

**Report on fact-finding mission to Punjab, India
21 March to 5 April 2000**

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INTRODUCTION

Over the last 10 or 15 years Denmark has received a relatively constant number of asylum seekers from India, of which the majority have been Sikhs from Punjab. In recent years the number of asylum applicants has been about 100 per year, with the exception of 1998 when there were about 200 applicants.

As their motive for seeking asylum, a large proportion of these applicants have cited problems with the Indian authorities, who suspect them of having connections with militant Sikh movements, and some claim to have been victims of torture while in the authorities' custody.

The Danish Immigration Service and the Danish Refugee Council therefore decided to undertake a fact-finding mission to India/Punjab with the aim of collecting information which might shed light on the situation of the Sikhs in Punjab. The fact-finding mission took place from 21 March to 5 April 2000. The delegation held meetings in Delhi and Chandigarh with representatives of the Indian authorities, international organisations, NGOs and human rights lawyers.

The situation in Punjab was very tense at the time of the Sikhs' occupation of the Golden Temple of Amritsar and the army's assault on it in June 1984. Events following the assassination of Indira Gandhi in October 1984, and the subsequent unrest in Punjab which went on for years, left a deep mark on the Sikhs. Our interlocutors seemed to feel a great need to tell us about these events, which are still very much in people's minds. Many Sikhs feel frustrated that the political questions which led to the conflict have not been cleared up.

In some areas the unrest seems to have continued until 1995, but most sources considered that there are now no major security problems in Punjab.

Many of our interlocutors made the point that the Sikhs generally are a very enterprising people, and that there has always been a tradition of one family member travelling either to other parts of India or abroad.

The delegation's contacts also paid a great deal of attention to the occurrence of torture, and to the overall human rights situation in India. Many sources observed that India is generally a violent society, and that torture and other inhuman treatment occur all over the country.

In 1993 the Government set up a National Human Rights Commission, whose task is to focus on the question of human rights and respect for them. Similar Commissions were set up in a number of individual States, including Punjab. However, opinions varied about the effect these Commissions had had on human rights abuses.

The day before the delegation left for India, Sikhs became involved in the ongoing conflict in Kashmir, where 35 Sikhs were killed in a massacre in a village. The delegation was able to read about these events in the Indian press, and many of our contacts were also preoccupied with them. However, it is very difficult to comment on the significance of these events for the future situation of the Sikhs in India.

2. TERMS OF REFERENCE FOR THE FACT-FINDING MISSION TO PUNJAB, INDIA

The mission shall collect information and undertake investigations in accordance with the following terms of reference:

HISTORICAL AND POLITICAL BACKGROUND

DEMOGRAPHY

POLITICAL, ECONOMIC AND SOCIAL CONDITIONS

The current political situation: Sikh organisations and parties and their integration into the political system

Education and schooling

The economy and the labour market

THE SECURITY SITUATION

The security situation in general

The presence of militant Sikh groups and their relations with the local population

The authorities' capacity and willingness to protect the civilian population from attack

THE HUMAN RIGHTS SITUATION

POLITICAL RIGHTS

the situation for human rights activists

freedom of expression and of the press

freedom of assembly and association/freedom to organise

CIVIL AND CIVIC RIGHTS

The rule of law and law enforcement

the legal system generally

access to the judicial system

prosecution of those in authority who commit abuse

Conditions of detention and imprisonment

conditions for and control of arrests

the occurrence of physical abuse/torture: the extent/ nature of abuse/special groups/circumstances

official and unofficial detention centres

the incidence of disappearances

The National Human Rights Commission and its role in investigating cases where physical abuse has been committed

Freedom of religion

Freedom of movement

Passport issue and conditions for leaving/entering the country

3. Historical and political background

The State of Punjab lies in the north-western corner of the Indian subcontinent. To the north it borders the Indian State of Jammu and Kashmir, to the east Himachal Pradesh and to the south the States of Haryana and Rajasthan. To the west, Punjab has a border with Pakistan (see map in Annex 1).

Punjab¹ was given its present boundaries in November 1966, when most of the areas with a Hindi-speaking majority were separated from it to form the new State of Haryana. Punjab covers an area of 50 362 km², i.e. a little more than Denmark. The town of Chandigarh is now the joint capital of Punjab and Haryana.

Sikhs form the majority of the population of Punjab – approximately two-thirds of the total population of the State. The word "Sikh" is derived from the Pali *sikkha* or the Sanskrit *shisya*, meaning "disciple"². The Sikhs are the disciples of the Ten Gurus (religious leaders), beginning with Guru Nanak (1469-1539) and ending with Gobind Singh (1666-1708)⁴. The Sikhs do not have a priesthood such as the Hindu Brahmins. The movement is inclined towards the layman, but a professional *granthi* (which literally means reader) may be appointed to undertake religious services and ceremonies, and to teach. The Sikhs' places of worship or temples are called *gurdwaras*. An important concept in Sikhism is *Khalsa* (= the pure) – a concept for a select band of holy soldiers, who are obliged to make certain moral promises (such as abstaining from tobacco, alcohol and drugs) and to dedicate themselves to a life of prayer and the fight for righteousness.

The number five has always had mystic significance in Punjab (the land of the five rivers), and in the Khalsa (the five commandments) there are five emblems which in Punjabi all begin with the letter "k". The most important of the five "k"s is *kesa* (uncut hair and beard). The other four "k"s are *kangha* (a steel comb), *kaccha* (trousers, often in a short version as underwear), *kirpan* (a double-edged sword) and *kara* (a steel bracelet worn on the right wrist)⁵.

At the beginning of the 20th century new religious ideologies caused tension in the Sikh religion. Akali Dal (the "Army of the Immortals"), a political/religious movement formed in 1920 as a movement to reform the gurdwaras, was a semi-military body of volunteers who campaigned for a return to the roots of the Sikh religion. Akali Dal became the political party which put forward Sikh demands and led the independence movement against the British. After the Sikhs had won back control of their gurdwaras through the Sikh Gurdwaras Act of 1925, the Akalis continued to

¹ The word Punjab is a compound of two Persian words, "panj" (five) and "ab" (water), which means the land of the five rivers (Beas, Chenab, Jhelum, Ravi and Sutlej). Since the partition of India in 1947, only two of these rivers – the Sutlej and the Beas – lie within Indian Punjab.

² Sikhism, Encyclopaedia Britannica.

⁴ Writers, including Sikhs, have generally described the religion as a fusion or synthesis of Hinduism and Islam. This interpretation neglects the contribution and the source of inspiration provided by the Sikh gurus themselves, and is regarded by most Sikhs as a denial of elements such as revelation and mercy which are the heart of the message of Guru Nanak and his followers. The view that Sikhism is a form of syncretism is almost universally rejected nowadays, see *Contemporary Religions: A World Guide*. Longman Current Affairs, 1992.

