IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003515
First-tier Tribunal No: PA/02872/2020

THE IMMIGRATION ACTS

Decision & Reason Issued:
On 19th February 2024

Before:

UPPER TRIBUNAL JUDGE GILL

Between

DK
(ANONYMITY ORDER MADE)
Appellant

And

The Secretary of State for the Home Department
Respondent

Representation:

For the Appellant: Ms F Shaw, of Counsel, instructed by ANP Solicitors.
For the Respondent: Ms A Nolan, Senior Home Office Presenting Officer

Heard at Field House on 17 January 2024

Anonymity

I make an order under r.14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the original appellant. No one shall publish or reveal the name or address of the original appellant or publish or reveal any information which would be likely to lead to the identification of the original appellant or of any member of their family in connection with these proceedings. This direction applies to both the appellant and to the respondent and all other persons. Failure to comply with this direction could lead to contempt of court proceedings.
I make this order because this is a protection claim.
The parties at liberty to apply to discharge this order, with reasons.

DECISION

1. The appellant, a national of India, born on 15 August 1985, appeals against a decision of Judge of the First-tier Tribunal Khurram (hereafter the "judge") who, in a decision promulgated on 31 May 2023 following a hearing on 14 March 2023, dismissed her appeal on asylum, humanitarian protection and human rights grounds against a decision of the respondent of 5 March 2020 to refuse her protection and human rights claims of 14 November 2016.

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2. Permission to appeal was granted by me in a decision dated 12 October 2023, served on the parties on 13 October 2023. Permission was limited to grounds 1A, 1B and 2. Given the limited grant of permission, the issues before me are as follows:

   (i) in relation to the appellant's protection claim, whether the judge materially erred in law in his assessment of the risk on return; and

   (ii) *if so*, then whether he materially erred in law in his assessment of the best interests of the appellant's children.

3. In my permission decision, I stated that the judge's adverse credibility assessment and his findings of fact at paras 30-47 and 52-53 shall stand. Briefly stating his findings, the judge rejected the appellant's evidence that she and her husband (hereafter "H") had received threats on account of her interfaith and inter-caste marriage. He found that she would have the support of her family in India (by which it is clear that he was referring to her parents and brother) if she were to return to India.

4. The background evidence before the judge concerning the risk of harm in India for an inter-caste Hindu/Muslim marriage included evidence contained in the respondent's CPIN entitled: '*India: Religious Minorities and Scheduled Casts and Tribes'*, version 3.0 dated November 2021 (hereafter the "CPIN") and an expert report dated 28 May 2021 together with an addendum thereto from Mr Shantanu Mohan Puri, an advocate practising in India.

5. At para 28, the judge said:

   > "28. I have also considered the country expert report provided by the appellant dated 05 March 2020 along with supplementary letter of 23 February 2023. In particular I have considered the various points referred to therein as set out in the skeleton argument**. I note the general position on risk for those of interfaith/inter caste relationships and children thereof.** I bear in mind that it remains my duty to test and evaluate the expert evidence and that an expert is not a judicial decision-maker. Therefore, the findings of fact remain with the Tribunal, and it is the function of the fact-finding Tribunal to assess the facts as found against the relevant legal standards."

   (My emphasis)

6. The sentence in bold was the only explicit reference made by the judge to the background material that was before him. There was nothing else expressly stated in his decision which could be said to amount to an assessment of the background material that was before him, nor did Ms Nolan suggest at the hearing before me that there was.

7. At the hearing before me, Ms Shaw informed me that she only relied upon the following background material, on which she made submissions:

   (i) the extracts of the background material quoted at para 9, para 10, the third bullet point of para 12 and at para 13 of the grounds (the "original grounds") submitted in support of the application to the First-tier Tribunal ("FtT");

   (ii) paras 28-58 of the expert report of Mr Puri; and

(iii) the two articles mentioned in the first two bullet points of para 12 of the original grounds.

8. In response, Ms Nolan drew my attention, inter alia, to other aspects of the expert's report and also the first two paragraphs of para 5.1.1 of the CPIN which had been omitted from the extract quoted at para 9 of the original grounds. Ms Nolan then took me through the background material explaining, inter alia, why it was either irrelevant in the appellant's case given the judge's adverse assessment of credibility or why the background evidence was insufficient to show a real risk of treatment sufficiently severe as to amount to persecution. She submitted that single sentence in para 5 of the judge's decision was sufficient by way of an assessment of the background evidence as to the risk on return, given that he had rejected the appellant's evidence of threats having been received and found that she would have the support of her parents and brother in India. In any event, even if the judge did fail to assess the background material, it was not material, in her submission.

9. I heard Ms Shaw briefly in response. In summary, the judge had materially erred in law by failing to engage with the background material.

10. I deal with the substance of the submissions by Ms Shaw and Ms Nolan below.

11. Ms Shaw confirmed that, in the event that I were to conclude that the judge had materially erred in law in his assessment of the risk on return, she did not wish to submit further evidence or updating evidence in support of the appellant's case. She confirmed that, in such event, she would only rely upon the background material and submissions she had advanced at the hearing before me in support of the appellant's case that the judge had materially erred in law in his assessment of the risk on return.

12. Likewise, Ms Nolan confirmed that, in such event, she would only rely upon the submissions she had already advanced in support of the respondent's case that the judge had not materially erred in law.

13. Accordingly, both confirmed that, if I were to set aside the judge's decision, I should proceed to re-make the decision on the appellant's appeal by considering the background material that had been addressed by each at the hearing and their submissions at the hearing without the need for any further hearing.

14. I reserved my decision.

(A) <u>Whether the judge materially erred in law</u>

15. It is trite that, in any asylum appeal before the FtT, the judge is obliged to make findings of fact on relevant facts that are in dispute between the parties and then decide the risk on return in light of the accepted facts, the facts as found in relation to the disputed issues of fact and any relevant country guidance and/or relevant background material. It is also trite that, whilst a judge is not obliged to engage with every piece of the background material in his or her decision, it is nevertheless necessary for the judge to provide adequate reasons for the decision as to the future risk, so that the party who has lost understands why.

