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WHAT'S IN A NAME?: Law, Religion, and Islamic Names
K.M. SHARMA

I. INTRODUCTION: THE SIGNIFICANCE OF A NAME

"What's in a name? that which we call a rose/ By any other name would smell as sweet." These memorable and oft-misunderstood lines of Juliet's speech in Shakespeare's Romeo and Juliet, an outpouring of

1. INTRODUCTION: THE SIGNIFICANCE OF A NAME

"What's in a name? that which we call a rose/ By any other name would smell as sweet." These memorable and oft-misunderstood lines of Juliet's speech in Shakespeare's Romeo and Juliet, an outpouring of
romantic agony, should not be taken to mean that the versatile Bard was a flimsy etymologist oblivious to the importance of the "naming game" or the legal implications thereof.\(^2\) In fact, naming a newborn child, except in cases where family tradition or the desire to propitiate wealthy relatives or to honor some favorite relative or godparent take precedence over personal wishes, is one of the important parental duties and is a matter usually of considerable thought.\(^3\) Moreover, controversies over legitimate and illegitimate children's names, particularly surnames involving familial autonomy, divorced spouses or de facto couples, and equal treatment, are arising today with much greater frequency than before as century-old naming practices collide with modern sensitivities about children's best interests and women's rights. Specifically, the traditional deference to a father's prerogative to name his children the way he likes, unless forfeited by misconduct or neglect, has been seriously questioned as being completely out-of-tune with current social mores and gender-justice-oriented realities.

A recent tastefully produced book\(^4\) reminds us that the first thing that Allah taught Adam was all the names of all the things. Many Qur'anic verses (aayats), personal acts and sayings of the Prophet

\begin{quote}
And for that name which is no part of thee
Take all myself.
\end{quote}

ROMEo AND JULIET, supra, at 11. 38-48; ANNOTATED SHAKESPEARE, supra, at 1627. Romeo makes himself known and somewhat dramatically denounces his name, saying:

I take thee at thy word:
Call me but love, and I'll be now baptized;
Henceforth I never will be Romeo.

ROMEo AND JULIET, supra, at 11. 49-51; ANNOTATED SHAKESPEARE, supra, at 1627. Romeo's and Juliet's fateful outcome attests, however, to the problems that arise as a result of a system based on customs and traditions attached to surnames.

2. References to "Name" and "Names" occur frequently in Shakespeare's plays. For a select sampling, see app. I.

3. For an examination of the various views of some philosophers, logicians, and linguistics on the protean functions of names, see FARHANG ZABEEH, WHAT IS IN A NAME?: AN INQUIRY INTO THE SEMANTICS AND PRAGMATICS OF PROPER NAMES (1968).

Muhammad *hadith* and those of his Companions constitute a major source of Islamic law and religion, extolling the importance of carefully selecting beautiful names for one's children, — for on the Day of Resurrection everyone will be summoned by their names and the names of their fathers. For example, when the wife of Imraan gave birth to a daughter who later became the mother of Prophet 'Isa, she told Allah: "I have named her Maryam." This indicates the importance of naming a child soon after its birth. Many Muslims are not aware of the true meaning or bearing on Islamic heritage of their names, particularly because of their unfamiliarity, or only a superficial acquaintance with Arabic or Persian. Furthermore, the extremely complex vocabulary of the Arabic language results in multiple meanings and subtle nuances; thus, Muslims oftentimes end up selecting names which are bereft of any real meaning, or have no relation to the existing stock of names.

Names go in and out of fashion for reasons that can be recorded, but there are always fastidious individuals in India who complain that they are tired of Rajiv or Sanjay or Priyanka or whatever may be the vogue name of the year, and that they want something novel. In virtually all cultures, rich and varied, the search for a beautiful name begins with the birth of a baby. Relatives and friends are approached for sug-

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5. Of the different versions of the *hadith* that emerged in the ninth century, only six are considered genuine. JOHN L. ESPOSITO, WOMEN IN MUSLIM FAMILY LAW 7, 112-13 (1982) (acknowledging existence of forgeries, fabrications and inauthentic *hadith*) [hereinafter ESPOSITO]; ABDULLAHI AHMED AN-NA'IM, TOWARD AN ISLAMIC REFORMATION: CIVIL LIBERTIES, HUMAN RIGHTS, AND INTERNATIONAL LAW 22-23 (1990) [hereinafter AN-NA'IM].

6. For a commentary in verse from various Oriental sources on the ninety-nine "beautiful names" of Allah in the form of stories, see SIR EDWIN ARNOLD, M.A. C.S.I., PEARLS OF THE FAITH OR ISLAM'S ROSARY, BEING THE NINETY-NINE BEAUTIFUL NAMES OF ALLAH (ASMA-EL-HUSNA) (London, Kegan Paul, Trench, Trübner, & Co., 5th ed. 1891) (1883). These stories are of an uneven quality, but a fine example is furnished by No. 4, *al-Malik* ("The King of Kings"). Id. at 9.

7. Sura Aal'Imraan 3:36. The mother of Maryam had expected a male child, but she was not disappointed in Maryam's birth. For she had faith in Allah's Plan, as Maryam was no ordinary girl, but a miracle-child destined to be the mother of the miracle-child, 'Isa.

8. In fact, the world in which things are nameless would be a strange world. Alice is momentarily confronted with such a domain:

"This must be the wood," she said thoughtfully to herself,

"where things have no names. I wonder what'll become of my name when I go in? I wouldn't like to lose it at all—because they'd have to give me another, and it would be almost certain to be an ugly one..."
LEWIS CARROLL, THROUGH THE LOOKING-GLASS AND WHAT ALICE FOUND THERE 61 (New York: Avenel Books n.d.) (1871) [hereinafter CARROLL]. While in the majority of cases children are given good, likeable, and propitious names, the practice of giving them names which invite banter, scorn or embarrassment has also not been found wanting. For example, in some parts of India and elsewhere, many parents, who have had the misfortune of suffering a high incidence of infant mortality, deliberately give their surviving progeny
gestions, various scriptural sources are often consulted, and the numerous names of gods and goddesses are explored in one's quest to select a suitable name which will adequately mirror a particular virtue, an aesthetic value, or a religious affinity. Most names originally meant something, and are thus the repositories of history. In fact, a person's name may have cultural and psychological implications that far transcend mere identification.

The origin of the practice of naming individuals or anthroponymy is somewhat obscure. One possible explanation is that after the discovery of fire, nomads looked for the best and safest parts of the forest for habitation. This search, in turn, necessitated identifying each member of the community by some symbolic figure - a symbol of perception of difference whereby one quality was distinguished from another. The first names that occurred to these nomads were probably names of animals, trees, forest spirits, river deities and the many pagan gods and goddesses they worshipped. As time passed, the primitive mind began to perceive, differentiate and reflect upon sensations, desires and emotions. Human sensitivity, pride, confidence and finer emotions of compassion, fairness, love and affection transformed one's way of looking at the world. Accordingly, as the mind energized the desires, each emotion was distinguished and thus knowledge commenced in the perception of differences. Survival no longer being the sole concern of humans, they had time to explore “[n]ature's majestic beauty, to name each fragrant flower, each splendid plumed bird, each cascading river and each phenomenon of nature. [Their] deities also became more beautiful and ac-
quired in [their] minds shapes of beauty and delicacy."\textsuperscript{11}

II. MUSLIM CULTURE OF NAMES: QUR'ANIC AND OTHER SOURCES

Mirrored in the names given to one's spouses and children was a growing sensitivity. This sensitivity symbolized the differentiation of qualities, the differences by which each quality was distinguishable from the other. Knowledge of names therefore implied acquisition of the qualities indicated. Girls were named after birds,\textsuperscript{12} flowers, deities or the softer qualities of a woman; boys were named after the gods and the qualities of valor, honor, bravery, and joy. Speaking of the Islamic experience, in general, Muslim "parents tend to give to their male children, names of religious significance or names bearing qualities of manhood, courage and bravery, while the female children are given names bearing on Islamic heritage or names depicting feminine qualities, e.g., beauty, modesty, virtue."\textsuperscript{13}

A. General Pattern of Names: Elegant, Beautiful and Divine

Many female names are, however, oftentimes chosen amongst Muslims not because they necessarily reflect a particular virtue—chastity (Afija, Araf, Amina, Muhshana, Nazaha), charity (Khayriyya, Atifa, Awatif, Karima), and pursuit of the right religious path (Labiba, Madiyya, Mujahida, Rashida) — or other divine Qur'anic attribute, but only because they suggest delicacy and a finer sense of delectation. For example, names like Abir (fragrance, aroma, scent), Ambarin (perfumed), Amna (safety), Andalib, Bulbul or Hazar (nightingale), Arij (sweet smell), Faatina (beautiful, pretty, ravishing), Fattanah (extremely beautiful), Hadil (cooing of pigeons), Husn-e-Ara (adorned with beauty), Lina (tender), Maliha (beautiful), Mahbuba (dear, beloved), Naahid (in the bloom of youth), Naaima (soft), Nadi (tender), Nasim (fragrant breeze), Raaiqa (serene), Rashiqa (graceful, elegant), Sabia (enchanting, charming), Sarab (mirage), Shakila (well formed, beautiful), Shamim (fragrant), Sharmin (shy, coy) are preferred, particularly in elite Muslim families, because of their tenderness and aesthetic ambiance. Similarly, the names of various flowers — viz., Banafsaj, Dalia or Dahlia (multicolored), Gul (rose),\textsuperscript{14} Khuzama (tulip), Nargis (narcis-\textsuperscript{11. VIMLA PATIL, BABY NAMES v (15th prtg. 1995) (1988).
12. In a light-hearted vein, in Australia, even today, girls are often referred to by men colloquially as "birds," presumably to denote their teasing chirpiness and sweetness of temper.
13. AHMED, supra note 4, at vi.
14. Names emanating from Gul — Gulbadan (rose body), Gulrukh, Gulru, Gul'adhar (rose face), Gulbarg (rose petal), Gulrang (rose colored), Gulshan (rose garden), Gul-i ra'na (lovely rose) — have been particularly popular in the Indo-Pakistan subcontinent.
sus), Nilufur (lotus), Rihanna (sweet basil), Sausan (lily of the valley), Yasmine (delicate Jasmine) — are very popular as female names.

Nevertheless, with ethnic names becoming more popular today than ever before, as they often serve as a link to a particular ethnic or national heritage, people often turn to the old ecclesiastical and juristic sources for finding attractive names. These sources are for Hindus, the Vedic texts, the Upanishads, the Ramayana, the Mahabharata and other ancient literary works; for Christians, the holy Bible; and for Muslims, the holy Qur'an. In the selection of any appropriate name which is a distinctive emblem of the cultural identity of the area and its peoples, religious affiliation and indigenous language are important. A woman called Anuradha can be presumed to be a Hindu; in choosing this name, her parents, at the very minimum, were indicating her cultural association with India and Hindu culture. Thus, many names besides these names, Guldali (rose-twig), Gulfiliz (rose sprout), Gulseren (spreading roses), Gulcin (gathering roses), Gulbahar (rose-spring), Gulbun (rose root), Gulperi (rose fairy) are common among modern Turkish female names.

15. Incidentally, films have equally been one of the most powerful influences on some parents in that the names of actors and actresses — and the characters in the movies — are freely bestowed on the children of their fans. Similarly, works of literature can profoundly influence name choices. For example, some of Shakespeare's heroines — Rosalind, Olivia, Portia, Imogen, Juliet, and Cordelia — have been used as popular names. Shahrzad is a name from the Thousand and One Nights and Shirin, Farhad, Layla, Majnu are celebrated in numerous Persian and Turkish romances. For many other examples, see Patrick Hanks & Flavia Hodges, A Dictionary of First Names XX-X1 (1990).

16. An amusing instance of what may be called a naming faux pas is narrated by the Maharani (Queen) of Jaipur, now Rajmata (Queen Mother):

I never learned what my horoscope foretold except that the most auspicious initial letter for my name was 'G,' so I was called Gayatri, which is a religious incantation of the highest order. But in the last days of her pregnancy my mother had been reading Rider Haggard's novel She and had already made up her mind that if I was a girl she would call me Ayesha, after the heroine of the book. It was only when some Muslim friends came to call on her a few days after I was born that she was reminded in surprised tones that Ayesha was a Muslim name belonging to the Prophet Mohammed's... favorite wife. By that time all my immediate family had got used to the name and fond of it, so, although Gayatri is my correct name, Ayesha remains the one my friends know me by.

Gayatri Devi, A Princess Remembers: The Memoirs of the Maharani of Jaipur 36 (2d rev. ed. 1995). Today, many Muslim names are not uncommon even among Hindus, e.g., Bibi, Jawahar, Kamal, Khushboo, Parveen, Rana, Roshan, Roshani, Sardar, Shabnam, Shah, Shamim, Sanam, Munmun, Yasmin, Fakir, Kabir, Sabram, Masoom, Bhaktawar. The son of the famous Muslim Bengali poet Nazrul ul-Islam, whose wife was
are culture- and language-specific in form.