⁵ *Sikhism*, Encyclopaedia Britannica

represent the Sikh community in Punjab and led the movement for a Punjabi-speaking, Sikh majority state.

The *Sikh Gurdwaras Act* also led to the establishment of the Shiromani Gurdwara Prabandhak Committee (SGPC) to control the Sikh temples. The SGPC in Amritsar is Sikhism's general governing body, and acts as a sort of welfare organisation for the Sikhs.

The period from 1947-1984

When India became independent in 1947, the British province of Punjab was divided between the two independent countries of India and Pakistan, and the smaller and most easterly part in which the Sikhs were concentrated became part of India. Before Partition there had been bloody and violent conflict between Muslims on one side and Hindus and Sikhs on the other, which resulted in thousands of dead on both sides. After independence the Indian Government withdrew the privileges which the British had previously allowed religious minorities including the Sikhs. As a result, the proportion of places for Sikhs in the defence forces and civil service fell. Partition also adversely affected Sikh farmers, who had to leave rich agricultural areas in Pakistan and take over smaller previously Muslim farms in East Punjab.

This decline in status made the Sikhs feel that they had been unfairly treated, and provided fertile soil for a demand for greater autonomy in a Punjabi-speaking state. A compromise was reached in November 1966, when Punjab was divided on a linguistic basis into the State of Haryana (with most of the Hindi-speaking areas) and a new smaller State of Punjab. Chandigarh, together with the immediately surrounding area, became a separate Union Territory. Although the town did not belong to either area, it continued to be the common administrative headquarters or capital for Haryana and Punjab.

However, that agreement did not solve the Sikh problem. After the scission into Punjab and Haryana in 1966, a large proportion of the water resources lay in Haryana. In the wake of the green revolution⁶ in the late 1960s the Sikhs had achieved significant economic progress, and this material progress was followed by a demand for more influence, including water rights and Chandigarh as a capital for Punjab alone.

At the beginning of the 1980s some factions of the leading Akali Dal party in Punjab – Shiromani Akali Dal – and the All India Sikh Students' Federation demanded the establishment of an autonomous Sikh state called Khalistan (= "the pure country"). Extremists such as Jarnail Singh Bhindranwale (1947-1984) – a charismatic religious leader, who preached fervent fundamentalism and the armed fight for national freedom – won support amongst many younger religious Sikh men in the Amritsar area and amongst small farmers who were dissatisfied with their economic lot. Furthermore, a widely-held opinion is that Bhindranwale's movement was being supported by Indira Gandhi's Congress party in an attempt to weaken the moderate wing of Akali Dal, which was Congress' local opponent in Punjab⁷. To achieve their aims, these militant groups began to carry out terrorist activities, including the murder of Punjabi Hindus and also of Sikhs who opposed the establishment of Khalistan. At the beginning of 1984 Bhindranwale and his armed supporters

⁶ The green revolution means the use of new hybrid grain varieties, which under certain conditions give a markedly higher yield per hectare than traditional varieties. The conditions include water and fertiliser. India introduced the green revolution strategy as part of official policy from the mid-1960s.

⁷ See *The Far East and Australasia 2000*, Europa Publications, 2000.

occupied the Sikhs' holiest place, the Golden Temple in Amritsar, and said that they would not leave the temple until Punjab had obtained independence from the rest of India.

In an attempt to drive out the Sikh militants Indira Gandhi's generals launched "Operation Blue Star", the code name for the attack on the Golden Temple on 5 and 6 June 1984. The Golden Temple was bombarded and besieged by the army to drive out the terrorists. The fighting continued for five days. Bhindranwale and hundreds of his supporters were killed and serious damage was done to the sacred buildings⁸.

This action had catastrophic consequences for the Sikh community and for the entire country. Relations between Sikhs and Hindus worsened, Sikh extremism was strengthened and political murders multiplied. On 31 October 1984 Indira Gandhi was murdered at her home in Delhi by two of her Sikh bodyguards. Over the days that followed, a massacre of Sikhs in and around Delhi began which left thousands dead and thousands more injured and homeless, in the worst religious strife since Partition in 1947.

The period from 1984-1992

In July 1985 the Indian Government and the moderate Akali Dal Sikhs led by Harchand Singh Longowal concluded a peace agreement, which met many of the Sikh community's demands. However, the extremists regarded Longowal as a traitor to the Sikh cause and he was murdered in August 1985. The promised reforms were never implemented and the peace agreement left many issues unresolved. Talks at the beginning of 1986 led to increasing extremism and temporary reoccupation of the Golden Temple by the militant Sikh movements.

In 1987 the State Government in Punjab was dismissed and Punjab came under direct Presidential rule. The militant Sikh movements spread terror throughout Punjab and the Indian Government implemented a campaign with the aim of returning the situation in Punjab to "normal".

In May 1988 "Operation Black Thunder" was launched against armed extremists by the Punjab police and Indian paramilitary forces. Serious oppression of the Sikhs by the police until the early 1990s has subsequently led to complaints from various human rights organisations about the police's abuse of power, serious human rights violations, arbitrary execution of suspects and the disappearance of young Sikh men.

The period since 1992

Presidential rule came to end with the State election in February 1992, which was won by Congress. However, the election was boycotted by the leading factions of Akali Dal and there was a low turnout of only 22%. Beant Singh of Congress was chosen as Chief Minister.

In August 1995 there was a brief resurgence of violence, when Beant Singh was killed by a car bomb which exploded near his car outside the Punjab Government building in Chandigarh, and also killed 15 of his security staff. However, this appears to have been an isolated event. One of the

⁸ Official figures set the number of casualties at 493 dead and 86 wounded "civilians/terrorists", and 83 dead and 249 wounded soldiers. Later in the year official sources set the total number of dead at about 1 000. Unofficial sources estimated that the number of civilian casualties alone was much higher. Apparently there were more than 3 000 people in the temple when Operation Blue Star began, including 950 pilgrims, 380 priests and other temple employees and their families, 1 700 Akali Dal supporters, 500 supporters of Bhindranwale and 150 members of other armed groups, see *India: Country Assessment*, CIPU, UK, September 1999.

militant Sikh groups, Babbar Khalsa, claimed responsibility, and three suspects were subsequently arrested.

Following the general election in 1996 Akali Dal became the dominant political power in Punjab. At the election to the State Assembly in February 1997 the alliance between Shiromani Akali Dal and the Bharatiya Janata Party (BJP) came to power, forcing out the ruling Congress party. Shiromani Akali Dal (led by Badal) obtained 75 out of 117 seats in the Assembly, and the BJP got 18, whereas Congress, which had had 87 seats in the previous State Assembly elected in 1992, was reduced to 14 members. Shiromani Akali Dal (the Mann faction) obtained one seat. On 12 February 1997, Prakash Singh Badal was appointed Chief Minister, and has since been in power in Punjab.

At the most recent general election in September/October 1999, Congress won nine out of 13 seats in the national Parliament in alliance with the Communist Party (CPI), and the Mann faction won two. The Badal faction did not achieve representation in Parliament.

