

74

17.11.98

Fra : Canadische Hygtuigenneun
INDIEN (25)

Date: 17 February 1997

Subject: India: Information from four specialists on the Punjab

Regional Office: 7

From: The Documentation, Information and Research Branch, Immigration and Refugee Board, Ottawa

Keywords: guerrilla fighters; arbitrary arrest and detention; assassination; terrorism; political parties; political activities; urban areas; political leaders; separatism; police; ideologies; Sikhs; weapons; legal proceedings; drug traffic; legislation; crime; extrajudicial executions; abduction; human rights violations; human rights activists; criminal law; prosecution; disposal of the dead; torture; human rights education; judicial system; courts; legal assistance; statistical data; armed forces; state of emergency; family; political opinion; refugee status; strikes; trade unions; deportation; immigration status determination procedures; ethnic discrimination; freedom of movement; residence; travel documents; communities; languages; population composition; peace; elections; violence; Europe; North America; Pakistan; India

Introduction:

On 23 January 1997 in Montréal the Documentation, Information and Research Branch (DIRB) interviewed a panel of four specialists on various aspects of the human rights, peace and order situation in the Indian state of Punjab. This Extended Response summarizes the information provided by the specialists, who the following day went on to address these and other issues at a conference on the Indian Punjab hosted by the Immigration and Refugee Board (IRB) in Montréal. A transcript of those conference proceedings is being prepared by the IRB, and brief biographies of the four speakers are included in an attachment to this document. The specialists were as follows:

Bob Brack is Deputy Program Manager of Immigration at the Canadian High Commission in New Delhi. He spoke on his own behalf for this interview, and not as a representative of the High Commission or the immigration programme.

Laurence Brooks works for the Canadian Security Intelligence Service (CSIS), and through his work has become familiar with the situation of militants in Punjab. Although CSIS often deals with confidential sources, for this interview Mr. Brooks restricted his comments to information which is in the public realm as reported in various media, and which corresponds with his understanding of the situation.

Gurinder Singh Mann, a specialist in the study of Sikhism, teaches Religion at Colombia University in New York. He has written extensively on Sikhs and Sikhism, and visits the Punjab regularly.

Ravi Nair is the Executive Director of the South Asia Human Rights Documentation Centre (SAHRDC) based in New Delhi, and is a former member of Amnesty International's International Secretariat. For more information on SAHRDC, please see the attachments.

(25) 4310MI

YF

The information in this Extended Response to Information Request is intended to update information contained in the DIRB February 1996 *Question and Answer Series* paper *India: Sikhs in Punjab 1994-1995*, as well as the 21 August 1995 DIRB Extended Response to Information Request IND20566.E on the human rights situation for Sikhs in Punjab, and the January 1994 *Question and Answer Series* paper *India: Punjab Human Rights Update*. For background information, please consult these documents.

The opinions and views expressed in this paper are those of the specialists surveyed and do not necessarily reflect the views of the DIRB or the IRB. This Response is not, and does not purport to be, either exhaustive with regard to conditions in the country surveyed or conclusive as to the merit of any particular claim to refugee status or asylum.

Sikh Militancy:

The panel broadly agreed that the Sikh militancy in Punjab has been virtually eliminated, and that all or almost all remaining militant leaders appear to have left the state and the country. According to Laurence Brooks, in the last few years militant organizations have been shut down or reduced in size, key leaders have been arrested, have gone underground, or have abandoned the movement, and those supporters who remain have struggled to maintain funding and morale. Brooks stated that the assassination of Punjab Chief Minister Beant Singh in late August 1995 was the last major terrorist incident to have occurred in Punjab. It has been attributed to the Babbar Khalsa, one of the few Sikh militant groups still operating, and the case is now before the Indian courts. Brooks stated that many groups like the All India Sikh Students Federation (AISSF) and the Sikh Student Federation (SSF) have in recent years denounced the use of violence and committed themselves to only pursuing a peaceful political agenda.