16. Ms Nolan essentially provided the reasoning that was entirely absent from the judge's decision. I reject her submission that the single sentence in para 5 of the judge's decision is sufficient to dispose of the background material. It is clear that her real case, in essence, was that, although the judge had not engaged with the background material, this was not material to the outcome. This is because, if he had engaged with the background material, he would have concluded that there was no real risk of treatment sufficiently severe as to amount to persecution for the reasons that she (Ms Nolan) gave at the hearing before me.

17. I can see the attractiveness of this argument. Nevertheless, I am satisfied that the judge's wholesale failure to make *any* assessment at all of the risk on return is a material error of law which I am satisfied justifies the setting aside of his decision. I am satisfied that the single sentence quoted in bold at **my para 5 above** is wholly insufficient to show that the judge had considered the background material before him in reaching his conclusion that there was no real risk of treatment amounting to persecution.

18. In the alternative, I am satisfied that the judge failed to give any, or any adequate, reasons for his finding that the appellant was not at real risk of treatment amounting to persecution. The single sentence in para 28 of the judge's decision, which I have emboldened at **my para 5 above,** does not enable the reader to understand why he found that there was no reasonable likelihood of the appellant being subjected to treatment amounting to persecution in India.

19. For the reasons given above, I set aside the judge's decision to dismiss the appellant's protection claim.

20. I proceed to re-make the decision on the appellant's appeal.

(B) <u>Re-making the decision on the appellant's appeal</u>

21. The issues in the re-making are limited to the following:

    (i) Whether the appellant is at real risk of treatment sufficiently severe as to amount to persecution or serious harm or treatment contrary to her rights under Article 3 of the ECHR; and

    (ii) A re-assessment of the best interests of the appellant's children in light of the risk assessment. It will then be necessary to carry out the balancing exercise in relation to proportionality, taking into account the best interests of the appellant's children.

22. I will first summarise the facts, as found by the judge. I will then deal with the background material relied upon and (to the extent I consider it necessary) the parties' submissions thereon, beginning with the expert's report.

23. I have reminded myself that the burden of proof is upon the appellant to establish that it is reasonably likely that, if returned to India, she would be subjected to treatment sufficiently severe as to amount to persecution or serious harm or treatment contrary to her rights under Article 3 of the ECHR.

(i) <u>Immigration history</u>

24. The appellant claimed to have arrived in the United Kingdom on 12 February 2011 with entry clearance as a Tier 4 student valid from 21 September 2010 until 30 July 2013. On 26 July 2012, her leave was curtailed with no right of appeal. On 19 September 2012, she was granted leave to remain until 7 June 2014 as a Tier 4 student. On 23 July 2013, she was granted leave to remain until 8 April 2015 as a Tier 4 student. On 30 March 2015, she made a family and private life application which was refused on 6 August 2015 with an out-of-country right of appeal. She claimed asylum on 14 November 2016.

25. The appellant and H have two children, a son born in the United Kingdom on 5 January 2018 and a daughter born in the United Kingdom on 6 August 2021.

(ii) The relevant facts (as found):

26. The appellant's protection claim was based on her inter-faith and inter-caste marriage with H. She was born into a Hindu family of Brahmin caste, regarded as the highest caste. She lived with her parents and brother in a village, "V1". H was an Indian Muslim. He lived in a village, "V2", about three miles away from V1.

27. The appellant and H decided to marry in February 2009. They married discretely in a Hindu ceremony on 5 April 2009. According to the judge's findings, this marriage ceremony was attended by friends and both their parents. The appellant did not convert to Islam before the marriage took place. The couple registered their marriage in India on 28 December 2010.

28. The judge rejected the appellant's claim to have received threatening calls 2-3 times daily since the registration of the marriage (para 30.b of his decision). He rejected her evidence that her brother had threatened her and her unborn child (para 30.c). He did not consider that the Fatwa dated 20 March 2015 assisted the appellant's case in view of his findings on her credibility (para 30.d).

29. The judge found that the appellant had manufactured her asylum claim. He also found that she could rely upon the support of family in India by which he plainly meant her parents and brother. He said that he had borne in mind her own claim that both parents had attended the marriage and that H's parents had contributed towards their travel to the United Kingdom (para 31).

30. At para 32 of his decision, the judge noted that the lengthy submissions advanced on the appellant's behalf in relation to the Citizenship (Amendment) Act 2019 were withdrawn during the submissions of Ms Shaw who appeared for the appellant before the judge. He noted that the appellant and her Muslim spouse were already Indian nationals and found that they would not therefore be affected. He found that they would not be materially affected by the Interfaith Marriage Law of November 2020 (the "IML 2020"), the appellant having not converted to Islam for her marriage and the couple continuing to practice their respective religions.

31. The judge did not accept that the appellant's children were stateless (paras 33-35). He found that they were entitled to acquire Indian nationality and that it was reasonable to expect the appellant and H as parents to take steps which would enable the older child to acquire Indian nationality.

32. Given the judge's rejection of the appellant's evidence she had received threats, including from her brother, the appellant's case is that she is at real risk of persecution at the hands of members of the community on account of her inter-faith and inter-caste marriage. In addition, the appellant fears the Rashtriya Seva Sangh ("RSS") (question 155 of her asylum interview, para 42 of the decision letter and para 13 of the original grounds).