In the context of culture-language specificity, it is no exaggeration to say that by far the richest source or cornucopia of names in the Muslim world has been the historical and moral legacy of the holy Qur'an. Islam's most sacred and revered scripture, the Qur'an, is the compilation of divinely-inspired Allah's revelations to the Prophet Muhammad. Significantly, Islam is the second largest religion and source of law in the world; its followers are spread all over the globe. Conservative estimates indicate that "[n]early one-fifth of the people in the world today are Muslim, and Islamic law is at the very core of their beliefs and social system."17

This religious commonality results in a naturally striking degree of homogeneity and resemblance in the names of Muslims, irrespective of the country and the legal system and the location in which they live. Presumably, this is so, because Arabic, and to a lesser extent, Persian and Turkish languages, predominated in Muslim culture during its ascension and gradual expansion to countries far beyond Arabia. Nearly every country has a version of the Arabic Leila ("born at night"). A significant percentage of Swahili names are simply minor variants of the Arabic. Furthermore, the unifying influence of the holy Qur'an, which is considered to be the primary regulator of the conduct and behavior of Muslims, and the reverential practice of choosing names from amongst the celestial attributes of Allah also account for this pattern of similar-


17. John Makdisi & Marianne Makdisi, Islamic Law Bibliography: Revised and Updated List of Secondary Sources, 87 L. Libr. J. 69, 71 (1995). The core beliefs of Islamic society and the criteria for being a true Muslim are delineated in the Qur'an. Although the Qur'an is the principal source of Islamic law, it should not be treated, however, as a code of law in the Western sense. On a liberal construction of the 6219 aayats (verses) of the Qur'an around 600 encompass a legal aspect, whereas, according to an exacting reading, no more than eighty aayats concern legal injunctions. AN-NAIIM, supra note 5, at 20; ESPOSITO, supra note 5, at 3. According to KEITH HODKINSON, MUSLIM FAMILY LAW: A SOURCEBOOK 3 (1984), however, "[t]here are no more than 200 verses [of the Qur'an] concerned with what we would term 'law' in the Western sense." On the pervasive influence of Islam and Islamization in various parts of Africa and Asia, one scholar has suggested that "personal names" may be used for the study of religious change in a given cultural context. As an example, examining the biographical literature on Iranian Muslims, he found an interesting correlation between the recurrence of four categories of names, Arab Old Testament/Qur'anic, Persian, and Muslim names, and successive phases in the progress of conversion to Islam in Iran. Richard Bulliet, Conversion to Islam and the Emergence of a Muslim Society in Iran, in CONVERSION TO ISLAM 30 (Nehemia Levtzion ed., 1979).
ity and enduring popularity of these names. Muslims' acceptance of Allah's message places them on a righteous path, with the expectation that they live and conduct themselves in accordance with His law and teachings as revealed in the Qur'an. The Islamic pantheon is unusually rich in images of divine attributes, representing a wide range of symbolic, social, and meditative meanings.\textsuperscript{18}

Many popular Arabic names, coming from the ninety-nine attributes of Allah listed in the Qur'an,\textsuperscript{19} are often prefixed with \textit{Abdul}, \textit{Abdel}, or \textit{Abd}, each meaning "servant of," for composing an almost endless variety and combination of beautiful Qur'anic names. For example, \textit{Abdul Azim} (Servant of The Almighty Allah), \textit{Abdul Khaaliq} (Servant of The Creator), \textit{Abdur Rahman} (Servant of The Most Gracious), \textit{Abdel Nasser} (Servant of The Victorious One) and so on. Similarly, the Prophet's name, \textit{Muhammad} (praiseworthy, possessing fine qualities), with its estimated five-hundred variants, such as \textit{Mahmud}, \textit{Ahmed}, \textit{Hamid}, \textit{Hamdi} — derived from the same root, \textit{hamida}, that is, to praise — are the most popular names that abound in virtually all Muslim countries. A pious, but apocryphal, Muslim saying goes, "If you have a hundred sons, name them all Muhammad." Another group of Muslim

\textsuperscript{18} United States Supreme Court Chief Justice William H. Rehnquist recently rejected complaints by a coalition of Muslim groups offended by a frieze, depicting the Prophet Muhammad, and turned down their plea that the marble sculpture in the Supreme Court's chamber be removed or altered. He disagreed the sculpture was a sacrilegious "form of idol worship" and drew attention to the rich symbolism of the Qur'anic motifs and Islamic beliefs. It is true that in Islam the depiction of a prophet is considered a form of apostasy, because it may encourage believers to worship someone other than Allah. The friezes though, carved of ivory Spanish marble and in place since the Court building opened in 1935, show allegorical figures and a process of eighteen great lawgivers. Muhammad is included among other historical figures including Confucius, Moses, Napoleon and Charlemagne. The bearded Muhammad is shown clutching a scimitar in his right hand and the Qur'an in his left hand. The coalition had also complained that the curved oriental sword in the Prophet's right hand "reflects long-held stereotypes of Muslims as intolerant conquerors." Furthermore, the protesters said, Supreme Court literature about the frieze incorrectly identifies Muhammad as the "founder of Islam," when he is in fact recognized as "the last in line of prophets that includes Abraham, Moses and Jesus." Rehnquist replied that the depiction of Muhammad "was intended only to recognize him, among many other lawgivers, as an important figure in the history of law; it [was] not intended as a form of idol worship," and that "[a]ltering the depiction of Mohammed would impair the artistic integrity of the whole." Rehnquist also dismissed the objection to the curved sword in the marble Muhammad's hand as reinforcing the stereotypical image of Muslims as intolerant conquerors: "I would point out that swords are used throughout the Court's architecture as a symbol of justice and that nearly a dozen swords appear in the courtroom friezes alone." Rehnquist said the description and literature, however, would be changed to identify Muhammad as a "Prophet of Islam," and not "Founder of Islam." The rewording, based upon "input of numerous Muslim groups," would also say that the figure "is a well-intentioned attempt by the sculptor Adolph Weinman to honor Mohammed, and it bears no resemblance to Mohammed." Aziz Hanifia, \textit{Religion: Court Rejects Plea to Deface Figure}, \textit{INDIA ABROAD} (New York), Mar. 21, 1997, at 38.

\textsuperscript{19} For a listing of these names, see app. II.
names is usually derived from those of the Prophet's descendants or immediate family.\textsuperscript{20}

Nothing gratifies law-abiding and pious Muslims more than the discovery that their names have a Qur'\'anic lineage, origin, background or association.\textsuperscript{21} For the bulk of the Qur'an — the corpus of Islamic ethico-legal norms (or Sharia) — comprises general moral directives for what true Muslims ought to do. Thus, names of all the apostles, either with their full names or derivatives, and of the other major characters which appear in the Qur'an, are a source of particular joy.\textsuperscript{22} After all, the “most beautiful names belong to Allah”\textsuperscript{23} and it is He who “taught Adam [all] the names of all the things.”\textsuperscript{24} Therefore, according to Qur'\'anic law, one must dissociate with people who use Allah's name degradingly or suggest anything disparaging to His dignity or unity.\textsuperscript{25}

\begin{itemize}
\item \textsuperscript{20} These include, for boys, Ali (cousin and son-in-law of the Prophet), Bahr (father of Prophet's favorite wife, Aisha), Hamza (Prophet's uncle and hero of a widespread saga), Hasan and Husayn (sons of Fatima and Ali), Umar (Omar) (second “guided” caliph and one of the staunch supporters of the Prophet), and Uthman (Usman) (son-in-law of the Prophet). Notable female names include Aisha, Hafsa, Khadija, Maimuna, Rayhana, Umm-Salamah and Zaynab (Zainab) (Prophet's wives), Ruqayya and Umm-Kulthum (Kulsum) (Prophet's daughters), Aamina (Prophet's mother), and Zahra (Zuhra) (family name of the Prophet's mother). Zaynab (Zainab), also the name of a flower, is probably one of the most popular female names; it featured four times in the Prophet's personal life. The first was his daughter by Khadija; the second, Zaynab bint-Khuzayma, married him in 625 but died soon thereafter; the third was Zaynab bint-Jahsh, cousin of the Prophet, whom he married after his adopted son, Zayd ibn-Haritha, divorced her; and the last Zaynab was Prophet's granddaughter by Fatima and Ali.
\item \textsuperscript{21} Id. In fact, since Muslim names are most profuse in the number of constituent words, one would end up composing a complete dictionary of Arabic, Persian and Turkish since almost every word has appeared as a proper name.
\item \textsuperscript{22} Cf. sura Bani Israa'il 17:110. Interestingly, the Aurangabad bench of Mumbai [Bombay] High Court (Maharashtra, India) recently directed the police to register a criminal case against actors and producers of a new Hindi movie Jodaai — a somewhat inspired adaptation of Indecent Proposal — if they determine that the song, "Mujhe pyar hua, pyar hua, Allah miya" (I have fallen in love, fallen in love, Oh God), had hurt religious sentiments of Muslims. A petition filed by one S.A. Ansari, seeking a ban on the song, had alleged that the song had defiled the pious name of Allah. File Case Against Jodaai [High Court], SUNDAY PIONEER (New Delhi), Mar. 16, 1997, at 6. The context, however, suggests otherwise; the innocuous reference to Allah is in no way intended to trivialize His name. The romantic ecstasy and exuberance, permeating the song, can be best understood if one appreciates that the use of the suffix miya, a respectful but loving form of address for a venerable person, after Allah is designed only to
B. Arabic Name Structure and Cross-Cultural Adaptations

Generally speaking, Arab names, Qur'anic or otherwise, particularly in Arabia, today conform to a certain pattern. First, *kunya* (surname of relationship), which is the paternal or matronymical designation of a person as father (*Abu*) or mother (*Umm*) of the son or daughter, for example, Abu Hamid (father of Hamid), Umm Zarina (mother of Zarina). Second, *ism*, is a given personal name sometimes supplemented by a nickname, such as Ibrahim or Tariq. Third, *nasab*, which expresses the lineage in relation to one's forefathers, for example, son (*ibn, bin*) or daughter (*bint*) of so and so. Fourth, *nisba*, indicating one's native place of birth, residence or origin or membership of a religious allegiance and the like, for example, Al Shammari, Al Harbi. And, fifth, *laqab* (nickname), which later tended to evolve into a proper name, or a family or clan name which could also be a honorific designation (either assumed by an individual or given to him by others).

This pattern, in the strict sequence of *kunya, ism, nasab, nisba* and *laqab*, though partly regulated by law in some Middle-Eastern countries, has been significantly transformed. As Islam spread to new countries from Arabia, many Muslim names adapted themselves to many variations in form and choice of local language, traditions, cultures or places where the person bearing that name happened to live. Moreover, as the family system and the laws thereof developed, the practice of having a separate surname derived either from the village or tribe or the vocation (somewhat analogous to Arabic *nisba*) also evolved. The complexity of the system of names and surnames increased over a period of centuries in the wake of increased commerce, the development of the caste system (particularly in the Indian subcontinent), invasions and the resultant assimilation of races and cultures, as well as the faster modes of communication and urbanization. Indeed, the influence of local cultures on Muslim names cannot be underestimated.

C. Surnames: Absence of Uniformity?

As a result, the naming models in the various countries of the Indian subcontinent, Indonesia, and Malaysia vary significantly from rhyme with *hua* (happened). Telling Allah that one "has been smitten with love" is certainly not disrespectful to His holy name!

27. Id.
28. The Indian subcontinent consists of the countries Pakistan, Burma, Bangladesh, Nepal, India, Sri Lanka, and the Islands of Andaman, Nicobar and Maldive.
the Arab models. For example, in Egypt, Iran and Turkey surnames
are well-established, presumably because of legal sanctions, and they
are perpetuated from generation to generation. Whereas in the Indian
subcontinent, complete laissez-faire exists in the selection of names
which renders the necessity of continuing the surnames from fathers to
sons somewhat redundant. Nevertheless, one should not overlook the
noble human sentiment that, in addition to contributing to reinforce a
child’s continuity of identity and relationship with one’s biological or
psychological parents as part of a nuclear family unit, a surname often
operates as a vehicle for transferring to a child the goodwill associated
with a particular name in a community.

Since the personal names taken from the attributes of Allah are of
limited number, most of them are commonly used. This limited avail-
ability led to a great number of individuals bearing the same name,
naturally necessitating the practice of adding second names. The sec-
ond name or surname serves to distinguish a population with a finite
number of given names and is not to be understood as a class name.
Rather, the surname may make identification easier when use of the
first name fails to do so. This is especially true where many persons
have the same first or middle name, as a result of the increase in
population. The resulting complexities of these compound and many-
worded names, however, have rendered the task of librarians particu-
larly difficult in identifying the real “personal name” and “surname” of
a given author. As one scholar rued, it was “no easy matter for cata-
loguers without a special knowledge of Arabic culture to deal with
names of such complexity [for in] addition to the intrinsic complexity of
such names, there [were] also special features characterizing Muslim
names of different nationalities such as Spanish, Moorish, Turkish,
Egyptian, Arabic, Persian, Afghan and Indian.” Similar difficulties
have also been encountered in establishing the “surname” as part of
traditional Arabic-Muslim or other names in a foreign court.

29. Described as “the simplest, most literal and most obvious of all symbols of iden-
tity,” Harold R. Isaacs, Basic Group Identity: The Idols of the Tribe, in ETHNICITY:
THEORY AND EXPERIENCE 29, 46 (Nathan Glazer & Daniel P. Moynihan eds., 1975), a
“surname, can reflect one’s cultural, ethnic, religious or familial heritage.” Note, Parents’
Selection of Children’s Surnames, 51 GEO. WASH. L. REV. 583 (1983); Teresa Scassa, Na-
See, e.g., Carroll v. Johnson, 565 S.W. 2d 10 (Ark. 1978) (biological parental relationship);
Nellia v. Pressman, 282 A. 2d 539 (D.C. 1971) (continuity of familial identity); In re Har-
riss, 236 S.E. 2d 426, 429 (W. Va. 1977) (transmission of surname’s goodwill).
30. S.R. RANGANATHAN, CLASSIFIED CATALOGUE CODE: WITH ADDITIONAL RULES FOR
DICTIONARY CATALOGUE CODE 235 (5th ed. 1964). For expressions of similar concerns,
see, for example, R.C. Dogra, Cataloguing Urdu Names, 5 INT’L LIBR. REV. 351 (1973);
M.S. Ashoor, The Formation of Muslim Names, 9 INT’L LIBR. REV. 491 (1977); ABDUL
HUQ, A STUDY OF BENGALI MUSLIM PERSONAL NAMES TO ASCERTAIN THE FEASIBILITY OF
APPLICATION OF A MECHANISTIC RULE FOR THEIR ARRANGEMENT (1970).
31. Walter Pintens & Michael R. Will, Names, in 4 INTERNATIONAL ENCYCLOPEDIA OF
D. Salient Characteristics in the Indian Subcontinent

Some Muslim names are very long, particularly on the Indian subcontinent. For example, the name of the famous poet Ghalib, Mirza Asadullah Khan Ghalib known familiarly as Mirza Nosha, holder of the titles Nijm ud Daula, Dabir ul Mulk, Asadullah Khan Bahadur, Nizam Jang, poetically named Ghalib in Persian and Asad in Urdu, was long enough to be exasperating. Such names led some readers to complain, as did Vincent Smith, an eminent British historian of India, that “the length of these Muhammadan names is terrible.”32 Another lengthy name that readily comes to mind is that of the most “bizarre and exotic ruler[s] in India,”33 who, in 1947, was “reputed to be the richest man in the world [and was] [s]o stingy ... that he smoked down the butts [of cigarettes] left behind by his guests”34: Rustum-i-Dauran, Arustu-i-Zeman, Wal Mamalik, Asif Jah, Nawab Mir Osman, Alikhar Bahadur, Musafrul Mulk Nizam al-Mulk, Sipah Solar, Fateh Jang, His Exalted Highness, Most Faithful Ally of the British Crown, the Seventh Nizam of Hyderabad.

Besides their length, Muslim names have another feature that compounds the reader’s difficulty, particularly where the reader is used to names made up of one or more forenames and a surname. Shorter names are relatively unknown in Muslim society, except for those who, while overseas, were obliged to use, for official purposes, one of their names as a surname. In some families, there is indeed a time-honored tradition, as against any legal requirement, of conferring upon a son the last element of the father’s name. For example, in the noble Loharu family, to whom Ghalib was related by marriage, the names end in “ud Din Ahmad Khan”—Ami’n ud Din Ahmad Khan, Ziya ud Din Ahmad Khan, Ala ud Din Ahmad Khan, and so on. This is the exception rather than the rule. Often there is nothing in the names to show that fathers,
sons and brothers are related, for the surname does not automatically continue through the generations of a family. Many Hindu names share this same characteristic.

