

## Refuge from the stones

Mohammed Syed says his sexuality puts his life in danger back home and he prays that Canada will grant him sanctuary. Trouble is, so many asylum seekers now are claiming to be gay when they're not

By MARINA JIMENEZ

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It's not uncommon in Pakistan to see grown men strolling through the streets and markets hand in hand.

This is a gesture of affection, not romance: These men live in a conservative Islamic society where homosexuality is not only taboo but illegal, and sodomy punishable by flogging. In some *madrassas*, the nation's all-male religious schools, boys are made to sleep with the lights on to guard against "particular friendships."

So, when word of Mohammed Syed's adolescent gay love affair spread through his neighbourhood in Rawalpindi, a bustling city of two million next door to Islamabad, the capital, he feared for his safety.

He began to receive threatening phone calls, he says, and one day, on his way home from school, he was attacked by three members of the fundamentalist political party Jamat-I-Islamia. Before beating him, Mr. Syed recalls, "They yelled '*gandoo*', which is like 'fag' in Urdu."

Now 27, he is a business student in Toronto, and recently applied to stay in Canada as a refugee, claiming that forcing him to go home is a guarantee of persecution.

This makes Mr. Syed a bit of a trendsetter. In the past 18 months, nearly 8,000 Pakistanis have sought asylum here; their homeland is Canada's leading source of refugee claimants. Although most complain of religious persecution, suddenly a growing number of them declare that they need protection because they are gay.

In fact, there is a rapidly rising number of self-

professed gay refugees from such unlikely places as Costa Rica, not exactly a nation associated with repression.

Canada is renowned for its sexual tolerance, but many of the same-sex newcomers have run into a problem: The authorities suspect that many of them simply aren't what they claim to be.

The sharp rise in the number of Pakistani claims is a result of the crackdown in immigration laws south of the border after the terrorist attacks of Sept. 11, 2001.

Last winter, after the United States introduced a law requiring men from Muslim countries to register with immigration authorities, a flood of Pakistanis packed up their furniture, sold their homes, businesses and cars, and headed to the Canadian border to seek asylum. Entire neighbourhoods uprooted and left such cities as New York and Chicago. Many people didn't have legal status in the States and feared that, after years of living abroad, they would be deported to the deprivations of their homeland.

This week, the U.S. Department of Homeland Security cancelled the program, acknowledging that it had only minimal benefits in terms of national security. But now the Pakistani expatriates are here, and the thousands of cases are slowly making their way through the refugee system.

Many have argued they need protection because they would face religious discrimination as members of a Shia minority in Sunni-dominated Pakistan. Thus far, the Immigration and Refugee Board has heard 510 such cases. But the acceptance rate for Pakistani claimants has been falling dramatically -- from 64 per cent in 2001 to 39 per cent for the first nine months of this year.

In comparison, says Catherine Dauvergne, a law professor at the University of British Columbia, from 1995 to 2000, the IRB issued at least 137 written decisions on gay cases, accepting more than half -- 54 per cent.

Perhaps it's a coincidence, but the nature of asylum claims has begun to change in recent months. From January, 2002, to October, 2003, at least 43 applications have been made by Pakistanis who said they were gay, and "I have had about a dozen in the last few months," adds Max Berger, the Toronto lawyer who represents Mr. Syed.

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lifestyle they are now leading.

Mr. Syed says he can answer such questions. Well-dressed with stylish glasses, black trousers and a collarless shirt, he remains closeted within the Pakistani community, but he says he felt that he had to tell his story. "It is daunting to go before the refugee board and have them ask all kinds of embarrassing questions about your sex life. But I understand they are testing my credibility."

He developed an intimate relationship with another young man in 1996, he says, and rumours soon spread that the pair were gay lovers. After the attack on the way to school, he went to the police, who declined to take action and suggested that he had brought the beating on himself. Three months later, he was attacked again by two men wearing green turbans. They trashed his apartment and threatened to kill him: "You are destroying the atmosphere of Islam with your filthy activities," they yelled.

With financial backing from his parents, Mr. Syed came to Canada on a student visa and was amazed to find a thriving gay bar scene in Toronto, and to learn that gays and lesbians can live together openly. When his visa expired last year, friends told him about Canada's refugee system.

