

ENGLAND AND WALES / JUDGMENT

R v M

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Neutral Citation Number: [2011] EWHC 2132 (Fam) Claim No: FD09D04319 IN THE HIGH COURT OF JUSTICE FAMILY DIVISION Royal Courts of Justice Strand, London WC2A 2LL Wednesday, 18th May, 2011 BEFORE: MRS JUSTICE PARKER

- ----- BETWEEN: Petitioner R
- v - M Respondent
- ----- Digital Transcript of Wordwave International, a Merrill Communications Company 165 Fleet Street, 8th Floor, London, EC4A 2DY Tel No: 020 7422 6131 Fax No: 020 7422 6134 Web: www.merrillcorp.com/mls Email: mlstape@merrillcorp.com (Official Shorthand Writers to the Court)
- ----- Clare Renton appeared on behalf of the Petitioner Joanna Toch appeared on behalf of the Respondent
- -----

Judgment

Mrs Justice Parker:

1. This is a preliminary issue within divorce proceedings between petitioner wife and respondent husband set down for hearing in the High Court by Judge Overall on 19th August 2010. The petitioner lodged a petition for divorce in which a special procedure certificate was granted, but which was subsequently set aside on the basis of the respondent being permitted to file an answer out of time.
2. The question is whether, under the rules of private international law, this Court should or must recognise as effecting a valid marriage a wedding ceremony celebrated in Islamabad, Pakistan on 9th November 2007.
3. The respondent has British citizenship and has been established here for some time. The petitioner lived in Pakistan until 2008, when she joined the petitioner in England. The petitioner says that this is a marriage which creates civil as well as religious status of the spouses as spouses. The respondent says that it creates a religious status only and says, accordingly, that in English law there is no marriage to dissolve. In any event, he says that the religious marriage has already been dissolved by his unilateral talaq performed by him in England after the parties separated. 4. I am told that nothing turns on this dispute of a

practical nature. There is no substantive application for ancillary relief, and the petitioner's immigration status in this country has been secured, although the respondent says wrongly, already. The petitioner's costs are £36,000, the respondent's costs are £22,500, broadly. The petitioner's costs are paid for by her father, and the respondent's by his brother, I am told.

5. However, this issue does raise important questions of status, particularly since it may affect many others in this country from the community to which the petitioner and the respondent belong, the Pakistan Ahmahdi community, of which there are a number of members in this country, and there is also a worldwide Ahmahdi diaspora as well as an Ahmahdi community of about 3 million people in Pakistan.
6. The marriage was unsuccessful, almost from the outset. The petitioner made allegations of domestic violence and rape. The respondent says that she was cold and unloving, that she had only married him to get a passport and that she wanted to be married to someone else; and that the allegations were made against him just so that she could rely on domestic violence in order to seek indefinite leave to remain.
7. The charges against the respondent of common assault and rape were dropped at a directions hearing in the criminal court and a not guilty verdict was pronounced. The respondent says that this was because the allegations were false. The petitioner says that the CPS took the decision not to proceed on pragmatic grounds. She relies on common assault and three instances of sexual intercourse without her consent within the marriage in her section 1(ii)(b) 1973 Act divorce petition.
8. The respondent has offered to compromise on the basis of 2 years' separation with her consent. Since the validity issue has been raised, and, since notwithstanding his concession, the respondent still asserts that the marriage is not recognisable here, the petitioner has sought to proceed and the case has proceeded, without objection from the respondent.
9. As a result of the petitioner making allegations against the respondent, the UK Ahmahdi community has excommunicated her. The respondent is much exercised about the allegations. His case that they are false, and that the respondent made them just to get the right to remain, formed a large part of his written presentations, and he complained that the petitioner's expert had not taken this into account, but in the end this case has not been advanced at all before me by counsel, and I disregard it.
10. The Ahmahdi community and sect of which both parties are members was regarded as Muslim in Pakistan until 1974, but in that year it was declared non-Muslim in Pakistan and it is now a criminal offence for Ahmahdis to describe themselves as Muslim within the Pakistani jurisdiction. There are other legislative provisions which affect them. They regard themselves as Muslim, but there are important and fundamental doctrinal differences between their beliefs and those of Sunni or Shia Muslims.