Muslim names, particularly on the Indian subcontinent, comprise three essential elements: first, prefixed styles of address similar to "Doctor," "Professor," and "The Reverend," are more numerous; second, personal names which generally consist of a single word; and third, suffixed styles indicating ancestry, or local connections, or other attributes. Some Muslim names may reflect examples of each.

Among the prefixed style, the appellations or *laqab*, *Mirza*, *Mir*, *Sayyid*, *Hakeem*, *Qazi* and *Munshi* are relatively more common. *Mirza* is the style appropriate to a man of Mughal or Turkish descent. *Mir*, apparently an abbreviation of Ameer, generally implies that the man so addressed is a Sayyid, one who claims descent from the Prophet Muhammad's daughter, Fatima and Ali ibn Abu Talib. *Sayyid* itself, a title of respect, is a common prefixed style of address, meaning lord, master or chief. *Hakeem* is a physician who practices the traditional Greek system of medicine as modified and popularized by the Arabs throughout the Muslim world. *Qazi* or *Qadi* or *Kazi* is one who dispenses Muslim law, conducts marriages, performs religious ceremonies, and so on. *Munshi*, a writer or secretary, denotes a functionary of importance in the old Mughal administration of law and justice. *Maulvi* best describes a person well-versed in Islamic learning and Shariat, while *Maulana* ("our master") has a similar, though perhaps less precise, connotation.

Among titles more exalted than these the most common is *Nawab* (*Nabob*), roughly equivalent to the English "Lord," meaning something like "one who exercised delegated powers" over either a very small or a very large area entrusted to him by a ruler. The tradition of conferring the honorary title, *khitab*, on scholars and other important personalities by Muslim rulers continued under and after the British. *Khitabs*, always prefixed to a given name, are not considered to be part of the name, but serve only as an honorable accessory contributing to deter-

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35. The Prophet and the early caliphs decided many matters in person, but later, since the time of the Umayyads came the *qadis*, who were religious judges working under the guidance of the Shariat. Since religion and law are confluent streams in Islam, the qualifications necessary for the appointment of a *qadi* were that he be a Muslim of blameless life thoroughly learned in the law. It was this officer, the *qadi* of the texts of Islamic jurisprudence, which the Judicial Committee of the Privy Council had in view when they laid down that in India the place of the *kazi* had been taken by the civil court: Mahomed Ismail v. Ahmed Moolla, 43 I.A. 127, 134 (1916). But in Bangladesh, India, and Pakistan, the term *kazi* is also applied to certain petty religious officiants and the two classes of *kazis* must be sharply distinguished. In the Indo-Pakistan subcontinent there are enactments regulating their appointment and rights. *See generally* Asaf A.A. Fyzee, *The Adab al-Qadi in Islamic Law*, 6 MALAYAN L. REV. 406 (1946); ASAF A.A. FYZEE, A MODERN APPROACH TO ISLAM 37-46 (1963).
mination of one's descent.

The prefixed style is followed by the personal name. For instance, again, in Ghalib's case, the personal name is Asadullah, meaning "Lion of God [Asad Alah]." Asadullah was also an honorific title of caliph Ali, the cousin and son-in-law of the Prophet. Like all Muslim names, the personal name is meaningful, and Ghalib often plays upon the literal meanings of his name and the names of his correspondents in his communications to them.\footnote{36. See generally 1 GHALIB — LIFE AND LETTERS (Ralph Russell & Khurshidul Islam trans. & eds., 1969). The abbreviated and paraphrased information in this section owes much to "Note on Muslim Names and Their Pronunciation and Transliteration." Id. at 13-16.}

The personal name is generally followed by one or more suffixed styles. It may begin with Khan, indicating either that he is of Afghan or Pathan stock, or else that he or one of his ancestors has been granted the title by some ruler. Khan Bahadur is a more exalted title. Other suffixed styles may denote ancestry, either physical or spiritual; others indicate a family connection with some famous place. Generally the most significant of these suffixed styles is an assumed literary pseudonym, used by writers. Classical forms of Urdu poetry mandate that the poet identify herself or himself in a sprightly pun in the final couplet by introducing her or his takhallus (pen-name),\footnote{37. The pen-name was often chosen by the writer himself, sometimes by his patron and frequently by his ustadh (teacher). If he belonged to a religious fraternity (e.g., Sufi), his spiritual guru might do so. The pen-names usually reflect the writer's personality, family, or aspirations.} usually consisting of one or two syllables only. Indeed, most writers in Urdu literature are best known by their literary names. For example, the famous Indian judge, Saiyyid Akbar Hussain (1846-1921), is better known by his takhallus and place name, that is, "Akbar Allahabadi" (Akbar of Allahabad).\footnote{38. The variant Urdu forms of authors' names as given by publishers on the title page, spine of a book, foreword, preface, introduction, and dust cover, etc., has often made the task of catalogers particularly difficult in identifying the real personal name and surname of a given authority. Thus, inspired by the popularity of takhallus (pen-name) — and collecting a detailed list of these from amongst diverse sources — one distinguished librarian has suggested that it "will save thousands of hours of labour by cataloguers and by users, if authors are entered under their Takhallus, or by the best known part of the name, or the call name, like Western surnames." Dogra, supra note 30, at 354.}

Finally, some individuals have a familiar name — a call name which is usually the last part of the name — by which their friends address them informally. An erroneous assumption exists that "Sahib" corresponds to the English "Mr." The correspondence is, however, only a partial one, for "Sahib" — suffixed to the name or style of the person addressed or referred to — is appropriate not only in relationships of a rather formal kind, but also to familiar and informal relationships. The words "Khanam" (a lady, a princess, a wife), "Bano" (a lady, a princess,
a gentlewoman), "Jan" (lady, sweetheart), and "Khatun" (a noble woman) are often suffixed to the personal names of Muslim women as a sort of title. The word "Begum," for a lady, is similarly used, sometimes prefixed, but more often suffixed, to the personal name. So are the words "Mussamat" and "Bibi," which are now becoming somewhat obsolescent. These are essentially matters of cultural peculiarities.

III. SOME DISTINCTIVE FEATURES OF MUSLIM NAMES

A. Allah's Law: Islamic Religious Heritage and Biblical Allusions

A distinctive feature of Ahmad's Muslim Names is that it painstakingly gives the meaning or bearing on Islamic heritage of the Muslim names. If a name or its derivative is found in the Qur'an, then, the relevant chapter (sura) and verse (aayat), both in Arabic and in English, have been given. Since Islam acknowledges much of the Judaeo-Christian tradition — Muslims trace their origins to Abraham, as do Christians and Jews — and many of the stories featured in both the Old and the New Testament also appear in the Qur'an, Biblical allusions or analogues have been given. Judaism is particularly important as it most closely resembles Islam. The Qur'an states that Jacob (Yaqub) and Abrahim (Ibrahim), who founded Judaism, were the first humans to submit fully to Allah's law.


40. As "Allah did take Abraham [Ibrahim] for a friend," sura An-Nisa 4:125, he is distinguished with the honorific title, Khalilullah, that is, "Friend of Allah."

41. Since Allah spoke to Moses on Mount Sinai, the title of Moses (Musa) is also Kalimu'llah, that is, one to whom Allah spoke.
interaction among Christianity, Judaism and Islam has thus often been mutually beneficial, particularly in the appreciation of names. From a theological perspective, Islam is viewed by Muslims as the last revelation of God’s word in its true and pristine purity, which had previously been revealed to the prophets of Judaism and Christianity in forms suitable for the conditions and traditions of those times and places. Allah had sent 124,000 prophets before Muhammad, and twenty-five Jewish-Christian prophets from Adam to Jesus (Isa) are mentioned in the Qur’an.

The book, Muslim Names, is not a stereotyped catalog of common names. Rather, it is a scholarly work of reference on the etymology of Muslim names, with meticulous annotations in the broad area of Islam and Sharia. As the work correctly notes: “To a general reader, the names themselves may not give enough indication, unless identified whether a name was borne by an Imaam, a Khalifa, a Sahaabi, a Mujahid, a Sultan, a saint, an author or a jurist who shaped the history of Islam.” Therefore, wherever appropriate, a famous personality of the past who bore the relevant name has also been mentioned. For instance, under the entry “Aziz,” the name of Ibn Sa’ud ‘Abdul Aziz,

42. Sura An-Nisaa 4:163-65:
We have sent thee
Inspiration, as We sent it
To Noah and the Messengers
After him: We sent
Inspiration to Abraham.
Isma’il, Isaac, Jacob
And the Tribes, to Jesus,
Job, Jonah, Aaron, and Solomon,
And to David We gave
The Psalms.
Of some messengers We have
Already told thee the story;
Of others we have not;—
And to Moses God spoke direct:—
Messengers who gave good news
As well as warning,
That mankind, after (the coming)
Of the messengers, should have
No plea against Allah:
For Allah is Exalted in Power, Wise.

43. AHMED, supra note 4, at ii. Ordinarily, though most Muslim names indicate the sex of an individual, there are some names, Qur’anic or otherwise, which are widely used for both sexes, for example, Hikmat (wisdom, sagacity), Badr (full moon), Ihab (gift or donation), Ihsan (charity, benefaction), 'Ismat (sinlessness, purity, chastity), Jannah (garden or paradise), Karam (generosity, magnanimity), Manal (acquisition, household), Manar (beacon, lighthouse), and Rida (contentment, satisfaction). Amal (hope), though predominantly a female name in Egypt, is also occasionally used as a male name in Syria and Lebanon. Similarly, Jamal (beauty, grace, comely), used as a female name in Syria, is used as a male name elsewhere.

44. Id. at 22-23. Meaning “[m]ighty, strong, prince, noble, honourable, illustrious,
founder of the modern Kingdom of Saudi Arabia, is mentioned. Five famous jurists — Abu Hanifa (700-767), founder of the Hanafi school of Islamic law; Ameer Ali (1849-1928), a great Indian judge (and Privy Councillor) who wrote several learned treaties on Islam and Islamic law; Jafar as-Sadiq (699-765), the sixth Imaam of the Shiites and the founder of the Ja’fari school of law; Ahmad ibn Muhammad ibn Hanbal (780-855), founder of the Hanbal school of law; and Muhammad ibn Idris ash-Shaafi’i (767-820), founder of the Shafi school of law — feature under the entries of “Abu,” “Ameer,” “Jafar,” “Hanbal” and “Shafi,” respectively. Another significant name is that of Sulaiman the Magnificent (1494-1566), who was the world famous Ottoman caliph, under the entry “Sulayman” (a Messenger of Allah, son of the Prophet Daud).

Such references, even though interstitial, enhance the utility of the book, not only as a linguistic dictionary, but also as an interesting and valuable reservoir of biographical information on legal personages.

B. User-Friendly Transliteration and Emphasis on Arabic Sources

Another commendable feature of Muslim Names is that, along with their English spellings in common use, the names have also been identified and spelled in their original languages as well, that is, Arabic (A), Persian (P), or Turkish (T) in Arabic script. This is important, because rendering Arabic, Persian and Turkish words and phrases into their precise English phonetic equivalents — complete with accents, gaps and symbols — is often problematic, especially in a book for the general reader, who is apt to be intimidated by words dressed in their full panoply of diacritics. Moreover, the results could be often confusing, for Q’run, Badawin or Ramzan do not correspond to the spellings most people easily recognize (Koran, bedouin, Ramadan). Unless one is a linguistic czar and an unrelenting follower of a particular system of transliteration, Arabic words can be spelled phonetically — Abdullah, Abdallah, Abd’Allah.46

highly esteemed, dearly loved, beloved [which is one] of the names of Allah: Al-Aziz . . . The All-Mighty." Id.

45. Id. at 23.

46. Thomas E. Lawrence, popularly known as Lawrence of Arabia, certainly did so, writing Jeddah or Jiddah as his mood fluctuated and shunned his publishers’ entreaties to impose uniformity. See generally THOMAS E. LAWRENCE, SECRET DISPATCHES FROM ARABIA (1939); THOMAS E. LAWRENCE, SEVEN PILLARS OF WISDOM (1935). In retrospect, he was, perhaps, a model of restraint, for, modern transliterations of that famous city’s name in various romanized spellings have included Jaddah, Jedda, Jeddah, Jiddah, Jid-dah, Judda, Juddah, Jadda, Dijiddah, Dijuddah, Djouddah, Gedda, Dsjiddah, Djettah and Dscheddah — to mention only some — and all seem acceptable! ROBERT LACEY, THE
The Arab world places a heavy emphasis on the most frequently given names in the Arab world which is, of course, understandable in that, apart from being important in their own right, these names are the principal source of the most common Muslim names in virtually every part of the globe where Islam is practiced. Moreover, Arabic, the main language of over 182 million or so people, is the sixth most common first language in the world, and it is the language most honored as the sacred script of Islam and the vehicle of religion. Furthermore, since the Muslim/Arab world has witnessed, in recent years, a renaissance in all things Islamic, one does not need the gift of clairvoyance to say that it is likely to have profound effect on the choice of names as well. Muslim Names should, therefore, prove a fertile source of pleasant-sounding and auspicious names, derived from general words and the Qur'an for good qualities, encouraging their bearers to try to conform to the characteristics exemplified by them.

47. Some names, e.g., Ishmael, Hager, however, have acquired pejorative association in their European forms, while the persons in the Arabic form (Ismail, Hajar, etc.) they represent are sacred personages held in high esteem in Islam. ENGLISH TRANSLATION, supra note 4, at x. Unfortunately, one Muslim name, "Abdul," has given rise to an unflattering Australian nickname, Abdul, meaning "a bloke with a dark complexion, or he is a bull artist — from the old song 'Abdul the bulbul Emir.'" TAFFY DAVIES, AUSTRALIAN NICKNAMES 17 (1977).

48. The linguistic nationalism of Kamal Ataturk, involving standardizing and modernizing of the Turkish language, however, had its curious impact on the language of given names, in particular, in freeing them from Arabic influences. Scassa, supra note 29, at 178 n.45. The alphabet was changed from Arabic to Roman along with linguistic changes in names. Richard W. Bulliet, First Names and Political Change in Modern Turkey, 9 INT'L J. MIDDLE EAST STUD. 489, 493 (1978) [hereinafter Bulliet]: "[I]n the nineteenth century virtually all male names contained in the lists were of Arabic origin. Today, however, it is evident that names of Turkish linguistic origin are quite common." Id.

