Refugee Review Tribunal
AUSTRALIA

RRT RESEARCH RESPONSE

Research Response Number: PAK17215
Country: Pakistan
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This response was prepared by the Country Research Section of the Refugee Review Tribunal (RRT) after researching publicly accessible information currently available to the RRT within time constraints. This response is not, and does not purport to be, conclusive as to the merit of any particular claim to refugee status or asylum.

Questions
1. What is the law under which the sale of video pornography is punishable in Pakistan?
2. Is this a national law/provision, or a state law?
3. If there are state or other local differences, what would the penalties be (and under what law), for example, in NWFP, Islamabad and in Karachi?

RESPONSE

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Note: The questions addressed in this Research Response were completed as an addendum to questions addressed in Research Response PAK17204 of 24 February 2005. For further information on the subjects of Jamaat-e-Islami (JI; also: Jamaat-e-Islami, Jamiat-i-Islami, Jamiat Islami, etc); the Muttahida Majlis-i-Amal (MMA); and the relationships between these organisations, the Pakistani government and security forces, please refer to earlier Research Response PAK17204.

DFAT advice – received 4 March 2005
On 4 March 2005, Country Research received advice from Department of Foreign Affairs & Trade (DFAT) which indicated that “[i]t is an offence to distribute pornography in Pakistan under the national law – the Pakistan Penal Code”; and that “[a]lthough the sale of “pornography” is not specifically mentioned, it would fall under the range of material outlined in section 292, sub-section (a) transcribed below”.


A. It is an offence to distribute pornography in Pakistan under the national law – the Pakistan Penal Code. Although the sale of “pornography” is not specifically mentioned, it would fall under the range of material outlined in section 292, sub-section (a) transcribed below.

- **Pakistan Penal Code, section 292, sub-section (a) – “Sale etc., of obscene books etc”:**
  
  whoever sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other object whatever...shall be punished with imprisonment of either description for a term which may extend to three months or with fine, or with both (Department of Foreign Affairs & Trade 2005, *DFAT Report 359 – RRT Information Request: PAK 17215*, 4 March – Attachment 13).

DFAT also provided advice, at this time, addressing the question of whether, or not, JI, or an associated organisation, would pursue a person alleged to have distributed obscene materials if he/she fled the NWFP for a major metropolitan area such as Karachi or Islamabad. The advice follows below.

B. Jamaat-e-Islami (JI) is a minority member of the ruling religious alliance of the Muttahida-Majlis-e-Amal (MMA) government in the NWFP and its political strongholds are located in Lahore and Karachi. It has negligible control over independent police and security forces, even in its stronghold regions. Given the size of Karachi (population between 15-20 million), the patchy nature of JI’s influence within Karachi itself and the lessor classification of selling pornography as a ta’zir crime, it is highly unlikely that JI cadres would pursue someone allegedly guilty of such a lessor crime who was fleeing the NWFP. While shops and stalls allegedly selling obscene material (DVDs and music) were ransacked at the height of the religious fervour generated by the introduction of Shariah Law in the NWFP, there were few incidents of shop and stall owners actually having their lives realistically threatened (Department of Foreign Affairs & Trade 2005, *DFAT Report 359 – RRT Information Request: PAK 17215*, 4 March – Attachment 13).


**Country Research – completed 28 February 2005**

The sources consulted provided reports which suggest that the sale of video pornography in Pakistan is an offence under Section 292 of the Pakistan Penal Code. The sources consulted provided reports which suggest that this federal law is employed to prosecute persons guilty of such an offence throughout Pakistan’s four provinces. Nonetheless, inconsistencies were found in the listing of the penalties which attend Section 292; this suggests that the penalties may vary from province to province. Furthermore, the fluid nature of Pakistani politics, and the frequently extrajudicial nature of Pakistani law enforcement, means that it is difficult, particularly with regard to a province such as the North Western Frontier Province (NWFP), to rule out the possibility that an offender might be dealt with otherwise.

