

Refugee Review Tribunal

AUSTRALIA

MRT RESEARCH RESPONSE

Research Response Number: PAK17201
Country: Pakistan
Date: 17 February 2005

Keywords: Pakistan – Ahmadis – Muslim Laws Ordinance – Divorce – Ahmadiyya Community Court

This response was prepared by the Country Research Section of the Refugee Review Tribunal (RRT) after researching publicly accessible information currently available to the RRT within time constraints. This response is not, and does not purport to be, conclusive as to the merit of any particular claim to refugee status or asylum.

Question

1. Is it the case that Ahmadis in Pakistan have been declared non-Muslims and that the Pakistan Muslim Family Laws Ordinance does not, therefore, apply to the Ahmadiyya?

List of Sources Consulted

RESPONSE

1. Is it the case that Ahmadis in Pakistan have been declared non-Muslims and that the Pakistan Muslim Family Laws Ordinance does not, therefore, apply to the Ahmadiyya?

The *Muslim Family Laws Ordinance, 1961*, strictly applies to “Muslim citizens of Pakistan”. It regulates such matters as marriage, polygamy, divorce, and inheritance (‘MUSLIM FAMILY LAWS ORDINANCE, 1961’, The Pakistan Lawyer website http://www.pakistanlawyer.com/OTHERS%20LAWS/Muslim%20Law/muslim_family_laws_ordinance.htm – Accessed 16 February 2005 – Attachment 1). Read in the light of legal developments which began in 1974, the Ordinance does not appear to apply to members of the Ahmadiyya (Qadiani) community.

Constitutional amendments passed in 1974 and 1983 “deprived Ahmadis of their identity as Muslims” in Pakistan (Khan, A. M 2003, ‘Persecution of the Ahmadiyya Community in Pakistan: An Analysis Under International Law and International Relations’, *Harvard Human Rights Journal*, Volume 16, Spring <http://www.law.harvard.edu/students/orgs/hrj/iss16/khan.pdf> – Accessed 31 January 2005 – Attachment 2; Lau, M. Undated, ‘Islam and Fundamental Rights in Pakistan: The case of Zaheer-ud-din v. The State and its impact on the fundamental right to freedom of religion’, Centre for Islamic and Middle Eastern Law website <http://www.soas.ac.uk/Centres/IslamicLaw/YB1Zaheer-ud-din.html> – Accessed 15

September 2005 – Attachment 3). One consequence, noted by M. Lau, was to effectively remove Ahmadis from the purview of “Muslim personal law in the area of family law” (Lau, M. Undated, ‘Islam and Fundamental Rights in Pakistan: The case of Zaheer-ud-din v. The State and its impact on the fundamental right to freedom of religion’, Centre for Islamic and Middle Eastern Law website <http://www.soas.ac.uk/Centres/IslamicLaw/YB1Zaheer-ud-din.html> – Accessed 15 September 2005 – Attachment 3). The new Articles, 260(3) (a) and (b), state that:

260 (3) In the Constitution and all enactments and other legal instruments, unless there is anything repugnant in the subject or context

(a) “Muslim” means a person who believes in the unity and oneness of Almighty Allah, in the absolute and unqualified finality of the Prophethood of Muhammad (peace be upon him), the last of the prophets, and does not believe in, 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 of any description whatsoever, after Muhammad (peace be upon him); and

(b) “non-Muslim” means a person who is not a Muslim and includes a person belonging to the Christian, Hindu, Sikh, Buddhist or Parsi community, a person of the Qadiani Group or the Lahori Group who call themselves ‘Ahmadis’ or by any other name or a Bahai, and a person belonging to any of the Scheduled Castes (‘Part XII – Miscellaneous. Chapter 5. Interpretation—Article 260(3)’, The Persecution website <http://www.thepersecution.org/50years/constatus.html> – Accessed 16 February 2005 – Attachment 4).

These amendments were followed by the promulgation of *Ordinance No. XX of 1984*—“An Ordinance to amend the law to prohibit the Qadiani group, Lahori group and Ahmadis from indulging in anti-Islamic activities”—and the enactment of the *Criminal Law (Amendment) Act of 1986*. Both instruments, by introducing amendments to Pakistan’s *Penal Code* and *Press Publication Ordinance*, effectively criminalised expressions of the Ahmadiyya faith in Pakistan, including attempts by the community to identify itself as Muslim (Khan, A. M 2003, ‘Persecution of the Ahmadiyya Community in Pakistan: An Analysis Under International Law and International Relations’, *Harvard Human Rights Journal*, Volume 16, Spring <http://www.law.harvard.edu/students/orgs/hrj/iss16/khan.pdf> – Accessed 31 January 2005 – Attachment 2; Lau, M. Undated, ‘Islam and Fundamental Rights in Pakistan: The case of Zaheer-ud-din v. The State and its impact on the fundamental right to freedom of religion’, Centre for Islamic and Middle Eastern Law website <http://www.soas.ac.uk/Centres/IslamicLaw/YB1Zaheer-ud-din.html> – Accessed 15 September 2005 – Attachment 3). The relevant amendments to the *Penal Code* follow in detail:

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

(1) Any person of the Qadiani 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 ‘*Ameerul Mumineen*’, ‘*Khalifa-tui-Mumineen*’, ‘*Khalifa-tul-Muslimeen*’, ‘*Sahaabi*’ or ‘*Razi Allah Anho*’

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

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

(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 representation, 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 Muslim, or calls, or refers to, his faith as Islam, or preaches or propagates his faith, or invites others to accept 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 (Government of Pakistan 1984, *ORDINANCE NO. XX OF 1984*, 26 April, The Persecution website <http://www.thepersecution.org/50years/paklaw.html> – Accessed 31 January 2005 – Attachment 5).