49. Some experimental psychologists and social scientists have indicated that a name exercises constraint upon the one who bears it and also tends to generate expectations which may shape an individual's perception of the name bearer's personality and identity. See, e.g., Barbara A. Buchanan & James L. Bruning, Connotative Meanings of First Names and Nicknames on Three Dimensions, 85 J. SOC. PSYCHOL. 143 (1971); Avner Falk, Identity and Name Changes, 62 PSYCHOANALYTIC REV. 647, 651, 655 (concluding that names "symbolize the identity of the person" and "have strong effective value"); Charles E. Joubert, Individuals' Ratings of Their Given Names on Several Dimensions, 131 J. SOC. PSYCHOL. 301 (1991); Albert Mehrabian, Interrelationships Among Name Desirability, Name Uniqueness, Emotion Characteristics Connoted by Names, and Temperament, 22 J. APPLIED PSYCHOL. 1797 (1992); Mary V. Seemar, Name and Identity, 25 CAN. J. PSYCHIATRY 129 (1980) (noting the many attributes of identity including ethnicity, relig-
IV. NAMES AND NAMING PRACTICES: SOME LEGAL ISSUES IN THE ISLAMIC WORLD

A person should ideally have the freedom to use and change his name as he or she pleases, as long as the purpose is not fraudulent and the result does not impinge upon the rights of others. In practice this is not so, particularly in Muslim societies. For while place-names are properly considered a matter of public concern, personal names also seem to be increasingly conditioned by various societal pressures, legislation, regulations and decrees.

Since the name of an individual represents the principal means of identification, the state has a strong interest regarding the assumption and change of names for maintaining public order (for example, law enforcement), as well as enforcing general obligations of citizens (for example, taxes, electoral privileges). The state interest for administrative and related purposes needs to be appraised against the backdrop of the rights, privileges and legitimate expectations of an individual, both under the respective legal systems and major human rights' instruments. As the experience of some countries, notably Pakistan, counsels, many substantial concerns - protection of gender equality, autonomy, privacy, and minority rights - implicated in the choice and change of names, deserve safeguarding as a part of human rights norms and aspiration, blood line or genealogy, gender, social stratum, birth order - are reflected in a name given to a child); William B. Schoenberg & Michael Murphy, The Relationship Between the Uniqueness of a Given Name and Personality, 93 J. SOC. PSYCHOL. 147-48 (1974); Richard D. Alford, Naming and Identity: A Cross-Cultural Study of Personal Naming Practices 141 (1988) [hereinafter Alford] (noting that "first names, for the most part, . . . symbolize personal identity"); Wilber G. Gaffney, Tell Me Your Name and Your Business; or Some Considerations upon the Purposeful Naming of Children, 19 NAMES 34, 35 (1971) (explaining that one's character and profession is determined by the first name under which one grew to adulthood).

Since frequent name-changing may lead to problems, however, many countries have introduced restrictions in this respect. See Pintens & Will, supra note 31, at 73-81. An amusing instance of name-change is narrated by Barbara Fletcher (whose nickname is "Rainbow"):

My own name has changed three times in the last 40 years. My mother remarried when I was nine years old, my step-father legally adopted me and my middle and last names changed. At twenty I married and changed my name. When I was forty, I remarried and my name changed again. Now, I often daily choose a name from this book when meeting new people in nonlegal situations.

Barbara Fletcher, Don't Blame the Stork?: The Cyclopedia of Unusual Names 269 (1981) [hereinafter Fletcher]. Incidentally, the book is dedicated to pediatrician Dr. Robert Stork.
rations. 51

A. The Giving of Names to Children by Their Parents

Most countries, particularly those that follow the common law rule, affirm the parents' freedom and privilege to choose any one of several surnames for their child: the traditional paternal surname, the maternal surname, a hyphenated combination thereof, which is the traditional method in Spain, or some other unrelated to either of the parents' surnames. Statutes and regulations that compel a child to take a particular surname, in contravention of the parental choice do, however, raise the issue of whether such a requirement representing an unconstitutional intrusion into the sanctum sanctorum of the family. 52

Apparently, there are few worthwhile reported cases or practices in

51. See generally infra notes 95-143 and accompanying text.
52. See, e.g., Sydney v. Pingree, 564 F. Supp. 412, 413 (S.D. Fla. 1982) (fusing parents' surnames "Ledbetter" and "Skylar" into child's surname "Skybetter"); O'Brien v. Tilson, 523 F. Supp. 494, 496 (E.D.N.C. 1981) (creating child's surname "Arneson" from father's first name "Arne" plus son); Jech v. Burch, 466 F. Supp. 714, 721 (D. Haw. 1979) (fusing mother's surname "Jech" with father's surname "Befurt" into child's surname "Jebef"). These district courts declared statutes mandating the patronymic for marital and the mother's surname for nonmarital offspring unconstitutional, primarily on the basis of right of privacy in childbearing matters. See Meyer v. Nebraska, 262 U.S. 390 (1923) (instructing child in a foreign language a fundamental right); Pierce v. Society of Sisters, 268 U.S. 510 (1925) (sending children to a private school a fundamental right); Roe v. Wade, 410 U.S. 113 (1973) (seeking abortion a fundamental right); Secretary of the Commonwealth v. City Clerk, 366 N.E.2d 717, 725 (Mass. 1977) (stating "the common law principle of freedom of choice in the matter of names extends to the name chosen by a married couple for their child"); and Jones v. McDowell, 281 S.E.2d 192, 197 (N.C. Ct. App. 1981) (holding that the requirement that nonmarital child's name be changed to the father's surname upon establishment of paternity is arbitrary and "denies such mothers a protected liberty interest"). O'Brien also relied on the mother's equal protection rights, which mandated patronymic to be infringed. 523 F. Supp. at 496; Haxel v. Wells, 918 S.W.2d 742, 745 (Ky. Ct. App. 1996) (reading the statute as requiring that a child bear the declared father's surname "would result in a violation of the Equal Protection Clause"). But see Robertson v. Pfister, 523 So.2d 678, 679 (Fla. Ct. App. 1988), which declared the state's naming statute, requiring child conceived before parents' divorce to bear father's surname constitutional, as reasonably designed to insure accuracy of vital statistics, in contradiction to the federal court's opinion in Sydney v. Pingree, supra, which had earlier, under nearly identical facts, declared the very same statute unconstitutional. In Henne v. Wright, 904 F.2d 1209, 1215 (8th Cir. 1990), cert. denied, 498 U.S. 1032 (1991), however, the court sustained the constitutionality of a naming statute on much narrower grounds of administrative convenience over the powerful dissent of Judge Arnold, but without undermining the broad sweep of constitutional concerns. For a thorough examination of the cases involving equal protection arguments challenging statutes that require that a child bear the patronym, see Merle H. Weiner, "We Are Family": Valuing Associationalism in Disputes over Children's Surnames, 75 N.C. L. REV. 1625, 1753-60 (1997); see generally Aeyal M. Gross, Rights and Normalization: A Critical Study of European Human Rights Case Law on the Choice and Change of Names, 9 HARV. HUM. RTS. J. 269 (1996); Carolus van Nijnatten, In the Name of the Third — Changing the Law of Naming Children in the Netherlands, 10 INT'L J. L. POL. & FAM. 219 (1996).
any of the Muslim countries where state compulsion to adopt a particular surname has given rise to the constitutional issues of privacy, parental autonomy and equal protection, despite the wealth of Islam and Sharia's humanistic and theological heritage. It is a different matter, however, that Muslims living in the United States would enjoy a similar constitutional protection in the selection of surnames as available to Americans. A heightened appreciation of women's contribution to society and the consequent questioning of patronymic naming conventions have stimulated recent litigation over naming statutes and regulations.

Some of the extant statutes, like those in Algeria, Egypt, Ethiopia, Iran, Iraq and Turkey, however, that require the adoption of family names in the Western sense, do not go far enough to require or insist upon a particular name. Primarily for administrative convenience and for identifying and registering its citizenry, these statutes require only that a family name, which is in practice overwhelmingly patronymic, be given to a child for transmission from generation to generation. This requirement often has resulted in the invention of family names based on personal predilections alone, particularly in Turkey.

Insofar as the first names are concerned, most Islamic countries do not seem to have any formal restrictions. The choice of first names is generally seen to be the proper function and province of parents alone as an integral part of their dominion of care and superintendence. Thus, there are no legally ordained limits on the names parents may bestow upon their children, other than usage or custom. In this respect, however, some Islamic statutory regimes do impose some restrictions, extolling the significance of philological esteem and considerations toward reinforcing cultural, religious and nationalist sensibilities. The extent to which these restrictions have been inspired by the French law of forenames is only a matter of intuitive speculation. In Algeria, 

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55. ETHIOPIAN CIVIL CODE [C. CIV.] art. 33 para. 1 (Eth.).
57. IRAQI CIVIL CODE [C. CIV.] art. 40 (1951) (Iraq); IRAQI CODE OF PERSONAL STATUS (1959) (as amended until 1987).
59. SCHIMMEL, supra note 8, at 80-81.
60. C. CIV. Alg., supra note 53, at art. 28 para. 2 (there is though an exception for children of non-Muslim parents).
gola, and Morocco the selection of the first name is restricted to native ones. Moroccan law requires such a choice to be made only from amongst names appearing on a specific list. Ethiopian law allows the father to choose the first forename and the mother to choose the second one. In Turkey, both parents have to choose the name together. In the absence of parental consensus, the father's choice prevails. The theoretical basis for traditional deference to the imposition of the custom of patronymic surnames is that the father is the head of the household, and he has an absolute duty to support his children.

B. Legitimacy, Illegitimacy and Adoption: Mother's or Father's Name, or Both?

New concerns and controversies have surfaced in many countries over the naming of children or the changing of their names in the wake of divorces, remarriages, separation of unmarried couples, and in births outside of marriage. How have the Islamic countries that adhere to a strict moral code of traditional religious values responded to these concerns of harmonizing filial and parental rights in names? Or, has patrimonial control and preference persisted, though their roots lie in palpably sexist medieval practices that are increasingly becoming anachronistic and patently discriminatory in modern society?

An illegitimate child, known at early common law as a nullius filius, or a child of nobody, did not acquire a hereditary surname, except as gained only by reputation or baptism. With the passage of time, it became customary and eventually statutory for a nonmarital offspring to assume the birth-name of his mother, or any name chosen by her, or even the paternal surname if both parents so agreed. Similarly, in situations where the father is not always known — for example, in the

61. Law on Civil Status Register No. 10/77 (Lei do registro) of Apr. 9, 1977, art. 1 para. 2 (at least one of the two first names has to sound "national").
63. Pintens & Will, supra note 31, at 79 n.808. According to Scassa, supra note 29, at 178-79 n.46, article 4(4) of a Tunisian law of 1959 has the same effect.
64. C. CIV. Eth., supra note 55, at art. 34 para. 1 & 2.
66. See, e.g., TURKISH CIVIL CODE [C. CIV.] art. 152 (1926) (Turk.) (as amended lastly by Law 3678 of 1990): "The husband is the head of the family and must set up the family home and provide maintenance to the wife and children." Id.
case of anonymous sperm donors and prostitutes — children usually receive their mother's surname.

But what should be the surname of a Muslim child born as a result of embryo transfer or obtained from a surrogate mother? Procreation outside of marriage, whether biologically or artificially, is inherently problematic from an Islamic perspective. Unlike in the Bible, when Sarah, Rachel and Leah, afflicted with infertility, gave their handmaids (Hager, Bilah, and Zilpah) to have children for their husbands, no such surrogates have been found in the Qur'an. Since the child belongs to the womb that bore it, it seems as though the mother would have the natural right to name the child, irrespective of the identity of genetic pair.

The concepts of legitimacy and illegitimacy are an integral part of Islamic law, though increasingly liberalized or even dispensed with.

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68. Cf. sura Ash-Shuraa 42:49-50; sura Al-Furqan 25:54. This position was recently reinforced at a seminar on "Ethical Implications of Use of Assisted Reproduction Technology [ART] for Treatment of Human Infertility," organized by the world's top Islamic University Al-Azhar and six other important Islamic research institutes of Muslim countries. Attended by many experts in the fields of religion, medicine and sociology from nine Islamic countries, a seminar communiqué termed ART (test tube babies and other related procedures) permissible in Islam only within the context of marriage between a man and a woman (who are not separated by divorce or death) and only in case of a medical requirement for adopting such a method of treatment. More specifically:

- The sperm provided for reproduction should be obtained from husband only while the ovum to be fertilized should be obtained from the wife.
- The carrier of the fetus should be the wife of giving the ovum fertilized by her husband.
- No reproduction is permissible with the help of a third party in the form of a donated zygote, oval cell, fetus or uterus.
- No ART is permissible in case the wife is dead or a decree occurs, for the absence of marriage relationship in this case negates affiliation. It should be also ascertained that there is no pregnancy after the elapse of the waiting period instituted by Islamic Sharia.
- ART is only permissible in the case which provides medical justification far from any other reasons unacceptable according to Sharia.
- Menopause or pre-puberty conception is precarious for mother and child.
- Besides, as it affects a third party, it is unacceptable.


69. Genesis 16:1-4, 15; 30:1-10. The practice of "female slaves as surrogates . . . was not without its difficulties," as Jacob's experience revealed. THOMAS A. SHANNON, SURROGATE MOTHERHOOD: THE ETHICS OF USING HUMAN BEINGS 3 (1988). In more modern times, however, the Vatican has strongly condemned in vitro fertilization, artificial insemination by donor, and surrogate motherhood, for, the "child has the right to be conceived, carried in the womb, brought into the world and brought up within marriage: it is through the secure and recognized relationship to his own parents that the child can discover his own identity and achieve his own proper human development." LORI B. ANDREWS, BETWEEN STRANGERS: SURROGATE MOTHERS, EXPECTANT FATHERS, & BRAVE NEW BABIES 162 (1989), quoting the Vatican "Instruction on Respect for Human Life in Its Origin and on the Dignity of Procreation: Replies to Certain Questions of the Day."
around the globe. As such, these concepts have considerable bearing on
the acquisition of a surname in certain circumstances. In a good many
Muslim countries today, children of either sex born in wedlock receive
their father's surname at birth\(^{70}\) and are entitled to inherit from him.
Illegitimate children have no such right to inherit property through
their father and the mother is most likely to be punished for illicit sexual liaisons (\(zina\)).\(^{71}\) Thus, the status of legitimacy assumes a criminal
dimension in Islamic law.

When paternity cannot be established, or, if established, is unac-
knowledged by the father, certain Islamic countries either resort to the
use of a surname invented by government officials, as if the offspring
were a foundling child,\(^{72}\) or permit the mother to choose freely the sur-
name of one of her consanguineal kin, or her own surname.\(^{73}\) Once pat-
ternity has been lawfully established, a Muslim who voluntarily ac-
knowledges a child to be his offspring — but not a product of \(zina\), that
is, adultery, incest or fornication — establishes a parental link toward
creating a presumption of legitimacy. Logically, then, the normal legal
status of the transmission of the father's surname for legitimate chil-

\(^{70}\) This unwritten tradition — implicit in sura An-Nisaa 4:34 which recognizes that
"men are the protectors and maintainers of women, because Allah has given them more
(strength) than the other, and because they support them from their means [and] there-
fore the righteous women are devoutly obedient [to their husbands] "has now also been
reflected in legislation of some of the countries of the Islamic world, e.g., Algeria, Egypt,
Iran, Iraq, Ethiopia and Turkey. See Pintens & Will, supra note 31, at 52 n.480.