11. It is common ground in this case that in the law of Pakistan a Muslim marriage is effected by the ceremony of marriage (the Nikah). In Pakistan practising Ahmahdis marry in a Nikah ceremony which is regarded by them, but not by the Pakistani authorities and law, as a Muslim ceremony. Such ceremonies are celebrated in their own religious buildings, which they are not permitted to describe as mosques. Ceremonies are arranged by and take place under the auspices of the Nazarat Islah-o-Irshad Shoba' Rishta Nata, strictly matchmaking but referred to as the Department of Marriages, or the Ahmahdi Marriage Office, situated in Rabwah, a town in Pakistan where Ahmahdis are in the majority and which is in the centre of Ahmahdi cultural life in Pakistan. The Ahmahdi Department of Marriages issues its own Nikah certificates and also issues decrees of divorce. In England Ahmahdi affairs are governed by the Ahmahdi Muslim Association UK. There are strong links between the various national agencies and the department in Rabwah.
12. The petitioner approached the Rabwah office to seek an arranged marriage. Her father, I think, had instigated the process. She was introduced to the respondent, who was seeking a bride, through liaison between the UK and Rabwah offices. The respondent says that he made arrangements so that the petitioner could arrive legally as his wife. He approached the Ahmahdi Muslim Association UK, and when he went to Pakistan to marry the petitioner he took with him uncompleted documents, which were the Nikah form and a marriage certificate in a form which was intended to be acceptable to the Department of Marriages in Rabwah. The marriage duly took place. I need not deal with the details of the ceremony. Marriage in Islam, and indeed within the Ahmahdi community, is regarded as a contract, and there are a number of fundamental elements of the marriage ceremony which were duly performed, and the documents were filled in and signed by the parties and a dowry of £5,000 was paid. It had been agreed as part of the negotiations leading up to the marriage that the petitioner would join the respondent in England. She applied for a spousal entry visa and the respondent supported this, and she was described as the respondent's wife in all of that documentation. She remained in her family home, and the marriage was not consummated until her spousal visa was obtained. She says the marriage was consummated in Pakistan; the respondent says that it was not until they were in England. It does not matter who is right. I was told by Professor Menski, the petitioner's expert, that consummation seals the marriage under the traditions which affect this couple, and that the petitioner's father would not have permitted her to live with the respondent and consummate the marriage until she was able to enter the UK to live with her husband, because, if the marriage were not consummated, then she would have found it much easier to dissolve the marriage and to re-marry. The respondent says that he wanted and intended to have the marriage registered in the UK after arrival, and that is the case which has been forcefully presented by him in his written documentation and which he asserted in oral evidence.

