

All-Party Parliamentary Group for International Freedom of Religion or Belief

Pakistani evidence hearings submission (Paul Nettleship)

I have been asked to comment on 3 matters:

- i. The definition of real risk of persecution for the purposes of the Refugee Convention
- ii. The definition of and distinction between discrimination and persecution
- iii. The country guidance case of AK and SK (Christians: risk) Pakistan CG [2014] UKUT 00569 (IAC) in terms of why it was reached and any potential limitations it may have

1. The Evaluation of Asylum Claims (meaning of real risk of persecution)

1. The threshold for establishing a future risk of prohibited harm is a low one. It is a test of real risk rather than likelihood. It is expressed as 'a reasonable chance', 'substantial grounds for thinking' or 'a serious possibility': *Fernandez v Government of Singapore* [1971] 1 WLR 987 HL, *R v Home Secretary Ex parte Sivakumaran* [1988] 958 at 994F-H-995 A-B; 996A-H-997A-B and 100F-G and *Bagdanavicius v Secretary of State for the Home Department* [2005] UKHL 38, [2005] 2 AC 668. In assessing future events, the Court is making an evaluation and is concerned with whether there is a real as opposed to a fanciful risk that they will happen: *MH (Iraq) v Secretary of State for the Home Department* [2007] EWCA 853.

2. The Court of Appeal in *Karanakaran v SSHD* [2000] 3 All ER 449, gave authoritative guidance in respect of the assessment of past facts which would include any account of past persecution including torture or other ill-treatment as follows (at 468d): "There may be circumstances in which a decision-maker must take into account the possibility that alleged past events occurred even though it finds that these events probably did not occur. The reason for this is that the ultimate question is whether the applicant [in an asylum case] has a real substantial basis for his fear of future persecution. The decision-maker must not foreclose reasonable speculation about chances of the future hypothetical event occurring." And at 469: "In the present public law context, where this country's compliance with an international Convention is in issue, the decision maker is ... not constrained by the rules of evidence that have been adopted in civil litigation, and is bound to take into account all material considerations when making its assessment about the future.

This approach does not entail the decision-maker ... purporting to find 'proved' facts, whether past or present, about which it is not satisfied on the balance of probabilities. What it does mean, on the other hand, is that it must not exclude any matters from its consideration when it is assessing the future unless it feels that it can safely discard them because it has no real doubt that they did not in fact occur ..."

3. Brooke LJ, relying upon a number of Australian decisions distinguished between ordinary civil litigation where "the court has to decide where, on the balance of probabilities, where the truth lies" and administrative decision making in the asylum context where "even if uncertain as to whether an alleged event occurred, it may be necessary to take account the possibility that the event took place in deciding the ultimate question".

4. In *Othman v United Kingdom* [2012] ECHR 56 the European Court has provided further clarification of the approach which ought to be taken to past allegations of torture where those allegations are made against states with a history of practicing torture (see paras 273-280). The Court in *Othman* was considering the question in the context of Article 6 ECHR and the admission of evidence obtained by torture, but its observations on the appropriate standard of proof where allegations are made against officials in states where complicity in the practices of torture is widespread apply with equal force in the context of asylum and Article 3 determinations. In those circumstances, the Court concluded that it would be inappropriate to impose a burden of proof higher than real risk.

5. Given the gravity of the issues at stake and the risk of wrong decisions, decision makers must always apply heightened scrutiny and rigorous examination to its consideration of asylum cases: *Bugdaycay* [1987] AC 514 and (subject to the closed material procedure) require the highest standards of procedural fairness: *Thirukumar v Secretary of State for the Home Department* [1989] Imm AR 414. 6. An account of a past experience of torture or ill-treatment, if accepted, is likely to be decisive, or at least highly material, to the question of whether the applicant has a well-founded fear of persecution and is at risk of prohibited harm under the Refugee or Human Rights Convention: Article 4(4) of Council Directive 2004/83/EC and Immigration Rules 339K which create a presumption of future risk.