\(^{71}\) NOEL J. COULSON, CONFLICTS AND TENSIONS IN ISLAMIC JURISPRUDENCE 78

\(^{72}\) A foundling child, or child of unknown parentage, often abandoned by the par-
ents, obviously, cannot inherit a surname from them. Such a duty naturally devolved
upon the person or institution having custody of the child — a position now statutorily
provided in most states in America. Charles Dickens satirized the naming of abandoned
children in his famous novel Oliver Twist:

'Mrs. Mann... added, after a moment's reflection, 'How comes
he [Oliver] to have any name at all, then?''

'The beadle drew himself up with great pride, and said, 'I
invented it.'

'You, Mr. Bumble!'

'I, Mrs. Mann. We name our fondlings in alphabetical order.
The last was a S. — Swubble, I named him. This was a T. —
Twist, I named him. The next one as comes will be Unwin,
and the next Vilkins. I have got names ready made to the end
of the alphabet, and all the way through it again, when we
come to Z.'

'Why, you're quite a literary character, sir!' said Mrs. Mann.
CHARLES DICKENS, OLIVER TWIST 10 (Dodd, Mead & Co. ed.,1941) (1838) (emphasis in the
original).

\(^{73}\) Pintens & Will, supra note 31, at 57 nn.519-26.
Although in most legal systems it is possible for the adopted child to bear, in one way or another the name of the adoptive parent, its consequences vary from country to country and may even differ within one country, depending upon the nature of the adoption involved. Tabniah, the concept of adoption, is alien to most Muslim societies ever since sura Al-Ahzab 33:37 abolished the pre-Islamic custom of adoption whereby an adopted child could be assimilated by law into another family.75 It has been, of course, suggested that the acknowledgment of

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74. CHRISTIAN KOHLER, DAS VATERSCHAFTSANERKENNTNIS IM ISLAMRECHT... 211 n.128 (Paderborn 1976); Pintens & Will, supra note 31, at 58 nn.537-38. The position may nonetheless be different for purposes of inheritance, if the stringent conditions of acknowledgment (iqrar) of paternity are not met, that is, (a) the child is of unknown paternity; (b) there is no definite proof that the child is the offspring of zina; and (c) there can be no rebuttal of the presumption of paternity of another by the acknowledgment. The distinction between status of legitimacy and the process of legitimation is crucial. "No statement by one . . . that another (proved to be illegitimate) is his son can make [him] legitimate, but where no proof of that kind has been given such a[n] . . . acknowledgment is substantive evidence that the person so acknowledged is the legitimate son of the person . . . provided his legitimacy be possible." Sadik Husain v. Hashim Ali, 43 I.A. 212, 234 (1916). See the very learned judgment of Mahmood, J., on the subject in the leading case, Muhammad Allahadad Khan v. Muhammad Ismail Khan, 10 I.L.R. (All.) 289 (1888). Legitimation per subsequens matrimonium is not known to Islamic law. F.A. Mann, Legitimation and Adoption in Private International Law, 57 L.Q. REV. 112 (1941).

75. This sura Al-Ahzab 33:37, in general, and the words, "one who had received the grace of Allah and thy favour" appearing therein, in particular, call for some explanation. They refer to Zayd ibn-Haritha. One of the first to embrace Islam, he was freedman (emancipated slave) of the holy Prophet, who loved him as a son and gave him in marriage his own cousin Zaynab bint-Jahsh. (The Prophet always called Zayd son — as slaves were often called after their master’s name — having perhaps lost their father’s names altogether when they were slaves. Cf. sura Al-Ahzab 33:5.) The marriage, however, turned out to be very unhappy and Zayd wished to divorce Zaynab. This obviously distressed the Prophet greatly, but Islam permits the marital bond to be dissolved, provided that all interests concerned are safeguarded. Zaynab, as it was her dearest wish, was raised to be a Mother of the Believers, and then the Prophet married her to help him in duties of leadership in guiding and instructing women who came into the fold of Islam. The Prophet’s Consorts of Purity (azwaj mutahharat) were not like that of ordinary women or ordinary wives. Rather, they occupied an exalted position toward discharging special duties and responsibilities and had no place in the sacred household of the Prophet if they “desire[d] the life of this world, and its glitter.” If such were the case, then, they could be “set . . . free” and “provide[d] for . . . enjoyment . . . in a handsome manner.” Sura Al-Ahzab 33:28. In this context, the pagan superstition and taboo about “adopted sons” had to be destroyed by Allah’s command:

    Fear Allah. Then when Zaid
    Had dissolved (his marriage)
    With her
    We joined her
    In marriage to thee:
    In order that (in future)
    There may be no difficulty
    To the Believers in (the matter
    Of) marriage with the wives
paternity of a child of unascertained parentage (lakit) amounts, in one sense, to a form of adoption. Moreover, some jurists would even argue that the said authority does not prohibit adoption, but merely classifies it into the category of acts known as mubah — the acts towards which religion is indifferent. Such arguments have not found favor with most legislators in Muslim countries, and by and large, there is very limited law of adoption in the Muslim world. Hence, the question of naming such a child is, at best, only hypothetical in most Muslim countries.

The Somali, Tunisian and Turkish laws, however, now allow adoption. In conformity with the Qur'anic exhortation, Somali law dictates that unless the adoptee is of unknown descent it must retain its natural father's name. In Tunisia, in the expectation that only children of unknown parentage (majhul al-nasab) would be adopted, the law allows the adoptee to take its adoptive father's surname (laqab).

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Of their adopted sons, when
The latter have dissolved
(T heir marriage) with them.
And Allah's command must
Be fulfilled.
Sura Al-Ahzab 33:37.
For, Allah has not
Made your adopted sons
Your sons. Such is (only)
Your (manner of) speech
By your mouths.
Sura Al-Ahzab 33:4. Otherwise, taken too literally, a man's calling another's offspring "his son" may create needless complications, by erecting false relationships to the detriment of or loss of true blood relations. Thus, only those who have been "wives of your sons proceeding from your loins" (sura An-Nisaa 4:23) are within the prohibited degrees of marriage, and this does not include "adopted sons."

76. JOSEPH SCHACHT, AN INTRODUCTION TO ISLAMIC LAW 166 (1964).
79. Sura Al-Ahzab 33:5.
80. C. FAM. Somal., supra note 78, at art. 110.
81. TUNISIAN LAW OF... ADOPTION, supra note 78, at art. 14: "The adoptee gets adopter's surname; also its first name may be changed. If so desired by the adopter the new name of the adoptee may be recorded in the adoption order."
Both in Somalia and Tunisia adoption by men and women and of male and female children is permissible, but the law enforces strict rules relating to difference of age between the adopted child and the adoptive parent. Significantly, in deference to sura Al-Ahzab 33:37, allowing marriage to an adopted son's former wife, the Turkish law provides that a marriage would override the relationship created by adoption—an expedient amalgam of secularism and religion!

C. Married Woman's Right to Her Maiden-Antenuptial Name: Gender Equality?

English common law permitted a woman to retain her birth-name when married. She generally adopted the name of the husband by usage, but was not required by law to do so; she could legally bear a name different from that of her husband's. This surprisingly liberal approach prevailed despite the feudal doctrine of coverture. For example, Lady Elizabeth Hatton, the second wife, *feme covert*, of Sir Edward Coke, did not adopt the surname of her husband, and today not all women adopt

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82. C. CIV. Turk., *supra* note 66, at art. 92 read with art. 121.

83. A married woman was not legally recognized as a separate being; her identity merged into her husband's. 1 WILLIAM BLACKSTONE, *COMMENTARIES* *442:

> By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband: under whose wing, protection, and cover, she performs every thing; and is therefore called in our law-french *feme-covert*, *foemina viro co-operta*; is said to be covert-baron, or under the protection and influence of her husband, her *baron*, or lord; and her condition during the marriage is called her *coverture*.

Coverture gave birth to the custom whereby the married woman drops her own surname and assumes her husband's. See generally LEO KANOWITZ, *WOMEN AND THE LAW: THE UNFINISHED REVOLUTION* 41 (1969); Julia C. Lamber, *A Married Woman's Surname: Is Custom?*, 1973 WASH. U. L. Q. 779; ALFORD, *supra* note 49, at 157-58 (in the United States, although three million women assume their husbands' surnames upon marriage each year, there are only around one-thousand or so court sanctioned name changes annually); Carey Quan Gerlenter, *Taking Names: Most Brides Now Are Using Their Husbands' Surname*, SEATTLE TIMES, Mar. 10, 1986, at C1 ("some husbands who are uncomfortable about a wife keeping her own name will accept her hyphenating her name [although] [m]ost [men] won't hyphenate theirs, though"); Lance Morrow, *The Strange Burden of a Name*, Time, Mar. 8, 1993, at 76.

84. CATHERINE DRINKER BOWEN, *THE LION AND THE THRONE: THE LIFE AND TIMES OF SIR EDWARD COKE* 125 (1956) ("Lady Hatton kept her own name, from pride, people said; plain Mistress Coke would not become her"); M. TURNER-SAMUELS, *THE LAW OF MARRIED WOMEN* 345 (1957). Similarly, in the celebrated case, *Cowley v. Cowley*, App. Cas. 450 (1901), Lord Cowley sought to prevent his former wife from bearing his name and arms. Because a wife could not be legally compelled to embrace her husband's name, the House of Lords refused to require that she cease using "Cowley" as a surname, for a person may assume any name unless it was a product of improper motives, or amounted to a commercial appropriation. The House, however, enjoined her from using the title "Countess." See also *infra* notes 123-25 and the accompanying text.
the name of their husbands when they marry.55

Similarly, in the codified regimes of Iraq,66 Ethiopia,87 Morocco88 and Senegal89 the wife maintains her own name, though, in practice, her husband's name is invariably used. Moreover, Turkish law compels the wife to take her husband's name at the time of celebrating marriage.90 In Muslim culture, it seems settled immemorial custom that, upon marriage, a woman replaces her own maiden name or nisba by her husband's surname. For example, an unmarried girl of the name, Shamim Ara Hassan, when married to a Tariq Ali Siddiqi, will henceforth be known as Shamim Ara Siddiqi and not Hassan as a matter of public record.

As at common law, could Shamim legally retain her maiden name? Or, after the marriage, could she reassume her birth-given surname? Many countries now provide a statutory mechanism for supplementing or supplanting the common law, but Islamic religious rules usually forbid the change of name.91 Muslim marriage is a sacred civil contract under Islam involving offer or ijab and acceptance or qubul. As such, a Muslim wife should be able to neutralize the assumption of the immutability of the name, as well as any cumbrous process involved in changing it, by simply stipulating in the marriage contract or nikahanama any conditions relating to the use of surname for herself and her children. Or she may do so simply by way of a subsequent contract if the husband agrees.

The validity of such contractual stipulations would be recognized as long as they do not negate the essential aspects of the nikah or marriage itself, or are otherwise not repugnant to Islamic law or social policy. Since free consent of both the parties is essential, Islamic law follows the rule of contractual freedom for a valid marriage contract. The doctrine of freedom of marital stipulation, khiyar-al-shart, permissible under Sharia, is specifically recognized by legislation in Iran, Jordan, 

85. Many women decide to go by two surnames, one for professional purposes and the other for social life. For example, Susan Brandeis Gilbert, daughter of the late Justice Louis D. Brandeis of the United States Supreme Court, used her maiden name in her law practice and her husband's name on social occasions. Susan Brandeis Gilbert is Dead: Lawyer Was Daughter of Jurist, N.Y. TIMES, Oct. 9, 1975, at 44. Such a choice, however, may not be completely free from any legal complications, as it may collide with the specific requirements of a given statute.
86. C. CIV. Iraq, supra note 57, at art. 40.
87. C. CIV. Eth., supra note 55, at art. 40 para. 1.
89. C. FAM. art. 7 (Somal.).
90. C. CIV. Turk., supra note 66, at art. 153.
Morocco, North Yemen, Syria, and Tunisia. All lawful conditions mutually agreed upon at the time of marriage, including those relating to the adoption of surnames for the spouses and their children, would appear judicially enforceable in these countries. The acceptance of the emergence of women as equals of men, a most significant revolution in many societies, however, has been grudgingly slow in Islamic cultures. Names of Muslim women are, therefore, intimately involved with their status and societal enforcement thereof.

D. Law and Religion: Qur'anic Epithets and Names

Has Islam been relatively inhospitable to the growth of a secular democratic polity? To answer this question, an examination of the nature and role of religion in human civilization, and the place it may have in defining the self-identity of a group, becomes increasingly relevant. There is an obvious need for objectively appraising the claim of Sharia as the law laid down by God or the continuing relevance to modern conditions of the accumulated weight of some of the Islamic tradition. Perhaps there is an even greater need to assess the hold of orthodoxy by interpreting the teaching of Islam. Unlike other religions, Islam has shown a remarkable persistence of belief and habits of thought in spite of the centuries separating the present from the years of its revelation and early growth. For instance, Islam does not recognize the sovereignty of man over the affairs of civic society because, it is not to man, but to “Allah belongs the dominion of the heavens and the earth: He forgiveth whom He wills, and punisheth whom He wills. But Allah is [ever] Forgiving, Most Merciful.” This need not, by itself, imply that a secular conception of sovereignty is ruled out in Islam. For one can look on almost every statement in the Qur'an which has a bearing on secular affairs. According to a well-known hadith, in favor of reinterpretation in the light of knowledge and experience, Muhammad is reported to have admonished his followers that in matters of this world he was only a human being; that he was as fallible as anyone else.

No doubt the orthodox would exclude from secular affairs everything on which the Qur'an is explicit. In some Islamic countries, the rise of fundamentalism recently saw an unusually bizarre resurgence of devout orthodoxy. Pakistan enacted a law which prohibited over 3.5

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92. C. CIV. Iran, supra note 56, at art. 1119; TALEGHANY, supra note 56, at 163; JORDANIAN CODE OF PERSONAL STATUS art. 19 (1976); C. PER. STAT. & SUC. (Moroc.). supra note 88, at art. 38 (1957-1958); NORTH YEMEN FAMILY LAW art. 4 (1978); SYRIAN LAW OF PERSONAL STATUS art. 14 (1953); TUNISIAN CODE OF PERSONAL STATUS art. 11 (1956) (amended in 1959).
94. SAHIH MUSLIM 1259 (Abdul Hamind Siddiqi trans., Kitab Bhawan, New Delhi 1978) (Hadith 5831).
million members of the Ahmadiyya community, known as Ahmadis, from practicing their faith as Muslims. Specifically, the law prohibited the use of Islamic prayers, salutations, epithets and names. Significantly, though "Islam was the very raison d'être of Pakistan," Paki-
stan was intended to function as a modern, democratic state, with all the members of the new nation (1947) having equal rights of citizenship, regardless of their religion, caste or origin. Indeed, article 20 of the 1973 Constitution of the Islamic Republic of Pakistan guarantees that:

(subject to law, public order and morality, —

(a) every citizen shall have the right to profess, practise and propa-
gate his religion; and

(b) every religious denomination and every sect thereof shall have
the right to establish, maintain and manage its religious insti-
tutions. Articles 21, 22 and 38 respectively forbid discrimination regarding taxation, educational policies, and the allocation of funds and concessions that the state may make to religious denominations or institutions. Ahmadis view themselves as Muslims within the pale of Islam.