Brooks pointed to recent media coverage concerning a list of six leading Sikh militants still wanted by the Indian security authorities and named in an Interpol alert: Wassen Singh Zafferwal, Wadwa Singh Babbar, Mehal Singh Desewal, Lakbir Singh Rode (also known as Lakbir Singh Brar), Paramjit Singh Panjwarh, and Pritam Singh Sekhon. According to Brooks, four of the six individuals, representing three different organizations, are believed to be residing in Lahore, Pakistan. The organizations include the Khalistan Commando Force (KCF), led by Panjwarh, the Babbar Khalsa, led by Babbar and Desewal, and the International Sikh Youth Federation-Rode faction, led by Rode/Brar. According to Brooks, these individuals are all veteran militants, but the poor track record of their organizations over the last year and the small number of suspects named in the alert indicate the weak state of health of the militant Khalistani secessionist movement. Although Sikh militant groups are suspected of trying to target key officials in India, they have mounted no recently successful operations, according to Brooks.

Brooks further stated according to most reporting, the few remaining Sikh militants are working in or around Lahore in close cooperation or association with Pakistan's Inter Service Intelligence (ISI), and are probably receiving training in conjunction with Kashmiri militant groups. Both Brooks and Ravi Nair commented on a November 1996 gathering of Sikhs, including some from Europe and North America, at the Nankana Sahib *gurdwara* or temple in Lahore, Pakistan. According to Brooks, media reports indicated that pro-Khalistani views were voiced at the gathering. Nair pointed out that major *gurdwara* gatherings take place in Pakistan every year, and that recently Khalistani advocates have

had a difficult time recruiting supporters at these gatherings. In the last few years, according to Nair, the Indian government has become increasingly confident about a reduced Sikh militant threat, and has allowed larger numbers of Sikh pilgrims to attend the Pakistan events.

Brooks pointed to other indications of a weakened Sikh militancy. According to Brooks, some recent arrests of suspected Sikh militants in North America and New Delhi—including Malook Singh, Darshan Singh Gill, Iqbal Singh Gill, and Manjinder Singh Suri—have featured illegal arms and drugs, and there have been media allegations that money raised by the militants from drug and arms dealing ended up in leaders' pockets rather than going towards the militant cause. While these cases are still before the courts, Brooks believes they could be indicators of the ill-health of the militant organizations and the Khalistani movement in general.

Nair, on the other hand, cautions that for many armed groups throughout south Asia there is a nexus between the illegal arms and drug trades. As well, according to Nair, police forces in many local stations sometimes plant illegal drugs on suspects when making arrests, taking advantage of stringent administrative detention conditions offered by the Narcotics, Drugs and Psychotropic Substances Act (NDPSA), under which it is very difficult for the accused to obtain bail.

Both Nair and Bob Brack stated that much of what was ascribed to militant activity in the late 1980s and early 1990s was actually common criminality—crimes unrelated to the militant movement. Nair explained that during the height of the militancy, the Indian Home Ministry in its annual crime records regularly attributed most crimes in the state to militants. According to Nair and Brack, many of the so-called militant groups were simply armed bandits taking advantage of the chaotic situation in the state. Nair stated that the Indian government also often exaggerated the extent of the militant threat in order to justify its own policies.

For his part, Brooks commented that the nature of the Sikh militant threat has changed considerably: he speculated that future militant operations will be highly-focused, targetting high-ranking officials, and not likely to affect ordinary individuals. Gurinder Singh Mann, however, warned that the Sikh search for some sort of political supremacy in the region remains a powerful ideology. Mann stated that while the militants' ability to assert themselves has been temporarily suspended, future manifestations of Sikh militancy could not be discounted, a view endorsed by Nair, who cautioned that in large part the workings of the militant Sikh underground remain unknown.

Punjab Police:

The panel agreed that in recent years the central government has been attempting to rein in the Punjab police, who during the insurgency were responsible for large numbers of extrajudicial executions and disappearances. According to Ravi Nair, just as there was an understanding in the late 1980s and early 1990s that police violations were permissible, now there is an understanding, especially within the Home Ministry and the Supreme Court in New Delhi, that the Punjab police have to be brought back under control. Consequently, according to Nair, there has been a sudden revival of many writs against Punjab police officers that had languished for years in the Supreme Court, and a number of Central Bureau of Investigation (CBI) investigations have been ordered against Punjab police officers accused of human rights violations.

Bob Brack stated that these recent actions have sent a strong signal that the climate of impunity for the Punjab police is coming to an end. For example, Brack mentioned that several Punjab police officers, including a police superintendent, have been accused of the September 1995 kidnapping and disappearance of human rights activist Jaswant Singh Khalra. Brack argued that in the new atmosphere being created by this and other cases, the average Punjab police officer will be strongly inhibited from taking extrajudicial actions, even if under instructions from senior officers. While Brack acknowledged that occasional violations might still take place, he predicted that the likelihood of future disappearances at the hands of the Punjab police is very low.