Information sourced from the Article 19 website suggests that Section 292 of the Pakistan Penal Code makes the sale of any form of pornographic material an offence in Pakistan (unless that material is “kept or used *bona fide* for religious purposes”). The report, ‘Global Trends on the Right to Information: a Survey of South Asia’, notes that Section 292 “is extremely broad and vague” The relevant extract follows in detail:
Section 292, which prohibits the sale, public exhibition and even possession of obscene books, is extremely broad and vague. An explanation exempts material “used bona fide for religious purposes” but the exemption does not extend to artistic works. Since the law does not define obscenity, this term is, in practice, left to subjective interpretation by the authorities. There have been instances of customs authorities tearing pages bearing nude photographs or paintings from art books being imported into Pakistan (‘Global Trends on the Right to Information: a Survey of South Asia’ 2001, Article 19 website, July http://www.article19.org/docimages/1116.htm – Accessed 24 February 2005 – Attachment 1).

A News On Sunday report, published on 29 August 2004, discusses a recent raid on a cinema house in Karachi in the Sindh Province. The report notes that “[a]ll the detainees were originally booked under Sections 292 and 294 of the Pakistan Penal Code (PPC) (FIR No 141/04)”; that “[s]ection 292 of the PPC deals with obscene literature and objects, punishable with imprisonment for a term which may extend to three months or with fine or with both”; and that “[t]his section was probably appropriate only for the owner of the cinema because the people present there had nothing to do with the import, export or exhibition of any obscene material”. The report also discusses Section 294, which deals with obscene acts, as opposed to the distribution of obscene materials. The relevant extract follows in detail:

All the detainees were originally booked under Sections 292 and 294 of the Pakistan Penal Code (PPC) (FIR No 141/04). Section 292 of the PPC deals with obscene literature and objects, punishable with imprisonment for a term which may extend to three months or with fine or with both. This section was probably appropriate only for the owner of the cinema because the people present there had nothing to do with the import, export or exhibition of any obscene material.

Section 294 deals with obscene acts and songs and reads: “Whoever to the annoyance of others, does any obscene act in any public place or sings or utters any obscene songs, ballads or words in or near any public place shall be punished with either description for a term which may extend to three months or with fine or with both” (Jabbar, Rubina 2004, ‘Screen Test’, The News on Sunday, Jang Group website, 29 August http://www.jang.com.pk/thenews/aug2004-weekly/nos-29-08-2004/dia.htm – Accessed 25 February 2005 – Attachment 2)

Section 292 states that “[w]hoever … sells, lets to hire, distributes publicly, exhibits or in any manner puts into circulation … any obscene books, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatever … shall be punished with imprisonment of either description for a term which may extend to three months, or with a fine, or with both”. Section 292 is presented below, in its entirety, as sourced from the Interpol website:

‘Sale, etc., of obscene books, etc.’, Section 292 of the ‘Pakistan Penal Code 1860’

‘Whoever-

a) sells, lets to hire, distributes publicly, exhibits or in any manner puts into circulation or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene books, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatever; or

b) imports, exports or conveys any obscene object for any of the purposes aforesaid or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation; or
c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are, for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation; or

d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person; or

e) offers or attempts to do any act which is an offence under this section,

shall be punished with imprisonment of either description for a term which may extend to three months, or with a fine, or with both.

Exception: this section does not extend to any book, pamphlet, writing, drawing or painting kept or used bona fide for religious purposes or any representation sculptured, engraved, painted or otherwise represent, on or in any sample, or on any car used for the conveyance of idols, or kept or used for religious purposes.

Information sourced from the Punjab Laws Online website indicates that persons deemed guilty of offence under Section 292 will be subject to “[t]wo years’ rigorous imprisonment and whipping”. This may indicate that the punishment for violation of Section 292 is not consistent throughout each of Pakistan’s four provinces (‘The Punjab Control of Goondas Ordinance, 1959’ (undated), Punjab Laws Online website http://punjablaws.gov.pk/laws/112.html – Accessed 24 February 2005 – Attachment 4).