(iii) Risk due to being in an inter-faith inter-caste marriage

(a) The expert's report

33. Ms Nolan submitted, in summary, that the expert relied upon the appellant's evidence of threats having been made on account of her inter-faith inter-caste marriage and that she would not have the support of her family (her parents and brother) on return to India. She submitted that, given that the judge rejected the appellant's evidence, much of the report was not relevant, including the section about honour killings. She also submitted that the sections of the report dealing with the IML 2020 and the alleged statelessness of the appellant's son were irrelevant, given that Mr Puri states (at para 69) that the IML 2020 is not applicable in the appellant's case because no religious conversion had taken place before her marriage to H and (at para 97) that the appellant's son is entitled to Indian citizenship.

34. Ms Shaw submitted, in summary, that there was still sufficient left in the expert's report that demonstrates that the appellant would be at real risk of persecution. Furthermore, although the IML 2020 was not applicable in the appellant's case, it shows that the situation in India has deteriorated for individuals in interfaith and inter-caste marriages.

35. I have carefully read and considered Mr Puri's report. Ms Nolan is correct in stating that Mr Puri had accepted the appellant's evidence of threats that she said she and H had received on account of their marriage and also that she would not have the support of her parents and brother in India. This much is clear from (for example), the first sentence of para 29 taken together with the contents of para 28, and paras 56, 58, 70, 77 and 81. These read as follows:

> "28. It was brought to my attention through the letter of instruction and other accompanying documents that the appellant is a Hindu and her husband is a Muslim. Two distinct and different religions. They were in a relationship and eventually got married. The facts of this case give me an irrefutable impression that the respective families of both the appellants, although having no objection to their marriage, are not going to be revising their opinion(s) on the relationship of the appellant and her husband, keeping in mind the threats received from the society and the community at large. Historically, even though India is a secular nation which prides itself on the concept of 'Unity in Diversity', certain realities run counter to this concept. Interreligious marriages across India have certainly increased with the present generation of Indians being far more accepting and accommodating of different cultures, practices and religions, yet in spite of a liberal outlook becoming more prevalent, the older generations still live with conservative and traditional mindsets. Conservative and traditional mindsets while prohibiting its followers to be more liberal and accepting, draw considerable strength from religious beliefs and practices. Hence, in most of rural and urban India, for a large number of persons, the position of religion is substantial to one's way of life and thinking.
>
> 29. Taking the facts of the case in account, I am of the opinion that the appellant is going to find it next to impossible to settle in India.) the following extracts from the expert's report; …

56 … when the problem has been shown to be alive… *[para 56 is quoted in full below]*

58. … In conclusion, I fear that the same could be the case for the appellant and her husband as well as her children, were they to relocate to India, especially when their experiences during their time in India are taken into account. *[para 58 is quoted in full below]*

70 … Applying this to the case of the appellant, I have been informed that the members of society of both the appellant and her husband's family have already started getting aware of their relationship, as I is evident from the threats they have received…

77 … On the basis of the information given to me by ANP Solicitors, I have understood that the appellant, her husband and their families fear risk of harm and persecution at the hands of the society and community at large. Further, the instances of harassment faced by the families in the past has created a well-founded fear and apprehension of harassment and even physical harm in the minds of the appellant and her husband, which I feel is correct.

81 …It has come to my knowledge through the letter of instruction and other accompanying documents that due to the appellant's non-conversion to Islam, the family of the appellant's husband has severed ties with him. His father has also excluded him from all of the family inheritance. Furthermore, the Muslim community to which the appellant's husband belongs to had harassed his family and alienated them, on account of the appellant's non-conversion…"

36. It is also clear, for example, from the first sentence of para 31, that his view of the risk of ill-treatment in India derives from the evidence he set out in his report of honour killings, at paras 31-58. Para 31 reads:

"31. My fear of the treatment which awaits the appellant emanates from the prevalence of a decadent and illegal practice of honour crimes and especially 'honour killings', which poses a threat to the well being, security and even life of couples who have undertaken an inter-faith/religious marriage."

37. Having set out the evidence in relation to honour killings, Mr Puri said at paras 56-58 as follows:

"56. It is also pertinent to mention that the issue of inter-faith/religious marriages has been widely shown, in my report, to exist across India. Therefore, I am of the strong opinion that **when the problem has been shown to be alive**, it should not be anyone's case to play it down by suggesting that it is less in one part of India than the other and hence, not relevant enough to consider. That in my opinion, will not only be an incorrect assessment of the situation but more importantly, a dangerous view to accept.

57. It has also been stated in the letter of instruction from ANP Solicitors that the appellant and her husband have a son from their marriage and are expecting a second child somewhere around 13th August 2021. Given the evidence of the treatment and outlook of Indian society, at large, no matter where they relocate in India, not only will the parents (i.e., the appellant and her husband in this case) but also a child born out of such a relationship (i.e. their son, in the present instance) **would not be accepted, thereby leading to a difficult time for the child as well.** This is based upon the prevailing scenario pertaining to inter faith/religious marriages in India that I have highlighted in the preceding paras of this report.

58. I am of the opinion that killing in the name of honour is the gravest of crimes against those who have chosen to be with each other of their own will and due to love. Interfaith/religious marriages are examples of the choice made by couples of different faiths. Objecting and then punishing such a union in the name of 'honour' is wrong be it in any form. **'Honour crimes' range from physical atrocities, kidnapping, abduction, discrimination,**

> **intimidation, harassment, to maiming and even killing.** To come to the conclusion that the only outcome of an inter-faith/religion marriage would be the death of the couple, is not only scary but totally unjustified. The media reports I have highlighted above go to show this. **In conclusion, I fear that the same could be the case for the appellant and her husband as well as her children, were they to relocate to India, especially when their experiences during their time in India are taken into account."**

(My emphasis)

38. I have carefully examined the evidence of honour killings at paras 31-58 of Mr Puri's report. Almost all of the examples Mr Puri gives at paras 31-58 are examples of honour killings at the hands of members of the immediate family or relatives of the couple in the marriage in question. He has also included (at paras 46-47) evidence of honour killings against Hindu individuals who have converted to Islam, which is not relevant in the instant case because the appellant has not converted to Islam.

