Max Planck Institute
for Social Anthropology
Department 'Law & Anthropology'

The Risk of Persecution Faced by Women in India Who Committed Adultery and Who Have Illegitimate Children as a Result

Question(s) at stake:

Whether the appellant, as a woman who had been accused of committing adultery, would face a real risk of persecution under the Refugee Convention if returned to India and whether internal relocation would be possible for her and her child.

Outcome of the ruling:

The Immigration Appeal Tribunal determined that women accused of adultery in India can constitute a Particular Social Group (PSG) within the meaning of the Refugee Convention and may be at risk of persecution on those grounds.

More generally, the Tribunal found that women in India who face accusations of adultery and have children born out of wedlock face a significant risk of persecution or serious harm, including severe discrimination, ostracism, gender-based violence, and honour killings. They are unlikely to have access to sufficient protection from the authorities. However, whether internal relocation would be unduly harsh depends on the unique circumstances of each case.

In light of the applicable Country Guidance (GC), the appeal was allowed. The appellant, who lacked education and family support, would suffer undue hardship if forced to relocate internally, likely leading to destitution and resort to prostitution as a means of survival.

Topic(s):

- Immigration and Asylum

Keywords:

- Gender based persecution
- Membership of a particular social group
- Refugee status
- Right to asylum
- Well-founded fear
- Forced marriage
- Domestic violence

Tag(s):

- Customary Law
- Adultery
- Honour killings

Author(s):

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Country:

United Kingdom

Official citation:

BK (Risk, Adultery, PSG) India CG [2002] UKIAT 03387

Link to the decision:

https://tribunalsdecisions.service.gov.uk/utiac/2002-ukiat-3387

ECLI:

No ECLI number / ECLI number unknown

Date:

02 August 2002

Jurisdiction / Court / Chamber:

Immigration Appeal Tribunal

Remedy / Procedural stage:

Appeal against the Immigration Adjudicator’s decision

Previous stages:

- On 27 August 1997, an Immigration Adjudicator dismissed BK’s appeal against the decision of the Home Office (HO).
- On 27 January 1997, the HO refused BK’s application for asylum and issued directions for her removal.

No official citations of the previous stages are available.

Subsequent stages:

No information found.

Branches / Areas of law:

Administrative law; Asylum law

Facts:

The appellant, BK, hailed from a rural area of Punjab, India, and arrived in the United Kingdom on 20 April 1991 on a six-month entry clearance as a visitor. She applied for asylum on 8 August 1991 on the basis that her husband, as a member of Babbar Khalsa, was considered a terrorist by the Indian police. Unable to find her husband, the police harassed BK and threatened to arrest her in his stead. BK’s sister, who lived in the UK, suggested that the appellant visit her. BK’s daughter remained in India.

On 27 January 1997, the respondent rejected BK’s application and served directions for her removal on the basis that her account of events was not credible. BK’s appeal against the Home Office’s decision was heard by an adjudicator on 27 August 1997.

Later developments in BK's circumstances formed the basis of her updated asylum claim. Namely, in December 1994, she met a married man, PS, with whom she started a relationship. She gave birth to their son in May 1996.

Two months later, PS terminated his relationship with BK because he did not wish to divorce his wife. However, PS remained in regular contact with their son and paid maintenance. The new basis of the appellant's asylum application was that she could not return to India because she feared that her husband would kill her and her son. BK claimed that her husband had threatened her daughter, who lived in India, to stop all contact with her. As the mother of an illegitimate child, she would be ostracized and persecuted by her community and the police would not be able to protect her. Additionally, PS expressed his intention to seek a residence order for BK's son to prevent him from being returned to India with BK if her asylum application failed.

However, BK's appeal was dismissed by the Immigration Adjudicator, who did not find the appellant to be a credible witness regarding her alleged risk of harm as a result of her husband's political involvement with a terrorist group.