13. Both these parties gave brief oral evidence before me. The petitioner says that the respondent did not tell her that it was necessary to have any registration here, because so far as she was concerned the marriage was legally valid and recognised in this country, and indeed she had obtained her passport and gained admission to the UK on the strength of it. She says that he never mentioned the necessity for registration. The respondent was unable to point to any step that he had taken to register the marriage. He told me in evidence, however, that the marriage was not in his view provisional or tentative. He says that he fully intended to go ahead with the registration, but he could not describe any steps which he had taken, although he eventually said that there would have been some sort of celebration to which relatives would be invited. He was asked as to what his view was about the legal status of the marriage when the petitioner entered the UK. That, of course, is not relevant to the decision as to recognition, but is relevant in assessing his evidence about his belief as to the necessity of some sort of registration here. He told me that he was not misleading the authorities when he supported the petitioner's entry and described her as his wife. That is, in itself, inconsistent with a belief at the time that he needed to do something else to legitimise the marriage in England. I reject his evidence that he ever discussed celebrating a register office marriage here, which in fact is the only form of ceremony which could take place, and find that the first time this was raised by him was after he challenged the petitioner's petition.
14. After the wife issued her petition on 7th September 2009, the wife's legal team produced a document (B15 in the bundle). It is headed "Registrar's certificate (under Section 13 of Special Marriages Act-III of 1872)", and it purports to be a certificate which registers "A marriage of [the petitioner] with [the respondent]...on 9th November 2007 at Islamabad and was got registered (sic) vide Registration No. 830 dated 22nd November 2007 (Rabwah Marriage Office)." The certificate purports to state that "the marriage has been registered in register under Section 13 of Special Marriages Act-III of 1872 on 27th October 2009". The respondent asserts that this was obtained by the petitioner's father bribing an official at the relevant office. I shall consider this assertion and the effect, if any, on the validity of this document when I come to look at the law.
15. In accordance with Judge Everall's directions order of August 2010 the petitioner was permitted to adduce and to rely on the report and opinion of Professor Menski, Professor of South Asian Law at the School of Oriental and African Studies, whom she had already instructed and who had prepared a report. The respondent was permitted to instruct Dr Ayaz OBE (who I think is Chair of the English Ahmahdi Association), and Mr Chohan, a Pakistani lawyer. Mr Chohan filed two reports, but on the morning of the hearing, and although he had been expected to give evidence by video link and this had been provided for by Judge Everall's order, a letter arrived stating that he was not able to appear because of professional commitments. I ruled, and Miss Toch accepted, that no reliance could be placed on his evidence. The law and expert evidence

16. There is no issue with regard to form and capacity, but, as I have said, the respondent's case is that the marriage is not valid until registered in Pakistan or England, and that, until then, it only has effect at a religious level within the Ahmahdi community. His original case that it was possible and necessary to register the marriage with the Pakistani authorities in Pakistan has now been abandoned.
17. I deal, firstly, with the assertion that it was necessary to register this marriage, or possible to register it, in England. So far as English law is concerned, there is no registration procedure in respect of a foreign marriage. If a domestic marriage is not recognised, or a foreign marriage is not recognised in this jurisdiction, then these parties must, if they wish to have a validly recognised marriage, undergo a civil or religious ceremony in this country which takes place in accordance with the Marriage Acts. There are indeed some marriages regarded as binding at a cultural and religious level in this jurisdiction which this jurisdiction does not recognise, in particular, religious marriages which take place in the Muslim community, because a Nikah marriage here is, as indeed are Hindu and other marriages, not recognised unless it takes place in a venue which is registered. The effect of non-recognition is graphically illustrated by the decision of Sir Christopher Sumner in *AAA v ASH* [2009] EWHC 636 (Fam). The consequences of non-recognition are very serious for the parties. Children are illegitimate, which is still a matter of some consequence because of the provisions for acquisition of parental responsibility by a father. There is no right to divorce unless the marriage is recognised here; thus these proceedings. If there is no divorce in these proceedings, there is no consequential right to claim any form of financial provision pursuant to the Matrimonial Causes Act 1973, and any children can only be supported pursuant to Schedule 1 to the Children Act 1989. *AAA v ASH* concerned a father whose child had been removed to the Netherlands. He had registered the child's birth in England as a married father relying on a Nikah certificate, there being no necessity for the mother to consent to this. The question was: had this birth been validly registered by the father as a married father, as opposed to pursuant to section 4 of the Children Act 1989, as amended, as an unmarried father in English law, which requires the mother's agreement to register. Sir Christopher Sumner held that the birth had been invalidly registered and that the father did not have parental responsibility.
18. As in *AAA v ASH*, there are cases where parties specifically choose to marry under religious procedures which do not affect a validly recognised marriage in this jurisdiction.
19. I deal with these issues because it is clear to me that it is certainly possible conceptually to have a marriage which is recognised religiously, as the respondent submits that this marriage is, without it taking effect as a recognised marriage in English law. But since this marriage ceremony took place in Pakistan, the issue is whether the marriage is recognised as creating a legally binding marriage in that jurisdiction. Thus, the current edition of Dicey, Morris & Collins on the Conflict of Laws Rule 66: "A marriage is formally valid when (and only when) any one of the following conditions as to the form of celebration is complied with (that is to say):