96. In an address to the delegates to the Constituent Assembly on August 11, 1947, at the creation of the Islamic Republic of Pakistan, Quaid-i-Azam Mohamed Ali Jinnah stated:

[You are free to go to your temples, you are free to go to your mosques or to any other place of worship in this State of Pakistan. . . . You may belong to any religion or caste or creed — that has nothing to do with the business of the State. . . . We are starting in the days when there is no discrimination, no distinction between one community and another. We are all starting with this fundamental principle that we are all citizens and equal citizens of one State . . . . Now, I think we should keep that in front of us as our ideal, and you will find that in the course of time Hindus would cease to be Hindus and Muslims would cease to be Muslims, not in the religious sense, because that is the personal faith of each individual, but in the political sense as citizens of the State.

98. Id. art. 21.
99. Id. art. 22.
100. Id. art. 38.
101. Ahmadiyyat, a sect entirely within the fold of Islam, is in no way a new religion. Their beliefs are in no way a repudiation of the basic tenets of Islam, but are, rather, plausible interpretations of the same doctrines. The essential doctrine of Islam is that
Mirza Ghulam Ahmad (1835-1908) of Quadian, India, founded the revivalist Ahmadiyya Movement in 1889. His followers believe that he is the personification of the long-awaited al-Mehdi (messiah) whose arrival was foretold by the Prophet Muhammad. The Ahmadis do not believe that Prophet Muhammad was chronologically the last prophet; rather he was so only spiritually, embodying all the quintessence of prophethood in its most consummate and pristine form. Thus, other prophets can undoubtedly appear, but only through an indispensable allegiance to Prophet Muhammad and that too as his penumbral remnant. This interpretation of the Prophet’s “finality” is, however, an

_There is but one God and that Muhammad is His Prophet. Thus, "[a]ny person who professes the religion of Islam, in other words, accepts the unity of God and the prophetic character of Mohammad is a Moslem … ."_ 2 SYED AMEER ALI, MAHOMMEDAN LAW 22 (Tagore Law Lectures, Calcutta, 4th ed. 1912). This is the indispensable minimum; a belief short of this is not Islam; a belief in excess of this is, for the law courts at least (in India), a redundancy. It has been thus held in India that, despite their peculiar beliefs, the Ahmadis are Muslims, for a court of law is not concerned with peculiarities in belief, orthodoxy or heterodoxy, so long as the minimum of belief exists. See, _e.g._, Narantakath _v._ Parakkal, 45 I.L.R. (Mad.) 986 (1922).

As far as the fundamental belief or acts of worship are concerned the Ahmadi Muslims have neither taken anything out nor added anything new to the religion of Islam. [They] make their declaration of faith by reciting the same kalima which was recited by the Prophet Muhammad himself [There is no God but Allah and Muhammad is the Messenger/Prophet of Allah]; they say their prayers and fast in the same manner as the Holy Prophet of Islam [Muhammad] did; and their Qiblah [where they face when they say their prayers], their Ka'aba [holy building in Mecca, Saudi Arabia], their Azan [call to prayer] and their Quran are all exactly the same as that of the other [Sunni] Muslims.


102. This is derived from _sura Al-Ahzab_ 33:40:

Muhammad is not
The father of any
Of your men, but (he is)
The Messenger of Allah,
And the Seal of the Prophets:
And Allah has full knowledge
Of all things.

Sunni interpretation of this _sura_ is that the holy Prophet Muhammad closed the long line of Messengers and, though Allah’s teaching will always be continuous, there will be no Prophet after Muhammad. The later ages may have thinkers and reformers, but not Prophets. This assertion, in no way lightly made, is a serious decree full of wisdom, for,
anathema to orthodox mainstream Muslims, that is, Sunnis. In particular, Mirza Ghulam Ahmad’s claim to prophethood (even though one subservient to Prophet Muhammad) is deeply resented and deemed blasphemous by the ummah (Islamic community).

Anti-Ahmadiyya sentiment, dating back to the lifetime of Mirza Ghulam Ahmad, forced Ahmadis to organize themselves as a separate and somewhat alienated group within the broader spectrum of Islam, against their own volition.\textsuperscript{103} Though long harassed, the Ahmadis were nevertheless relatively safe before 1953. Thereafter, under the pressure of the late Maulana Abul A'la Maududi,\textsuperscript{104} their ostracization\textsuperscript{105} and persistent victimization\textsuperscript{106} ultimately led to a constitutional amendment in 1974 that proclaimed them a non-Muslim minority.\textsuperscript{107} Beginning in 1978, under the escalated Islamization of Pakistan, Ahmadis were first effectively disenfranchised.\textsuperscript{108} Subsequently, they were dispossessed of

\begin{quote}
"Allah has full knowledge of all things."
\end{quote}

\textsuperscript{103} Naeem Osman Memon, Ahmadiyyat or Qadianism: Islam or Apostasy? 326-29 (1989).
\textsuperscript{105} ANTONIO R. GUALTIERI, CONSCIENCE AND COERCION: AHMADI MUSLIMS AND ORTHODOXY IN PAKISTAN 47 (1989).
\textsuperscript{106} Id. at 47, 69; MUJEEB-UR-REHMAN, PERSECUTION OF AHMADIS IN PAKISTAN: AN OBJECTIVE STUDY (1993); Persecution of the Ahmadiyya Community in Pakistan, 36 I.C.J. REV. 16 (1986).
\textsuperscript{107} Second Amend., Act XLIX of 1974 (amending PAK. CONST. of 1973), in SAFDAR MAHMOOD, CONSTITUTIONAL FOUNDATIONS OF PAKISTAN 1038 (2d rev. ed. 1990) [hereinafter MAHMOOD]; JOHN L. ESPOSITO, ISLAM AND POLITICS 163 (1984). Article 260 (3) (a) of the Pakistan Constitution, quoted below, defines who is a Muslim:

- Muslim means a person who believes in the unity and oneness of Almighty Allah, in the absolute and unqualified Prophethood of Muhammad (peace be upon him), the last of the prophets and does not believe or recognize as a prophet or religious reformer, any person who claimed or claims to be a prophet, in any sense of the word or any description whatsoever, after Muhammad (peace be upon him). . . .

PAK. CONST. art. 260 (3) (a). If this alone was not enough to exclude "Ahmadis," article 260 (3) (b) explicitly states that Ahmadis and other religious groups are non-Muslims:

- Non-Muslim means a person who is not a Muslim and includes a person belonging to the Christians, Hindus, Sikh, Buddhist or Parsi community, a person of the Quadiani Group or Lahori Group (who call themselves 'Ahmadis' or by any other name) or a Bahai, and a person belonging to any of the Scheduled Castes.

PAK. CONST. art. 260 (3) (b).
\textsuperscript{108} JUDGE GUSTAF PETREN ET AL., PAKISTAN: HUMAN RIGHTS AFTER MARTIAL LAW
the right to profess, practice, or propagate their religious beliefs and to adopt Muslim names, through the Martial Law Ordinance XX of April 26, 1984.109

Despite its length, Ordinance XX merits quotation in its precious fullness, particularly to appreciate the restrictions imposed on the use of certain Islamic names:

WHEREAS it is expedient to amend the law to prohibit the Quadiani group,110 Lahori group111 and Ahmadis from indulging in anti-Islamic activities . . . . the President is pleased to make and promulgate the following Ordinance:

1. Short title and commencement.

(1) This Ordinance may be called the Anti-Islamic Activities of the Quadiani Group, Lahori Group and Ahmadis (Prohibition and Punish-

105 (1987). An amendment to the Constitution, providing for separate electorates for non-Muslims, effectively meant that Ahmadis, pursuant to article 260 (3), were required to enroll as non-Muslims in order to vote or run for office. Such a requirement amounted to an admission by Ahmadis — contrary to their faith and religious beliefs — that they were non-Muslims. Pak. Const. of 1973 arts. 50, 260 (3) (a)-(b) (amended 1985), in MAHMOOD, supra note 107, at 860. Undeniably, rapid Islamization of the laws in Pakistan was the primary objective of the military ruler, General Zia-ul-Haq. See generally Charles H. Kennedy, Islamization and Legal Reform in Pakistan, 63 PAC. AFF. 62 (1990); RASHIDA PATEL, ISLAMISATION OF LAWS IN PAKISTAN? (1986); Daniel P. Collins, Islamization of Pakistani Laws: A Historical Perspective, 24 STAN. J. INT'L L. 511 (1988); ISLAMIC REASSERTION IN PAKISTAN: THE APPLICATION OF ISLAMIC LAWS IN A MODERN STATE (Anita M. Weiss ed., 1986); RUBYA MEHDI, THE ISLAMIZATION OF THE LAW IN PAKISTAN (1994).


110. Though referring and naming people after their place of origin is customary and commonplace in the Muslim culture, dubbing Ahmadis as a group collectively as Quadrani is gratuitously disparaging. While it is understandable to refer to as Mirza Ghulam Ahmad Quadrani (as he hailed from Quadian), his followers, diverse in origin and coming from different places, should not be slighted in this way.

111. A dissident group of Ahmadis, deriving their name by choice from Lahore (the city of their headquarters), who believe Mirza Ghulam Ahmad was merely a reformer (mujaddid) and not a prophet. See generally HAZRAT MIRZA BASFUR-UD-DIN MAHMOUD AHMAD OF QDAN, THE TRUTH ABOUT THE SPLIT: A REPLY TO A PAMPHLET ENTITLED 'THE SPLIT' BY M. MUHAMMAD ALI M.A., OF LAHORE (1924); CAESAR E. FARAH, ISLAM 243-44 (5th ed. 1994); Charles H. Kennedy, Towards the Definition of a Muslim in an Islamic State: The Case of Ahmadiyya in Pakistan, in RELIGIOUS & ETHNIC MINORITY POLITICS IN SOUTH ASIA 71 (Dhirendra Vajpeyi & Yogendra K. Malik eds., 1989).
ment) Ordinance, 1984.

(2) It shall come into force at once.

2. Ordinance to override orders or decisions of courts.

The provisions of this Ordinance shall have effect notwithstanding any order or decision of any court.

3. Addition of new sections 298B and 298C . . . .

In the Pakistan Penal Code [1860], after section 298A, the following new sections shall be added, namely:

298B. Misuse of epithets, descriptions and titles, etc., reserved for certain holy personages or places.

(1) Any person of the Quadiani group or the Lahori group (who call themselves ‘Ahmadis’ or by any other name) who by words, either spoken or written, or by visible representation,

(a) refers to, or addresses, any person, other than a Caliph or companion of the Holy Prophet Muhammad (peace be upon him), as ‘Ameer-ul-Mumineen’ [Leader of the Faithful], ‘Khalifa-tul-Mumineen’ [Caliph of the Faithful], ‘Khalifa-tul-Muslimeen’ [Caliph of the Muslims], ‘Sahabi’ [Companion] or ‘Razi Allah Anho’ [May God be Pleased With Them];

(b) refers to, or addresses, any person, other than a wife of the Holy Prophet (peace be upon him), as ‘Ummul-Mumineen’ [Mother of the Faithful];

(c) refers to, or addresses, any person, other than a member of the family (Ahle-bait) of the Holy Prophet Muhammad (peace be upon him), as Ahle-bait; or

(d) refers to, or names, or calls, his place of worship as ‘Masjid’ [Mosque];

shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

112. Ordinance XXI changed the punishment under this section (as well as under section 298C) from "up to three years" to up to "ten years" for anyone who outrages "the religious feelings of any citizens of Pakistan." Ordinance XXI of 1991, in AMNESTY
(2) any person of the Quadiani group or Lahori group (who call themselves ‘Ahmadis’ or by any other name) who by words, either spoken or written, or by visible presentation, refers to the mode or form of call to prayers followed by his faith as ‘Azan’, or recites Azan as used by the Muslims, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

298C. Person of Quadiani group, etc., calling himself a Muslim or preaching or propagating his faith.

Any person of the Quadiani group or the Lahori group (who call themselves ‘Ahmadis’ or by any other name) who directly or indirectly, poses himself as a Muslim, or calls, or refers to, his faith as Islam, or preaches or propagates his faith, by words, either spoken or written, or by visible representations, or in any manner whatsoever outrages the religious feelings of Muslims, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

Designed to regain “moral purity of early Islam” even further, in 1986, President Zia-ul-Haq’s ambition mandated blasphemy punishable by death, adding section 295C to the Pakistan Penal Code. Known as the “Blasphemy Law,” section 295C has been increasingly used to prosecute Ahmadis, the bête noire of the clergy.

In Zaheeruddin v. State, some Ahmadis appealed their conviction under section 298C of the Pakistan Penal Code for wearing a badge having Kalma Tayyaba inserted on it — “There is no God but Allah and Muhammad is the Messenger of Allah” — on their persons and claiming to be Muslims, to the Supreme Court of Pakistan. The appellees challenged, inter alia, the constitutionality of Ordinance XX. Over a four-to-one dissent, the Pakistan Supreme Court surprisingly sustained the constitutionality of the impugned provisions. The Ahmadis argued the Ordinance had seriously eroded the freedom of religion and conscience, both enshrined in article 20 of the Pakistan Constitution and recognized by Islam, to practice their faith freely. The Court’s principal conclusions were:

(1) Because Ahmadis are non-Muslims, under article 260 (3) (b) of the

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Pakistan Constitution, their representation as Muslims is fraud and deception upon the general public.\textsuperscript{115}

(2) Because Muslims have exclusive use of their Islamic epithets, names and practices under the corporation and trademark law of various countries, including England, India and the United States, the Ahmadies’ use of these is constitutionally proscribed.\textsuperscript{116}

(3) Ahmadies’ beliefs and representations, including the use of Muslim names and practices as Muslims, offend and outrage the religious susceptibilities of Pakistan’s Muslim majority, that is, Sunnis.\textsuperscript{117}

(4) In the interest of law and order, Ahmadies are not allowed to offend the Sunni populace by practicing their faith.\textsuperscript{118}

(5) Ordinance XX was constitutional and did not violate the principles of freedom of religion as guaranteed in article 20 of the Pakistan Constitution.\textsuperscript{119}

Although all are highly suspect, these conclusions can be refuted effectively.\textsuperscript{120} Such a detailed exercise is obviously beyond the limited scope of this Article. Nevertheless, some comments on conclusion (2), above, regarding the proprietary nature of the use of epithets and names, are in order.

If an individual possesses a property right in such intangibles as her/his name, likeness, personality and history, then any appropriation of such rights for commercial exploitation is impermissible. This concern led to the necessity of providing some protection for the holder of a name. Thus, both in civil law and common law jurisdictions, the name was first located within the framework of property rights, premised on

\textsuperscript{115} Id. at 1775-78.