295C. Use of derogatory remarks, etc. in respect of the Holy Prophet.

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” (Government of Pakistan 1964, *ACT III of 1986: Criminal Law (Amendment) Act, 198*, The Persecution website <http://www.thepersecution.org/50years/paklaw.html> – Accessed 31 January 2005 – Attachment 5).

Little information was found in the sources consulted on divorce among Ahmadiyyas. An extensive report on the laws and policies affecting female reproduction in Pakistan by the Centre for Reproductive Rights, which provides information for all other major groups in Pakistan, is conspicuously silent on the issue (Centre for Reproduction Rights 2004, ‘Chapter 4: Pakistan’, in *Women of the World: Laws and Policies Affecting Their Reproductive Lives*, Centre for Reproduction Rights website http://www.crlp.org/pdf/pdf_wowsa_pakistan.pdf – Accessed 17 February 2005 – Attachment 6)

It would appear that provisions were not made for the community in such matters after it was declared non-Muslim in 1974 (Lau, M. Undated, ‘Islam and Fundamental Rights in Pakistan: The case of Zaheer-ud-din v. The State and its impact on the fundamental right to freedom of religion’, Centre for Islamic and Middle Eastern Law website <http://www.soas.ac.uk/Centres/IslamicLaw/YB1Zaheer-ud-din.html> – Accessed 15 September 2005 – Attachment 3).

One other report, appearing on the Emory Law School website, briefly mentions “Ahmadi initiatives to adopt a modified version of the Muslim Family Laws Ordinance 1961 to be applied to Ahmadi personal status cases” in Pakistan (‘Pakistan, Islamic Republic of’ Undated, Emory Law School website <http://www.law.emory.edu/IFL/legal/pakistan.htm> – Accessed 16 February 2005 – Attachment 7).

Internet Sources:

Google search engine

UNHCR *REFWORLD* UNHCR Refugee Information Online

Databases:

| | | |
|-------------|----------------|---|
| Public | <i>FACTIVA</i> | Reuters Business Briefing |
| DIMIA | <i>BACIS</i> | Country Information |
| | <i>REFINFO</i> | IRBDC Research Responses (Canada) |
| RRT | <i>ISYS</i> | RRT Country Research database, including Amnesty International, Human Rights Watch, US Department of State <i>Country Reports on Human Rights Practices</i> . |
| RRT Library | <i>FIRST</i> | RRT Library Catalogue |

List of Attachments

1. ‘MUSLIM FAMILY LAWS ORDINANCE, 1961’, The Pakistan Lawyer website. (http://www.pakistanlawyer.com/OTHERS%20LAWS/Muslim%20Law/muslim_family_laws_ordinance.htm – Accessed 16 February 2005)
2. Khan, A. M 2003, ‘Persecution of the Ahmadiyya Community in Pakistan: An Analysis Under International Law and International Relations’, *Harvard Human Rights Journal*, Volume 16, Spring. (<http://www.law.harvard.edu/students/orgs/hrj/iss16/khan.pdf> – Accessed 31 January 2005)
3. Lau, M. Undated, ‘Islam and Fundamental Rights in Pakistan: The case of Zaheer-ud-din v. The State and its impact on the fundamental right to freedom of religion’, Centre for Islamic and Middle Eastern Law website. (<http://www.soas.ac.uk/Centres/IslamicLaw/YB1Zaheer-ud-din.html> – Accessed 15 September 2005)
4. ‘Part XII – Miscellaneous. Chapter 5. Interpretation—Article 260(3)’, The Persecution website. (<http://www.thepersecution.org/50years/constatus.html> – Accessed 16 February 2005)
5. Government of Pakistan 1964, *ACT III of 1986: Criminal Law (Amendment) Act, 198*, The Persecution website. (<http://www.thepersecution.org/50years/paklaw.html> – Accessed 31 January 2005)
6. Centre for Reproduction Rights 2004, ‘Chapter 4: Pakistan’, in *Women of the World: Laws and Policies Affecting Their Reproductive Lives*, Centre for Reproduction

Rights website. (http://www.crlp.org/pdf/pdf_wowsa_pakistan.pdf – Accessed 17 February 2005)

7. 'Pakistan, Islamic Republic of' Undated, Emory Law School website. (<http://www.law.emory.edu/IFL/legal/pakistan.htm> – Accessed 16 February 2005)