39. I acknowledge that Mr Puri said at para 58 that honour crimes range from *"…physical atrocities, kidnapping, abduction, discrimination, intimidation, harassment, to maiming and even killing*". However, as Ms Nolan submitted, the fact is that the appellant's evidence of threats from her family was rejected by the judge. In addition, he found that she would have the support of her family (i.e. her parents and her brother) if she returned to India.

40. Although Mr Puri did at times mention honour killings by members of the community (for example, at para 40), he did not give any actual example of any honour killing at the hands of members of the community except for two examples, i.e. the example in the last paragraph on page 14 of his report (AB/103) where mention was made of the perpetrator being a "*former 'friend'*" and the last paragraph on page 24 of the report (AB/113) where mention was made of the perpetrators being "*accused men belong to the same community".* Mr Puri occasionally mentioned honour killings by members of the community elsewhere but only in general terms.

41. Not only is it the case that Mr Puri's view of the risk of honour killings of the appellant and her family is based upon his acceptance of the evidence that she and H have been threatened, his view of the risk of discrimination and harassment at the hands of *"friends and/or even the society"* is also based upon an acceptance of the evidence that she and H had received threats. This is because he said in his concluding para 100.i as follows:

> "100i. The social perception in India towards individuals engaging in interfaith/religion relationship/marriages has always been negative. **This is due to the fact that the disrespect brought to the family of the individuals is too much to bear for the respective families. This leads to such individuals being subject to discrimination, harassment and even death at the hands of their family, friends and/or even the society.** In the instant case, the appellant and her family are also susceptible to the same, if they are forced to relocate to India. What makes this discrimination and harassment worse is the fact that the outlook of society in a pan-India scenario, be it Delhi, the capital of India, Mumbai, the corporate capital or any other state, including that of the appellants, i.e., Punjab, remains the same."

(My emphasis)

42. Another real difficulty with Mr Puri's report is the fact that it is at times unclear what test he has applied – for example, the words in para 100.i that I have underlined

above – and at other times he has incorrectly considered the wrong test or the wrong threshold, an example of which is para 57 where he states that the appellant, H and their child "*would not be accepted*" (which is not the same as persecution) and that the child will also have a "*difficult time*".

43. In addition, Mr Puri's opinion as to relocation is unhelpful in deciding whether relocation would be reasonable, this being the correct test. At para 77, he appears to think that "*well-being*" must be guaranteed whereas the test in relation to the risk of harm in the place of relocation is not whether well-being can be "*guaranteed*" or whether that there would be "*no threat to their well-being*" but whether it is reasonably likely that the appellant and her family in the United Kingdom would be subjected to treatment sufficiently severe as to amount to persecution or serious harm or treatment in breach of Article 3 in the place of relocation. On this issue, the relevant extracts from his report include the following:

> "69. … relocation would not be an easy option for the appellant and her family…
>
> 80. … it would be a challenge for the appellant to adjust and adapt…[if relocating to another part of India]…
>
> 77. … The appellant and her family's rehabilitation in another part of India, with no threat to their well-being cannot be guaranteed. "

44. Again, on the issue of relocation, Mr Puri incorrectly at para 89 compared the situation that the appellant and her family would face in India with their circumstances in the United Kingdom as follows:

> **"**89. Thus, taking into account all the aspects and factors mentioned in the preceding paras, **relocation to any part of India has its own set of problems, which in my opinion would be greater than what the appellant and her family would have to face were they to stay in the UK,** without converting to Islam. However, what is also relevant to consider is the psychological and physical hardships which the appellant and her family would be required to undergo were they to move to (any other part of) India. Though it is a fact that India is a big country the fact that it has the second largest population in the world with diversity of cultures, traditions, language and attire, is also relevant to be considered since **it becomes difficult for a person from one part of India to settle in another much less for a returning national**."

(My emphasis)

45. At para 71 of his report, Mr Puri said:

> "71. If the appellant and her family were to re-locate to India, I feel, that there are various issues which need to be considered, with respect to their relocation. These would include the appellant's non-conversion to Islam, re-integration issues, employment issues, healthcare, etc. It is pertinent to look at these issues since they will also impact the mental, physical and emotional well being of the appellant and her family. **Given that the appellant and her family are in the UK, at present, where they have achieved a certain level of mental, physical and emotional well being, were they to relocate to India, I fear, they are likely to suffer a substantial negative impact.**

(My emphasis)

46. Not only is it the case that the test for relocation is not whether the appellant and her family in the United Kingdom are likely to suffer a "*substantial negative impact*" in

their mental, physical and emotional well-being when their circumstances in India are compared with their circumstances in the United Kingdom or whether relocation would be "*difficult*", he did not explain what expertise or evidence he had to enable him to comment on their mental, physical and emotional well-being.

47. For all of the reasons given above and **subject only to what I say in para 48 below**, I simply cannot rely upon Mr Puri's report as supporting the appellant's case that she, H and her children would be real risk of treatment sufficiently severe as to amount to persecution or serious harm or treatment in breach of Article 3 at the hands of members of the community, if she were to return to her home area. In addition, I cannot rely upon his report as supporting the appellant's case that she and her family cannot safely and reasonably relocate in the event that they were to encounter difficulties from members of the community in her home area.

48. There is only one aspect of Mr Puri's evidence that survives. I accept Ms Shaw's submission that the IML 2020 shows that the situation for interfaith and/or inter-caste marriages has deteriorated in India since the passing of the Act. The only reason why this aspect of Mr Puri's evidence survives is because his evidence on this issue is consistent with the other background material. I take this aspect of Mr Puri's evidence into account in reaching my overall conclusions as to the future risk.

49. Finally, Ms Nolan submitted that the way that Mr Puri had expressed himself in his report, including about the issue of honour killings, shows that he is biased. In my view, it is not objectionable for any person, including an expert, to express an opinion in strong terms against the practice of honour killings because the practice of honour killings is indeed a practice that any civilised person should deprecate.