4. Demography

According to the latest census taken in 1991, the Sikhs form a religious and cultural community of just under 16 million people, or less than 2% of India's total population of approximately 850 million⁹. Hindus make up 82% of the Indian population and Muslims 12%, whereas Christians are just over 2% and various other religious groups (Buddhists, Jains and others) under 1% each.

80% of the Sikhs live in Punjab, where they make up some two-thirds (63%) of the total population of about 20 million people. Hindus represent approximately 35% of the population in Punjab, and Muslims and Christians each make up just over 1%. The Hindus are mainly concentrated in the urban areas, where they are involved in trade, whereas the Sikhs live in the rural areas and are particularly involved in farming. In Chandigarh the Sikhs make up about 20% of the population of about 500 000, whereas Hindus are in the majority with 76%¹⁰.

As in the rest of India, by far the greatest proportion of the population of Punjab – approximately 70% – live in rural areas (in India as a whole this figure is 74%), and only 30% live in the urban areas. The largest towns in Punjab are Amritsar, Ludhiana, Jalandhar and Patiala.

The Sikhs may be grouped into three broad categories largely based on ethnic differences. Jats (the agricultural clan/caste), non-Jats (previously Brahmins, Ksatriyas and Vaishyas – the three highest castes in the traditional Hindu caste system) and Mazahabis (the untouchables). The Jats are the dominant group, despite the fact that they came lower in the original caste system. The Mazahabis or "scheduled castes" (or Dalits – previously known as untouchables), of both Sikh and Hindu extraction, make up approximately one quarter of Punjab's population. The Mazahabis have much higher status with the Sikhs than "untouchables" do in Hindu society.

There are also Sikh communities in the other Indian States, particularly those in the north. In the neighbouring State of Haryana there are approximately 950 000 Sikhs (or 6% of the total population of the State), and there are about 650 000 in each of Uttar Pradesh and Rajasthan (or 0,5% and 1,5% of the populations of those States, respectively); in Delhi there are about half a million Sikhs (or 5% of the population of the city).

⁹ The Indian population was believed to have passed one billion at the end of the 1990s, but no census has taken place since 1991.

¹⁰ Muslims make up just under 3% of Chandigarh's population, while the remainder consists of various other religious groups (Christians, Buddhists, Jains).

5. Political, economic and social conditions

The political system

India consists of 25 States with a constitutional Government. Each State has a Governor appointed by the President for five years, a legislative assembly elected for five years, and a cabinet led by a Chief Minister. Each of the States has its own legislative, executive and judicial bodies corresponding to those of the Union of India. In the event of the constitutional government of a State not functioning, the central Government can impose direct Presidential rule.

5.1. The current political situation

Akali Dal (Shiromani Akali Dal), which was founded in 1920, is the political party which is the prime representative of the Sikh community in Punjab nowadays. The party takes part in general elections to the Parliament (Lok Sabha), but concentrates mainly on the status of the Sikhs in Punjab. The history of the party has been marked by changing alliances and splits between its various factions. While Shiromani Akali Dal – Badal and Tohra – cooperated from 1995 until May 1999, when the Tohra faction left this alliance, the Amritsar/S.S.Mann faction was an independent faction for a large part of that period, with more critical and radical views. Thus the party is now divided into three main factions: Shiromani Akali Dal (Badal); Akali Dal (Tohra) and Shiromani Akali Dal (Mann). Congress, which has followers amongst both Hindu and Sikh voters, also plays an important role in Punjab, and has been in power in the State Government at various times. *Chief Minister Prakash Singh Badal, the leader of Shiromani Akali Dal (the Badal faction)*, underlined that nowadays there were no security problems in Punjab. The major problem was unemployment in the rural districts and the lack of a food processing industry. Badal did not see other basic problems in modern day Punjab. He also underlined that cooperation between the State government and the central Government was good.

Captain Amrinder Singh, the leader of the Congress Party in Punjab (State Congress Party President), pointed to three basic political problems in Punjab today:

(1) Water rights (river water)

Punjab, which produces over half of India's rice and wheat, lacks water for irrigation. The agreement made by the central Government in 1951 meant that most of the water from the rivers Ravi, Beas and Sutlej went to the States of Haryana and Rajasthan, while Punjab received under a third of the total amount of water. All the political parties in Punjab had rejected the agreements which the central Government had made to date about the distribution of the water, but according to Amrinder Singh no political initiatives had been taken by the current State Government to solve the problem.

(2) An increase in population growth and a lack of employment

The strong increase in population growth meant that annually 240 000 new jobs were needed in Punjab. There were now in total 40 000 jobs in industry in Punjab, and agriculture was no longer profitable. Crop patterns in Punjab needed to be changed towards more vegetable production.

Industrial development was needed in the food processing sector. There was also a need to attract more industrial concerns, but there was no confidence in the current Government.

The result of the lack of agricultural development and of employment in industry was that many people were now leaving Punjab to go abroad. Small farms in Punjab previously typically supplemented their income by sending one son into the army and one son abroad or to other parts of India, while a third son stayed in agriculture.

(3) The rationalisation of State enterprises and effective taxation

Punjab was at present bankrupt, because of corruption in the State, and State enterprises ran at a loss. Nearly two-thirds of State expenditure nowadays went on salaries and pensions for government employees, and there was no surplus in the State budget for development activities, including the improvement of the electricity supply. There were currently 20 State enterprises in Punjab running at a loss. The Congress Party's solution would be to shut down or privatise these enterprises. Singh added that electricity charges needed to be rationalised.

Singh asserted that Congress would take action within the first six months, if it won a majority at the next State elections. The most recent general election in September/October 1999 had been a negative reaction against the sitting BJP government. Furthermore, Congress could come together as one party, whereas Akali Dal was divided into three different factions, largely because of Tohra, which had formed a new faction. The election result would not lead Congress to demand the resignation of the sitting State Government. Singh felt that the current Badal Government had "made such a mess in Punjab" that it could only lose more votes at the next election by remaining in office.

S. S. Mann, Shiromani Akali Dal (Mann), who is a member of both the State Government in Punjab and the national Parliament, said that nowadays the State was oppressing the Sikhs and said that fear of the State – seen in the light of earlier events in Punjab – was now so great that the Sikhs had been threatened into giving up their demands. His party wanted greater freedom in Punjab, including the freedom of expression and the freedom to speak openly about politics. He referred to the fact that he himself had been imprisoned for seven or eight years because of his political views. His party could no longer openly call for an independent state for the Sikhs, but that did not change the fact that this was still a part of his party's programme, which he had also put forward in the national Parliament. The Sikhs wanted an independent buffer state between Pakistan and India. He pointed out that if the Sikhs had had their own state they would have reacted violently to the massacre of Sikhs in Kashmir in March 2000.