- (i) if the marriage is celebrated in accordance with the form required or (semble) recognised as sufficient by the law of the country where the marriage was celebrated;..." This is the rule upon which reliance is placed by the petitioner in this case. At 17-004 Dicey, Morris & Collins set out the following proposition: "(1) Local Form. A marriage celebrated in the mode, or according to the rights or ceremonies, required by the law of the country where the marriage takes place is (as far as formal requisites go) valid. Our courts in this matter give effect to the principle that the form of a contract is governed by the law of the place where the contract is made and hold that, though under certain circumstances other forms may be sufficient, yet the local form always suffices, and that in general 'the law of a country where a marriage is formalised must alone decide all questions relating to the validity of the ceremony by which the marriage is alleged to have been constituted'. If a marriage is good by the laws of the country where it is effected, it is good all the world over, no matter whether the proceeding or ceremony which constituted marriage according to the law of the place would not constitute marriage in the country of a domicile of one or other of the spouses. If the so-called marriage is no marriage in the place where it is celebrated, there is no marriage anywhere, although the ceremony or proceeding if conducted in the place of the party's domicile would be considered a good marriage." Compliance with the local form is essential. This principle is known as the *lex loci celebrationis*. Further, at 17-010 Dicey, Morris & Collins states that: "If the local law recognises marriage by cohabitation and repute a union so constituted would be recognised in England." This includes marriages by proxy to illustrate the importance which the law places on local ceremonies, although this, of course, was not a proxy marriage.
20. Professor Menski has been Professor of South Asian Law at SOAS since 1981. He has produced a CPR-compliant report (the first report having been written before these proceedings) together with two addenda. I accept his experience and his credentials to provide an expert opinion as to the validity of this marriage in Pakistan. He has frequently given expert opinion and evidence in his area of expertise in the courts and tribunals of this country. He is a published author and is the joint author of 'Muslim Family Law' published in 1998, together with His Honour Judge Pearl. He speaks Urdu and he has taught in Pakistan as visiting professor in Lahore. He keeps up to date with Pakistani law and is familiar with the social system in and the demographic makeup of Pakistan. He has extensive knowledge of the position of the Ahmahdi community in Pakistan, the UK and worldwide.
21. In his report and oral evidence Professor Menski says that:
- (1) Since Ahmahdis were declared non-Muslim in 1974 they cannot use standard procedures under Muslim law to marry and, in particular, cannot marry in Muslim mosques. They are not allowed to describe their own places of worship as mosques.