Both Nair and Gurinder Singh Mann maintained, however, that the climate of impunity for Punjab police officers has been deeply ingrained over many years, and will take a long time to change. In Nair's opinion, the Indian government helped the process of impunity by passing an amendment to the Criminal Procedure Code, section 197(a), in September 1992, which stated that without prior permission of the government prosecutions could not be launched against public officials for things they did in the course of their duties. According to Nair, Punjab police officers knew it would be very difficult for individuals to get state sanction for prosecution if they wanted to bring writs for compensation or criminal liability against police officers for human rights violations.

Furthermore, according to Nair, the current signals being sent to the Punjab police regarding impunity are not always straightforward. Nair explained that Khalra had disappeared after making allegations of widespread secret cremations of unidentified bodies brought in by the Punjab police. According to Nair, the CBI reported to the Supreme Court that it had *prima facie* evidence of over 480 cases of extrajudicial executions in the cremations case, but that it could not investigate a number of other cases, which it recommended the Punjab police investigate—in effect, recommending that the Punjab police investigate themselves. According to Nair, important aspects of the CBI report have also remained confidential, fueling speculations that high-ranking officials were involved and are being protected. Nair also stated that for the last three years the Indian government has refused to give permission to United Nations special rapporteurs to visit India and report on the human rights situation.

In Mann's opinion, the recent judicial actions against some Punjab police officers will not solve the problem of impunity or abuses. Mann stated that the Punjab police, with an ingrained culture of using brute force, retain the power to do many unacceptable things without being called into account. He argued that they still, for example, have the power to bring people to the police station and abuse them, a contention with which both Nair and Brack agreed. According to Nair, torture is used endemically by police throughout India. Brack argued, however, that while serious, the abuse of detainees is now no worse in Punjab than in other parts of the country. Brack also stated that there is some encouragement in a current project being developed between the Canadian Human Rights Commission and the Indian Human Rights Commission to provide extensive human rights training for police in India, including Punjab police. According to Brack, this project is an example of the general trend in India toward recognizing and addressing systemic problems with police.

The Judiciary:

Ravi Nair stated that during the height of the militancy in Punjab the Supreme Court, the High Courts in Punjab and New Delhi, and the mainstream media all knew there was a policy of extrajudicial execution by the state, as exercised by the Punjab police. According to Nair, these groups "played the

ostrich" because there was a consensus that the only way to defeat the militants was to liquidate them. Thus until the mid-1990s, according to Nair, there was a failure by all levels of the judiciary to address gross human rights violations. But in Nair's view now the Supreme Court is clearly attempting to address these problems. However, Nair stated that this new resolve is not percolating down to the Punjab and Haryana High Court as much as it should, or even lower down to the level of the Sessions Court and the District Magistrate. In Nair's opinion, the District Magistrate, as the first point of grievance addressal, is the key bulwark against the erosion of civil liberties and constitutional rights: if that edifice is not functioning, then justice is far off, since not everybody can afford to go to New Delhi to fight their legal battles.

Nair also stated that judicial delay remains a problem in Punjab, and that legal fees are expensive for ordinary people. However, according to Nair these problems are common throughout south Asia, and are not insurmountable. Nair stated that in Punjab now there is judicial access to anyone wishing to push a case forward, and many people are doing just that. If someone is arrested arbitrarily, according to Nair, the individual, often through a relative, will be able to inform a lawyer, human rights group or court of law. Nair stated that in the past in Punjab such actions normally did not help, but now that is not true—judicial protection has improved.

However, Nair also commented that the Punjab police are able to manipulate the judicial system. As an example, he stated that although the notorious Terrorist and Disruptive Activities (Prevention) Act (TADA) has been allowed to lapse, old TADA cases are still being processed under the lapsed legislation. As well, according to Nair, in practice new TADA cases are still being introduced. Nair stated that in First Information Reports (FIRs) police, when writing the name of those being arrested, commonly added the phrase "and persons unknown." Now, according to Nair, police are using old TADA cases to charge people, filling in their names under this category, so a new case is in effect processed under an old one, still using TADA and its provisions for long administrative detention without trial. At the height of its use, according to Nair, there were over 67,000 TADA cases across the country; now there are less than 5,000, although Nair has no statistic for how many involve Sikhs.