As for the Sikh's political demands in Punjab nowadays, Mann remarked that the Badal Government was so frightened that it did not dare put them forward. The Badal Government had entered an alliance with the BJP solely to obtain greater power, and the party no longer had any principled programme. The demands of the Mann faction were more radical, and therefore there was no cooperation between Mann's faction of Akali Dal and the rest of it – Badal and Tohra.

One of the most basic Sikh political demands was for rights to the river water in Punjab. The water from the rivers in Punjab went mainly to Haryana and Rajasthan and no compensation was given to Punjab.

Another important political problem was that Punjab now had 1,6 million unemployed youths, and that nothing was done to create employment. There was a need for investment in industrial development in Punjab, but Punjab had not benefited when India opened up to investment from abroad. Investment had gone only to the Hindu States.

Thirdly, Mann pointed out that Punjab had an agricultural economy and was the largest producer of rice and wheat in India. The central Government continued to increase the prices of fertiliser and agricultural machinery, while the prices of agricultural produce were falling, which meant that agriculture was not profitable.

Finally he asserted that at national level a right-wing Hindu party was now in power, which wanted to eliminate the minorities in India. According to local witnesses the recent massacre of Sikhs in Kashmir had been carried out by people in Indian uniforms. The Muslims did not want the Sikhs to leave Kashmir, but the state talked of ethnic cleansing. The fundamental rights of the religious minority were enshrined in the Indian constitution but the Government had recently established a commission to evaluate it. Mann feared that this could lead to an attack on the rights of the religious minorities.

The delegation tried to arrange a meeting with the *All India Sikh Student Federation (AISSF)*. However, it was not possible to trace a representative for this movement, and the delegation heard from other sources that the movement is nowadays split into many different groups, which either belong to the various wings of Akali Dal (Badal/Mann/Tohra) or are not active.

5.2. Education and schooling

Under the Indian constitution, education is primarily the responsibility of the individual States ¹¹, and most schools are run by the States. Education is compulsory and free for pupils aged six to eleven. Education from years seven to ten is also free in the State schools.

According to the most recent census taken in 1991, 58,5% of the population of Punjab could read and write. By comparison, literacy amongst India's population as a whole stood at 52%. The literacy rate was greatest in the urban areas in Punjab, standing at 72% as against 53% in the rural districts. There was also a difference in the proportion of men and women who were literate, as only about 50% of women can read and write as against 65% of men ¹².

Several sources explained that three languages are taught in the schools from the first class: Punjabi, Hindi and English.

T.S. Cheema, Punjab Human Rights Commission, stressed that education was a fundamental human right and observed that nowadays it was possible for the poorest groups in society to obtain scholarships to send their children to school. Although Government schools were free, there were still parents who were reluctant to send their children to school because the children were used as labour at home. Both T.S. Cheema and *Amrinder Singh of the Congress Party* remarked that those who were able to pay for private schools preferred to send their children to them, since they were of

¹¹ The central Government does have various direct areas of responsibility, some of which are specified in the constitution, for example responsibility for the central universities and all higher educational institutions, the promotion of the Hindi language, coordination and maintenance of education standards and academic research.

¹² See *Census India 1991*, table 14

a significantly higher standard. Amrinder Singh reported that there was a ratio of one teacher to 500 pupils in the Government schools, whereas in private schools in Punjab it was one to 17/18. Basic

improvements were needed as regards schools in Punjab. Cheema also reported that there were no dedicated Sikh schools up to year ten of schooling, but that there were several Sikh high schools (Sikh Khalsa colleges), run by the Shiromani Gurdwara Prabandhak Committee (SGPC). These followed the same curriculum as other high schools, and had no specific religious aspect. There were no Sikh universities.

Former Advocate-General G.S. Grewal observed that the reduction in access to employment in the army (see section on the economy and the labour market, below) had generally led to more Sikhs becoming trained in other occupations and had therefore led to an increase in the level of education in the Punjab compared with earlier. There were now five universities in Punjab: the Technical University in Jalandhar, the Punjabi University in Patiala, Guru Nanak University in Amritsar, Punjab University in Chandigarh and the Agricultural University in Ludhiana.

A western embassy remarked that Punjab had a good educational system and that people in Punjab were generally better educated than in the rest of India.

5.3. The economy and the labour market

All the sources we asked agreed that Punjab was currently in a difficult economic situation with high unemployment amongst the young in the rural areas, and a lack of opportunities for employment in industry. In agriculture, many of the farms had become too small to support a family because of division in connection with inheritance. Several sources (*Amrinder Singh, Punjab Congress Party; Movement Against State Repression; Committee for Coordination on Disappearances in Punjab*) also mentioned that there was a high suicide rate amongst farmers in Punjab because of their difficult economic situation.

The *Committee for Coordination on Disappearances in Punjab (CCDP)* explained that the economic situation in Punjab had previously been favourable, but that it was now marked by economic chaos. Punjab essentially had an agricultural economy, which according to the CCDP had been exploited – first by the British and then by the rest of India, as Punjab now provided 70% of the wheat and rice production for the whole country on an area corresponding to 2% of its size. CCDP felt that Punjab's economy was being run behind the scenes by a few powerful money-lenders and business and industrial leaders, who were high-class Hindus.

Ravi Nair, South Asia Human Rights Documentation Centre, observed that social mobility in Punjab was greater than in other parts of India as Sikhs were generally entrepreneurs and historically had looked abroad to create an improved standard of living for themselves. Nair pointed out that Sikhs were already migrating to the USA and Canada at the beginning of the 20th century, especially in the 1920s and 1930s, and that migration to Europe began in the 1950s. As a result of the mechanisation of agriculture and the lack of employment in industry, there was now very high unemployment amongst young people in the rural areas of Punjab – about 40% according to Nair – which contributed to a "push" effect from Punjab. This situation was being exploited by travel agents who had made it their job to get admission to Europe and the USA/Canada for young people.

Herkawaljit Singh, News Bureau Chief for the Daily Ajit, also considered that the lack of employment was being exploited by agents who gave young men false hopes of a better life in Europe. He pointed out that young Punjabi men coming from small land-owning families were not ready to take any old job going in Punjab. They preferred white collar jobs and did not want to take work as e.g. daily labourers in agriculture, but instead sought alternative employment opportunities abroad.

Herkawaljit Singh and several other sources (Movement Against State Repression, judge T. S. Cheema, the lawyer S. S. Grewal) also explained that employment in the army, which had previously been an important source of income for Sikhs in the Punjab, had been significantly reduced, as the composition of the army nowadays matched that of the population. Thus only 2% of posts were reserved for the Sikhs, who had made up 30-50% of the Indian Army under the British, and 15% until about 20 years ago. Judge T.S. Cheema, State Human Rights Commission, said that in the 1960s and 1970s there had been at least one senior military figure in every village in Punjab.

The lawyer S S. Grewal described how some Sikhs also found employment in other parts of India, particularly in the transport sector, as lorry drivers, taxi drivers and the owners of transport firms. *Judge T S. Cheema* added that nearly every family in Punjab had members who were employed either in other Indian States or abroad.