50. I did have some reservations about the impartiality of Mr Puri upon my first reading of his report. More than once, he expressed himself in terms of how he *feels*, as opposed to giving his opinion, i.e. at paras 71, 77 and 88. He also referred to his "*fear*" of the situation that the appellant and her family would face in India; for example, at paras 31, 58, 70 and 71. However, bearing in mind the possibility that this manner of expression may be due to cultural differences, I decided to place no weight upon this issue, on reflection.

(b) The CPIN and other evidence relied upon

51. Paras 9 and 10 of the original grounds quote from para 5 of the CPIN. Ms Nolan drew my attention to the first two (unnumbered) paragraphs of para 5.1.1 of the CPIN which were omitted from the quote at para 9 of the original grounds. I was therefore referred to the whole of para 5 of the CPIN which I now quote (omitting the footnotes):

> 5. Interfaith marriages
>
> 5.1 Legislation
>
> 5.1.1 The DFAT country report 2020 outlined that:
>
> 'India is officially a secular and multi-ethnic country, and inter-faith and intercaste marriages are legal. However, many Indian families still prefer marriages arranged within their own religion and caste. According to researchers, around 10 per cent of all marriages in India take place between different castes while around 2.1 per cent of marriages are inter-faith.

‘The Special Marriage Act 1954 (SMA) is the secular marriage law in India, which enables inter-faith and inter-caste marriages, and is an alternative to each of the personal laws. The SMA is available to all citizens who choose to marry outside their faith, and the religion of the parties to an intended marriage is immaterial under the Act. However, few people use the SMA, favouring traditional personal laws that provide solemnisation of marriage under religious rites. As an example, in 2019, according to official data, of the 19,250 marriages registered in Delhi, 3 per cent were inter-faith marriages (and registered under the SMA).

'The Hindu Marriage Act allows members of the Hindu, Buddhist, Jain or Sikh religions to intermarry without declaring detachment from their religion. Under Muslim personal status laws, only Muslim men are permitted to marry kitabia (members of the Christian or Jewish religions); Muslim women are prohibited from marrying non-Muslims. If a partner is a Christian, it may be possible to marry under Christian rites through the Indian Christian Marriage Act, 1872’

5.2 Treatment of inter-faith and inter-caste married couples

5.2.1 The DFAT country report 2020 also outlined the obstacles that face some interfaith and inter-caste married couples:

‘… there is a continued and growing intolerance in Indian society to inter-caste and inter-faith marriages. Many families cut off social relations with sons or daughters who undertake such unions, while other families commit or instigate acts of violence against the person who undergoes the marriage. Communal tensions and violence can also result. In August 2019, in Haryana, when a shopkeeper's daughter reportedly left her family to marry a tailor of a different religious community, people blocked a highway and forced shopkeepers to keep shutters down, demanding the bride be "returned" to her parents. The couple sought protection from the state High Court. In May 2019, a newlywed couple was reportedly set on fire in a village in Maharashtra because the woman’s family was opposed to their inter-caste love marriage.

'In some parts of the country, informal social systems like the male-only Khap Panchayats (or Khaps) pass decisions and judgements on marriage, based on traditions. (DFAT understands Khap Panchayats are mainly found in Haryana and parts of Rajasthan, Uttar Pradesh, Punjab and Madhya Pradesh.) Such punishments in marriage cases include fines, social ostracism, public humiliation and expulsion from the village. Despite the Supreme Court ruling against the practice, intrusions by Khaps to stop a legal marriage between consenting adults continue. Analysts have claimed there is a lack of political will to act against Khap Panchayats given their influence over large numbers of voters.

'One reason for social disapproval of mixed marriages in India is that inter- faith marriage generally takes place after one of the parties converts to the other's religion, despite this being unnecessary under the SMA. While the constitution guarantees freedom of conscience and free profession to all (Articles 25- 28), for some sections of the majority community, conversion has been and remains a sensitive issue.

(See also Conversion).

5.2.2 The same report continued:

'Practical matters such as renting property, obtaining a passport or boarding flights can be difficult for such mixed unions. Some report the need to remain vigilant against being found, as their extended family is "still on the lookout for them”. To support such couples there are limited initiatives such as Love Commandoes, Pratibimb Mishra Vivah Mandal, Dhanak of Humanity, Adhalinal Kaadhal Seiveer and Chayan which provide a mix of legal advice, counsel and shelter. In 2019, Dhanak of Humanity self-reported it had handled 2,000 cases since 2005. An analysis of roughly half their cases showed 58 per cent were inter-caste and 42 per cent were inter-faith couples.

'Couples from rural areas who marry inter-caste or inter-faith may attempt to move to the anonymity of urban areas. However, factors that can affect couples moving to a larger city include their financial capacity, the degree to which their families have the power to find them, their educational background and employability, availability of a personal support network, and whether they appear "visibly different”.

5.2.3 The USCIRF Annual Report 2021 noted that:

> 'Hindu nationalist groups [...] launched inflammatory campaigns decrying interfaith relationships or engagements, including calling for boycotts and censorship of media depictions of interfaith relationships. These efforts targeting and delegitimizing interfaith relationships have led to attacks and arrests of non-Hindus and to innuendo, suspicion, and violence toward any interfaith interaction.'"

52. Ms Nolan drew my attention to the Special Marriage Act which enables inter-caste and interfaith marriages. Ms Shaw drew my attention to the last sentence of the same paragraph which states that only 3 per cent of all marriages registered under the SMA in Delhi are inter-faith marriages. However, this does not help the appellant's case on persecution given that her marriage has been registered.