Nair also pointed out that there are still several other special laws operating in India, including the Armed Forces Special Powers Act, the Special Courts Act, and other legislation, that allow, for example, a common soldier to shoot to kill in areas of emergency without being arraigned for it. Nair also stated however that habeas corpus writs, which used to be ineffective in Punjab, are now being honoured and are an effective way of safeguarding an individual in detention.

Groups at Risk:

According to Bob Brack, people who are not high profile militant suspects are not at risk in the Punjab today. For Brack, the high-profile suspects might include a perceived leader of a militant organization, or someone suspected of a terrorist attack. Brack as well stated that Sikhs with some slight perceived connection to the militancy—through a family member, for example—would not now be targets of the Punjab police. Laurence Brooks indicated that there were only a few high profile militant suspects left, with virtually none remaining in Punjab or India itself.

Ravi Nair defined a high profile individual as someone suspected of anti-state activities by the Indian authorities. Nair stated that a family member of such a person or someone who was forced to provide

shelter for militants during the height of the insurgency would not now be considered a high profile suspect. According to Nair, those without a high profile have much less to fear from the Punjab police, and now have much better access to judicial recourse if they are treated improperly. Nair stated that simply holding a pro-Khalistani opinion, for example, would not make an individual a high profile suspect; one would have to engage in violent anti-state acts. According to Brack, many of the high profile suspects wanted by the Punjab police would actually be excluded from claiming refugee status in Canada because of their past actions.

Lists of habitual offenders—history sheeters—are kept throughout India, according to Nair and Brack. Nair explained that if police believe an individual could be a possible recidivist, his or her name would go on the list of habitual offenders, and the information would be shared with other jurisdictions. According to Nair, the intelligence bureau keeps a centralized computer network, but it is not available in all levels of police stations. There is however a constant updating of the records kept. According to Nair, every police station will have a history sheeters' list of local suspects, so that when there is a major security disruption, such as the assassination of Beant Singh, typically the police will pull in everyone on the list. In the investigation of that assassination, according to Nair, a couple of hundred people were detained, and most were released after a few days.

Nair explained that this system is used throughout India, and gave the example of a hypothetical trade union strike in Bombay. Before the strike, according to Nair, the police might detain a large number of people from their habitual offenders' list so that suspected criminals will not use the strike as an excuse to rob a bank or commit some other crime. Then when the strike ended these people would be let out again.

According to Nair, being on the habitual offenders' list does not mean one will be hotly pursued, but the list does imply a threat. History sheeters normally have to report to police fairly regularly and, according to Nair, usually become known to authorities quickly after they relocate. Nair stated that the Indian security network remains loose, but can become effective when the police want it to be.

According to Brack, officials from the Canadian High Commission in New Delhi regularly monitor the airport arrivals of individuals deported from Canada. Brack stated that in the last few years this group has numbered 8 or 10, and Indian authorities have not pursued any of them, with the exception of Sarabjit Singh Bhatti, who was arrested by Indian police in September 1996 after being deported from Canada. According to Brack, Bhatti was arrested because he was a senior official of the Khali-stan Commando Force (KCF).

Brack also stated that in the last few years Canadian High Commission staff in New Delhi have interviewed for immigration purposes many dependents of individuals from the Indian Punjab who have obtained Convention refugee status in Canada. In the vast majority of cases, according to Brack, the dependents failed to verify their relative's claim. According to Brack, most stated that their relative had gone to Canada for economic reasons, and had nothing to fear in Punjab. Brack contends that these family members had no reason to lie to High Commission officials, since a false statement would have been grounds for nullifying their immigration applications. According to Brack, High Commission staff have also observed that many Convention refugees from Punjab return to their former homes, and that some even accompany their spouses and families to the High Commission in New Delhi to help them with their immigration applications.

Internal Flight Alternatives:

Gurinder Singh Mann stated that there are some large Sikh communities outside Punjab dating back to the 17th century, in Bengal for example and in south India. But according to Mann 1984 was a watershed year: after the widespread anti-Sikh rioting that followed the assassination of Indira Gandhi, Sikhs in Punjab stopped thinking of relocating themselves in other parts of India. Indeed, both Mann and Ravi Nair stated that after 1984 there was reverse migration: many Sikhs left other parts of India to return to Punjab, even when this involved difficulties. According to Mann, the fear remains among Sikhs that outside Punjab violent anti-Sikh feelings can rise up any day, and because Sikhs are so visible, they can be an easy target. Mann stated that in the past ten years, he could not think of one family from his area in Punjab, the village of Mann, that had relocated in Bombay or elsewhere outside the state.