Judge Jaspal Singh of the People's Commission for Human Rights considered that in India outside Punjab there was still a tendency for employers not to feel safe in employing a Sikh, because of the revolt against the Sikhs in Delhi and other large cities after the assassination of Indira Gandhi in 1984. Jaspal Singh commented that there had previously been five Sikh judges at the High Court in Delhi but that since he himself had retired in July 1998 there was now only one left, and that there were no Sikh judges at the Supreme Court.

A western embassy observed that the Sikhs held a considerable number of senior positions in Indian society and in the civil service in relation to their proportion of the total Indian population. There had never been a really poor group of Sikhs, partly because Sikh society was well-organised and had established self-help groups.

UNHCR also remarked that Sikh society was very well-organised, and that the Sikh temples (gurdwaras) played a central role in providing social services. Thus the Sikh community provided for its own vulnerable members, e.g. the disabled, who could live in the temples. Many Sikhs who went abroad in the 1980s contributed to strengthening the Sikh community in Punjab by helping financially.

Vineeta Gupta of the People's Union for Civil Liberty considered that the lack of employment and high levels of corruption had created a difficult economic situation in the Punjab, but that the economic conditions there were better than those in other Indian States where her organisation was also active, partly because the gurdwaras (Sikh temples) looked after vulnerable groups.

6. The security situation

6.1. *The security situation in general*

According to the *UNHCR* in Delhi, the situation in Punjab is now under control. However, *UNHCR* would not dismiss the idea that recent events in Kashmir, when 35 Sikhs were massacred, might not have some influence on the overall security situation in Punjab. As *UNHCR* does not have a presence in Punjab they could not comment on the situation in detail.

Three foreign diplomatic missions agreed that the situation in Punjab has considerably improved, and that the conflict between various groups in Punjab has calmed down. Acts of violence in Punjab are becoming less common, and are now at a low level. Two of the missions reported that even now incidents do occasionally occur in Punjab, such as explosions caused by bombs on buses and trains. However, such incidents also occur in the rest of India, and more violence is generally reported in places in India other than Punjab. No group takes responsibility for these bombs, but officially India will often accuse the Pakistani intelligence service *ISI* of being behind them.

Rajesh Chhabra, Department of Home Affairs and Justice, Punjab maintained that the conflict in Punjab had ended in 1991 and that there had been no security problems since then. However, it did happen that people in Punjab were arrested with explosives which had been smuggled from Pakistan and were sent on to Kashmir. Over the last two to three years, three bombs had exploded in Punjab, but these had been on buses originating in Jammu-Kashmir. There had been no cases of bombs exploding in villages in Punjab within the last two to three years, and there had been no militant activities in Punjab since 1991, with the exception of the murder of Chief Minister Beant Singh in 1995.

Chhabra also reported that the police force in Punjab now consisted of 70 000 men as against 30 000 before 1981. There was no need for such extensive security forces nowadays, but the extra manpower employed in the 1980s could not just be dismissed. The authorities were therefore planning to use some of these police for security at banks, insurance companies and Government food stores.

A senior Punjabi official who wished to remain anonymous remarked that Punjab had been peaceful for the last four or five years and that nowadays there was no law and order problem. Now and again stories appeared in the press that police had found explosives on people in the Punjab, which according to this official could be ascribed to the police's wish to create a feeling of insecurity so that they could be allocated more resources.

Amrinder Singh, Congress Party, felt that nowadays there were no security problems in Punjab. Local incidents did occur where individuals were caught with explosive materials and arrested. According to Amrinder Singh, Pakistan carried out fifth column activities in Punjab because of its interest in hindering the Indian army from bringing supplies to Kashmir through Punjab.

S.S. Mann saw the massacre of 35 Sikhs in a village in Kashmir on 20 March 2000 as an expression of the general oppression of Sikhs in the country and as breaking 10 years' peace. Mann stated that local inhabitants had reported that the individuals who shot the Sikhs in Kashmir were wearing the

uniforms of the Indian security services. The aim of the massacre was to clear the area of population groups other than Muslims, who would then stand out clearly as the enemy in Kashmir.

Amrik Singh Muktsar and Harinder Singh, CCDP, considered that Punjab was now peaceful. There were no problems with militant groups, and no political problems either. However, state terror still existed in people's hearts. The police tried to create an atmosphere of fear in society, and people were still liable to attacks if they had formerly been activists.

Herkawaljit Singh, News Bureau Chief for the Daily Ajit, remarked that there had been no security problems in Punjab in the last two or three years. Police actions were rare, and the security forces were present to a limited extent as they were in every other border State in India.

6.2. The presence of militant Sikh groups and their relations with the local population

Our interlocutors had divided opinions on whether militant groups still existed, and if so which. However, it was a widely held opinion that insofar as such groups did exist, their activities in Punjab nowadays were very limited – almost imperceptible. Opinions were divided on whether the groups existed under the surface and could be organised anew in future.

A foreign embassy considered that there were still terrorist groups in Punjab which were remnants of previous militant groups, but nowadays they were not related to the Khalistan movement. The groups imported weapons from abroad – presumably from Pakistan – and were probably financed by Sikhs in Great Britain, the USA and Canada. Internal fighting took place between these groups, but they could not really be called a movement. On the other hand, the source stated that several people who had previously been militants and who had served their sentences for terrorist activities now lived a normal life in Punjab. The source instanced a politician who had been accused of involvement in the assassination of Indira Gandhi in 1984 and was now a member of Parliament.

Another foreign embassy observed that most radical groups had left India and were probably living in Pakistan, the USA, Canada and Europe. There was no recent information on the activities of militant groups in Punjab.

The police (R.P. Singh) stated that there were still 300 militants on the police list of wanted men. These people were living abroad – according to police information mostly in Belgium and Germany, with some in Britain, France, the USA, Canada and Pakistan, and it was possible that there were also some still hiding elsewhere in India.

Another source who wished to remain anonymous added that the police had a list of 3 000 wanted persons. That source believed that more than 2 000 were already outside India.

Rajesh Chhabra, Department of Home Affairs and Justice, remarked that there were still breakaway groups from Babbar Khalsa which the police believed might resume activities. This was not a very large group – a maximum of two to three hundred active members, who were being trained in Pakistan. Chhabra would not dismiss the possibility that this group was now active in Punjab but if so its activities were not visible.

Amrinder Singh, Congress Party, commented that there were still some militant Sikh organisations in Pakistan which belonged to the Khalistan Commando Force (Zaffarwal group) amongst others,

and referred to an article in that day's paper stating that there were some young Sikh men in Pakistan who wanted to return to Punjab. Nowadays there was no support for the militant groups and no recruitment took place in Punjab.