2. Discrimination/persecution dichotomy

i. Discrimination

6. The assertion that a claim is based on acts of discrimination rather than persecution may stand in the way of establishing a claim under the Convention, but may be wholly misconceived.

7. However, protection from persecution based on discrimination is an important purpose of the Refugee Convention;

The relevance of the preambles [to the Refugee Convention] is twofold. First, they expressly show that a premise of the Convention was that all human beings shall enjoy fundamental rights and freedoms. Secondly, and more pertinently, they show that counteracting discrimination, which is referred to in the first preamble, was a fundamental purpose of the Convention. [Lord Steyn, Islam v Secretary of State for the Home Department, R v IAT ex parte Shah, (HL) [1999] INLR 144, [1999] Imm AR 283]

In my opinion, the concept of discrimination in matters affecting fundamental rights and freedoms is central to an understanding of the [Refugee] Convention [Lord Hoffman, Islam v Secretary of State for the Home Department, R v IAT ex parte Shah, (HL) [1999] INLR 144, [1999] Imm AR 283]

8. Definition of discrimination:

The Refugee Convention is concerned 'with persecution which is based on discrimination. And in the context of a human rights instrument, discrimination means making distinctions which principles of fundamental human rights regard as inconsistent with the right of every human being to equal treatment and respect.' [Lord Hoffman, Islam v Secretary of State for the Home Department, R v IAT ex parte Shah, (HL) [1999] INLR 144, [1999] Imm AR 283]

To discriminate is: to 'make a distinction in the treatment of different categories of people or things esp. unjustly or prejudicially against people on grounds of race, colour, sex, social status, age, etc.' [The New Shorter Oxford English Dictionary, Oxford University Press (1993)]

9. Discrimination (and discriminatory treatment) may:

- Amount to 'serious harm' within the meaning of the Refugee Convention;
- be the / a factor which turns 'harm' into 'serious harm' and a breach of human rights (for example - discriminatory access to police protection or education); and
- be a factor in failure of state protection in the Refugee Convention (thus the State may protect some groups in society and not others).

10. The state may discriminate in relation to a wide range of harm and all levels of human rights. For example:

- The State and its agents may themselves discriminate directly - e.g. through discriminatory laws and the application of laws in a manner which impacts disproportionately against certain groups or individuals.
- Non-state agents may carry out discriminatory activities or social / cultural / religious discriminatory norms may exist and, the State and its agents may support, be unwilling, or unable to take serious action to combat the discrimination.

11. Discrimination against apostates/those of a minority religion may include (but is not limited to):

- political rights - e.g. discrimination in relation to voting or being able to be involved in mainstream or grassroots politics or to be publicly involved;
- economic rights - e.g. there may be legal and or social / cultural restrictions on apostates/those of a minority religion taking paid employment or employment outside the home;
- professional - e.g. apostates/ those of a minority religion may be barred from certain types of employment or restricted in their ability to undertake them;
- education - e.g. apostates / those of a minority religion may be discriminated against in their access to education including basic literacy;

- marriage rights - e.g. apostates / those of a minority religion may not be free to choose their own partner due to legal and /or social / cultural / religious restrictions, or alternatively be divorced by operation of the law and disenfranchised;
- property rights - e.g. apostates / those of a minority religion may not be allowed to own or inherit property (or not equally);
- child custody rights - e.g. apostates (especially female apostates) / those of a minority religion may not be entitled to custody of their children on divorce;
- freedom of movement - e.g. apostates / those of a minority religion may be restricted in their freedom of movement including their ability to move outside the home, to travel or to travel alone; and
- equal protection of the law - e.g. violence may not be illegal or prosecuted or subject to evidential restraints, apostate's / those of a minority religion may find their evidence will not be considered equal to that of state officials/ members of majority religions

