

## A Critical Review of Asia Bibi Case

*Mst. Asia Bibi v The State*

CrI.A. No.39-L of 2015

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### Introduction

Blasphemy law was first promulgated in the sub-continent by the British Government as a result of protests by Muslims, who demanded enactment of a law that may provide protection against insult of their religious feelings. This issue arose after a person named Rajpal published material containing derogatory remarks against the Prophet Muhammad (Peace Be Upon Him).<sup>1</sup> He was not convicted, as there was no law which prevented insult to a religion. Rajpal was later killed by IIm-ud-Din and after the latter's hanging, the Muslims demanded a ban on this pamphlet and forced the British Government to insert section 295-A<sup>2</sup> in the Indian Penal Code 1860.<sup>3</sup> Pakistan inherited the same law in 1947.

During the period of martial law imposed by General Zia-ul-Haq, rapid changes were brought in the law. This time is commonly referred to as the 'Islamisation' of the Pakistani legal system.<sup>4</sup> In this regard, section 295-C<sup>5</sup> was added in the Pakistan Penal Code 1860<sup>6</sup> ('PPC') in 1986. The validity of this provision was considered by the Federal Shariat Court ('FSC') in *Muhammad Ismail Qureshi v Pakistan through Secretary, Law and Parliamentary Affairs*.<sup>7</sup> The FSC ruled that section 295-C was repugnant to Islam by allowing life imprisonment as a substitute to a death sentence. The Court was of the view that death penalty is applicable for contempt of the Holy Prophet. The FSC further held that, if the President did not amend the law before 30 April 1991, then section 295-C would stand amended by its decision. The ruling of FSC was challenged before the Supreme Court of Pakistan ('SC'). However, the appeal was dismissed due to non-prosecution. Thus, the judgment of FSC remains in field. Therefore, under the existing law in PPC, persons convicted under section 295-C are liable to be sentenced to death, with or without a fine.

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<sup>1</sup> 'A brief history of the anti-blasphemy laws' (*Herald*, 31 October 2018) <<https://herald.dawn.com/news/1154036>> accessed 13 December 2018.

<sup>2</sup> Section 295-A reads: "Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs: Whoever, with deliberate and malicious intention of outraging the 'religious feelings of any class of the citizens of Pakistan, by words, either spoken or written, or by visible representations insults the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both."

<sup>3</sup> Inserted by Criminal Law (Amendment) Act, XXV of 1927.

<sup>4</sup> Bilal Hayee, 'Blasphemy laws and Pakistan's human rights obligations' (2012 (14) (Dec 2012) *University of Notre Dame Australia Law Review* 26.

<sup>5</sup> Use of derogatory remarks, etc., in respect of the Holy Prophet: Whoever by words, either spoken or written, or by visible representation, or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Muhammad (peace be upon him) shall be punished with death, or imprisonment for life, and shall also be liable to fine.

<sup>6</sup> Inserted by Criminal Law (Amendment) Act, III of 1986, s. 2.

<sup>7</sup> PLD 1991 FSC 10.

In Pakistan, the topic of blasphemy has been under discussion for many years. Critics are of the view that this law targets the minorities and is misused. It is stated that the law itself is broad, unclear, and has been misused for personal vendettas.<sup>8</sup> For example, in *Ayub Masih v The State*,<sup>9</sup> the SC observed that the complainant wanted to seize the land of Ayub Masih and his father, after involving them in a false blasphemy case. This law has been misused and applied arbitrarily, mostly affecting non-Muslims in Pakistan.<sup>10</sup> Those who have spoken up regarding the amendment and misuse of this law have also been targeted.<sup>11</sup> A High Court judge, namely, Arif Iqbal Bhatti was killed in 1997 after he acquitted Salamat Masih and Rehmat Masih from blasphemy charges.<sup>12</sup> It is reported that violence relating to blasphemy has increased during the past few years.<sup>13</sup> Due to this, it was suggested that the punishment be proposed for those falsely accusing others of blasphemy.<sup>14</sup> Even though some call for a complete abolition of the law,<sup>15</sup> the former judge of the Islamabad High Court, Justice Shaukat Aziz Siddiqui, was of the opinion that it is better to prevent exploitation of the law than to abolish it.<sup>16</sup>