S.S. Mann commented that there had not been a militant movement in Punjab for the last three to four years. Nowadays there was no open support for the militant movement in Punjab, because people did not dare to talk openly about politics and because the movement had been shattered by the Indian security forces. Reports of finds of explosives in Punjab had been cooked up to punish the Sikhs. He did not expect militant activity in Punjab now, but there were movements such as AISSF which were strong under the surface.

*Most NGOs and independent lawyers*¹³ *who we asked* believed that nowadays there was no militant movement in Punjab. Those who had previously been active members were now either inactive or living abroad.

The *Committee for Coordination on Disappearances in Punjab (CCDP)* considered that Punjab was peaceful at present. However, the ruling political parties were trying to maintain fear of a revival of the militant movement in order to distract public attention from a lack of political changes and from human rights abuses. According to the Committee, human rights activists are currently marked down as militants by the authorities. The *Movement Against State Repression* also observed that Punjab was now peaceful, but asserted that the police had an interest in maintaining fear of the militant groups and therefore used the pretext of supposed bombs and attempts on the Chief Minister's life to arrest young Sikh men at random.

The human rights activist Jaspal Singh Dhillon commented that many former members had broken their ties with the militants once they had served their sentences for terrorist activity. He referred to Kanwar Pal Singh Bittu, who had served his sentence and then broken his ties with the militant movement, going into politics in the Dal Khalsa party.

According to Dhillon, the AISSF now consisted of about 10 different factions, which were not militant. The SSF (Sikh Student Federation) under the leadership of Daljit Singh Bittu had a few active members and was still taken seriously, while Bittu himself was in prison. Dhillon also mentioned the AKJ (Arkand Kirtan Jatha) as an organisation which was being watched by the authorities. This organisation had previously been a recruiting base for Babbar Khalsa but was no longer. Nowadays the organisation was divided into two groups: a religious group which operated freely and a political/social group which was under surveillance. Damdami Taksal had lost its support and had no political significance. Violence still occurred between Sikh and Hindu groups in Punjab, which was publicly categorised as anti-national activities caused by the Sikhs.

Ravi Nair, South Asia Human Rights Documentation Centre, and Herkawaljit Singh, News Bureau Chief for the Daily Ajit, both believed that there still were militant Sikh groups in Punjab today. Herkawaljit Singh named three militant groups which were still active: Babbar Khalsa, the Khalistan Liberation Force and the Khalistan Commando Force; Ravi Nair described Babbar Khalsa and the Khalistan Commando Force as the largest and most active groups.

¹³ (*Jaspal Singh Dhillon, Human Rights and Democracy Forum; Movement Against State Repression; Committee for Coordination on Disappearances in Punjab (CCDP); Vineeta Gupta, People's Union for Civil Liberty; ex-judge Jaspal Singh; lawyer Navkiran Singh; lawyer G.S. Grewal*).

According to Nair and Herkawaljit Singh, these groups were currently operating from Pakistan and were financed by Sikhs who lived abroad – in the USA and Canada, as well as Germany and Belgium. Nowadays the groups did not have a political ideology as most of the hard core political leaders had either been imprisoned, been murdered in extrajudicial executions, or fled. Nair believed that these groups now consisted mainly of criminal elements, and he described the relationship between the Khalistan Commando Force and Babbar Khalsa as that of "two mafia bosses fighting amongst themselves".

Nair believed that members of the movements were nowadays recruited from young people in rural areas, where unemployment was high. Frustration about unemployment and a lack of results produced by the ruling political parties as regards implementing Sikh demands had created a hotbed for continuing recruitment to these movements. However, Nair maintained that there was no forced recruitment to them.

According to Herkawaljit Singh, many of the leaders of Babbar Khalsa were recruited from two legal religious groups, which worked "above ground". One – Arkand Kirtan Jatha (AKJ) - was a religious group which published books about the Sikh religion, and had some support amongst government employees. The other – Damdami Taksal – was a religious group which trained Sikh priests. Seventy-five to eighty percent of Sikh temples had priests who had been trained by this organisation. The militant Sikh leader Bhindranwale had been leader of Damdami Taksal.

Herkawaljit Singh said that the All India Sikh Student Federation was an organisation "which was most active in the newspapers". Nowadays there were six different organisation with the same name. Two of these groups belonged to the Badal faction of Akali Dal, a third was connected with the Tohra wing of the party, and a fourth with the S.S. Mann faction. None of the groups' members were now students and they were almost inactive.

However, *Professor Dipankar Gupta, Nehru University in Delhi*, considered that there never had been an organised political militant movement in Punjab, but that it had merely been a question of a few anti-social elements fighting the police because of old enmities. The police had always known who the members of the movements were and could have arrested those individuals if they had wanted to do so. The political aspect of the movement had been created by other political parties which wanted to bring about a split amongst the Sikhs and break their support for Akali Dal.

According to Gupta, the movement in Punjab had been eliminated in 1992 in the course of six months. The fact that the movement could be eliminated within such a relatively short period was because it had been created by Congress, which had also worked to eliminate it.

Gupta felt that the militant movement would not be able to revive within the next 10 or 15 years. The demands which the Sikhs make for greater autonomy were not connected with the Sikh religion. However, he could not dismiss the possibility that there were now Sikhs outside Punjab who were more militant and who were perhaps supporting activities inside Punjab financially.

Several other sources (lawyer Navkiran Singh, judge Jaspal Singh, Ravi Nair, Director of the South Asia Human Rights Documentation Centre, and S.S. Mann, Shiromani Akali Dal), said that the conflict over the Sikhs' political and cultural demands had not been resolved and that therefore there were many Sikhs who felt frustrated and discriminated against.

Former judge Jaspal Singh did not exclude the possibility that frustrated Sikhs might once again get organised. Nowadays there was no demand for an independent Khalistan, but the situation in Kashmir could have an influence on future developments in Punjab if the Kashmiris were successful in obtaining greater independence.

Nair felt that the movements had not been eliminated and that it would not be surprising if they did regain strength as there would be people who could reorganise them. This problem had been overlooked by both the central Government and the Punjab State Government.

6.3. *The authorities' capacity and willingness to protect the civilian population from attack*

As may be seen from the section on the general security situation, the situation in Punjab is currently much improved, and the conflict between the different groups there has quietened down. It was therefore not relevant to ask our various interlocutors about the authorities' capacity and willingness to protect the civilian population from attack by militants or others.

7. THE HUMAN RIGHTS SITUATION

7.1. Political rights

7.1.1. The situation for human rights activists

The Indian Constitution and many of the country's laws contain provisions relating to respect for human rights. The constitutional provisions include freedom of expression, equal rights, freedom of association and a prohibition on discrimination on the grounds of religion, race, caste, sex or place of birth. India has also acceded to a number of international agreements on the protection of human rights.

In most of the country there are human rights organisations and active individuals concerned with human rights who monitor violations of those rights. A number of lawyers have taken on the task of conducting cases for those who suffered harm during the long-running conflict in Punjab, or whose surviving relatives want compensation for the loss they have suffered.