53. Ms Nolan submitted that the Hindu Marriage Act (to which I have referred as the IML 2020) is irrelevant in the appellant's case as she and H were already married by the time the Act came into force and they have successfully registered their marriage. In this regard, she relied upon paras 60 and 61 of the report of Mr Puri. I agree with Ms Nolan that, according to paras 60 and 61 of Mr Puri's report, the purpose of the Act appears to be to tackle the issue of conversion. It provides for individuals who wish to convert to submit an advance declaration of the proposed religious conversion to a District Magistrate. Nevertheless, I also agree with Ms Shaw that the passing of the Act is a sign of a deterioration in the situation for interfaith marriages.

54. This is also consistent with the first sentence of para 5.2.1 of the CPIN quoting from the DFAT country report 2020 which states, *'… there is a continued and growing intolerance in Indian society to inter-caste and inter-faith marriages*". Whilst this is evidence of a deterioration in the situation, the word "*intolerance*" does not, of itself, show that there is a reasonable likelihood of treatment sufficiently severe as to amount to persecution.

55. It is not enough simply to say that there is evidence of the situation having deteriorated. There needs to be more. There needs to be evidence that shows that the situation as reached the point of showing that the appellant and her family in the United Kingdom are reasonably likely to be subjected in India to treatment sufficiently severe as to amount to persecution.

56. The first paragraph from the DFAT Country report 2020 quoted at para 5.2.1 refers, inter alia, to families cutting off social relations with sons or daughters who have entered into an inter-caste and interfaith marriage. However, the evidence before the judge was that the parents of both the appellant and H attended their wedding and the judge rejected their evidence of threats having been made by the appellant's brother. The next sentence, "*Communal tensions and violence can also result*" is followed by two examples. The first example, from August 2019, is not helpful to the appellant's case because her marriage, which was attended by her parents, has already taken place. The next example, from May 2019, is also irrelevant because the appellant's parents attended her wedding.

57. The second paragraph from the DFAT report that is quoted at para 5.2.1 of the CPIN does not assist either, in part because it refers to the situation in "*some parts of the country*" without explaining which parts of the country this concerns. The third sentence mentions various punishments but only in general terms which does not enable any proper assessment of the incidence of such problems. The remainder of that paragraph does not assist given that there was nothing in the evidence before

the judge that shows that the appellant is reasonably likely to live in a part of the country where she may encounter the 'Khap-Panchayats'.

58. The third paragraph from the DFAT report that is quoted at para 5.2.1 of the CPIN is irrelevant to the appellant's case because she did not convert to Islam.

59. Turning to para 5.2.2 of the CPIN, the first sentence, *'Practical matters such as renting property, obtaining a passport or boarding flights can be difficult for such mixed unions*" is likewise problematic for the appellant's case. "*Can be difficult*" does not equate to a reasonable likelihood nor does "*difficult*" equate to treatment sufficiently severe to amount to persecution". Likewise there is nothing in the following paragraph which assists the appellant's case. To the contrary, this paragraph detracts from her case because it is evidence that, even if she experiences problems in her home area, internal relocation is a reasonable and safe option given that the judge rejected the evidence of threats and found that the appellant would have the support of her parents and brother.

60. There is insufficient material in the paragraph quoted at para 5.2.3 of the CPIN which demonstrates that there is a reasonable likelihood of treatment amounting to persecution.

61. The evidence other than para 5 of the CPIN relied upon is referred to in the three bullet points at para 12 original grounds. The third bullet point of para 12 of the original grounds quotes from a report by the *'India Immigration and Refugee Board of Canada*' dated 16 May 2019 entitled *'Situation of inter-religious and inter-caste couples, including treatment by society and authorities; situation of children from such marriages'*, which states:

> "4. Societal Attitudes and Treatment
>
> AFP reports that inter-religious marriages are "frowned upon" in India, especially in rural areas (AFP 8 Mar. 2018). Inter-caste marriages are "rarely endorsed" by dominant caste groups and social and cultural stigma precludes intermarriage, according to a joint submission to the UN by Indian NGOs who provide support to Dalits (Navsarjan Trust, et al. June 2014, 6)...
>
> According to sources, the least societally accepted intermixed unions in India are those between:
> • Hindus and Muslims (Social anthropologist 3 Apr. 2019; Anthropologist 5 Apr. 2019; Professor 6 Apr. 2019), especially where the male is Muslim and the female is Hindu (Anthropologist 5 Apr. 2019); […]"

62. Again, the words "*frowned upon*", "*rarely endorsed*", and "*least socially acceptable intermixed unions*" do not demonstrate a reasonable likelihood of treatment sufficiently severe as to amount to persecution.

63. The first two bullet points of the original grounds refer to the following documents:

    (i) an article entitled: 'Police in India Make First Arrest Under New Interfaith Marriage Law', dated 03 December 2020, published in the New York Times; and

    (ii) an article entitled: 'India's interfaith couples on edge after new law, dated approximately 15 March 2021, published in the BBC news website.

64. Ms Nolan submitted that these two articles are irrelevant in the appellant's case because Mr Puri's opinion was that the IML 2020 was irrelevant to the appellant's case. Ms Shaw submitted that they were relevant, in that, they show that the situation in India has deteriorated for those in inter-caste and interfaith marriages.

65. I have said (**para 48 above**) that I accept that the situation in India has deteriorated for couples in inter-caste and interfaith marriages. This is based on the passing into law of the IML 2020, the first sentence of para 5.2.1 of the CPIN quoting from the DFAT country report 2020 which states, inter alia, *'… there is a continued and growing intolerance in Indian society to inter-caste and inter-faith marriages*" and the general tenor of the background evidence. As the opinion of Mr Puri that the situation has deteriorated is consistent with this other evidence, I accept that opinion and have taken it into account.

66. However, **as I said at para 55 above,** it is not enough to say that there is evidence of the situation having deteriorated. There needs to be evidence that shows that the appellant and her family in the United Kingdom are reasonably likely to be subjected to treatment sufficiently severe as to amount to persecution.

