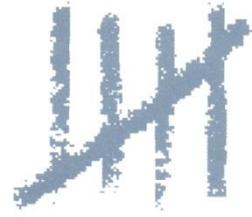


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BAR HUMAN RIGHTS
COMMITTEE OF
ENGLAND AND WALES

FORCED CONVERSIONS AND FORCED MARRIAGES IN PAKISTAN

Legal briefing on behalf of the Bar Human Rights Committee of
England and Wales

Following a visit to Pakistan

March 2013

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INTRODUCTION

1. The Bar Human Rights Committee of England and Wales ('BHRC') is the international human rights arm of the Bar of England and Wales. It is an independent body concerned with protecting the rights of advocates, judges and human rights defenders around the world. The Committee is concerned with defending the rule of law and internationally recognised legal standards relating to human rights and the right to a fair trial. The remit of BHRC extends to all countries of the world, apart from its own jurisdiction of England & Wales. This reflects the Committee's need to maintain its role as an independent but legally qualified observer, critic and advisor, with internationally accepted rule of law principles at the heart of its agenda.
2. The BHRC's objectives include upholding the rule of law and internationally recognised human rights norms and standards, and supporting practicing lawyers, judges and human rights activists. To achieve its objectives, the BHRC conducts trial observations, capacity building training, fact-finding investigations, monitors human rights abuses, provides legal resources and conducts strategic litigation.
3. In carrying out this work, the BHRC has secured a reputation for legal expertise in the protection of human rights, and notably the right to a fair trial. The BHRC's reports and written submissions provide valuable tools to legal practitioners around the world and are read widely by policy makers within national and international bodies, thereby assisting in the development of the law.
4. From 2nd February - 14th February 2013 Zimran Samuel, a member of the Executive Committee of the BHRC, undertook a visit to Pakistan to increase the discourse amongst lawmakers, NGO's, academics, human rights activists and parliamentarians in relation to the issue of forced conversions of minorities in Pakistan.

ACKNOWLEDGMENTS

5. The BHRC would like to thank those who supported this project and gave up their time to discuss the issues contained within this report. Most notably: The Foreign and Commonwealth Office, the Bar Council of England and Wales, Mrs. Asma Jahangir (Former United Nation's Special Rapporteur on Religious Freedom), Mrs. Zohra Yusuf (Chair of the Human Rights Commission of Pakistan), Ms. Hina Jilani (Human Rights Commission of Pakistan), Dr. Paul Bhatti (Federal Minister for National Harmony,

Pakistan), Mrs. Asiya Nasir (Member of National Assembly, Pakistan), Mr. Abdul Khaliq (Deputy Inspector General of Police, Sindh), Mr. Ehsan Sadiq (Deputy Inspector General, Punjab), Bishop Michael Nazir Ali (former Bishop of Rochester), Mr. Peter Jacob (National Justice and Peace Commission of Pakistan), Mr. Saleem Khursheed Khokhar (Member of the Sindh Provincial Assembly and Chair of the Standing Committee on Minority Affairs), Mr. Tahir Naveed Chaudhry (Member of Provincial Assembly), Mrs. Romana Bashir (Peace and Development Foundation) and Ms. Tahira Abdullah.

THE ISSUES OF CONCERN

6. The BHRC would like to bring more attention to the terrible situation many young Christian and Hindu girls have to face when they are kidnapped, forced to 'convert' to Islam and cannot be traced by their families. Cases involving alleged forced conversions predominately emanate from the Punjab and Sindh provinces and can be correlated to gender based violence.² It is reported that Hindu women belonging to lower castes are the most vulnerable and considered 'sexually available' by men of some Muslim dominated communities. During Friday sermons at mosques in some areas of Sindh, jihad is often declared against Hindus. Muslims are exhorted to convert Hindu women to Islam by marrying them.³
7. Whilst it is accepted that there are undoubtedly genuine religious conversions in Pakistan and instances where the use of overt force was not involved, incidents of forced conversion are reportedly on the rise. Amarnath Motumal, an advocate and council member of the Human Rights Commission of Pakistan (HRCP) estimates that as many as 20 to 25 girls from the Hindu community are abducted every month and converted forcibly.⁴
8. The United Nations High Commissioner for Refugees also reports that Hindu women and girls are subject to abductions for the purposes of forced conversion at the hands of Muslim men, particularly in Sindh.⁵ During the BHRC's visit, the Prime Minister's

² A question of Faith, A report on the status of religious minorities in Pakistan, Jinnah Institute Lead Researcher and Report Writer: Mariam Faruqi, consulting Editor: Ali Dayan Hasan, 2011

³ A question of Faith, A report on the status of religious minorities in Pakistan, Jinnah Institute Lead Researcher and Report Writer: Mariam Faruqi, consulting Editor: Ali Dayan Hasan, 2011