This case note examines the SC judgment in the *Asia Bibi* case in the light of the established principles of criminal law and the law of evidence: that “everyone is presumed innocent unless proved guilty”, and that “the prosecution has to prove its cases beyond any reasonable doubt”. It shows that the verdict of the Lahore High Court (‘LHC’) in *Asia Bibi* case was seriously flawed. It is argued that the SC has acquitted Asia Bibi on the basis of sound reasoning and the established principles of criminal law.

## **Facts and Judgment**

The facts of the case are that on 14 June 2009, Asia Bibi allegedly uttered derogatory remarks against the Holy Prophet Muhammad (Peace Be Upon Him) and the Holy Qur’an, while she was plucking *falsa* (purple berries) along with other Muslim ladies in the fields of one Muhammad

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<sup>8</sup> ‘Pakistan: Aasia Bibi verdict is a landmark victory for religious tolerance’ (*Amnesty International*, 31 October 2018) <<https://www.amnesty.org/en/latest/news/2018/10/pakistan-aasia-bibi-verdict-is-a-landmark-victory-for-religious-tolerance>> accessed 18 December 2018.

<sup>9</sup> PLD 2002 SC 1048.

<sup>10</sup> Naeem Shakir, ‘Islamic Shariah and Blasphemy Laws in Pakistan’ (2015) (104) (3) *The Round Table* 311 <<https://www.tandfonline.com/doi/abs/10.1080/00358533.2015.1053235?scroll=top&needAccess=true&journalCode=trt20>> accessed 13 December 2018.

<sup>11</sup> (n 8) 312. On 2 March 2011, Shahbaz Bhatti, Pakistan’s Federal Minister for Minorities Affairs (a Roman Catholic member of the National Assembly), was killed by gunmen in Islamabad; Punjab Governor Salman Taseer was shot dead by his security guard for supporting Asia Bibi in 2009.

<sup>12</sup> ‘Pakistani Judge who acquitted Christians of Blasphemy is murdered’ (*UCAnews.com*, 15 October 1997) <[https://www.ucanews.com/story-archive/?post\\_name=/1997/10/15/pakistani-judge-who-acquitted-christians-of-blasphemy-is-murdered&post\\_id=10265](https://www.ucanews.com/story-archive/?post_name=/1997/10/15/pakistani-judge-who-acquitted-christians-of-blasphemy-is-murdered&post_id=10265)> accessed 13 December 2018.

<sup>13</sup> ‘World Report 2018, Events of 2017’ (*Human Rights Watch*, 2018) 411 <[https://www.hrw.org/sites/default/files/world\\_report\\_download/201801world\\_report\\_web.pdf](https://www.hrw.org/sites/default/files/world_report_download/201801world_report_web.pdf)> accessed 18 December 2018.

<sup>14</sup> ‘Pakistan court seeks to amend blasphemy law’ (*Aljazeera*, 16 August 2017) <<https://www.aljazeera.com/indepth/features/2017/08/pakistan-court-seeks-amend-blasphemy-law-170814120428595.html>> accessed 18 December 2018.

<sup>15</sup> ‘Time to repeal the blasphemy law’ (*The Express Tribune*, 16 November 2018) <<https://tribune.com.pk/story/78368/time-to-repeal-the-blasphemy-law>> accessed 18 December 2018.

<sup>16</sup> ‘Islamabad High Court suggests making blasphemy law tougher to check its misuse’ (*DAWN*, 12 August 2019) <<https://www.dawn.com/news/135112>> accessed 18 December 2018.