(iv) Risk from Hindu nationalists

67. Para 13 of the original grounds quotes from para 8.2 of the CPIN. However, para 13 of the original grounds only quotes paras 8.2.1 and 8.2.2 of the CPIN.

68. In my view, para 8.1 provides useful information which I therefore quote. More importantly, para 8.2.3 of the CPIN, which concerned the incident mentioned in the BBC report of 2 September 2021 and which is plainly relevant, was omitted from para 13 of the original grounds. I now quote paras 8.1 and 8.2.1-8.2.3 of the CPIN (omitting the footnotes):

> "8. Hindu nationalism
>
> 8.1 What is Hindu nationalism?
>
> 8.1.1 The School of Oriental and African Studies (SOAS), noted in its working paper – 'The Muslim "Threat" In Right Wing Narratives: A Critical Discourse Analysis', 2021:
>
> 'The Hindu nationalist movement sees India as a 'Hindu Rashtra', where various distinctive religious and cultural traditions have existed in the subcontinent since ancient times. These are based on a sense of belonging, fostered by a common language Sanskrit and shared philosophical and moral traditions. The movement propagates cultural nationalism with the end goal of restoring the Hindu Rashtra -- India to its glorious past, uninterrupted by invasions of Muslim and Christian rulers. Muslims are the primary targets of the Hindu nationalist organisations, wherein an idea of a dangerous outsider is constructed to represent everything wrong with the country and is the root of all problems.'
>
> 8.1.2 In May 2019, National Public Radio (NPR), reported:
>
> 'The RSS, founded nearly 100 years ago, has profoundly shaped Indian society and politics — and Modi himself. … Led since 2009 by longtime stalwart Mohan Bhagwat, the RSS is India's most prominent proponent of Hindutva — Hindu-ness and the idea that India should be a "Hindu nation." About 80 percent of India's 1.4 billion people are Hindus, but there are also millions of Muslims, Christians, Sikhs, Buddhists and Jains. The constitution defines India as a secular country….

‘The RSS and many of its members want to change that. The group's mission statement describes it as "firmly rooted in genuine nationalism" and decries an "erosion of the nation's integrity in the name of secularism" and "endless appeasement of the Muslim population".’

8.2 Attacks perpetrated by Hindu Nationalists

8.2.1 The DFAT country report 2020 noted that, 'There has been an increase in targeted attacks against religious minorities in recent years. Some observers claim members of the current government have created a permissive environment for Hindu nationalist groups in India to target minorities and engage in hate-speech. ' The report continued:

'In 2018, Hindu nationalist groups called for a ban on public prayer by Muslims in parks in Gurgaon, which led to mob attacks in the name of enforcement. In June 2019, in Jharkhand, 24-year-old Muslim Tabrez Ansari was tied up, beaten and forced to chant messages in support of Hindu gods. Footage of the attack was shown on national television. Ansari later died from his injuries. Jharkhand police dropped the murder charges of the 13 accused when an autopsy stated Ansari had died of cardiac arrest, but they were later reinstated. Although there was no evidence of the perpetrators' link to any Hindu right-wing organisation, VHP activists protested their arrests.

8.2.2 With specific reference to Hindu Nationalist violence towards Muslims, the DFAT country report 2020 outlined that 'Reported instances of communal tension involving Muslims in recent years, include violence, assaults, riots, religiously motivated killings and discrimination,' and that 'Hindu nationalist groups, such as the Shiv Sena or the RSS, have been responsible for some incidents, in what some observers claim is a permissive environment. ' On 2 September 2021, the BBC reported on a number of Hindu mob attacks on Muslims in India, including:

'Unprovoked attacks on Muslims by Hindu mobs have become routine in India, but they seem to evoke little condemnation from the government.

'Last month, a video that went viral on social media showed a terrified little girl clinging to her Muslim father as a Hindu mob assaulted him.

'The distressing footage showed the 45-year-old rickshaw driver being paraded through the streets of Kanpur, a city in the northern state of Uttar Pradesh, as his crying daughter begged the mob to stop hitting him.

'His attackers asked him to chant "Hindustan Zindabad 'I or "Long Live India" and "Jai Shri Ram" or "Victory to Lord Ram" - a popular greeting that's been turned into a murder cry by Hindu lynch mobs in recent years. '

'He complied, but the mob still kept hitting him. '

8.2.3 The same article continued to note that the victims of this attack were rescued by the police and three men subsequently arrested, who were later released on bail.”

69. Neither Ms Shaw nor Ms Nolan addressed me specifically on para 8.1 to 8.2 of the CPIN. I have nevertheless considered this evidence given that paras 8.2.1 to 8.2.2 are quoted in the original grounds.

70. This evidence concerns attacks by Hindu nationalists and mobs on Muslims. The appellant is not a Muslim nor has she converted to Islam. I acknowledge that her husband, H, is a Muslim. I have therefore given the content of this evidence careful consideration. Para 8.2.2 refers to the RSS being responsible for *some* of the incidents in what some observers claim is a permissive environment. I have noted that two specific examples are given as follows: an incident in June 2019 (para 8.2.1

of the CPIN quoting from the DFAT country report 2020) and the incident reported by the BBC on 2 September 2021 (para 8.2.2. of the CPIN). In relation to the incident in June 2019, the DFAT report states that Jharkand police brought murder charges. In relation to the second incident, para 8.2.3 states that the victims of the attack were rescued by the police and three men were subsequently arrested. On this very limited evidence, I find that, if the appellant does experience any difficulties from the RSS due to being in a marriage to a Muslim, there is no reasonable likelihood that she would not be able to obtain sufficient protection from the Indian authorities. To the contrary, I find that there would be sufficient protection against the RSS and other Hindu nationalists.