The Adjudicator reasoned that if her claims were true, it would be legitimate for the Indian authorities to investigate any suspected acts of terrorism. The Adjudicator accepted that BK had had an extramarital affair with a married man in the UK, resulting in the birth of her son. However, it was argued that there was no prospect of a family life between BK and her son's father. The discrimination BK would face on return to India because of her child born out of wedlock would not amount to persecution. Alternatively, any harm sustained would not be for a Refugee Convention reason because it could not be said that BK belonged to a Particular Social Group (PSG) within the remit of the Convention.

BK appealed against the Adjudicator's decision, and the hearing was adjourned pending the House of Lords decision in *Shah and Islam [1999]* concerning the formation of a PSG.

Ruling:

The ruling of the Immigration Appeal Tribunal (IAT) can be divided into two main parts. The first part is concerned with providing Country Guidance on the risk of persecution faced by women who have committed adultery and have illegitimate children in India. The second part deals with assessing the appeal of BK.

Country Guidance:

1. “Women who committed adultery in India” can form a PSG within the meaning of the Refugee Convention. (para. 13)

   The IAT reached this conclusion by analogy with the House of Lords decision in *Shah and Islam* [1999], in which evidence of community ostracism and institutional discrimination against women was one of the key factors contributing to the recognition of “women in Pakistan” as forming a PSG for the purposes of the Refugee Convention. (para. 10)

2. Women with children born out of wedlock are at considerable risk of serious harm and community ostracism, especially in rural communities where traditional socio-cultural and religious values are most entrenched. (para. 12)

3. The enforcement of legislation against gender-based violence remained weak. Cases of violence against women, including domestic abuse, sexual harassment, as well as dowry-related violence and honour killings, have increased in recent years. Domestic violence, in particular, was an issue “cutting across all castes, classes, religions and education levels”. (para. 14)

Determination of the appellant’s case

The appeal was allowed and BK and her son were granted refugee status in the UK. The Tribunal held that BK was at considerable risk of violence at the hands of her husband, his family, and her own family. She and her son would face severe ostracism in their home area, a rural part of Punjab. With little education and no family support, internal relocation would be unduly harsh for the appellant because it would lead to destitution and prostitution as the only means of survival. (paras. 12–16)

Main quotations on cultural or religious diversity:

“That said, the Tribunal accepts that there are considerable risks for the Appellant were she to return to India with her son. She is ill-educated and from a rural background where traditional values are at their strongest. The Tribunal has very little doubt that not only would the Appellant be ostracised by her husband’s family but in all likelihood by her own family as well. In the light of the evidence about the perceived role of women and their relationship to their husbands, the Tribunal is satisfied that there is a real risk that she could face reprisals from her husband. […] In our view, the combination of the factors we have referred to means that the Appellant would be at risk of treatment which could properly be described as persecution”. (para. 12)

“[O]n balance we have come to the view that, looking at the Appellant’s background in rural India in the light of the social, cultural and religious mores, women in the Appellant’s circumstances are identifiable as a particular social group”. (para. 13)

“CIPU report April 2001 […] at paragraph 5.3.9 it is reported that violence against women has increased in recent years. Wife-beating is a problem cutting across all castes, classes, religions and education levels. There is domestic violence in the context of dowry disputes”. (para. 14)

Regarding the expert opinion before the Tribunal:

“The report deals with the situation facing single adult women in India and in particular the problems arising from divorce and separation. The general cultural attitude is that a women [sic] belongs to her husband once married and this proprietorial relationship is offended by a man other than the husband having sexual relations with a married woman. […] [Dr Sen] says that it is safe to conclude that a single adult female in India would have great difficulty in supporting herself financially and in [the] absence of familial support may be destined to destitution or prostitution. So far as the willingness or ability of the police to protect women against violence, it is her view that the Indian State appears to succumb to communal pressures and to privileged religious interests.