Reporting on the prospective introduction of Shariah law in the NWFP in April 2003, a Newsline report notes the comments of NWFP “advocate Qazi Anwar” in respect to the relationship between the federal Pakistan Penal Code and the new provincial laws. According to this report, Qazi Anwar indicated that the Pakistan Penal Code would not be affected by the provincial introduction of Shariah law. The relevant extract follows in detail:

Announcing the proposals of the Nifaz-i-Shariat Council, formed to make recommendations for the Islamisation of the province, the chief minister said, “We are introducing the Nifaz-i-Shariat Act in the Frontier, which will make Shariah the supreme law in the provincial sphere. All directives will be derived from the Quran and the Sunnah.” This implies that the courts in the Frontier will be obliged to interpret provincial laws in accordance with the Shariah. No specification, however, over which provincial laws were going to be affected, was given.

“Civil and criminal laws are federal laws, and as such, the provinces will have no jurisdiction over them,” says advocate Qazi Anwar. “As the Pakistan Penal Code, Criminal Penal Code and the Constitution are part of federal legislation, the only law to come under the provincial jurisdiction is the Pre-emption Act (1950).” According to Qazi, however, “This act has already been amended in light of the CII recommendations in 1986 and as such the titles of judges might be changed, from Justice to Qazi, as has been the case in the Malakand Agency, after the proclamation of Nizam-i-Adl Regulations.” A member of the Nifaz-i-Shariat Council’s Shariat Committee, MNA Dr Ata-ur-Rahman of the MMA, also issued a statement saying that although, under the new bill, all provincial laws should conform to the Shariah, in reality only a few provincial laws would be affected (Khan, Amir Mohammad 2003, ‘Back to the Dark Ages?’, Newsline website, April
The US Department of State’s *International Religious Freedom Report for 2004 – Pakistan* suggests that “NWFP Government’s ‘anti-obscenity’ drive” has been a relatively benign affair; reporting that: “[t]here have been sporadic incidents of police detaining shopkeepers for selling music CDs and videos” but that “most were released after a night in detention and the payment of fines”. The report makes light of recent developments in the NWFP generally; observing that: “the NWFP Shari’a Act [of] 2003 … is almost identical to the 1991 Shari’a Act passed at the federal level, which was already binding on the entire country”. Relevant extracts follow in detail:

The Muttahida Majlis-e-Amal (MMA), an alliance of religious parties that includes both Sunni and Shi’a groups, leads the opposition in the federal Parliament, holds a majority in the Northwest Frontier Province (NWFP) Provincial Assembly, and is part of the ruling coalition in Baluchistan. The MMA has called for strict adherence to Shari’a law. Minority groups claim the MMA’s outspoken calls for Islamic laws and morals have made the social climate more hostile to persons of minority Muslim sects and other religions.

…In June 2003, the Provincial Assembly of NWFP, dominated by the MMA, unanimously approved the NWFP Shari’a Act 2003, ruling that all future legislation should be in accordance with Shari’a law, existing legislation should be reviewed in light of Shari’a, and education and financial sectors should be brought in line with Islamic teaching. This was the first time in the country’s history that a Shari’a Act had been passed by a provincial legislature; however, the act is almost identical to the 1991 Shari’a Act passed at the federal level, which was already binding on the entire country. During the period covered by this report, no existing legislation was forwarded to the provincial legislature for review based on the Shari’a act.

In May 2003, a directive by the provincial NWFP Government ordered civil servants to pray five times a day; however, the directive has not been enforced, and no action has been taken against civil servants who do not pray. The prayer directive followed curbs on the sale of “vulgar” music and videos, destruction of posters featuring women and advertising Western products, and the imposition of a complete ban on alcohol. There have been sporadic incidents of police detaining shopkeepers for selling music CDs and videos, as part of the NWFP Government’s “anti-obscenity” drive; most were released after a night in detention and the payment of fines (US Department of State 2004, *International Religious Freedom Report for 2004*, September 15 – Attachment 6).