12. A discriminatory measure, in itself or cumulatively with others, may be 'serious harm' (and therefore persecution; see below) in some circumstances, for example:

- if the discrimination has consequences of a substantially prejudicial nature for the person concerned for example, serious restrictions on right to earn a livelihood, to practise or not practise the religion of their choice, restrictions on freedom of movement such as forced seclusion or lack of access to normally available education, legal, welfare and health provision; *and*

if the discriminatory measures, irrespective of how serious they are, lead the person concerned to feel apprehensive and insecure as regards their future existence;

ii. Persecution

13. To be recognised as a refugee an asylum applicant must fear a form of harm which constitutes 'persecution' within the meaning of the Refugee Convention.
14. The Refugee Convention contains no definition of persecution; guidance is given in the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status 1988, re-edited 1992 ('UNHCR Handbook') ¹, caselaw and by academic writers.
15. The term 'persecution' is linked to violations of human rights as set out in the international human rights instruments and international customary law:

Persecution is: 'the sustained or systemic violation of basic human rights demonstrative of a failure of state protection in relation to one of the core entitlements which has been recognised by the international community.' ²

'... comprehensive analysis requires the general notion of persecution to be related to developments within the broad field of human rights.' ³
16. It will be necessary to consider whether the fear is of persecution from an agent of the state (for example a police or army member) or a non-state agent (for example an opposition group) since this will affect the approach taken to deciding whether the feared treatment is 'persecution' within the meaning of the Refugee Convention ⁴.

State Agents

The term 'persecution' covers ill-treatment which is of sufficient seriousness.

Non-State Agents

The term 'persecution' under the Refugee Convention includes two factors:

¹ Paragraphs 51 - 60 and 65 *UNHCR Handbook*, Geneva (1992).

² Hathaway, J., *The Law of Refugee Status*, Butterworths Canada, (1991) page 114 (referred to in these guidelines as 'Hathaway'), see also Home Office Asylum Directorate Instructions Chapter 1, Paragraph 8.1.

³ Goodwin-Gill, G., *The Refugee in International Law, 2nd Edition*, Oxford University Press (1996).

⁴ Important UK cases on the meaning of persecution include:

R v IAT ex parte Jonah (QBD) [1985] Imm AR 7;
Gashi v Nikshiqi (IAT) [1997] INLR 96;
Horoath v SSHD (HL) [2000] 3 WLR 379;
Horoath v SSHD (CA) [2000] INLR 15, [2000] Imm AR 205;
Horoath v SSHD (IAT) [1999] INLR 7, [1999] Imm AR 121;
Faraj v SSHD (CA) [1999] INLR 451;
Demirkaya v SSHD (CA) [1999] INLR 441, [1999] Imm AR 498;
Ravichandran v IAT (CA) [1996] Imm AR 97;
Kagama v SSHD (CA) [1997] Imm AR 137.

1. serious harm or ill-treatment from non-state agents; and
 2. inability or unwillingness of the State to protect the victim from such harm or ill-treatment.⁵
17. Whether harm, including gender-specific harm, amounts to persecution should be assessed on the basis of internationally recognised human rights standards ⁶.

*"In our considered opinion, the term 'persecution' should be defined by reference to human rights standards. In this respect we agree with the academic commentators, in particular Goodwin-Gill and Hathaway, and we associate ourselves with the view expressed in [the IAT decision of] Gashi [1997] INLR 96] that decision-makers should look in particular at the preamble to the 1951 [Refugee] Convention."*⁷ [*Horvath v SSHD* (IAT) [1999] INLR 7, [1999] Imm AR 121]

18. Only 'serious harm' will constitute 'persecution' within the meaning of the Refugee Convention. Not all harm or violations of human rights standards will amount to 'serious harm'.