\textsuperscript{116} Id. at 1751-58. It is not clear whether these Islamic practices and epithets were actually registered under the laws of Pakistan.

\textsuperscript{117} Id. at 1765, 1777-78.

\textsuperscript{118} Id. at 1758-65. Many Pakistanis regard Ahmadies as unbelievers (kafirs) who should not have a right to exist in an Islamic country. See generally AMNESTY INTERNATIONAL, supra note 112.

\textsuperscript{119} Zaheeruddin, 26 S.C.M.R. (S. Ct.) at 1779.

the theory that the name and the rights accompanying it have characteristics singularly common to property and property rights.

*Du Boulay v. Du Boulay* discussed these rights. The appellants, members of the Du Boulay family, sued the respondent, son of a former slave of the family, who also used the name *Du Boulay*. Appellants sought a declaration that their name, property of their family, could not be used by a person unrelated to them. The following principle, articulated by Lord Chelmsford, has sharply influenced the development of a property right in a name in the common law world today:

In this country we do not recognize the absolute right of a person to a particular name to that extent of entitling him to prevent the assumption of that name by a Stranger. The right to the exclusive use of a name in connection with a trade or a business is familiar to our law . . . . But the mere assumption of a name, which is the patronymic of a family, by a Stranger who had never before been called by that name, whatever cause of annoyance it may be to the family, is a grievance for which our Law affords no redress.122

This doctrine was applied, with greater vigor, in the much-publicized case of *Cowley v. Cowley*. Lord Cowley's wife persevered in using his name and title despite her remarriage to a commoner. Lord Cowley sought to restrain his former wife from this use, presumably on the theory that his peerage was a form of property, albeit an incorporeal hereditament. The House of Lords, sitting as a Committee for Privileges, however, ruled that, although Countess Cowley used Earl Cowley's name, she had neither endeavored to participate or to share in his hereditary privilege of earldom, nor had she caused him any pecuniary damage. Rejecting his appeal, Lord Lindley reinforced the long-standing principle that the common law recognized no "property" right in a name per se and that the "controversy between the parties [was] reduced to a dispute about the use of a name as distinguished from a dignity. Speaking generally, the law of this country allows any person to assume and use any name, provided its use is not calculated to deceive and to inflict pecuniary loss."124

The aspects of the commercial value of a name, and the rights attached thereto, inform the regulation of the right in a name in most common law countries. Thus, apart from questions of unfair competition and use in business, there is no property right in a name. In other words, a name is, in itself, incapable of ownership like any other thing. So, merely using another person's name cannot be prevented, unless, as mentioned earlier, it is inspired by improper motives such as defama-

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122. Id. at 644-45.
123. App. Cas. 450 (1901).
124. Id. at 460.
tion, or its use amounts to a meaningful or purposeful commercial appropriation.\textsuperscript{125}

Thus, one certainly cannot quibble with the animating observations of the Supreme Court of Pakistan that:

\[ \text{[i]ntentionally using trade names, trade marks, property marks or descriptions of others [as one's own] amounts to an offense and not only the perpetrator can be imprisoned and fined but [also] damages can be recovered and injunction to restrain ... issued. ... For example, the Coca Cola Company will not permit anyone to sell, even a few ounces of his own product ... marked Coca Cola ... The principles involved are: do not deceive and do not violate the property rights of others.}\textsuperscript{126}

Had the Court stopped here, one could not have questioned the broad accuracy of its statement concerning the unauthorized commercial exploitation of one's name. The Court, however, went further and intoned: "[I]n this Ideological State, the [Ahmadis], who are non-Muslims want to pass off their faith as Islam [and a Muslim believer,] will not tolerate a Government which is not prepared to save him of such deceptions or forgeries."\textsuperscript{127}

The curious analogy between religion and trade, advanced by the Court, is not only flippant, but outright misconceived. It nonchalantly assumes that there can be a copyright on God and that the ennobling concept of religion can be degraded to the mundane level of a routine merchandise (like Coca Cola). Religion as an abstract sentiment or idea is manifestly unpatentable. References to trademarks and company law are, thus, totally inappropriate in that religion is not a commercial property, nor is Islam a registered corporate entity.

Moreover, contrary to the Court's avid fondness for the United States' cases in support of its tortured reasoning, many American precedents, neither discussed nor mentioned, stand exactly for a diametrically opposite proposition. That is, religious prayers, terms, names, and practices simply cannot be trademarked or protected through the aegis of intellectual property laws.\textsuperscript{128} The terms "Islam,"

\begin{itemize}
\item \textsuperscript{125} 65 C.J.S. Names § 13 (1966).
\item \textsuperscript{126} Zaheeruddin, 26 S.C.M.R. (S. Ct.) at 1753-54.
\item \textsuperscript{127} Id. at 1754. Such a statement, \textit{sub silentio}, seems to recognize (if not outrightly legitimize) the manipulation of Islam to introduce regressive legislation for political expediency.
\item \textsuperscript{128} See, e.g., McDaniel v. Mirza Ahmad Sohrab, 27 N.Y.S. 2d 525, 527, aff'd, 29 N.Y.S.2d 509 (1941) ("plaintiffs have no right to a monopoly of the name of a religion [and the] defendants, who purport to be members of the same religion, have an equal right to use the name of the religion [for] their own meetings, lectures, classes and other activities" and that the Baha'i defendants did not intend to deceive the public into believing that their acts were affiliated with those of the plaintiffs); Christian Science Board of Directors of First Church of Christ v. Evans, 520 A.2d 1947, 1353 (N.J. 1987) (a New Jersey church, not affiliated with the Christian Science Church, Boston, but also bearing the
“Muslim,” “Masjid” and, arguably, the terms and epithets laboriously enumerated in section 298B of the Pakistan Penal Code — “Ameer-ul-Mumineen” (Leader of the Faithful), “Khalifa-tul-Mumineen” (Caliph of the Faithful), “Khalifa-tul-Muslimeen” (Caliph of the Muslims), “Sahabi” (Companion), “Razi Allah Anho” (May God Be Pleased With Them), “Ummul-Mumineen” (Mother of the Faithful) — are generic in nature and are thus neither patentable nor subject to asserted regulation under trademark law. Unfortunately, the Zaheeruddin court did not feel any discomfiture in addressing a religious issue in terms more appropriate to the commercial world.

Assuming, arguendo, that the Court was right in upholding the constitutionality of the oppressive Ordinance, thereby justifiably abridging the freedom of religion of the Ahmadis, including their right to use any Islamic epithets and names, the implications of the Court’s decision nevertheless need to be weighed carefully in the broader context of Muslim countries’ obligations to observe the minimum human rights norms envisioned in many international instruments on the subject. It is respectfully submitted that, despite its apparent erudition in repeatedly referring to cases from Australia, the United Kingdom, India, and the United States, the Court has not only thoroughly failed to appreciate the subtle nuances and the true import of these overseas precedents on the subject of law and religion, but also it has in the process wrongly deprived the Ahmadis from using ordinary generic Islamic names and epithets in total disregard of their religious tenets and sincere beliefs. The Court’s observation “that the Ahmadis will face [no] difficulty in coining new names, epithets, titles and descriptions for their personages, places and practices,”129 rather than adopting Islamic ones, is gratuitous and assumes that only Muslims enjoy some kind of

name "Christian Science Church," was free to do so, for religious names and terms are "generic" and thus cannot be subjected to trademark law; General Conference Corp. of Seventh-Day Adventists v. Seventh-Day Adventist Congregational Church, 887 F.2d 228 (9th Cir. 1989) (since “Seventh-Day Adventist” is a generic term, its unauthorized use could not deceive the public); Board of Provincial Elders of Southern Province of Moravian Church v. Jones, 159 S.E.2d 545 (N.C. 1968) (defendant was free to use the name "Moravian" in connection with any religious activity despite nonaffiliation with plaintiffs); New Thought Church v. Chapin, 144 N.Y.S. 1026, 1028 (N.Y. App. Div. 1913) (the "New Thought Church" could not prevent defendants from conducting services under the name "New Thought Services" for the plaintiff "surely is not in a position to successfully claim a monopoly of teaching [a] form of religious faith by means of organizations known by the generic names of churches"). See generally Howard J. Halperin, Annotation, Right of Charitable or Religious Association or Corporation to Protection Against Use of Same or Similar Name by Another, 37 A.L.R.3d 277 (1971 & Supp. 1997).

monopoly in this respect. Such a loathsome specter of discrimination is not only violative of the universality of the concept of human rights, but also blithely ignores the evident proposition of law that generic names belong to the public domain, there being absolutely no exclusive private right to their use.

The United Nations Charter, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief have all been accepted, in one form or another, by many Islamic countries — including, one would believe, Pakistan. If so, then, the minimum norms of these instruments are expected to be preserved through a reasoned and enlightened interpretation of Islam. Such an interpretation of Sharia which would enable contemporary Muslim countries to maintain their commitment to the dynamism of the Qur'an, while at the same time complying with the international standards, 


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should include, inter alia, the freedom of religion and related rights of minority groups like the Ahmadis who have been the most savage victims of bigotry, intolerance and unrelenting suppression.

Ordinance XX, notwithstanding its dubious constitutionality, violates most of the norms of international human rights, including the Universal Islamic Declaration of Human Rights: "Every person has the right to freedom of conscience and worship in accordance with his religious beliefs." Instead of facing an enforced apostasy, Ahmadis or any such sects, should have the right to self-determination, including the right to choose Qur’anic names and epithets. Any brutal repression and discrimination against any ethnic and religious minorities, solely because of their different religious beliefs and practices, is most pernicious and should not be allowed to be justified by recourse to medieval constructs of Islam. The perceptive suggestions of a study, that regressive interpretations of Islam have seriously inhibited the progress and reform of matters affecting women, are equally apposite to the subject-matter of our present discussion:

The only version of Islam that has developed and flourished at all is conservative, bigoted and fanatical, and it is from this that the emerging elite attempt to derive their philosophical bearings. In the absence of any serious work towards progressive interpretations of religion, of distinguishing between its spirit and symbols, Pakistan seems to be in the grip of the unenlightened and the close-minded. And since the political process has been subverted, the masses, whose belief may be Islam, but whose concern is not religion but the real issues of existence, have been by-passed. Appalling then is that the Ahmadis’ use of Islamic names and epithets could expose them to the draconian mandatory death penalty for “posing as Muslims” under the Blasphemy Law, though traditional


137. WOMEN OF PAKISTAN, TWO STEPS FORWARD, ONE STEP BACK? 17 (Khawar Mumtaz & Farida Shaeed eds., 1987).

138. PAK. PENAL CODE § 295C (1860) (as amended).
sources of Sharia do not mandate it. Ample authority exists in the Qur'an that prohibits the practice of compulsion or duress in matters of religion. Faith (iman), the quintessence of religion, cannot be imposed on the recalcitrant, but implies only willful and voluntary submission. Sharia does not deny the followers of other faiths the freedom to practice and to retain the religion of their choice.

Furthermore, the Qur'an is silent on the death sentence for apostasy. Whatever authority exists on the subject in the Sunna has been open to diverse interpretations. Overwhelming juristic opinion has supported the view that apostasy alone — unless accompanied by high treason (hirabah) — does not call for any punishment, death or otherwise. "[A]postasy by itself, however condemnable as a spiritual offence, entails no temporal penalty. This is the essence of the freedom to change one's religion and the Qur'an is explicit on it."142

Zaheeruddin raises many thorny issues, not only in the realm of human rights of one's religious freedom and the politicization of Islam and the exercise of cloaking regressive laws in Islamic terms for blatantly political purposes, but also on the extent of the role that law ought to be allowed to play in the selection and regulation of names. After all, absent any compelling state interest, the choosing of a name should be a highly private and individual matter.

V. CONCLUDING OBSERVATIONS

Names and naming processes are, after all, not a light-hearted business. A complex interplay of law and religious values is involved, as names originate in the language and culture of the varied heritages of a given society. Relatively sparse literature exists, and that too not easily accessible, on this specific aspect, at least, from an Islamic perspective. Despite the recent global comparative law survey on the subject of "Names," with an understandably marked emphasis on common

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140. For a perceptive examination of the various authorities on the subject, see Mohammad Hashim Kamali, Freedom of Religion in Islamic Law, 21 CAP. U.L. REV. 63, 70-80 (1982); GEORGE MAKDISI, RELIGION, LAW AND LEARNING IN CLASSICAL ISLAM (1991).


142. MUHAMMAD ZAFRULLA KHAN, HUMAN RIGHTS IN ISLAM 116 (1967).

143. In its relentless drive toward exterminating the Jewish populace, Nazi Germany deliberately dehumanized its holocaust victims, first, by giving them a disagreeably bad name and, then, assigning a number. Such a technique, though much deprecated, often features in ordinary criminal trials as well, where prosecutors at times tend to portray defendants in contumelious terms while defense attorneys strive to present their names in honorable expressions. Arthur N. Bishop, Name Calling: Defendant Nomenclature in Criminal Trials, 4 OHIO N.U.L. REV. 38 (1977).
law and European legal orders — by far the best and amazingly thorough — by Professors Walter Pintens and Michael R. Will,144 one needs a composite and integrated study of Islamic practice, both traditional and statutory, toward a better and richer understanding on the complex subject of names and its allied aspects.145 In particular, a sensitive study of the subject of “names” and naming systems, onomastics, from a relatively neglected perspective of law and religion, is long-overdue from a specialist in Islamic law. After all, that “which we call a rose [by] any other name” may not necessarily “smell as sweet”146 as the fictional Juliet — in her romantic naïveté — would like us to believe, particularly, if a name is not in conformity with law and the expectations of one’s religion. Thus, a study of Islamic names, from the perspective of law and religion, apart from promising to be a rewarding venture in itself, should also add a new dimension to that perennially anguished question: “What’s in a name?”147 — which ought to be rephrased, “What isn’t in a name!” For the right to a name, a threshold requirement for one’s private and public existence,148 has been correctly recognized by the United Nations as a basic part of human identity and development.149

144. Pintens & Will, supra note 31.
145. Unfortunately, the very valuable work, TAHIR MAHMOOD, STATUTES OF PERSONAL LAW IN ISLAMIC COUNTRIES (2d rev. ed. 1995), while giving easy access to various statutes in English, omits most of the provisions relating to names; otherwise, the book would have been an excellent source of research on the law of Islamic names.
146. ROMEO AND JULIET, supra note 1, at ll. 43-44; ANNOTATED SHAKESPEARE, supra note 1, at 1627. Cf. FLETCHER, supra note 50, at 107: A rose does not smell as sweet by another name. The result of much research has shown that there is magic in having the right name and that an unsuitable name can cause great pain and even harm a person. Proper names can develop self-esteem, describe how one feels about oneself, show heritage, be a magic protector, have astrological or numerical importance; it can be the remembrance of an occupation; it can occasionally tell the month of one’s birth; it can recall a rank; it can show geographical places of birth; if named for movie stars or famous people, it can tell your age; it establishes a relationship with your peers; it can be poetry or music, a blessing or a curse.
147. ROMEO AND JULIET, supra note 1, at 1. 43; ANNOTATED SHAKESPEARE, supra note 1, at 1627.
APPENDIX I

The following sampling of William Shakespeare's references to "Name" and "Names" is only illustrative and is in no way intended to be exhaustive:

(1) I would to God thou and I knew where a commodity of good names were to be bought

WILLIAM SHAKESPEARE, THE FIRST PART OF KING HENRY THE FOURTH act 1, sc. 2, ll. 93-94 (1597), in ANNOTATED SHAKESPEARE, supra note 1, at 1159. Typically, Falstaff is more concerned with reputation than morality.