Ravi Nair stated however that in the last year or two there has been a movement of some Sikhs out of Punjab and back to different parts of India, with some confidence of security. According to Nair, however, a Sikh who is on a police list or fears the state in some way would not be able to re-locate undetected, since police intelligence has become quite effective. Nair remarked that in the past the Punjab police commonly travelled outside Punjab and extrajudicially executed militant suspects. But Nair also stated that ordinary Sikhs with no specific fear of the state could safely settle in large urban areas such as Bombay or Bangalore. According to Nair, Sikhs who re-locate do not have to report to police, although Nair has reservations about a proposed National Identity Card registration and its possible diminution of personal privacy. Also, in some areas in the past, according to Nair, Sikhs were subjected to restrictions on their movements, such as in the aftermath of the 1984 anti-Sikh riots. Now however, according to Nair, Sikhs have freedom of movement within India, except in five of seven troubled north-eastern states, where permits are required for travel.

According to Bob Brack, there are many Sikhs in every major Indian city, including over one million in New Delhi and thousands in Bombay and Calcutta. Brack stated as well that Punjabi is spoken in every Sikh community, and is linguistically close to Hindi, which most Punjabi speakers are able to understand or quickly learn, and which is commonly spoken in northern India. Brack stated that the very high costs of being smuggled into Canada—\$US20-30,000 for air fare, false documents, and fees for middlemen—are extremely prohibitive for most Sikhs, and that Sikhs with fears in Punjab who could not afford to come to Canada have been able to settle with reasonable safety in other parts of India.

Prospects for a Lasting Peace:

In discussing the prospects for a lasting peace in Punjab, Gurinder Singh Mann and Ravi Nair both pointed out that the root problems in the state have not been addressed. These problems, enunciated in the doomed Rajiv Gandhi-Sant Longowal Accord of 1985, include the issue of river water, the status of Chandigarh and of the Golden Temple, and protection and promotion of the Punjabi language. Despite the physical elimination of most of the militants in Punjab, according to Mann there remains within Sikh society a strong basic desire—rooted in politics, religion and history—for political supremacy in the area. Within a few years of the February 1997 state elections Mann expects these unresolved issues to resurface since many political hard-liners remain among the Sikhs. According to Mann, there is potential for these problems to be solved peacefully at a political level if the central

government fundamentally agrees to not interfere in state politics. However, Mann stated that if left unresolved, these issues also could drive the area into violence again. In addition, according to Mann, communal tensions within India remain high, and many Sikhs have told him they are ready for future outbreaks of violence against them—for Mann an indicator that if there is an eruption it will be violent.

Nair agreed that the fundamental grievances in Punjab might be handled in a peaceful and democratic way, and like Mann stated that at present he is not certain that the situation will evolve peacefully. In this context, Nair stated that he is acutely aware of recent flawed elections in Kashmir, and continuing difficulties in the north-eastern Indian states, which undermine the democratic process in the region.

In discussing the state of human rights and communal relations within India as a whole, Bob Brack stated that episodes of violence have been common throughout India's history, but that the country generally manages to maintain a sense of stability. This view was echoed by Nair, who stated that for all its problems, India retained a certain institutional strength: at senior levels within the country, according to Nair, there is a growing understanding that institutions need to be fostered rather than undermined. In Nair's view human rights violations, which are common and deeply-rooted throughout India, are not going to go away quickly, but Nair now sees growing room to engage in democratic debate in order to counter them.

References

Brack, Bob. 23 January 1997. Montréal: DIRB panel discussion.

Brooks, Laurence. 23 January 1997. Montréal: DIRB panel discussion.

Mann, Gurinder Singh. 23 January 1997. Montréal: DIRB panel discussion.

Nair, Ravi. 23 January 1997. Montréal: DIRB panel discussion.

Attachments

Deputy Chair's Office (DCO), Convention Refugee Determination Division (CRDD). 24 January 1997. *Information Session on Country Conditions in India (Montréal): Speakers' Biographies*. Ottawa: Immigration and Refugee Board, pp. 1-2.

South Asia Human Rights Documentation Centre (SAHRDC), New Delhi. 12 February 1997. E-mail to the DIRB.