71. Drawing everything together, I have reached the following conclusions on the appellant's protection claim:

72. On the whole of the evidence before me and for the reasons given in the whole of this decision, whilst I am prepared to accept that it is reasonably likely that the appellant, H and their children may experience discrimination and even social stigma due to the marriage between the appellant and H being an inter-caste and interfaith one, I find that the evidence before me falls well short of establishing that they are reasonably likely to be subjected to treatment sufficiently severe as to amount to persecution. Whilst I accept that the background evidence shows that there has been an increase in attacks by Hindu nationalists on Muslims, there is no reasonable likelihood of protection from the Indian authorities against any difficulties that may be experienced from Hindu nationalists and/or members of the community being insufficient. To the contrary, I find that there would be sufficient protection.

73. Accordingly, the appellant's appeal stands to be dismissed on asylum grounds. For the same reasons, her appeal also stands to be dismissed on humanitarian protection grounds and on human rights grounds (Article 3).

(iv) Article 8

74. In Article 8 claims, the burden is on the applicant to establish family and/or private life rights that engage the Article. The burden of proof in establishing facts to be relied upon is on the applicant and the standard is the balance of probabilities.

75. The judge considered the Article 8 claim at paras 50-53 of his decision. These read:

> "50. I turn to consider the best interests of the children in this case, which are a primary consideration. I will focus on the appellant's son who has been resident in the UK for the lengthiest period. He was born in the UK and is now 5 years old. He will have been in the education system from around the age of 4 years. He is not at a critical stage in his education. I consider his best interests would lie in staying with the family unit, having not developed sufficiently weighty private life outside the family. The remaining question is whether it would be appropriate to expect the children to follow their parents to India.
>
> 51. I have considered the position on statelessness above. There is nothing otherwise in any country specific information, which materially suggests that relocation would be unreasonable, considering my findings on the protection element of the appellant's case. The parents have existing family, social and cultural ties with India. There is no suggestion of wider family dependency for the children in the UK. I note the children have not visited India, but I am satisfied they have some exposure to the cultural norms of the country. It is likely they will achieve an ability to communicate in a reasonable time. Removal would not give rise to a significant risk to their health. Both parents are expected to leave the UK,

and it would be reasonable for the children to go with them. Therefore, viewed through the lens of family life I consider it in their best interests to remain within their stable family unit and return with them to India.

52. The claim under paragraph 276ADE(1)(vi) of the Immigration Rules with respect to 'very significant obstacles' to return, was made on the same factual basis as the protection claim. The appellant, and her family are healthy, it is not claimed that the appellant's own medical needs cannot be met in India. The appellant and her husband have lived the majority of their lives in India and are familiar with the customs and culture. They have family and friends there and the appellant has studied to a high level there prior to coming to the UK.

53. I note that the maintenance of effective immigration controls is in the public interest. Under s.117B it is in the public interest that those living in the UK speak English. The appellant gave evidence with an interpreter in Punjabi, assuming that she does speak English, this is a neutral factor in any case. It is in the public interest, and in particular in the interests of the economic wellbeing of the UK, that persons who seek to enter or remain in the UK are financially independent, the appellant has not demonstrated financial independence. Little weight should be given to a private life established by a person at a time when the person is in the UK unlawfully or her status is precarious. This has been the case for the entirety of the appellant's stay in the UK."

76. As can be seen, the judge proceeded to consider proportionality, taking it as read that there was no issue in relation to the first three of the five-step approach explained in R (Razgar) v SSHD [2004] UKHL 27. I see no reason to do otherwise, especially given that, as stated at **paras 11 and 13 above,** Ms Shaw confirmed that she was content for me to re-make the decision on the appellant's appeal on such material as was before me and that she did not wish to submit further evidence or updating evidence in support of the appellant's case. Ms Nolan was also content for me to proceed to re-make the decision on the appellant's appeal. I therefore proceed to re-make the decision on the appellant's Article 8 claim on such material as is before me, on the basis that it is accepted that the first three steps of the five-setp approach are satisfied and that it is only necessary for me to consider the fourth and fifth steps which together relate to the assessment of proportionality.

77. I take into account that the children are now about 9 months older. However, the daughter is still only an infant, being 2 ½ years old. Whilst the son is now nearly 6 years 2 months old, I nevertheless find, on the evidence before me, that he has not developed sufficiently weighty private life outside his family unit. The son is still not at a critical age in the education system.

78. I have carefully considered the remainder of the judge's reasoning at paras 50-53 and entirely agree with his reasoning. I adopt his reasoning as my own.

79. The best interests of the appellant's children are a primary consideration but they are not a paramount consideration. On the whole of the material before me, I find that the appellant's children will not experience any serious difficulties in India because they were born into an inter-caste and interfaith marriage and/or because they are of mixed caste. My attention has not been drawn to any evidence that shows that children born into an interfaith and inter-caste marriage experience serious difficulties from members of the community.

80. Nevertheless, I take into account my reasoning above in relation to the appellant's asylum claim, including the fact that I have accepted that it is reasonably likely that the appellant, H and their children may experience discrimination and even social

stigma due to the marriage between the appellant and H being an inter-caste and interfaith one.

81. The appellant's children have the love and support of their parents and the appellant has the support of her parents and her brother, on the judge's findings. In addition, they will have the support of H's parents.

82. Giving each factor for and against the appellant's Article 8 claim such weight as I consider appropriate and having taken into account the best interests of the appellant's children as a primary consideration, I find that the return of the appellant, H and their children to India would not breach any of their rights under Article 8 because the decision would not cause unjustifiably harsh consequences.

83. Accordingly, the appellant's appeal is also dismissed on human rights grounds.

Decision

The making of the decision of the First-tier Tribunal did involve the making of any error of law sufficient to require it to be set aside.

I re-make the decision on the appellant's appeal by dismissing her appeal on asylum, humanitarian protection and human rights grounds against the respondent's decision.

Signed
Upper Tribunal Judge Gill Date: 16 February 2024

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**
3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**
5. **A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.**
6. **The date when the decision is "sent' is that appearing on the covering letter or covering email**