⁴ 25 Hindu girls abducted every month, The News International, Rabia Ali, March 30 2010. Available at : <http://www.thenews.com.pk/TodaysPrintDetail.aspx?ID=231616&Cat=4&dt=3/31/2010>

⁵ United Nations High Commissioner for Refugees (UNHCR) 14 May 2012, HCR/EG/P AK/12/02

Advisor on Human Rights Mr. Mustafa Nawaz Khokhar conceded that such incidents are undoubtedly a real problem in parts of Pakistan and are of a growing concern.⁶

9. The following two cases illustrate the issue in the Sindh province. In 2011 Ameena Ahmed was abducted from Karachi by a group of young men who offered her ice cream and a ride in their car. She was dragged into a larger van and driven to an area she did not know. She was later converted to Islam after being asked to recite some verses in front of a cleric. To date she has still not been reunited with her family.⁷
10. In 2012 Manisha Kumari, a 14-year-old Hindu girl, was allegedly kidnapped from Jacobabad in Pakistan's southern Sindh province and forced to convert to Islam and marry a Muslim man.⁸ Earlier in 2012 Rinkle Kumari, a 19-year-old Pakistani student, Dr. Lata Kumari, and Asha Kumari, a Hindu working in a beauty parlor, were allegedly forced to convert from Hindu to Muslim. Their cases were appealed to the Supreme Court where the girls stated that they wanted to live with their new husbands. Their statements have been treated with a degree of caution by many of those concerned as well as human rights activists.⁹
11. Forced conversions are not a Sindh-specific issue alone and are not confined to any particular gender, faith or locality. The HRCP reports that forced conversions tend to have different dimension in Punjab, where often the justification was economic.¹⁰
12. In September 2012 a panel constituted by Pakistan's National Assembly recommended legislating on forced religious conversions. Their report held local police officers, tribal chiefs and politicians responsible for not helping minorities recover their kidnapped community members.¹¹

⁶ Interview of Mr. Mustafa Nawaz Khokhar, the Advisor to PM on Human Rights at the Ministry of Human Rights, 11th February 2013

⁷ Abducted and forced into a Muslim marriage, IRIN, UN Office for the Coordination of Humanitarian Affairs, 27 February 2012. Available at: <http://www.irinnews.org/report/94969/PAKISTAN-Abducted-and-forced-into-a-Muslim-marriage>

⁸ 'Abducted Pak Hindu girl forced to convert', Sun Aug 12 2012. Available at : <http://www.indianexpress.com/news/-abducted-pak-hindu-girl-forced-to-convert-987191>

⁹ 'Abducted Pak Hindu girl forced to convert', Sun Aug 12 2012. Available at : <http://www.indianexpress.com/news/-abducted-pak-hindu-girl-forced-to-convert-987191>

¹⁰ Working Group on Communities Vulnerable because of their Beliefs, Report of HRCP April 2011

¹¹ Protecting Minorities: NA panel suggests law on forced conversions, Express Tribune, Zahid Gishkori, September 28, 2012. Available at: <http://tribune.com.pk/story/443767/protecting-minorities-na-panel-suggests-law-on-forced-conversions/>

Courtroom Intimidation

13. In June 2010, the HRCP established the *Working Group on Communities Vulnerable because of their Beliefs*. The aim of the Working Group was to highlight the challenges and discrimination faced by minorities across Pakistan and to suggest appropriate responses. The members of the Working Group raised grave concerns in respect of forced conversions and emphasised that forced conversions of minors to any faith should be made a criminal offence.
14. Members of the Working Group were concerned that the courts that were asked to adjudicate on such matters invariably came under immense public pressure in the form of courtrooms packed with slogan-chanting crowds.
15. The BHRC notes with concern that in many cases when a girl is recovered from her captors and taken to a court to verify that she has converted of her own free will, the courtroom is packed full of people; there is often gun firing outside the court building to celebrate the 'conversion' to Islam. Judges and lawyers acting in such cases are also put under huge public pressure. It is under this climate that young girls are asked to attest whether they have truly converted to Islam.
16. The Working Group suggested the formation of an authority by the government that could vouch for the voluntary nature of conversions. They said that any person who wanted to convert should appear before the authority in a secure environment. The authority should have the powers to protect the person in question and prosecute the accused if coercion is alleged. It was suggested that senior judges and individuals with unblemished credentials should be nominated to the authority.
17. Another alternative which has been tested in some cases is a mechanism for the victim to see the judge in chambers rather than the courtroom. Such alternatives should be subject to consideration. By virtue of the United Nations Basic Principles on the Role of Lawyers (adopted in 1990) and the United Nations Basic Principles on the Independence of the judiciary (adopted in 1985), Pakistan has a duty to ensure that lawyers and judges are able to perform all of their professional functions without intimidation, pressure, threats or interferences.