- (2) In the personal law of Pakistan the religious ceremony creates the civil status, providing that it is based on a valid oral contract of marriage. There is no requirement, as in England, for a marriage to be celebrated in a registered venue, whether a place of worship or not, and for the registration to take place at the time of the ceremony.
- (3) There are a number of religious minorities in Pakistan who marry pursuant to their religious customs, for example, Hindus, Jains, Sikhs, Christians and Buddhists. In addition, tribal groups have their own ceremonies. These marriages are treated as valid in Pakistan.
- (4) Sexual relations outside marriage constitute a criminal offence in Pakistan.
- (5) Muslims are required to register their marriages pursuant to the Muslim Family Laws Ordinance 1961. This "extends to whole of Pakistan, and applies to all Muslim citizens of Pakistan, wherever they may be." Professor Menski says that this wording is absolutely clear and does not permit extension to Ahmahdis as non-Muslims, nor indeed to Hindus, Christians and other minorities. In 1984 Ahmahdis were prohibited through changes in the Pakistani criminal law from using the provisions of the Muslim Family Laws Ordinance.
- (6) Section 5 of the Muslim Family Laws Ordinance 1961 provides that "every marriage solemnised under Muslim Law shall be registered in accordance with the provisions of this Ordinance". Registration takes place through the Union Council in Pakistan, which relates, Professor Menski tells me, and I accept, only to Muslims. There are penalties for non-registration. Professor Menski relies on the case of *Allah Rakha v the Federation of Pakistan*, Federal Shariat Court PLD 2000 FSC1 in which it was argued that that the prescribing of a penalty for non-registration was un-Islamic, and that the only requirement for the performance of Nikah in Islam is the presence of two witnesses. The Court said that the purpose of the legislation was to "regulate the procedure of Nikah in a Muslim country and to keep records of marriages which in turn entails the paternity of children". The word 'shall' does not mean 'must' and the requirement to register a marriage, which is an administrative provision, does not affect the underlying law of Pakistan, which is that it is the contract and the ceremony of marriage which creates the status of husband and wife. Professor Menski's view, hotly disputed by the respondent and Dr Ayaz, is that this also applies to non Muslim marriages. He says that since 1984, when the Ahmahdi community was prevented from registering marriages with the Union Council, that community has "had to create a customary marriage law", which he describes as an "Ahmahdi personal law". It is his view that although none of this is official or officially recognised in Pakistan, the Rabwah authority has come to be treated as equivalent to the Union Council. He stresses, however, that this does not affect the validity of the marriage, but only its proof and the way in which the marriage can come to be relied upon when dealing with officialdom in Pakistan.
- (7) Authenticity of the Rabwah marriage documents is not in dispute. Professor Menski says that for a "normal" Sunni Hanali Muslim couple to have a Nikah Nami, i.e. a Nikah certificate, would be settled proof of marriage.

- (8) It is Professor Menski's view that, providing that there is a valid contract of marriage, then this marriage is valid for all purposes. It is valid in the eyes of the parties, their families and the community. It was publicly announced on 9th November 2007 and would not have been consummated had it not been regarded as valid. To that the husband, of course, says that the fact that it is regarded as valid in his community does not mean that it is regarded as valid in Pakistan as a whole.
22. There is strong evidence that it is treated as a valid marriage in Pakistan. Professor Menski told me that there are no court authorities either way as to the status of Ahmahdi non-registered marriages in Pakistan so far as he is aware, but there is no suggestion whatsoever that Ahmahdi spouses are regarded as engaging in illicit sexual relations (a criminal offence in Pakistan), there is no suggestion that the children are illegitimate, and there is no indication that the Pakistani community in general treats Ahmahdi spouses as anything other than legally married. He told me that the document can be relied upon for all official purposes and, in his view, if there were to be a dispute which involved the marital status of parties married in an Ahmahdi ceremony, that that marriage would be treated as valid and that evidence of the certificate would be produced in order to support the existence of that marriage. In any event, he says there is a strong presumption of marriage based on cohabitation and reputation in Pakistani law and that evidence as to marital status may be accepted by the courts irrespective of any formal registration or documentation. He relied upon the decision in *Noor Khan v Haq Nawaz & Others* (PLD) 1982 Federal Shariat Court 265, which dealt with a criminal prosecution of a wife whose husband asserted that she had been living in unlawful relations with a man who purported to be her second husband because the validity of a talaq was disputed because no notice had been given as required by s 7 Muslim Family Laws Ordinance 1961. I accept his interpretation of that decision.
23. Professor Menski gave some evidence about the purported registration of the marriage under the Special Marriages Act 1872, which provides for a civil marriage ceremony between persons who are not Christian, Jewish, Mohammedan or Parsee, or between couples who are adherents to different religions, namely Hindu, Buddhists, Sikh or Jain. The celebration of such a marriage creates the marriage itself. Professor Menski expressed the view that the certificate was an illustration of the way in which the Ahmahdi community had adapted to the effect of the 1984 prohibition and reliance on the Muslim Family Laws Ordinance, although he said that this was only the second such certificate that he had seen. He said, and I accept, that it did not and could not have created a valid marriage between the petitioner and the respondent, because the respondent did not take part in any such ceremony or registration.
24. I am not clear as to how and why the certificate was obtained and whether it may have been procured by some influence or more by the petitioner's father. I am quite satisfied that this certificate does not have any legal validity in Pakistan upon which I can rely. I am quite satisfied that Ahmahdis cannot register their marriage in any way under the Special Marriages Act of 1872, and in order validly to marry under the Special Marriages Act they