Idrees in village Ittanwali, District Nankana, the Province of Punjab. Two Muslim ladies, namely, Mafia Bibi and Asma Bibi, narrated this incidence to the complainant, Qari Muhammad Salaam. On 19 June 2009, he called the accused to a public gathering, where she allegedly confessed her guilt, and on the same day a First Information Report ('FIR') was registered against Asia Bibi under section 295-C of the PPC at the Police Station Sadar, District Nankana.

The prosecution's case was essentially premised on the statements of the eyewitnesses and the alleged extra-judicial confession. Asia Bibi, however, denied the allegations. In the statement under section 342<sup>17</sup> of the Code of Criminal Procedure 1898 ('CrPC'), she stated, "...I have great respect and honor to the Holy Prophet (PBUH) as well as Holy Quran and since police have conspired with the complainant, so, the police have falsely booked me in this case..."<sup>18</sup>

The trial court convicted Asia Bibi under section 295-C of the PPC vide judgment dated 8 November 2010 and sentenced her to death with a fine of Rs.1,00,000. In default of the payment thereof she was liable to undergo simple imprisonment for a period of six months. Asia Bibi appealed against her conviction before the LHC,<sup>19</sup> which dismissed this appeal, vide judgment dated 16 October 2014. In appeal against this judgment, the SC reappraised the evidence on the record and acquitted Asia Bibi after finding her innocent because the prosecution failed to prove the guilt beyond a reasonable doubt.

### **Analysis**

Under section 295-C of the PPC, a blasphemous act targeting the Prophet (Peace Be Upon Him) attracts the punishment of death. Those who vehemently oppose the verdict of the SC are of the opinion that Asia Bibi committed the above-mentioned offense and therefore should be put to death. More specifically, the prosecution claimed that Asia Bibi committed an heinous offense and offended the feelings of Muslims. It was also stated that the five day delay in lodging of the FIR was sufficiently explained as the complainant had investigated the matter before reporting it to the police. It was pointed out that both the eyewitnesses were not cross-examined in connection to the material aspect of blasphemy. In addition to this, as per the prosecution, the accused admitted commission of offence in a public gathering and on the basis of these reasons, the counsel for prosecution claimed that Asia Bibi deserved the death penalty because the case has been proved beyond any shadow of doubt through concrete and consistent evidence.

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<sup>17</sup> Power to examine the accused: (1) For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may, at any stage of any inquiry or trial without previously warning the accused, put such questions to him as the Court considers necessary, and shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence.

(2) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them; but the Court [...] may draw such inference from such refusal or answer as it thinks just.

(3) The answers given by the accused may be taken into consideration in such inquiry or trial and put in evidence for or against him in any other inquiry into, or trial for, any other offence, which such answers may tend to show, he has committed.

(4) Except as provided by subsection (2) of section 340, no oath shall be administered to the accused.

<sup>18</sup> *Mst. Asia Bibi v The State* CrI.A. No.39-L of 2015, paragraph [28].

<sup>19</sup> Criminal Appeal No. 2509 of 2010, which was heard along with Murder Reference No. 614 of 2010.

On the other hand, Asia Bibi's defence is that on the day of alleged occurrence, an altercation took place between the appellant and both the eyewitnesses regarding the fetching of water. According to Asia Bibi, the eyewitnesses refused to take water from her because she was a Christian. As a result of this disagreement, a false case was registered against the appellant. The appellant also claimed that the extra-judicial confession was not voluntary but was a result of coercion and undue pressure, as the complainant brought the appellant before a gathering and threatened to kill her. Therefore, the counsel for the appellant contended that the extra-judicial confession cannot be made the basis of the conviction. He also stated that the inordinate delay in lodging of the FIR casts serious doubts about the case of the complainant and a false story was concocted against the appellant, thus, she should be acquitted from the charge.

While considering potential misuse of blasphemy law in Pakistan,<sup>20</sup> the SC, at the very outset, stated that only the State has the authority to decide on blasphemy charges. The SC, for the first time, has thoroughly referred to the relevant provisions of the law (Articles 4,<sup>21</sup> 37 (d),<sup>22</sup> 175(2)<sup>23</sup> of the Constitution and section 28<sup>24</sup> of the CrPC) in order to establish authority of the State to decide in the blasphemy cases.<sup>25</sup> The SC further referred to its judgment in *Malik Muhammad Mumtaz Qadri v the State*<sup>26</sup> to clarify that the State is to ensure that innocent persons are not tried on false blasphemy charges.