Lack of Family Law Governing Matrimonial Affairs for Hindus

18. One of the difficulties members of minority communities in Pakistan face (including the Hindu, Sikh and Baha'i communities) is discrimination arising from the absence of a mechanism for the registration of their marriages. Often this means that married couples from several minority groups do not have any official marriage certificate showing that they are married. This can result in several practical problems such as acquisition of passports by married women. The current procedure requires married couples to make individual petitions to the courts in order for their marriages to be registered and recognised.
19. The absence of a satisfactory mechanism for the registration of marriages also has implications in relation to forced conversions and forced marriages. The inferior status given to Hindu marriages means that a marriage to a Muslim following a 'conversion' is given priority. Women who have been allegedly forced to convert find themselves unable to prove that they have already been married under another religious ceremony. The BHRC urges the Government of Pakistan to introduce a family law for marriages within the Hindu and other religious minority communities to be registered and recognised.

Underage marriages

20. Under the 1961 Pakistan Muslim Family Law Ordinance, the legal age for marriage is 16 for girls and 18 for boys. Furthermore, article 16 (2) of the Universal Declaration of Human Rights 1948 stipulates that '*Marriage shall be entered into only with the free and full consent of intending spouses*'.
21. The BHRC respectfully submits that even in cases of genuine conversion, underage marriages remain a matter of concern. The police is required to investigate the ages of those entering a marriage upon the complaint of a parent. In some cases the girl in question is not older than 12 or 13 years old.¹² According to reports,¹³ however, law enforcement authorities are generally reluctant to register or investigate allegations of abduction, forced conversion and forced marriage. In 2005, a 13 year old Hindu girl was allegedly converted to Islam in Mirpurkhas, Sindh. The court validated the

¹² Working Group on Communities Vulnerable because of their Beliefs, Report of HRC April 2011

¹³ Life on the Margins: A study on the minority women in Pakistan, Jennifer Jag Jivan, Peter Jacob, National Justice and Peace Commission 2012, page 61

marriage on a statement of consent. The police refused to investigate the circumstances of the alleged conversion or meet with the girl's parents.¹⁴

Safe House Periods to Assess Whether the Conversion is Legitimate

22. Amongst the safeguards tabled during the visit to Pakistan, was the proposal that girls allegedly forced to convert be taken to a safe-house or refuge for a period of time so that they may reflect on the decision away from an intimidating setting.¹⁵ This issue was discussed with Mr. Saleem Khursheed Khokhar (Member of the Sindh Provincial Assembly and Chair of the Standing Committee on Minority Affairs) who has long advocated for this approach. He recently proposed

*If it is suggested that a young girl has been forced to change her religion, then the court should be open to the idea of sending her to a safe house for 21 days so that she can rethink her decision without being pressured from the outside.*¹⁶

23. The BHRC agrees that serious consideration should be given to alleviating the pressure and intimidation faced by girls who are allegedly forced to convert. Discussions with Mrs Hina Jilani of the HRCP stressed the importance of safe-houses or shelters to protect the dignity and independence of victims rather than simply being used as a further mechanism of control over a young victim.

Police Investigations and Training

24. It has been widely reported that law enforcement authorities are generally reluctant to register or investigate allegations of forced conversion.¹⁷ Following discussions with several senior members of the police in Sindh and Punjab, it is noted that training for officers relating to the nuances and sensitivities of forced conversion cases is much needed and would be welcomed by members of the police force.¹⁸

25. Any training implemented should have regard to international standards in relation to the protection of minorities as well as domestic legislation. Such training should

¹⁴ Life on the Margins: A study on the minority women in Pakistan, Jennifer Jag Jivan, Peter Jacob, National Justice and Peace Commission 2012, page 61

¹⁵ Interview with Dr. Paul Bhatti (Federal Minister for National Harmony), February 2013

¹⁶ Lawmaker submits recommendations on legislation for forced conversions, The Tribune, Published: October 11, 2012

¹⁷ Life on the Margins: A study on the minority women in Pakistan, Jennifer Jag Jivan, Peter Jacob, National Justice and Peace Commission 2012, page 61

¹⁸ Discussions with Abdul Khalique (Deputy Inspector General of Police, Sindh), February 2013.

include an analysis of the practical issues arising from forced conversions and other major issues affecting minorities such as Pakistan's blasphemy law.