would have to declare themselves as being non-Muslims. They did not undergo any such form of ceremony.

25. This document may well be a valid document in the sense that it truly emanated from an official in Pakistan, but whether it is genuine in the sense of truly representing a state of affairs is an entirely different matter. I am not convinced it is a forgery. I am unable to go further than that in dealing with the document. I am not satisfied on this evidence that the Ahmahdi community in general are utilising the Special Marriages Act 1872 in an attempt to validate their marriages in Pakistani law. However, having heard the wife, who was a convincing witness, give evidence, I am satisfied that she had no hand in producing this document and that it was obtained by her father. She has, of course, been resident in this jurisdiction ever since she arrived in 2008.
26. Professor Menski's report led to a very strong counter attack by Mr Chohan. In a further list of questions and a report submitted by Professor Menski, Professor Menski expressed his concern that Mr Chohan's report had been subtly misleading because it gave the impression that it was possible for Ahmahdi Muslims to register their marriages under the Muslim Family Laws Ordinance. I accept that what Mr Chohan said was not in fact accurate. I am not prepared to express any view as to whether this may have been deliberate or otherwise without hearing Mr Chohan, but I do accept Professor Menski's unchallenged evidence that Ahmahdis are not permitted to register their marriages under the Muslim Family Laws Ordinance, nor to marry in a mosque regarded as Muslim in Pakistan, because this is a criminal offence there. I also comment that the three authorities relied upon by Mr Chohan and of which extracts were produced by him are now accepted by Miss Toch on behalf of the respondent as not being relevant to the issue which I have to decide.
27. Dr Ayaz did give evidence before me. Dr Ayaz is not a lawyer, but I am satisfied that he is a respected community leader who has knowledge of procedures in his own community. He told me in his report dated 10th February 2011, paragraph 4 that: "It is mandatory for UK Ahmadiyya Muslim Community members who get married in Pakistan that they MUST get their marriage registered as required in UK where they intend. This requirement is to safeguard the legal status of the parties under laws of UK." It is quite clear, as I have already set out, that there is no registration provision as such in this jurisdiction. Dr Ayaz was not specifically challenged on this area of his evidence, however, and it may be that the advice given to Ahmahdis is that they should, in order to be certain of their status, undergo a civil ceremony here. I am not asked to and nor do I find that Dr Ayaz has deliberately misled the court in this regard.
28. Dr Ayaz did say in his report that: "In Pakistan marriage/divorce certificates are granted by the Community Headquarters to Ahmahdis. There are millions of Ahmahdis in Pakistan and overseas who do not register their marriages and divorces in accordance with the Family Laws in Pakistan. There is no dishonour, as espoused by Professor Menski, in not registering religious marriages in Pakistan as these are considered religiously valid by society. A religious marriage and divorce is absolutely important. Seeking marriage or divorce

document from a court in Pakistan is not necessary." Insofar as Dr Ayaz may have been intending to imply there that there is any choice as to registration of marriages in Pakistan, I reject that assertion for the reasons that I have already given.