The delegation was able to talk to several of the most prominent human rights campaigners about the situation for those organisations and individuals who are active in this field.

Ravi Nair, Director of the South Asia Human Rights Documentation Centre, remarked that there was only a handful of genuine professional human rights lawyers dealing with the situation in Punjab. He saw human rights campaigners as very brave people who were often themselves subject to pressure from the authorities. The lawyers worked almost for free.

The human rights lawyer Ranjan Lakhanpal commented that human rights lawyers were regarded as enemies of the state. They often received threats. For example, they might receive threats on the telephone, but there were also examples of lawyers being threatened that the courts would stop all that lawyer's other cases if he did not withdraw a particular case involving human rights abuse. Members of the lawyer's family also received threats.

Ranjan Lakhanpal agreed with Ravi Nair that there was only a very small number of genuine human rights lawyers. A number of other lawyers called themselves human rights lawyers, without really being so. They were only trying to exploit their clients. Ranjan Lakhanpal had brought about 2 000 actions over the last 15 years. Nowadays he received about one new case a day. Between 1993 and 1995 he had received two or three enquiries a day. Ranjan Lakhanpal described how he himself had lost a son in a faked traffic accident in 1995. According to Lakhanpal the accident was staged because of his activities as a human rights lawyer. His ten-year old son was struck by a car which allegedly belonged to a policeman, who had threatened Lakhanpal with violent reprisals in the days leading up to the accident if he did not stop his defence of victims of police violence.

Ajit Singh Bains, a retired Delhi High Court judge, founded the "Punjab Human Rights and Democracy Forum" (PHRO). The organisation consists of about 20 volunteer lawyers and human rights activists from Amritsar, Jalandhar and Chandigarh. Ajit Singh Bains explained that in 1995 many human rights activists had disappeared. Nowadays members of PHRO did not feel persecuted, but still felt themselves to be at risk. They were constantly receiving threats and feared being the victim of "accidents" such as faked car crashes. When the organisation was founded, a

rule was introduced that no member should be under the age of 50, exactly because of the risk they were subject to. Most of the organisation's members are doctors, lawyers, etc. whom the authorities cannot touch.

*Another retired judge from the High Court in Delhi, Jaspal Singh, maintained that human rights campaigners and journalists still risked arrest. The human rights activist Jaspal Singh Dhillon*¹⁴ underlined that the state made life difficult for human rights activists. There would always be threats against genuine human rights lawyers. Several lawyers had been killed in the past. It was often people who had retired from working life who became human rights activists. Jaspal Singh Dhillon described how many members of his own organisation, the "Human Rights and Democracy Forum", had been threatened, after he himself had been imprisoned in 1998 for his human rights activities. Afterwards he had to keep a low profile and had moved his office into his own home. As a result the organisation took on fewer cases and nowadays only received about one case a week.

Jaspal Singh was a founder member of "The People's Commission on Human Rights". The Commission consists of three former judges, and the aim is to investigate complaints about illegal abductions, torture, disappearances, summary executions and cremations. It has no judicial power but was established to give those who had been the victims of human rights violations by the police the opportunity to present their complaints at public hearings. It met for a public hearing in Chandigarh from 8 to 10 August 1998. There were further plans for meetings in Ludhiana and Amritsar. However, these meetings were suspended by the High Court in Punjab at the request of the Punjab police in February 1999¹⁵. The People's Commission on Human Rights has appealed against the High Court's decision to the Supreme Court.

The initiative for the People's Commission on Human Rights was taken by a committee consisting of various human rights organisations and political groups, which amongst other things wanted an independent and thorough investigation of complaints about disappearances in Punjab. The Committee took the name "Committee for Coordination on Disappearances in Punjab". At its first meeting in December 1997, the Committee called on the Punjab State government – besides establishing the People's Commission on Human Rights – to establish a "Truth Commission" to investigate all reports of human rights violations in Punjab. However, the truth commission was never formed.

A foreign diplomatic mission observed that nowadays NGOs involved in human rights activities could work more freely than previously.

Several sources pointed out that international human rights organisations found it difficult to get access to India. Amnesty International and Asia Watch had been refused permission to enter. The Government also continued to refuse to allow the UN's Special Rapporteurs on Torture and Extrajudicial Killings to visit the country, just as the International Committee of the Red Cross (ICRC) only had permission to visit prisons in Jammu and Kashmir.

7.1.2. Freedom of expression and of the press

Freedom of expression and of the press are guaranteed in the Indian Constitution. Most of the sources we asked agreed that at national level there was a good degree of freedom of expression, as

¹⁴ Jaspal Singh Dhillon is Chairman of the Human Rights and Democracy Forum, Punjab. The organisation's main task is to offer legal assistance to the victims of oppression.

¹⁵ "India Assessment", Version 4, September 1999. Country Information and Policy Unit. Home Office, UK.

long as it did not concern questions relating to India's culture or sovereignty. However, at State level there were differing opinions over how much freedom of expression there was.

UNHCR believed that generally there was a healthy atmosphere in the media and in the Indian Government as regards the freedom of expression. Several newspapers were very critical of the Government.

A foreign diplomatic mission commented that generally there was freedom of expression in India, but some news was reported in local newspapers which would not be reported in the national news media. For example, this was the case for information on the number of prisoners who died in prison in Kashmir, which was reported in the local news media in Kashmir but not nationally, where a form of media self-censorship occurred out of respect for national sovereignty. However, subjects such as violent attacks on religious minorities elsewhere in India were openly criticised by the media.

Ravi Nair, Director of the South Asia Human Rights Documentation Centre, also felt that regard for national sovereignty meant that self-censorship was practised by the media. For example no Indian media reported nowadays on massive human rights abuses in Kashmir or in the north-eastern States. Similarly, in the 1980s and 1990s there were no reports on human rights abuses in Punjab, except for a few cases against terrorist groups.

The lawyer Ashok Agrawal explained that journalists were often arrested because of what they wrote, and that he conducted many cases relating to the freedom of expression. However, this was not only a question of legislative restrictions but also of social restrictions. Thus it happened that organised communities could demand that certain materials – books, articles, films and so on – be prohibited by the authorities particularly when they touched on India's culture or sovereignty. He described how an Indian film director had received permission from the authorities to make a film in the Hindu holy city of Varanasi, but had met violent opposition in the Hindu community; the authorities had had to withdraw permission.

Herkawaljit Singh, News Bureau Chief for the Daily Ajit, considered that the media in Punjab were now free, whereas from 1987 to 1995 censorship had been introduced and all newspapers had had to be approved by the local magistrate before publication. Two major newspapers are now published in Punjab. The largest is Daily Ajit with a circulation of 300 000, of which 200 000 are in Punjabi and 100 000 in Hindi; The Tribune has a circulation of 100 000. There are also two or three local newspapers with a smaller circulation of 5 to 10 000 each, and national Indian newspapers which also report from Punjab.