The SC analysed the evidence which was available on record. The verdict of LHC may briefly be discussed in order to examine the reasons recorded by the SC for the acquittal of Asia Bibi. The LHC confirmed the death sentence awarded by the trial court for the reasons that (a) the presence of the eyewitnesses and the appellant at the relevant time in the field of *falsa* was not denied; (b) the witnesses were not cross-examined by the defence in relation to the offence of blasphemy alleged against the appellant; (c) the defence could not point out any previous enmity, ill-will, or ulterior motive of the eyewitnesses against the appellant, which would indicate a false

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<sup>20</sup> (n 14) paragraph 12; The SC noted, since 1990, 62 people were killed on blasphemy charges, even before the conclusion of court proceedings; 'Misuse of Blasphemy Law Again on the Rise in Pakistan' (*The Diplomat*, 15 August 2018) <<https://thediplomat.com/2018/08/misuse-of-blasphemy-law-again-on-the-rise-in-pakistan>> accessed 4 December 2018; 'Mardan university student lynched by mob over alleged blasphemy: police' (*DAWN*, 13 April 2017) <<https://www.dawn.com/news/1326729>> accessed 4 December 2018.

<sup>21</sup> "Right of individuals to be dealt with in accordance with law, etc.- (1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen. Wherever he may be, and of every other person for the time being within Pakistan.

(2) In particular—

(a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;

(b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and

(c) no person shall be compelled to do that which the law does not required him to do."

<sup>22</sup> "Promotion of social justice and eradication of social evils. The State shall...(d) ensure inexpensive and expeditious justice."

<sup>23</sup> "Establishment and jurisdiction of courts (2) no court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law."

<sup>24</sup> "Offences under Penal Code: Subject to the other provisions of the said Code, any offence under the Pakistan Penal Code may be tried (a) by the High Court, or (b) by the Court of Sessions, or (c) by any other Court by which such offence is shown in the eighth column of the Second Schedule to be triable."

<sup>25</sup> (n 14) paragraph 15.

<sup>26</sup> PLD 2016 SC 17.

involvement in this case; and (d) the testimony of court witness, Muhammad Idrees, provides a strong corroboration to the evidence provided by the eyewitnesses.

The reasons given by the LHC for maintaining conviction of Asia Bibi are misconceived. It is to be noted that under section 342 of the CrPC, Asia Bibi had stated that Mafia and Asma Bibi had argued with her over fetching of water and that they were both sisters. As per Asia Bibi, they wanted to involve her in the case on the basis on that quarrel.<sup>27</sup> Thus, it is not a case of the defense that the eyewitnesses were not present at the spot of the alleged occurrence. As stated by Asia Bibi, the eyewitnesses implicated her in a false case due to the exchange of hot words between them on fetching water. The LHC, thus, erred while appreciating the suggestions (put by defense to establish enmity between Asia Bibi and the eyewitnesses) as a proof of the presence of Asia Bibi and the eyewitnesses at the place of occurrence.<sup>28</sup>

The second reason that the witnesses have not been cross-examined by the defense as to the offence of blasphemy alleged against the appellant<sup>29</sup> is based on misreading of the evidence and misinterpretation of the law. Reliance of the LHC on *Hafiz Tassaduq Hussain v Lal Khatoon*,<sup>30</sup> with reference to the interpretation of Article 132<sup>31</sup> of the Qanun-e-Shahadat Order 1984, that a fact deposed in examination-in-chief, but not cross-examined shall be deemed to have been admitted, is misplaced. The LHC seems to have ignored the latest case *Nadeem Ramzan v The State*,<sup>32</sup> in which it was held that the part of the statement, which remains un-rebutted amounts to an admission, does not attract in criminal cases.