It is her view that Mrs Kaur will not only be subjected to allegations of adultery but there will be a factual basis to those claims. There will be significant social opprobrium if not absolute ostracism. She will be the subject of hostility even persecution and may well be socially outcast by her peers. […] The likelihood is that she would not be accepted back into her community and would probably be rejected by her family. Were she and her son to be forcibly returned to India, they would be at risk of violence from her husband or his family. This would be due to their interpretation of her behaviour as bringing shame and dishonour on the family". (para. 7)

"In the opinion from Professor Jeffrey […] [t]hroughout south Asia, the honour of a family is said to reside in the behaviour of its women and those who fail to meet these standards run the risk of some form of punishment such as marital violence. Women who commit adultery are extremely vulnerable to being murdered by their husbands who feel that they have been dishonoured by their wives' behaviour. […] [H]onour killings are still common for women in the Appellant's situation and there are no grounds for supposing that the police would be able or willing to protect her adequately". (para. 8)

"[M]any "disgraced" and rejected women and their children are forced to live in total destitution, vulnerable to economic and sexual exploitation". (para. 9)

Main legal texts quoted in the decision:

International law

- Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention)

UK domestic law

- Human Rights Act 1998

Cases cited in the decision:

Particular Social Group:

- *Islam and Shah* [1999] UKHL 20

Cases cited in the commentary:

- *AR and NH (lesbians) India (CG)* [2016] UKUT 66
- *MD (Women) Ivory Coast v SSHD CG [2010]* UKUT 215
- *SA (Divorced woman – illegitimate child) Bangladesh CG [2011]* UKUT 254
- *SL (Unmarried mother with mixed race child) Azerbaijan CG [2013]* UKUT 46
- *SM and MH (lone women - ostracism) Pakistan CG [2016]* UKUT 67

Commentary

The Risk of Persecution Faced by Women in India Who Committed Adultery and Who Have Illegitimate Children as a Result

Country Guidance (CG) cases are specific to the UK immigration system. They involve the evaluation of a wide array of background information and expert evidence related to a country's general political condition, cultural norms, and social attitudes towards specific groups seeking asylum in the UK. CG decisions have a binding effect on subsequent cases involving similar issues and factual evidence (Clayton and Firth 2018: 389; Thomas 2008).

BK's case is one of the first in what is now a growing body of judicial decisions on the consequences faced by individuals who transgress the social, cultural, and religious norms of their communities. Examples of similar case law relating specifically to women with children born out of wedlock include *MD (Women) Ivory Coast v SSHD CG [2010]* (see CUREDI041UK014 for a full analysis), *SA (Divorced woman – illegitimate child) Bangladesh CG [2011]* (see CUREDI041UK012), *SL (Unmarried mother with mixed race child) Azerbaijan CG [2013]* (see CUREDI041UK011) and *SM and MH (lone women - ostracism) Pakistan CG [2016]* (see CUREDI041UK010). What these cases have in common is a recognition of the severe discrimination and community-based ostracism women face, coupled with institutionalized discrimination against them and the state's failure to offer sufficient protection.

In BK's case, the Immigration Appeal Tribunal explicitly identified three primary sources of her apprehensions, whose cumulative effect posed a serious risk of harm to both her and her son upon return to India (para. 7):

1. BK's husband, his relatives, and her own family, who were highly likely to pursue an honour killing in an attempt to restore the family honour;
2. The wider community, who would reject and ostracize both BK and her son;
3. The inadequacy of the protection against gender-based violence offered to BK by the police and other state authorities.

Consequently, the Tribunal held that women from rural India, such as BK, who have committed adultery and have a child born out of wedlock, may constitute a Particular Social Group (PSG) within the meaning of the Refugee Convention (Christensen 2011; Querton 2012). The AIT drew on analogies to *Islam and Shah*, which held that "women in Pakistan" form a PSG. In that decision, the House of Lords emphasized that "[t]he distinguishing feature of the present case is the evidence of institutionalised discrimination against women by the police, the courts and the legal system, the central organs of the State" (para. 10). Using cultural and socio-legal evidence, the Tribunal was satisfied that the consequences for Indian women in need of protection from gender-based violence were similar to those identified in Pakistan. Notably, the expert evidence provided by Professor Jeffrey was recognized by the AIT as particularly helpful because of her recent 18-month period of research in India. Her research findings corroborated other available evidence presented to the Tribunal, highlighting the significant rise in "wife-beating" despite existing legislation criminalizing gender-based violence (para. 14).