26. Police training would be particularly useful in order to contextualise the problem of forced conversions and its implications, identify procedural gaps, and emphasise the crucial role of the police in these cases. Abductions of minority girls, even when not for the purpose of forced conversions, exacerbate the feelings of isolation and intimidation felt by marginalised communities. During consultations with the senior police officials in Punjab, Deputy Inspector General Mr. Ehsan Sadiq stated

If the police fail to give equal protection to citizens, it not only loses its own legitimacy it further alienates the marginalised groups from the state. So even a single case, which may be just another case in police routine work, can have phenomenal impact on perceptions of vulnerable groups.¹⁹

27. Training of police officials is also required so that existing investigations into the abduction of girls from the religious minority communities can be more effective. Steps should be taken to ensure that the kidnappers do not have supporters and sympathisers within the police. Given the young ages of some of the girls reportedly abducted for the purpose of marriage, the BHRC respectfully suggests that the police investigate the ages of those entering a marriage upon the complaint of a parent.

School syllabus

28. All discussions held during the visit to Pakistan demonstrated that there is evidence linking intolerance towards religious minorities to school textbooks, some of which teach that members of religious minorities are enemies of Islam or are inferior. The school curriculum therefore directly discriminates against minorities.
29. Following the 18th amendment to the Constitution of Pakistan in April 2010, powers in relation to the school syllabus have been devolved to the provincial authorities. In June 2012, the United Nations High Commissioner for Human Rights, Navi Pillay, stressed during her visit to Islamabad that Pakistan's commitment to universal primary education must be accompanied by a reform of the school curricula to better promote tolerance with regard to religious minorities. Navi Pillay stated,

¹⁹ Discussions with Mr Ehsan Sadiq (Deputy Inspector General of Police, Punjab), February 2013.

The Government has informed me that it is undertaking a study to identify elements in the school curricula which incite discrimination against particular religious groups and minorities.....²⁰

30. The BHRC respectfully agrees with the views expressed by the United Nations High Commissioner and supports the call for faith-based hatred to be removed from the school curriculum.

Freedom of speech and freedom of religion

31. The Constitution of Pakistan guarantees freedom of speech to the citizens of Pakistan although this is subject to restrictions in the interest of Islam. Article 19 of the Constitution states,

Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, [commission of] or incitement to an offence.²¹

32. As a party to the International Covenant on the Elimination of all forms of Racial Discrimination ('ICERD') Pakistan is under an obligation to protect its subjects from racial hatred. As a party to the International Covenant on Civil and Political Rights ('ICCPR') Pakistan is under an obligation to uphold the right to free expression and the right to freedom of religion.

33. The Government of Pakistan must ensure security of life and property of all citizens, irrespective of their religious belief. It must also ensure that there is no discrimination against the personal religious affairs of minority groups. By allowing perpetrators of forced conversions to act with impunity, Pakistan is failing to uphold its positive obligations under the ICCPR.

²⁰ United Nations News Centre, 7 June 2012. Available at: <http://www.un.org/apps/news/story.asp?NewsID=42171#.UTNYyY5iGLI>]

²¹ Article 19 of the Constitution of Pakistan, 1973

Blasphemy law

34. The BHRC continues to express concern in respect of the blasphemy law in Pakistan. In short, a widespread climate of intimidation has developed in Pakistan such that persons involved in the issue of blasphemy in any way, including the legal professionals who prosecute, defend and preside over such cases, are forced to either flee the country or to live in Pakistan in a permanent state of fear for their own lives and the lives of their families.
35. Most recently, on March 9 2013, over 160 homes in the Christian community of Joseph Town in Lahore were ransacked and set on fire by an angry mob following an accusation of blasphemy against a local Christian Sawan Masih.²²
36. The BHRC urges the Government of Pakistan to carefully scrutinise the operation of the blasphemy laws and to undertake a detailed assessment of the need for their abolition or reform. The BHRC respectfully urges the Government of Pakistan to take urgent steps to protect those at risk of vigilante violence due to blasphemy issues.

RECOMMENDATIONS

37. The BHRC recommends that the Government of Pakistan fully investigate and fairly prosecute all persons involved in abductions, forced marriages and forced conversions of girls from minority communities. Furthermore, the BHRC respectfully suggests that the Government of Pakistan undertake a detailed assessment of the need for concrete legislative changes to stop the practice of forced conversions of minorities. In doing so the Government should give consideration to the importance of conducting hearings in an environment in which is not hostile to the alleged victims or their lawyers, whether that be before a specialist judge in chambers or through other safeguarding mechanisms.
38. The BHRC calls upon the Government of Pakistan:
 - to remove from the syllabus at schools literature which endorses discrimination of minorities or incites violence.

²² The Joseph Town tragedy, The Lahore Times, Staff reporter, March 10 2013

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- to introduce a family law for marriages within Hindu and other religious communities to be registered and recognised.
- to take urgent steps to protect those at risk of vigilante violence following an alleged conversion.
- to carefully assess the need for police officers in Sindh and Punjab to receive specific training to deal with the sensitivities and concerns surrounding forced conversions. Such training should include an analysis of the legal and practical issues arising from forced conversions and Pakistan's blasphemy law.

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