"I don't want to go home where I could be stoned, blackmailed or face lashings," he says. "Even people in my own family with strong religious convictions would harm me if they discovered the truth."

Mr. Berger considers Mr. Syed credible, but he has been practising refugee law long enough to know that other claimants often try to replicate legitimate stories to bolster their chances.

"It was the same with the Roma gypsies. At first they came through the Czech Republic and had fairly high acceptance rates," he says. "Then they started coming through Hungary, where country conditions aren't as bad. And a lot were turned down."

Similarly, Costa Rica now ranks No. 4 among Canada's source countries for refugee claimants, and people from the tiny tourist country also have begun to request asylum on the basis of their sexual orientation. In one infamous case, two Costa Ricans did so after showing up in Montreal with their wives and children.

Such claims have been largely unsuccessful, and the overall acceptance rate for Costa Ricans hovers between 2 and 4 per cent. Their homeland is a constitutional democracy with an independent judiciary, and it boasts a flourishing homosexual community. Not only are gays and lesbians not persecuted by the government, they are catered to by organizations, businesses and travel companies. Every year in San Jose, the capital, there is a gay pride parade. And the Internet is filled with services for gays, including Gaymocracia, to protect their rights.

In Pakistan, of course, the situation is quite different. A gay subculture exists, but homosexual acts are described in the penal code as "carnal intercourse against the order of nature," and are punishable by prison terms. Under Islamic Sharia law, those caught engaging in homosexual acts may be stoned to death, although the edict is rarely enforced.

There are transvestite prostitutes (known as *hijras*) in Lahore and Karachi, but homophobia is prevalent, according to the IRB's file on Pakistan, and the police



may use the law to threaten people.

So credibility is the central issue for gay Pakistani refugee claimants, and some recent decisions issued by the IRB reveals the difficulty board members have in trying to assess these cases.

In August, 2003, panel member Lawrence Lang in Montreal granted refugee status to a once-married 39-year-old hotel worker from Lahore who testified that his father threatened to kill him after discovering an illicit gay affair. He fled to New York City in August, 2001, but did not file a refugee claim. Instead, he married a woman so he could obtain immigration papers, but she withdrew her sponsorship, and last February he came to the border crossing at Lacolle, Que. and sought asylum.

Mr. Lang said he believed the man was a homosexual and yet still concluded that his failure to seek asylum in the United States showed he was "more motivated by the prospect of working and staying in the U.S. than seeking protection from going home."

Defining homosexual behaviour can be difficult, Prof. Dauvergne says, because it varies according to culture and social class. "A young male prostitute in Bangladesh who sleeps with a different man every night may not face persecution, but a middle-class gay couple who live together may face unbearable discrimination."

She has created a database to compare the gay cases in Canada with those in Australia, where she has found about 20 written decisions involving Pakistanis.

The gay issue is troublesome, but immigration critics suggest that the recent flood of Pakistanis and the nearly 3,000 Costa Ricans who have made claims in the past two years illustrate a larger problem within the refugee-determination system.

Established in 1989, the IRB rules on whether people fit the United Nations definition of a refugee: someone with a well-founded fear of persecution on the basis of race, religion, nationality, membership in a particular social group or political opinion.

But the UN Convention on Refugees dates from 1951 and some argue that it has outlived its usefulness. It was designed to deal with the tide of people displaced in the aftermath of the Second World War, but many of those seeking asylum today are fleeing poverty, not political persecution. The top 10 refugee-producing countries now include Mexico, Hungary, Turkey and Costa Rica, all better known more for their difficult economic circumstances than civil unrest.

Perhaps not surprisingly, the IRB's acceptance rate has been cut in half from the 89 per cent recorded in 1989 when the top 10 sources included civil-war-torn Central American countries as well as Somalia, Sri Lanka, Iran and Lebanon.

Mr. Berger, who represents at least 400 Pakistanis, says more and more of today's claimants are economic migrants who cannot enter Canada as immigrants because they lack the education, language skills and job experience to qualify (applicants must score 67 out of a possible 100 points). The waiting list for interviews for applicants from China, Pakistan and other countries is as long as three to five years. But anyone who can get here can file a refugee claim.



through the back," he says. "We should recognize there is a core of genuine claims and a core of economic migrants using the system to get in. They should be processed another way."