29. In cross-examination by Miss Renton on behalf of the petitioner, Dr Ayaz accepted that the Nikah certificate issued in Rabwah is a "testimonial for official purposes". He said: "When you have to prove what is your marital status, go to some office... You produce this as evidence not only when getting a passport but when getting any official document. Some offices and officials require this. It is valid wherever in the world. It is all she needs to prove her status. This is a certificate to prove that they are married. There are four copies if they marry in Pakistan." So Dr Ayaz's evidence was in conformity with that of Professor Menski, and indeed reinforced it. Professor Menski had told me that if there was a dispute as to the validity of the marriage it could be proved in the Pakistani courts, although, as I have said, he knows of no case where this has happened. Dr Ayaz told me that Ahmahdis do not litigate in Pakistan because any disputes are sorted out in their own community. This seems to me to be highly likely bearing in mind the status of Ahmahdis in Pakistan. However, and contrary to what Dr Ayaz told me, I accept Professor Menski's evidence that if it were necessary to prove the marriage as against some non-Ahmahdi litigant, then this marriage certificate could and would be relied upon as good against all the world, as indeed it was relied upon in the petitioner gaining entry to this jurisdiction. Dr Ayaz also told me that there is a distinction to be drawn between tribal customary ceremonies and religious ceremonies and that religious ceremonies should not be regarded as falling within the definition of customary marriage. That may be a lay person's interpretation of the law, but Professor Menski was clear that, for the purposes of private international law, a religious ceremony may be regarded as customary marriage, and I accept his evidence. Dr Ayaz stressed that the Ahmahdi community in this country takes the view that it should be in charge of its own domestic affairs and status, and therefore that the Ahmahdi community wishes to be in a position to grant its own talaq divorces. That, of course, cannot be the case if there is a valid and recognised marriage abroad because of the provisions of the Family Law Act 1986 in this jurisdiction. Miss Toch for the respondent has attempted to persuade me that the talaq is valid or is effective to dissolve this marriage here, but that is an unsustainable submission. The fact that the talaq has been recognised by the Marriage Office in Rabwah as dissolving the marriage for their purposes is irrelevant. If this marriage takes effect only as a religious non-recognised marriage, then the talaq only takes effect for religious purposes, and so far as the law of Pakistan is concerned, it must be that the talaq has no effect for the purposes of civil law there if Miss Toch's argument that this ceremony only has religious effect is correct. I understand, as Professor Menski said, that the distinction between recognising the marriage which takes place in Pakistan, the wife having then been resident there, is contradistinction to the non-validity of the talaq divorce granted here, is difficult for the lay person to understand, but I am clear that that is the law.

30. Miss Toch's overall submission is that, in contradistinction to other non-Muslim marriages in Pakistan, the effect of the prohibition and reliance on the Muslim Family Laws Ordinance for Ahmahdis is that Ahmahdis cannot marry in a way which is recognised in civil law in Pakistan, and that their marriage only has religious effect. I have already stressed that I accept that it is possible in English law to have a marriage which for the parties is effective culturally and religiously but which is not recognised in law. She says that the decision in Allah Rakha is of no relevance because it relates only to Muslim marriages which shall, although not must, be registered under the Ordinance. But I am persuaded by Professor Menski's evidence that the Allah Rakha decision is a principle of general application in Pakistan and the principle is that it is the ceremony of marriage rather than the registration which creates its validity.
31. I am quite satisfied that this is a marriage which is informally but, importantly, recognised for all purposes in the Pakistani State, because officials will recognise the marriage based upon the evidence of the certificate in the ways that Professor Menski and Dr Ayaz described. I do not accept that Ahmahdis, even though they are declared as non-Muslims, are in fact in any different position from adherents to other religious groups who also cannot register their marriages in Pakistan. It is quite clear to me, therefore, that this marriage should and must be recognised as valid in this jurisdiction.

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Prepared on 23 October 2026 · Esheria