As to the non-appearance of other ladies present at the place of alleged occurrence, the LHC relied on *Haji Bashir Ahmad v The State*<sup>33</sup> to hold that evidence of even a single witness is sufficient to prove a charge of blasphemy. In the circumstances of this case, this rule does not apply, when none of the prosecution witnesses were, in fact, able to prove the alleged offence of blasphemy, against the accused. The LHC failed to note irregularities in the conduct of police investigation. This aspect of the case may be elaborated later.

The SC assessed evidence of seven witness produced by the prosecution and a court witness: Qari Muhhamd Salaam (complainant), Mafia Bibi and Asma Bibi (eyewitnesses), Muhammad Afzal (a witness of extra-judicial confession), police witnesses, and Muhammad Idress. The evidence was with reference to the registration of the FIR and the conduct of the police investigation, extra-judicial confession, plausibility, coherence, and consistency of the prosecution evidence. Regarding the delay in registering the FIR, Justice Saqib Nisar found that the explanation given for such delay was not satisfactory. He referred to the case of *Iftikhar*

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<sup>27</sup> (n 14) paragraph 28.

<sup>28</sup> *Mst, Asia Bibi v The State and another* CrI.A.No.2509/2010 and M.R.No.614/2010, 8 and 9.

<sup>29</sup> *Ibid*, 6 and 7.

<sup>30</sup> PLD 2011 SC 296.

<sup>31</sup> Examination-in-chief, etc.: (1) The examination of a witness by the party who calls him shall be called his examination-in-chief.

(2) The examination of a witness by the adverse party shall be called his cross-examination.

(3) The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.

<sup>32</sup> 2018 SCMR 149.

<sup>33</sup> 2005 YLR 985.

*Hussain and others v The State*,<sup>34</sup> in which it was held that the FIR lodged after conducting an inquiry, loses its evidentiary value. Justice Asif Khosa noted that the prosecution failed to explain the delay of five days in getting the FIR registered, and it failed to produce details of the investigation, consultation, and looking into the matter with people of the village before the recording of the FIR. He noted<sup>35</sup> that the complainant did not even remember where and before whom the application was presented for the registration of the FIR. As the eyewitnesses informed the complainant of the alleged incident, admittedly, he was not present at the place of occurrence. His statement was merely hearsay. The complainant also changed his stance frequently. He did not mention in the FIR as to when he was informed about the incident. In his statement before the court, he said that Mafia Bibi, Asma Bibi, and Yasmin Bibi (given up witness) informed him on 14 June 2009 and at that time Muhammad Afzal and Muhammad Mukhtar Ahmad were present with him, whereas, he did not mention the presence of these persons in the FIR. In cross-examination, he stated that he came to know about the occurrence on 16 June 2009. In view of this, the SC concluded that the complainant's statements and the FIR lacked credibility. Further, the SC noted that investigation was conducted in violation of section 156-A<sup>36</sup> of the CrPC, as Muhammad Arshad/ASI recorded the statements of the prosecution witnesses, prepared the site plan, and arrested the accused. Muhammad Amin Bukhari/SP, as required under section 156-A CrPC, was assigned investigation at a later stage. However, the LHC failed to note this irregularity in the police investigation. Surprisingly, both the courts failed to determine the impact of this irregularity in the police investigation on the fate of the case.

Regarding the extra-judicial confession that allegedly took place at the public gathering, the SC observed that it "is a fragile piece of evidence and utmost care and caution has to be exercised in placing reliance on such a confession."<sup>37</sup> The Court further held that "the legal worth of [an] extra-judicial confession is almost equal to naught..."<sup>38</sup> as it might have been obtained by inducement or coercion. The SC stated in view of Article 37<sup>39</sup> of the Qanun-e-Shahadat Order 1984, a confession caused by any inducement, threat or promise with reference to the charge against the accused person is irrelevant in criminal proceedings.