"The denial of human rights is not the same as persecution, which involves the infliction of serious harm." [*Islam v Secretary of State for the Home Department, R v IAT ex parte Shah*, (HL) [1999] INLR 144 ⁸, [1999] Imm AR 283]

'Persecution may involve physical or mental ill-treatment. Torture is such ill-treatment carried to extremes. But persecution, unlike torture, always involves a persistent course of conduct.... It involves an element of sustained or

⁵ *Horvath v SSHD* (HL) [2000] 3 WLR 379.

⁶ see also paragraphs 1.18 and section 2 above; for an earlier approach in UK caselaw see *R v IAT ex parte Jonah* (QBD) [1985] Imm AR 7: the term 'persecution' 'should be given its ordinary, dictionary definition' - the definition in the Shorter Oxford English Dictionary was 'to pursue, hunt, drive ... to pursue with malignancy or injurious action; exp. to oppress for holding a heretical opinion or belief'.

⁷ The Preamble to the Refugee Convention states, *inter alia*: "Considering that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination, Considering that the United Nations has, on various occasions, manifested its profound concern for refugees and endeavoured to assure refugees the widest possible exercise of these fundamental rights and freedoms".

⁸ see also *Horvath v SSHD* (IAT) [1999] INLR 7 at page 28E, 30E and *Horvath v SSHD* (HL) [2000] 3 WLR 379.

*systematic failure of protection towards the person or group*⁹ *the object of such persecution, as distinct from casual or random acts of violence inflicted on citizens at large.... an incident of torture of a person which is the sole incident affecting that person may amount to persecution if there are other incidents affecting a group*¹⁰ *of which that person is a member.'* [Faraj v SSHD (CA) [1999] INLR 451]

*'... what conduct may amount to persecution is a question of degree. At one end of the scale there may be arbitrary deprivation of life, torture and cruel, inhumane and degrading punishment or treatment. In such a case the conduct may be so extreme that one instance is sufficient. But less serious conduct may not amount to persecution unless it is persistent*¹¹. [Demirkaya v SSHD (CA) [1999] INLR 441, [1999] Imm AR 498]

- 19.** Hathaway's approach to the meaning of persecution, within the Refugee Convention, is frequently referred to. He states:

*Persecution is: 'the sustained or systemic violation of basic human rights demonstrative of a failure of state protection in relation to one of the core entitlements which has been recognised by the international community. The types of harm to be protected against include the breach of any right within the first category, a discriminatory or non-emergency abrogation of a right within the second category, or the failure to implement a right within the third category which is either discriminatory or not grounded in the absolute lack of resources'*¹²

⁹ Note - this is not specifically referring to a 'particular social group' within the meaning of the Refugee Convention.

¹⁰ see footnote 18.

¹¹ With regard to persistence of the harm see also *Ravichandran v IAT* (CA) [1996] Imm AR 97: 'Persecution must at least be persistent and serious ill-treatment without just cause by the state, or from which the state can provide protection but chooses not to do so.'

¹² Hathaway, J., page 114, see also Home Office Asylum Directorate Instructions Chapter 1, Paragraph 8.1.

20. Hathaway refers above to three levels of human rights and the situations in which their breach may constitute serious harm ¹³. The three levels of human rights are:

Level One Rights:

Rights stated in the Universal Declaration of Human Rights 1948 (UDHR) and the International Covenant on Civil and Political Rights 1966 (ICCPR) which countries may not derogate from even in times of compelling national emergency. They include:

- Freedom from arbitrary deprivation of life (Art 6 ICCPR);
- Freedom from torture, cruel, inhuman or degrading punishment or treatment (Art 7 ICCPR);
- Freedom from slavery and servitude (Art 8 ICCPR);
- freedom from imprisonment for inability to fulfil a contractual obligation (Art 11 ICCPR);
- protection from retroactive criminal prosecution (Art 15 ICCPR);
- right to be recognised as a person in law (Art 16 ICCPR); and
- freedom of thought, conscience and religion (Art 18 ICCPR).