Other immigration lawyers such as Lorne Waldman and Sergio Karas agree. "I hope the incoming federal government will develop an alternate process for people who have jobs here and whose labour is needed," Mr. Waldman says. "That way, they won't be forced to resort to the refugee system as a way in. It wastes time and money."

The current refugee-determination system does not reflect the realities of human migration in the 21st century, Mr. Karas says. "It doesn't address the needs of refugees who can't leave their country to ask for protection and it rewards those who pay smugglers to get them out. We need a new system with non-political appointees who can deal more quickly with legitimate refugees while separating out bogus claimants."

It is particularly complex for Pakistani claimants, because many of them lived illegally for years in the United States, establishing successful businesses and raising families. Even if they did flee political persecution initially, claimants are supposed to seek a haven in the first country they reach, not wait several years and then head north to Canada, which will no longer accept claims made at the border once a new regulation called the Safe Third Country Agreement comes into effect.

Many of the Pakistanis say they did not bother seeking U.S. asylum because authorities tolerated their presence in the underground economy, where they toiled away in minimum-wage jobs at gas stations and grocery stores.

"There was a big Shia community in New York, and I was able to live there without a problem," Intikhab Hassan Rizvi says. The 34-year-old medical technologist says he was persecuted in Islamabad because of his Shia religious beliefs, and fled to New York with the help of an agent after zealots from Sipah-e-Sahaba, an extremist political group, attacked him in a mosque.

He would probably still be there working as a cashier in a grocery store, if it hadn't been for the 9/11 attacks. "Then everything changed. Immigration started raiding houses and arresting people and we had done nothing wrong," he recalls.

"We worried we would be deported. All the Pakistanis panicked. Thank God, we had Canada. Otherwise, I might be dead by now, if I'd been sent back to Pakistan."

Mr. Rizvi had no faith the United States would give him a fair hearing. Last year's overall acceptance rate was 37 per cent, including 57 per cent of the 560 asylum seekers from Pakistan. Now, he finds the IRB is increasingly wary of granting protection to Shiites.

Sectarian attacks remain a problem in Pakistan, where hundreds of Shiites have been killed in the past decade, but the government has made serious efforts to curb religious violence, according to recent IRB rulings. General Pervez Musharraf's regime has banned several extremist groups that target Shiites, including the Sipah-e-Sahaba, and has attempted to reform *madrassas*, where many of the militants are trained.

ruled Cliff Barry, an IRB member who denied the claim of a young Shia Pakistani man in a Nov. 23 decision in Toronto.

Mr. Rizvi insists that his case should be accepted. "I had a very good job at Islamabad's National Institute of Health. I lived in government housing and had a car. Why would I leave it if I didn't have to?"

Like many of Pakistani claimants from the United States, he speaks perfect English, has a university degree and an impressive work history. He would make an ideal "new Canadian." He is volunteering in a Shia mosque here, and has applied for a job in Oakville, Ont., as a medical technologist, although most employers do not want to hire him until he has permanent status.

In another recent IRB case, a Shia military officer, his wife and two children were found not to be refugees on the grounds of religious persecution: "The claimants are economic migrants who, after failing to obtain permanent resident status in the U.S., have sought to obtain permanent residence status in Canada via the refugee system," James Simeon ruled in October.

While awaiting resolution of their cases, which can take years, Pakistani claimants have revitalized a neighbourhood on Toronto's Gerrard Street known as "Little India Bazaar." It is filled with halal meat shops, curry restaurants with the Pakistani green and white flag flying out front, Islamic book stores and corner shops selling phone cards, basmati rice and spices. One man who used to drive a taxi in Chicago recently converted a former Dunkin' Donuts site into a restaurant called Ali Baba.

Imtiaz Ahmad, whose claim has failed, runs the nearby Lahore Biryani restaurant. "In Canada, everyone is treated well, even the dogs and cats. I would like to stay here," he says. "In Pakistan, there is no sense of dignity or equality."

Having appealed his decision on humanitarian and compassionate grounds, he may have as long as three years to wait.