Nearly two decades later, the UK Home Office's 2018 Country Policy and Information Notes (CPIN) on India continues to document that practices such as forced and child marriages, dowry-related violence, domestic abuse, unsafe gender-selective abortions, honour crimes, rape, sexual harassment, acid attacks, forced sterilizations, and accusations of witchcraft are widespread across India,

despite legislation prohibiting them. One example of such legislation is the Protection of Women from Domestic Violence Act (2005). It established a protection mechanism for women, including interim protection orders and the requirement for compensation and maintenance, as well as protection not only from an abusive spouse but also from the spouse's family. Nonetheless, women's access to the legal system is found to be undermined by "entrenched patriarchal attitudes" within the community at large, as well as among judicial actors and other state authorities (para. 2.5.6).

With regard to internal relocation, the AIT took a human rights approach in concluding that such a measure would be unduly harsh on the appellant and her son. With little education, rejected by her family, and ostracized by her community in India, BK would be forced into a life of destitution. Prostitution would likely be her only option for survival. This finding was confirmed in the more recent CG case of AR *and NH (lesbians) India (CG)* [2016], in which the Upper Tribunal found that single women and women with children without family support would find it difficult to relocate within India. This is because, for example, they would be asked to provide details of their father's or husband's name to access accommodation, services, and employment.

Additionally, the Tribunal considered that removal to India would not be in BK's son's best interests given that he was six years old at the time of the hearing (Pobjoy 2015). In the UK, he started school and developed a close relationship with his father, who expressed to the Tribunal his intention to bring proceedings to prevent his son from being removed to India with his mother, if her removal were to take place.

Although pronounced two decades ago, the BK's CG case remains an authoritative precedent on the conditions encountered in India by women with children born out of wedlock who have committed adultery. The decision continues to influence similar subsequent cases, as the most recent Home Office CPIN on India (2018) continues to be based on the guidance set out in it.

Literature related to the main issue(s) at stake:

Guidelines and reports cited in the commentary:

- Home Office 'Country Policy and Information Notes India: Women Fearing Gender-Based Violence' (Home Office, 2018), available at < www.gov.uk/government/publications/india-country-policy-and-information-notes> accessed 26 May 2021.
- UNHCR. 2002 . *"Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1a(2) of the 1951 Convention and/or Its 1967 Protocol Relating to the Status of Refugees (hcr/Gip/02/01)".* Geneva: UNCHR, available at <https://www.unhcr.org/media/guidelines-international-protection-no-1-gender-related-persecution-within-context-article-1a> accessed 20 March 2024.
- UNHCR. 2002. "*Guidelines on International Protection No. 2: 'Membership of a Particular Social Group' Within the Context of Article 1a(2) of the 1951 Convention and/or Its 1967 Protocol Relating to the Status of Refugees (hcr/Gip/02/02)*". Geneva: UNHCR, available at <https://www.unhcr.org/media/guidelines-international-protection-no-2-membership-particular-social-group-within-context> accessed 21 March 2024.

Academic literature cited in the template commentary:

- Clayton, Gina and Georgina Firth. 2018. *Immigration and Asylum Law*. Oxford: Oxford University Press.
- Dowd, Rebecca. 2011. "Dissecting Discrimination in Refugee Law: An Analysis of its Meaning and its Cumulative Effect". *International Journal of Refugee Law*, 23(1): 28–53.
- Pobjoy, Jason M. 2015. "The Best Interests of the Child Principle as an Independent Source of International Protection". *International & Comparative Law Quarterly* 64 (2): 327–363.
- Querton, Christel. 2012. *The Interpretation of the Convention Ground of "Membership of a Particular Social Group" in the Context of Gender-related Claims for Asylum: A critical analysis of the Tribunal's approach in the UK.*

(Refugee Law Initiative Working Paper 3), available at <https://sas-space.sas.ac.uk/4690/> accessed 7 July 2020.

- Thomas, Robert. 2008. “Consistency in Asylum Adjudication: Country Guidance and the Asylum Process in the United Kingdom”. *International Journal of Refugee Law* 20(4): 489-532.

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