It should be noted, at this point, that a number of political commentators consider the present US administration to have been less critical of human rights concerns in Pakistan owing to the importance of the Musharraf regime as a regional ally in the “war on terror”. For instance, a February 2005 report for the US Congress on Pakistan notes that “United States now considers Pakistan to be a vital ally in the international anti-terrorism coalition”; and observes that “Bush Administration has refrained from expressing any strong public criticisms of Pakistan’s internal political practices, while still asserting that the strengthening of civilian political institutions in Islamabad is ‘a requirement for the development of a stable, moderate Islamic state’” (Kronstadt, K. Alan 2005, ‘CRS Report for Congress: Pakistan’s Domestic Political Developments’, US Department of State website, 14 February, p.4
A *News on Sunday* report, published on 11 November 2004, presents a darker picture of recent events in the NWFP. Like the US State Department, the *News on Sunday* report notes that “[i]n itself [the NWFP Shariah] Bill is not much different from the one introduced by General Zia and later by his political protege Nawaz Sharif”; but this latter report goes on to observe that the passage of such a Bill in a provincial assembly legitimizes, and prepares the way for, a much more radical institution of law than that which has manifested itself in the federal Shariah Bill: “what will give [the NWFP Bill] teeth is the proposed follow-up, the Hisba or Accountability Bill, modelled along the lines of the Taliban’s Department of Vice and Virtue (framed on the principle of ‘to support that which is good and oppose that which is wrong’)”. In fact, according to this report, “a Hisba (Accountability) tribunal has already been quietly set up (reported by some newspapers on May 4, 2003), which may serve as a precursor to an all-powerful Hisba Force that is meant to ensure implementation of the Shariat and Hisba Acts”. The report goes on to note, of the NWFP Government’s “anti-obscenity” drive, that “[v]igilantes and extortionist policemen have an open field to harass video and cable operators and public transport bus drivers, tear cassette players out of buses and raid wedding parties”. Relevant extracts follow in detail:

In itself this Bill is not much different from the one introduced by General Zia and later by his political protege Nawaz Sharif. But what will give it teeth is the proposed follow-up, the Hisba or Accountability Bill, modelled along the lines of the Taliban’s Department of Vice and Virtue (framed on the principle of ‘to support that which is good and oppose that which is wrong’).

The proposed Hisba law will create parallel judicial, police and accountability systems argue its opponents. The scheme should be debated now, says the well known political analyst I A Rehman, “instead of waiting till the state and the people are confronted with another fait accompli.”

But a Hisba (Accountability) tribunal has already been quietly set up (reported by some newspapers on May 4, 2003), which may serve as a precursor to an all-powerful Hisba Force that is meant to ensure implementation of the Shariat and Hisba Acts.

…Soon after assuming power, the NWFP government banned music on public transport, gambling and the sale of alcohol, even to foreigners with valid liquor permits. The first step could be justified on safety grounds, but gambling and alcohol sales have been illegal since 1979, when then Prime Minister Zulfikar Ali Bhutto, Benazir’s father did his bit in trying to gain the support of the ‘religious parties’.

Vigilantes and extortionist policemen have an open field to harass video and cable operators and public transport bus drivers, tear cassette players out of buses and raid wedding parties – even the famous are not spared, as the renowned Pashtu singer, Gulzar Alam, found out when he was beaten and arrested for performing at a local hotel. Not surprisingly, musicians, livelihood and life threatened, are fleeing from Peshawar to other cities.

On the streets, the vigilantes in Peshawar started an ‘anti-obscenity’ campaign, defacing billboards picturing women. Such activity is contagious: billboards featuring women in Karachi and Lahore have also been attacked – as happens during ‘anti-obscenity drives’ periodically announced by the religious parties.

…and such vigilantism may be formalized in the NWFP with the proposed Hisba Act, fear rights activists, arguing that the ripples will be felt throughout the country. Although the MMA publicly denounced the billboards vandalism, it took no action against the police force that had stood by and watched. The embarrassed federal government later stepped in and removed two senior officials, a policeman and a civil servant (Sarwar, Beena 2004, ‘The creeping
Two news reports, published by *The Daily Times*, provide an indication of the intimate relationship between the MMA NWFP government and NWFP police in the ongoing “anti-obscenity” drive. The first, dated 14 May 2003, reports on the campaign at the time of its launch. This is followed by a more recent report, dated 5 November 2004. It may be of interest to the Member that the May 2003 article reports that NWFP police were directed “to keep a close watch on video shops and centres”. Pertinent extracts from the two reports follow respectively:

### [14 May 2003]

PESHAWAR: Following the directives of Northwest Frontier Province (NWFP) Chief Minister (CM) Muhammad Akram Khan Durrani, the provincial police chief, Muhammad Saeed Khan, on Tuesday ordered all the district police chiefs to vigorously restart a campaign against obscenity and vulgarity.

