the Technical and Theological Terms of the Muhammadan Religion Lahore: Kazi Publications.

- Hyder, Syed Akbar 2006 Reliving Karbala: Martyrdom in South Asian Memory New York: Oxford University Press.
- Karim, Maulana Fazlul 1989 Al-Hadis (Books 1-4): An English Translation of Mishkat-ul Masabih New Delhi: Islamic Book Service.
- Khan, Naveeda 2005 “Trespasses of the State: Ministering to Theological Dilemmas through the Copyright/Trademark” Sarai Reader 2005: Bare Acts ([www.sarai.org](http://www.sarai.org))
- Lau, Martin 2006 The Role of Islam in the Legal System of Pakistan Leiden: Brill Publishers.
- Sells, Michael, translated. 1999 Approaching the Qur’an: The Early Revelations Ashland: White Cloud Press.
- Thanawi, A. n.d. Ihkam Al-Masjid Multan: Idara Talifaat Ashrafiya.
- Weiss, Anita 1986 Islamic Reassertion in Pakistan: The Application of Islamic Laws in a Modern State Syracuse: Syracuse University Press.