Prof. Dauvergne, who holds the Canada research chair in migration law, says the refugee-determination system needs to be better financed, if only so it can hear such appeals more rapidly and clear up its backlog of 50,000 cases.

She considers it inevitable that "economic migrants" will use the refugee system as a way in. "People are desperate and want to improve their lives. Canada holds itself out as a great place to live. Even if the success rate for your country is only 2 per cent, how do you know it won't be you who is accepted?"

But she also feels that every claimant, no matter what the nationality or grounds for applying, deserves a full hearing. "If you start refusing all claimants from certain countries, then you will miss genuine cases."

But Mohammed Syed seems much less tolerant of frivolous or fraudulent claims. "It has been so difficult for me to live as a gay man. I have been estranged from my family and I have really suffered. I can't imagine anyone pretending to be gay just to stay in Canada."

*Marina Jimenez is a senior feature writer with The Globe and Mail.*

## Seeking asylum



Since the Immigration and Refugee Board was created in 1989, the rate of acceptance has steadily dropped. The nationalities of those seeking a new home has also drifted.

Last year in the U.S. the acceptance rate was 36%. It's top source countries were: China (10,522); Mexico (8,977); Colombia (7,967); Haiti (3,562); and India (1,714).

### **1989**

Acceptance rate: 89%

Total refugee claimants: 9,488

Top five source countries:

1. Somalia
2. Sri Lanka
3. El Salvador
4. Iran
5. China

### **1990**

Acceptance rate: 81%

Total refugee claimants: 17,771

Top five source countries:

1. Sri Lanka
2. Somalia
3. China
4. El Salvador
5. Lebanon

### **1991**

Acceptance rate: 73%

Total refugee claimants: 18,320

Top five source countries:

1. Sri Lanka

2. Somalia

3. Lebanon

4. China

5. Iran

**1992**

Acceptance rate: 69%

Total refugee claimants: 18,247

Top five source countries:

1. Sri Lanka

2. Somalia

3. Pakistan

4. Iran

5. China

**1993**

Acceptance rate: 55%

Total refugee claimants: 18,943

Top five source countries:

1. Sri Lanka

2. Somalia

3. Israel

4. India

5. Iran

**1994**

Acceptance rate: 55%

Total refugee claimants: 11,632

Top five source countries:



2. Somalia

3. Iran

4. India

5. Bangladesh

**1995**

Acceptance rate: 68%

Total refugee claimants: 13,909

Top five source countries:

1. Sri Lanka

2. Iran

3. Somalia

4. Chile

5. India

**1996**

Acceptance rate: 42%

Total refugee claimants: 15,161

Top five source countries:

1. Sri Lanka

2. Chile

3. Iran

4. India

5. Israel

**1997**

Acceptance rate: 51%

Total refugee claimants: 11,656

Top five source countries:

1. Sri Lanka

2. Czech Republic

3. Iran

4. India

5. Pakistan

### **1998**

Acceptance rate: 49%

Total refugee claimants: 12,080

Top five source countries:

1. Sri Lanka

2. Pakistan

3. China

4. Mexico

5. India

### **1999**

Acceptance rate: 48%

Total refugee claimants: 14,976

Top five source countries:

1. Sri Lanka

2. China

3. Pakistan

4. Hungary

5. India

### **2000**

Acceptance rate: 51%

Total refugee claimants: 16,750

Top five source countries:

**1. Pakistan: 61% accepted**



2. Sri Lanka

3. Hungary

4. China

5. Argentina

## **2001**

Acceptance rate: 45%

Total refugee claimants: 23,036

Top five source countries:

1. Hungary

2. **Pakistan: 64%**

3. Sri Lanka

4. Zimbabwe

5. China

## **2002**

Acceptance rate: 47%

Total refugee claimants: 19,999

Top five source countries:

1. **Pakistan: 54%**

2. China

3. Colombia

4. Mexico

5. Sri Lanka

## **2003**

Acceptance rate: 45%

Total refugee claimants: 13,334

Top five source countries:

1. **Pakistan: 39%**

2. Mexico

3. Colombia

4. Costa Rica

5. China

*SOURCES: IRB AND CITIZENSHIP AND US CITIZENSHIP AND  
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