…The DIGs and DPOs were directed to keep a close watch on video shops and centres during the campaign and remove film stars’ pictures displayed there. They were also ordered to remove all billboards, posters and signboards displaying beverages and women’s pictures, and ask the companies to “adopt the alternate means of advertisement.” The police officials were warned that strict action would be taken against them if they showed leniency in curbing vulgarity and obscenity. The provincial police chief ordered them to submit a daily progress report (‘NWFP police ordered to restart campaign against obscenity’ 2003, *Daily Times*, 14 May [http://www.dailytimes.com.pk/default.asp?page=story_14-5-2003_pg7_34](http://www.dailytimes.com.pk/default.asp?page=story_14-5-2003_pg7_34) – Accessed 20 February 2005 – Attachment 8).

### [5 November 2004]

The anti-obscenity committee held a meeting with Masood Ahmed Paracha, the capital police chief, on Wednesday. It was attended by members of the committee including, Hakim Abdul Wahid, Haji Ihsanul Haq, Maulana Abdus Salam Salfi, Maulana Abdul Malik, Haji Dost Mohammad, Hassan Sheikh, Shujjat Ahmed Khan, investigation superintendent of police (SP) and various city SP’s.

…In order to ensure a successful campaign, the police have divided Peshawar into three zones under the command of the city SP, the cantonment SP and the rural SP. MMA nominated members in the three zones would liaise closely with respective SP to maintain cooperation and communication (‘NWFP govt undecided about closing cinemas in Ramazan’ 2004, *Daily Times*, 5 November [http://www.dailytimes.com.pk/default.asp?page=story_5-11-2004_pg7_26](http://www.dailytimes.com.pk/default.asp?page=story_5-11-2004_pg7_26) – Accessed 25 February 2005 – Attachment 9).

A number of news reports indicate that, in the NWFP, many persons, who are deemed to guilty of propagating obscenity, are dealt with in an extra-judicial fashion by the local police. For instance, a report published by the UN Integrated Regional Information Networks (IRIN) highlights the case of a “popular folk singer” in the NWFP who is said to claim that “some 25 policemen broke into his house on 10 April without any search warrants, and took away his 10- and 14-year-old sons, as well as his brother, subsequently releasing them after detaining them for a day”; “police beat and arrested his brother and two sons without preferring any charges”. Another report, published by the *Dawn* news service, states that “Swabi police beat up a number of youth” at an Internet café after “they had learnt that teenagers mainly frequented Internet cafes to visit pornographic sites”. The owners of cafés accused “the police of abuse, they said that if they had caught anyone accessing pornography they should be

List of Sources Consulted

Internet Sources:

**Government Information & Reports**
Interpol website [http://www.interpol.int](http://www.interpol.int)
US Department of State website [http://www.state.gov](http://www.state.gov)

**United Nations (UN)**
UN Integrated Regional Information Networks (IRIN) website [http://www.irinnews.org](http://www.irinnews.org)
UN High Commissioner for Refugees (UNHCR) website [http://www.unhcr.ch/cgi-bin/texis/vtx/home](http://www.unhchr.ch)
UN Office of the High Commissioner for Human Rights (UNHCHR) website [http://www.unhchr.ch](http://www.unhchr.ch)

**Non-Government Organisations**
Article 19 website [http://www.article19.org](http://www.article19.org)
Human Rights Commission of Pakistan (HRCP) [http://www.hrcp-web.org](http://www.hrcp-web.org)

**International News & Politics**

**Region Specific Links**
The Pakistan Tribune website [http://paktribune.com](http://paktribune.com)

**Search Engines**
StaggerNation website’s Google API Proximity search engine [http://www.staggernation.com/cgi-bin/gaps.cgi](http://www.staggernation.com/cgi-bin/gaps.cgi)

**University Sites**
University of Virginia Library website [http://www.lib.virginia.edu](http://www.lib.virginia.edu)

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List of Attachments