(2) Good name in man and woman, dear my lord, Is the immediate jewel of their souls: Who steals my purse steals trash; 'tis something, nothing; 'T was mine, 'tis his, and has been slave to thousands; But he that filches from me my good name Robs me of that which not enriches him And makes me poor indeed.

WILLIAM SHAKESPEARE, OTHELLO act 3, sc. 3, ll. 154-60 (1604), in ANNOTATED SHAKESPEARE, supra note 1, at 1841. Iago is uttering the proverbial notions of reputation and good name. His prevarication fuels Othello’s desire to be told Iago’s opinion of Cassio, while ironically it heightens the audience’s awareness of the damnable act Iago is about to commit. Iago is to defame both Cassio and Desdemona as lovers.

(3) Awake, thou coward majesty! thou sleepest. Is not the king's name twenty thousand names? Arm, arm, my name! A puny subject strikes At thy glory.

WILLIAM SHAKESPEARE, KING RICHARD II act 3, sc. 2, ll. 84-87 (1595), in ANNOTATED SHAKESPEARE, supra note 1, at 1065. Throughout the scene of his return from Ireland, Richard vacillates between despair and vaunting rhetoric. This revival of courage is made in response to Aumerle’s encouragement that Richard remember his names of his parents or that of one of them”); The U.N. Convention on the Rights of the Child, 28 I.L.M. 1448, 1460 (1989) (reproduced from G.A. Res. 44/25, U.N. Doc. A/44/736 (1989) art. 7 (the "child shall be registered immediately after birth and shall have the right form birth to a name").
WHAT'S IN A NAME?

(4) O good Horatio, what a wounded name,

Things standing thus unknown, shall live behind me!

WILLIAM SHAKESPEARE, HAMLET act 5, sc. 2, ll. 354-55 (1600-01), in ANNOTATED SHAKESPEARE, supra note 1, at 1802. Hamlet begs Horatio to stay alive to explain what has happened; otherwise, his reputation ("name") would be damaged ("wounded") since the cause of the events was still unknown to most people.

(5) Wherever the bright sun of heaven shall shine, His honour and the greatness of his name Shall be, and make new nations . . .

WILLIAM SHAKESPEARE, KING HENRY VIII act 5, sc. 5, ll. 51-53 (1613), in ANNOTATED SHAKESPEARE, supra note 1, at 1410. The reference is to James I. Henry VIII was written to celebrate the marriage of James' daughter Elizabeth to the Elector Palatine.

(6) The fault, dear Brutus, is not in our stars,

But in ourselves, that we are underlings.

Brutus and Caesar: what should be in that 'Caesar'?

Why should that name be sounded more than yours?

Write them together, yours is as fair a name;

Sound them, it doth become the mouth as well;

Weigh them, it is as heavy; conjure with 'em,

Brutus will start a spirit as soon as Caesar.

Now, in the names of all the gods at once,

WILLIAM SHAKESPEARE, JULIUS CAESAR act 1, sc. 2, ll. 140-48 (1599), in ANNOTATED SHAKESPEARE, supra note 1, at 1681. Cassius is maintaining to Brutus that there is nothing intrinsic to the name of Caesar, and by extension to his merit, to justify the position he holds. There is nothing magical or divine about the name of Caesar and that the name of Brutus may inspire as much.

(7) I cannot tell what the dickens his name is . . .

WILLIAM SHAKESPEARE, THE MERRY WIVES OF WINDSOR act 3, sc. 2,
1. 19 (1599-1600), in ANNOTATED SHAKESPEARE, supra note 1, at 474. When Ford inquires of Mrs. Page where had she “this pretty weather-cock” she was unable to tell the name her “husband had him of.” Id.

(8) JAQUES: Rosalind is your love’s name?

ORLANDO: Yes, just.

JAQUES: I do not like her name.

ORLANDO: There was no thought of pleasing you when she was christened.

WILLIAM SHAKESPEARE, AS YOU LIKE IT act 3, sc. 2, ll. 280-84 (1598), in ANNOTATED SHAKESPEARE, supra note 1, at 367. Jaques complains about Rosalind’s name, perhaps, because it leads to Orlando’s bad rhymes.
APPENDIX II

"The most beautiful names belong to Allah. So call on him by them." Sura Al-A’raaf 7:180. In listing the following names or attributes of Allah, an effort has been made, wherever possible, to indicate if the relevant name is mentioned in the Qur’an, or in the hadith.

<table>
<thead>
<tr>
<th>Name</th>
<th>Attribute</th>
<th>Reference</th>
</tr>
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<tbody>
<tr>
<td>Al-Aalim/Aleem</td>
<td>The All-Knowing</td>
<td>&quot;Allah is All-Knowing, Most Forbearing.&quot; Sura An-Nisaa 4:12. &quot;Allah is the knower of the Unseen.&quot; Sura Fatir 35:38.</td>
</tr>
<tr>
<td>Al-‘Adl</td>
<td>The Just</td>
<td></td>
</tr>
<tr>
<td>Al-‘Afuw</td>
<td>The Pardoner</td>
<td>&quot;Allah is All Pardoning, All Forgiving.&quot; Sura Al-Mujadila 58:2.</td>
</tr>
<tr>
<td>Al-Ahad</td>
<td>The One</td>
<td>&quot;Say: He is Allah, One.&quot; Sura Al-Ikhlaas 112:1.</td>
</tr>
<tr>
<td>Al-Akhir</td>
<td>The Last</td>
<td>&quot;He is the First and the Last.&quot; Sura Al-Hadeed 57:3.</td>
</tr>
<tr>
<td>Al-Akram</td>
<td>The Most Bountiful</td>
<td>&quot;Proclaim! And thy Lord is the Most Bounteous.&quot; Sura Al-Alaq 96:3.</td>
</tr>
<tr>
<td>Al-Awwal</td>
<td>The First</td>
<td>&quot;He is the First and the Last.&quot; Sura Al-Hadeed 57:3.</td>
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Al-Baith The Resurrecter.


Al-Basir The All-Seeing. “Allah is All-Hearing All-Seeing.” Sura Luqman 31:28.
Al-Basit  The Expander. “Allah... enlarges the provision [sustenance] or restricts it, to any of His servants He pleases.” Sura Al-Qasas 28:82.

Al-Batin  The Inward. “He is The First and The Last, and The Outward and The Inward.” Sura Al-Hadeed 57:3.

Ad-Darr  The Distresser.

Al-Fattah  The Deliverer. “He is The All-Knowing Judge.” Sura Sabaa 34:26.


Al-Hakeem/  The All-Wise. “Allah is Mighty, All-Wise.” Sura Al-
The All-Clement. “Allah is Forgiving, Clement.” Sura Al-Baqarah 2:225.

The All-Laudable. “And Know that Allah is free of all wants, and Worthy of all praise.” Sura Al-Baqarah 2:267.

The Truth. “Say ‘It is Allah Who gives guidance to Truth.’” Sura Yunus 10:35. Sura Al-Haqqah 69:1-52, meaning “the Reality,” extols the eschatological argument: “The absolute Truth cannot fail; it must prevail; therefore be not lured by false appearances in this life; it is Revelation that points to the sure and certain Reality.” ENGLISH TRANSLATION, supra note 4, at 1803.


The All-Compeller. “He is Allah, than whom there is no other God, the Sovereign Lord, the Holy One, Peace, the Keeper of Faith, the Guardian, the Majestic, the Compeller, the Superb.” Sura Al-Hashr 59:23.


The Exalted. “He is Exalted in Might, full of wisdom.” Sura Ar-Rum 30:27.

The Gatherer.
<table>
<thead>
<tr>
<th>Name</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>Al-Jamil</td>
<td>The Beautiful.</td>
</tr>
<tr>
<td>Al-Kabir</td>
<td>The All-Great. &quot;That is because Allah... is the Reality... Verily Allah is... Most High, Most Great.&quot; Sura Al-Hajj 22:62.</td>
</tr>
<tr>
<td>Al-Kafi</td>
<td>The All-Sufficient. &quot;Is not Allah sufficient for His servant?&quot; Sura Al-Zumar 39:36.</td>
</tr>
<tr>
<td>Al-Karim</td>
<td>The Most Generous. &quot;O man! What hath made thee careless concerning thy Lord, the Bountiful...?&quot; Sura Al-Infitaar 82:6.</td>
</tr>
<tr>
<td>Al-Khaaliq</td>
<td>The Creator. &quot;Say: 'Allah is the Creator of all things: He is The One, the Supreme and Irresistible.'&quot; Sura Al-Ra’id 13:16.</td>
</tr>
<tr>
<td>Al-Khabir</td>
<td>One Who is Aware. &quot;Fear Allah... for Allah is well-acquainted with (all) that you do.&quot; Sura Al-Hashr 59:18.</td>
</tr>
<tr>
<td>Al-Khafid</td>
<td>The Abaser.</td>
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<tr>
<td>Al-Mani</td>
<td>The Preventer.</td>
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<tr>
<td>Al-Mannan</td>
<td>The Benevolent. &quot;Allah is the Beneficent, the Merciful.&quot; Sura Al-Hashr 59:22.</td>
</tr>
<tr>
<td>Al-Matin</td>
<td>The Strong. &quot;For Allah is He who is the All-Provider, the Possessor of Strength, the Strong.&quot;</td>
</tr>
</tbody>
</table>
The Lord Supreme. “You (Allah) are our Lord Supreme, our Protector, grant us victory over the unbelievers.” Sura Al-Baqarah 2:286.

The Delayer.

The Originator.

The Enricher.


The Reckoner.

The Quickener. “Verily, He who brings it to life can surely give life to the dead.” Sura Fussilat 41:39.

The Teacher.

The Honorer.

The Responsive. “My Lord is near and answers prayer.” Sura Hud 11:61.

The All-Faithful. “And Allah is the Protector of those who have faith.” Sura Aal ‘Imraan 3:68.
<table>
<thead>
<tr>
<th>Name</th>
<th>Meaning</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Al-Munaim/Munim</td>
<td>The Benevolent.</td>
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<tr>
<td>Al-Muntaqim</td>
<td>The Avenger.</td>
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<tr>
<td>Al-Muqaddim</td>
<td>The Expediter.</td>
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<td>Al-Muqsit</td>
<td>The Equitable.</td>
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<tr>
<td>Al-Muqtadir</td>
<td>The Omnipotent. &quot;Allah is able to do all things....” Sura Al-Kahf 18:45.</td>
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<tr>
<td>Al-Musawwir</td>
<td>The Shaper. &quot;He is Allah, the Creator, the Shaper, the Fashioner. To Him belong the most beautiful names.&quot; Sura Al-Hashr 59:24.</td>
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<tr>
<td>Al-Muta’ali</td>
<td>The Most High.</td>
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<tr>
<td>Al-Mutakabbir</td>
<td>The Majestic. &quot;He is Allah... the Sovereign Lord, the Holy one, Peace, the Keeper of Faith, the Guardian, the Majestic, the compeller, the Superb.” Sura Al-Hashr 59:23.</td>
<td></td>
</tr>
<tr>
<td>Al-Mu’ti</td>
<td>The Grantor.</td>
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</tbody>
</table>
The Dishonorer. The Helper. "(On the day of judgment man) will have no strength, nor helper." Sura Al-Taariq 86:10. "You have no protector and helper instead of Allah." Sura Al-Tawba 9:116.


The Constrictor. The Omnipotent. “He is the Omnipotent over His servants.” Sura Al-An‘aam 6:18.

Al-Quddus  

The All-Holy. “He is Allah, than whom there is no other God, the Soverign Lord, the Holy One...” Sura Al-Hashr 59:23.

Ar-Rabb  


Ar-Rafi’  

The Exalter. “Exalted is He in His attributes. (He is) the Lord of the Throne.” Sura Al-Mu’min 40:15.

Ar-Rahim  


Ar-Rahman  

The Most Gracious. “In the name of Allah, Most Gracious, Most Merciful. The Most Gracious! It is He Who has taught the Qur’an.” Sura Al-Rahmaan 55:1-2. In fact, all suras, except sura Al-Tawba 9, begin with these words.

Ar-Raqib  

The Watcher. “Allah is watchful over everything.” Sura Al-Ahzaab 33:52.

Ar-Rashid  

The Right-Minded. “Lo! thou are the mild, the guide to right behavior.” Sura Hud 11:87.

Ar-Rauf  


Ar-Razzaq  

The All-Provider. “Allah! He it is that giveth livelihood, the Lord of unbreakable might.” Sura Al-Dhaariyaat 51:58.

Al-Sabur  

The Patient.

Al-Salam  

The All-Peaceable. “And they call to the inhabitants of Paradise: Peace be upon you.” Sura Al-A’raaf 7:46.


The Veiler of Sin.

The All-Thankful. “Allah is All-Thankful, All-Knowing.” Sura *Al-Baqarah* 2:158. “Allah is All-Thankful, Most forbearing.” Sura *Al-Taghaabun* 64:17.

The Glory. “Glorified be Allah above all that they attribute to Him.” Sura *Al-Mu’minun* 23:91.

The All-Compassionate. “I am the Relenting, the Merciful.” Sura *Al-Baqarah* 2:160.


The All-Loving. “And He is the Oft-Forgiving, full of loving kindness.” Sura *Al-Buruj* 85:14.

The All-Giver. “He [Sulaiman] said, ‘O my Lord! Forgive me, and grant me a Kingdom which, will not belong to another after me: For Thou art the Gran-tor of Bounties (without measure).’” Sura *Saad* 38:35. “And Allah is the Lord of bounties un-bounded.” Sura *Aal Imraan* 3:174.

The Finder.

The Trustee. “And Allah is in charge of all things.” Sura *Hud* 11:12.

The Protector. “And He is the Protector, Worthy of all Praise.” Sura *Al-Shuraa* 42:28.
Al-Waris

The Inheritor. “And (remember) Zakariya, when he cried to his Lord: ‘O My Lord! leave me not childless, though You are the best of inheritors.’” Sura Al-Anbiyaa’ 21:89.

Al-Wasi

The All-Embracing. “Allah is All-Embracing, All-Knowing.” Sura Al-Baqarah 2:115.

Al-Zaahir

The Evident. “He is the First and the Last, the Evident and the Hidden.” Sura Al-Hadeed 57:3.