According to Hathaway failure of the state of origin to ensure these 'first level' rights will, under any circumstances 'be tantamount to persecution' ¹⁴.

Level Two Rights:

Rights stated in the UDHR and in the ICCPR from which states may derogate during a state of emergency which has been officially proclaimed. These rights include:

- freedom from arbitrary arrest and / or detention (Art 9 ICCPR);

¹³ see Hathaway, pp 109 –112.

¹⁴ Hathaway at page 109.

- freedom from arbitrary arrest and/or detention (Art 9 ICCPR);
- right to equal protection for all (Art 26 ICCPR);
- rights, in criminal hearings, to a fair and public hearing and a presumption of innocence (Art 14 ICCPR);
- protection of family and privacy (Art 17 ICCPR);
- right to freedom of movement inside a country and to choice of residence (Art 12 ICCPR);
- freedom to leave and return to one's country of origin (Art 12 ICCPR);
- liberty of opinion, expression, assembly and association (Arts 19, 21, 22 ICCPR);
- right to form and join trade unions (Art 22 ICCPR);
- right and opportunity to take part in the conduct of public affairs, and vote in periodic and genuine elections (Art. 25 ICCPR); and
- right to have access to public employment without discrimination (Art 25 ICCPR).

21. A failure to ensure these rights will generally be a violation of a state's basic duty of protection of its nationals unless 1) the government's derogation was strictly required by the problems of a real emergency situation, and 2) the derogations are not applied in a discriminatory way and 3) that the derogation was not inconsistent with other aspects of international law.

*'Where, for example, the failure to respect a basic right in this category goes beyond that which is strictly required to respond to the emergency (in terms of scope or duration), or where the derogation impacts disproportionately on certain subgroups of the population, a finding of persecution is warranted.'*¹⁵

Level Three Rights:

22. Rights in the UDHR and carried forward in the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR)¹⁶. The state will be in

¹⁵ Hathaway at page 110.

¹⁶ Generally the ICESCR does not demand immediate compliance, but rather demands that States "take steps to the maximum of [their] available resources" to "achieve progressively the full realisation of the rights" without

breach if it secures the rights in a discriminatory manner or where it takes no steps to ensure the rights despite having adequate finances to do so. These rights include:

- right to work, including just and favourable conditions of employment, remuneration and rest (Arts 6 and 7 ICESCR);
- right to an adequate standard of living including: food, clothing, housing (Art 11 ICESCR);
- right to enjoyment of highest attainable standard of health (Art 12 ICESCR);
- right to education (Arts 13 and 14 ICESCR);
- protection of the family, especially children and mothers (Art 10 ICESCR); and
- right to engage in and benefit from cultural, scientific, literary and artistic expression (Art 15).

23. According to Hathaway 'a state is in breach of its basic obligations where it either ignores these interests notwithstanding the fiscal ability to respond or where it excludes a minority of its population from their enjoyment. Moreover, the deprivation of certain of the socio-economic rights, such as the ability to earn a living, or the entitlement to food, shelter, or health care will at an extreme level be tantamount to the deprivation of life or cruel, inhuman or degrading treatment, and hence unquestionably constitute persecution.'¹⁷

European Law and member states

24. The above concepts have been fairly well enshrined into European Community Law which forms the basis of the Common Asylum standards of member states as enacted through the relevant directives which give effect to International Law obligations pertaining to protection. The most important is Article 9 of EC Council Directive 2004/83/EC of 29 April 2004 ('the Qualification Directive'), which provides as follows:

Acts of persecution

1. *Acts of persecution within the meaning of article 1 A of the Geneva Convention must:*

"discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

¹⁷ Hathaway at page 111.

(a) be sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; or

(b) be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in (a).