One main question to consider is if Asia Bibi was actually forced to appear before the public gathering and whether the prosecution was able to convince the SC that she was not threatened. "[T]he alleged extra-judicial confession ... even if presumed to have been made by her before such public gathering",<sup>40</sup> noted by Justice Saqib Nisar, returning to the lack of clarity

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<sup>34</sup> 2004 SCMR 1185.

<sup>35</sup> (n 14) paragraph 17.

<sup>36</sup> "Investigation of offence under section 29-C, Pakistan Penal Code. Notwithstanding anything contained in this Code, no police officer below the rank of a Superintendent of Police shall investigate the offence against any person alleged to have been committed by him under section 295-C of the Pakistan Penal Code 1860 (Act XLV of 1860)."

<sup>37</sup> (n 14) paragraph 42.

<sup>38</sup> Ibid.

<sup>39</sup> Confession caused by inducement, threat or promise, when irrelevant in criminal proceedings. – A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court that it has been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of temporal nature in reference to the proceedings against him."

<sup>40</sup> (n 14) paragraph 44.

regarding the circumstances surrounding the alleged public gathering and the alleged extrajudicial confession, cannot unequivocally be termed as “a voluntary action ... nor it can be relied upon to form the basis of a conviction, especially for capital punishment.”<sup>41</sup>

Justice Khosa found that the evidence produced in respect of alleged public gathering and confession of blasphemy was not only an afterthought but also a concoction.<sup>42</sup> It may further be appreciated that the complainant failed to mention any public gathering in the FIR; the key prosecution witnesses, namely, Mafia Bibi, Asma Bibi, and Muhammad Afzal did not mention anything about any public gathering in their statements under section 161 of the CrPC. Further, their statements in court were found mutually contradictory and against the record of the case, particularly, with reference to date, time, or place of holding of such gathering. Justice Khosa stated that the “evidence ... where the public gathering had been held, how many people had participated in that gathering, who and how the appellant was brought to the gathering ... has been found by me to be replete with glaring contradictions exposing the complex falsity of the ... prosecution's story.”<sup>43</sup>

The SC has disbelieved the evidence of eyewitnesses, Mafia Bibi and Asma Bibi, as they suppressed material fact of verbal exchange of hot words between them and Asia Bibi on fetching water, during the investigation and also before the court. It clearly showed that eyewitnesses were inimical towards the accused so they tried to hide the quarrel with the accused. This fact surfaced only through the statements of Muhammad Amin Bukhari, Superintendent Police (Investigation) and owner of the fields, namely, Muhammad Idrees. It proved the fact that both the eyewitnesses were not truthful witnesses. The SC further noted that the eyewitnesses failed to tell whom Asia Bibi addressed while making the alleged remarks; they never deposed that in whose fields the alleged occurrence took place, and why they had not reported the incident to the local police.<sup>44</sup> The LHC failed to examine this aspect as well. The SC securitized the evidence duly and provided convincing reasons for the acquittal of Asia Bibi.

## **Conclusion**

In the landmark judgment in the *Asia Bibi* case, the SC has extensively referred to the Quran, Sunnah, and the covenant of the Prophet Muhammad (Peace Be Upon Him) with non-Muslim minorities to strengthen its reasoning. The SC further affirms its authority in interpreting the Islam on blasphemy. It established with a thorough analysis of the law that only the State has the mandate to decide in blasphemy cases. This judgment hints on the conduct of the lower courts as to the appraisal of evidence. However, it does not provide guidelines for the appreciation of evidence in blasphemy cases by the lower courts. The SC highlights the misuse of blasphemy laws in Pakistan, but fails to propose safeguards for the protection of minorities. The SC goes a long way to disapprove the conduct of those who have brought false blasphemy cases against minorities. Nevertheless, it did not recommend an adequate punishment for such persons.

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<sup>41</sup> Ibid.

<sup>42</sup> (n 14) paragraph 14.

<sup>43</sup> (n 14) paragraph 15.

<sup>44</sup> (n 14) paragraph 9.