2. Acts of persecution as qualified in paragraph 1 can, inter alia, take the form of:

(a) acts of physical or mental violence, including acts of sexual violence;

(b) legal, administrative, police, and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner;

(c) prosecution or punishment, which is disproportionate or discriminatory;

(d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;

(e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under the exclusion clauses as set out in Article 12(2);

(f) acts of a gender-specific or child-specific nature.

3. In accordance with Article 2(c), there must be a connection between the reasons mentioned in Article 10 and the acts of persecution as qualified in paragraph 1.

Summary

25. A wide range of civil/criminal penalties may be imposed on those of religious minorities for disobeying cultural/religious norms (including cultural, social and legal restrictions). Such penalties will often constitute serious harm/persecution. For example, restrictions on women who are part of a minority religion may have social, medical or other consequences for women which constitute 'serious harm'. By way of illustration, consequences for women in mixed religion marriages or child or arranged (Islamic) marriages, and on separation, divorce or widowhood. An illustration of this is background material which suggests that in Egypt (and I believe Pakistan) children of marriages between apostates are taken away by the authorities in Egypt and assigned to male Muslim guardians.

3. AK and SK (Christians: risk) Pakistan CG [2014] UKUT 00569 (IAC)

26. The CG case finds as follows:

1. *Christians in Pakistan are a religious minority who, in general, suffer discrimination but this is not sufficient to amount to a real risk of persecution.*
2. *Unlike the position of Ahmadis, Christians in general are permitted to practise their faith, can attend church, participate in religious activities and have their own schools and hospitals.*
3. *Evangelism by its very nature involves some obligation to proselytise. Someone who seeks to broadcast their faith to strangers so as to encourage them to convert, may find themselves facing a charge of blasphemy. In that way, evangelical Christians face a greater risk than those Christians who are not publicly active. It will be for the judicial fact-finder to assess on a case by case basis whether, notwithstanding attendance at an evangelical church, it is important to the individual to behave in evangelical ways that may lead to a real risk of persecution.*
4. *Along with Christians, Sunnis, Shi'as, Ahmadis and Hindus may all be potentially charged with blasphemy. Those citizens who are more marginalised and occupy low standing social positions, may be less able to deal with the consequences of such proceedings.*
5. *The risk of becoming a victim of a blasphemy allegation will depend upon a number of factors and must be assessed on a case by case basis. Relevant factors will include the place of residence, whether it is an urban or rural area, and the individual's level of education, financial and employment status and level of public religious activity such as preaching. These factors are not exhaustive.*
6. *Non state agents who use blasphemy laws against Christians, are often motivated by spite, personal or business disputes, arguments over land and property. Certain political events may also trigger such accusations. A blasphemy allegation, without more, will not generally be enough to make out a claim under the Refugee Convention. It has to be actively followed either by the authorities in the form of charges being brought or by those making the complaint. If it is, or will be, actively pursued, then an applicant may be able to establish a real risk of harm in the home area and an insufficiency of state protection.*
7. *Like other women in Pakistan, Christian women, in general, face discrimination and may be at a heightened risk but this falls short of a generalised real risk. The need for a fact sensitive analysis is crucial in their case. Factors such as their age, place of residence and socio-economic milieu are all relevant factors when assessing the risk of abduction, conversions and forced marriages.*
8. *Relocation is normally a viable option unless an individual is accused of blasphemy which is being seriously pursued; in that situation there is, in general, no internal relocation alternative.*

Comment on AK & SK (This judgment is being appealed; a hearing to determine whether permission to appeal will be granted is taking place on 19th November 2015 at the Court of Appeal)

27. A possible criticism of the judgment is that the Tribunal constructed a narrow paradigm of assessment of risk in 2 chief respects:

- i. Firstly in focussing (para 242) on limited aspects of religious practice ('being active'; 'behaving in evangelical ways') as encapsulating what it is to be an adherent of the Christian faith, rather than the wider concept of 'being' a Christian i.e. faith as religious observance rather than as a core component of identity¹⁸. This leads to a false dichotomy between those adherents who are 'evangelical' or 'active' and those who are considered not to be and fails to recognise that faith, as it informs identity, permeates and is exhibited in all aspects of individual life and communal life. Religion in Pakistan will be more manifest than in a westernized secular society like the UK in any event as the concept of a private/public divide in relation to the holding or professing of a religious faith (as exists in the UK) is simply an alien concept in Pakistan. In any event it is an error to classify a wider group as 'active' and 'quiet' or similar because it distracts from individual assessment, it is a false dichotomy and history is not a useful guide where the persecution has caused the persecuted group to modify its behaviour in the past and that just because persecution has been effective at suppressing and oppressing the persecuted group so that manifestations of the protected characteristic are rare (and perhaps therefore rarely punished) does not make it any the less persecutory. What is absent from the judgment is any real appreciation that being a 'born again' Christian involves a spiritual transformation that is broader than religious conversion and more *innate* in its manifestation. So that faith is an inherent aspect of the applicants' identity and core personality.
- ii. Perhaps because the Appellants AK & SK were comprehensively disbelieved in relation to their account of past persecution in Pakistan, the Tribunal did not assess risk outside the narrow parameters of state persecution, as on the facts, no need to assess risk outside such parameters arose. The focus was therefore on the risk of becoming a victim of a blasphemy charge. This AK & SK cannot be said to provide guidance to the effect that a blasphemy charge is the only medium of persecution by extremist Islamist groups; the threats from extremist grounds are legion and manifest in the following:

- kidnapping (AK & SK @ para 140, 237)
- extra judicial killings (84)
- terrorist attacks (85, 227)
- violence (101,157,207)
- mob attacks (226)

¹⁸ Such a focus may be inconsistent with case law regarding the recognition of sexuality as a part of core identity and a recognition of sexual identity as a protected characteristic. From such a starting point, any interference, or inability to realise such a characteristic is prohibited and potentially persecutory : *HJ (Iran) & HT (Cameroon) v Secretary of State for the Home Department* [2010] UKSC 31

- sexual & gender based violence (102, 128)
All of the above are carried out with impunity (101)

It is far too narrow a reading of AK & SK to say that Christians are only at risk from extremist groups through the penal code/blasphemy charges, though there is a risk that it will be so read. However, AK & SK did not need to consider the risk from non state agents as the appellant's claims to have been targeted by such groups was completely rejected. Properly read, AK & SK is concerned almost exclusively with the consequences to Christians of accusations of blasphemy brought by a militant Islamic group. It therefore is concerned with persecution by the state (through persecutory laws enacted by the govt) and not with direct persecution by non-state actors/ those targeted at large by extremist groups. (15).

This has now been expressly recognised by the Upper Tribunal in a judgment in April¹⁹ of a Christian family who were targeted by extremists and found to be at risk despite it never being part of their account that they had suffered/were at risk of (legalised) persecution from the state through the medium of the blasphemy laws. There were rumours of such a charge, but these rumours did not eventuate.

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8th November 2015

¹⁹ See attached redacted judgment wherein the Upper Tribunal expressly rejected a contention by the Home Office (para 60) that 'A charge of blasphemy is at the top end of the scale of risk and there is a clear inference that if you fall below that level there would be a sufficiency of protection and an option of internal relocation.', expressing the limitations of AK & SK as follows:

'61. AK and SK were concerned with appellants who had not been found to be credible and the assessment of risk was made on that basis. The focus of the country guidance was to address the risk to Christians in Pakistan generally and not those who it is accepted have been subject to violent attack. At paragraph 226 the Tribunal said:

"This does not mean that the evidence establishes that the authorities never protect minorities.... however predominantly the evidence suggests that there is a failure to protect Christians from attacks and the consequences of abusive allegations of blasphemy.... overall there has been and there continues to be an insufficiency of state protection in cases where serious allegations of blasphemy are made and pursued regardless of the religious faith of the accused."