Several other sources (the human rights lawyer Rajvinder Singh Bains, human rights lawyer Navkiran Singh, Vineeta Gupta of the People's Union for Civil Liberty, and former Advocate-General G. S. Grewal) agreed that generally there was press freedom in Punjab and that the authorities did not interfere with what was published in the media. The press was generally interested in reporting human rights abuses, including illegal detention, in local newspapers. However, Navkiran Singh commented that it was not possible to express oneself freely on matters relating to Khalistan.

The lawyer *Ranjan Lakhanpal* remarked that political groups in opposition to the State Government could not express themselves freely without having problems with the authorities. Lakhanpal

mentioned the S.S. Mann faction of Akali Dal, which suffered from restrictions to its freedom of expression, in this context.

S.S. Mann, Shiromani Akali Dal (Mann), considered that nowadays it was not possible to express oneself freely about politics in Punjab. The opposition had been shattered and Government oppression had been so violent that people had been threatened into silence for fear of reprisals. According to Mann no-one dared to express himself openly nowadays.

7.1.3. Freedom of assembly and association

The right of peaceful assembly is ensured in the Indian Constitution.

According to *Herkawaljit Singh, News Bureau Chief for the Daily Ajit*, the right to form associations/organisations and parties is guaranteed in practice. He mentioned the All India Sikh Student Federation (AISSF) which had now formed six separate organisations.

As for freedom of assembly, *Herkawaljit Singh* reported that the police tried to make it difficult to hold public meetings where groups in opposition to the sitting State government were involved. He referred to recent events where the Tohra group had tried to hold a public meeting to oppose the sitting Badal Government. In that case the police had made difficulties, so that the meeting could not be held.

The human rights lawyer Navkiran Singh said that the Government did not allow opposition groups to demonstrate against them, and pointed out that factions within Akali Dal which had broken away from the Badal faction were subject to restrictions and could not hold public meetings freely.

Former Advocate-General G. S. Grewal said that the right to freedom of assembly was ensured by the Constitution and was respected. He quoted a recent protest meeting against the establishment of a new town near Chandigarh, in which he himself had participated. The authorities ask to be notified before meetings and demonstrations are held, and unless the organisers receive an objection from the authorities then the meeting can go ahead. Religious meetings are generally held in the gurdwaras (Sikh temples) which does not require any permission from the authorities, and armed police do not have access to the temples.

Former Delhi High Court judge Jaspal Singh and human rights lawyer Rajvinder Singh Bains remarked that the authorities did infringe the right to meet freely. They pointed out that the People's Commission on Human Rights, which held its first meeting in August 1998, had sought permission from the authorities to use a public meeting room for the occasion. This had been refused, and the Commission had had to hold its meeting in a Sikh temple in Punjab. *Rajvinder Singh Bains* saw this as a basic infringement of the right to assembly and to express oneself freely.

8. Civil and civic rights

8.1. *The rule of law and law enforcement*

8.1.1. **The legal system generally**

The Indian judicial system is a direct inheritance from British colonial rule and therefore has many similarities with the current British legal system.

Basically, the underlying judicial system is good, with recognised in-built legal safeguards. Our sources agreed that on paper the system is satisfactory and gives a basis for a fair trial. However, most criticised the fact that the judicial system does not always function in practice.

According to the constitution any person who is arrested is to be brought before a judge within 24 hours, to determine the legality of his detention. The legislation also states that free legal advice shall be given to those with a low income, and that at the first hearing the charge and the public prosecutor's evidence shall be produced to the accused and his defence lawyer. The accused will then either be detained or be released, if appropriate on bail. If it is decided that the accused should remain in custody then that decision may be appealed against in the High Court.

Lower courts are found in individual States, in the districts (magistrates' courts) and subdistricts (session courts). More serious cases and appeal cases are dealt with in the High Courts of the individual States and in the national Supreme Court, which also handles constitutional questions.

The State governments appoint the judges in the individual districts and subdistricts¹⁶. The choice is generally made amongst those judges or lawyers who are practising at the court in question. Supreme Court judges are similarly appointed from amongst the High Court judges. The Chief Justice is chosen on grounds of seniority. The maximum age is 62 for judges in the High Courts and 65 for the Supreme Court.

Special legislation

The rules for the administration of criminal justice stipulate public court hearings in most cases, but there are exceptions, for example in cases involving state security or charges relating to special security legislation. The legislation which is most commonly used in this area is the Terrorist and Disruptive Activities (Prevention) Act (TADA), the National Security Act (NSA) and the Armed Forces Special Powers Act (AFSPA).

The Terrorist and Disruptive Activities (Prevention) Act, TADA, was introduced in 1985 and allowed detention for up to one year without charges being brought. Those detained under the TADA had their cases heard *in camera*, and the burden of proof was reversed, which meant that the accused had himself to prove his innocence¹⁷. The TADA lapsed in 1995, but until that date it was the most commonly used legal basis for the detention of those suspected of involvement in the Sikh militant organisations' activities.

¹⁶ High Court judges are appointed by the President on the recommendation of the Federal Law Ministry in the state and with advice from the Supreme Court, the High Court Chief Justice in the relevant state and the Chief Minister of the state.

¹⁷ *India Assessment*, UK Home Office, Country Information and Policy Unit, Version 4, September 1999.

The National Security Act, NSA, allows the authorities to detain people for up to one year without trial if they can be regarded as a security risk for the State.

The Armed Forces Special Powers Act, AFSPA, dates from 1958 and is used in "disturbed areas". The law empowers any commissioned or non-commissioned officer or any other person of equivalent rank within the armed forces to shoot or exercise force in any other way even if this leads to death, if he deems this to be necessary to maintain law and order. The law also states that anyone acting under the AFSPA shall not be prosecuted.

As regards the use of the TADA and the AFSPA nowadays, please see the section on the conditions for and control of arrests.

As can be seen from the section on detention, a large number of sources reported that the police arrested and charged people on false grounds. The basis for false arrest was often a claim that the individual was in possession of explosives. The legal basis for this was the 1884 Explosives Act, which gives the police the power to arrest someone without a warrant.

8.2. Access to the judicial system

According to *Ravi Nair, Director of the South Asia Human Rights Documentation Centre*, a case involving a human rights violation will usually be reported at the local police station. The police will undertake an investigation and on that basis will decide whether a case should be brought. If no case is brought, the individual may bring a civil suit to the lower court (district court). Ravi Nair added that the case often stops there as the court does not proceed with the case. The lower courts are often reluctant to register a case involving human rights abuse or to receive a claim for compensation for injury, because they fear police reprisals. Whether or not something is reported to the police thus depends on the family's influence or status in society. Ravi Nair stated that no senior police officers had been convicted for their actions. However, he remarked that nowadays it was easier to have a case heard in the courts than previously.

The lawyer Rajvinder Singh Bains explained that for example in a case involving unlawful detention, a case being brought in the High Court would mean the court appointing a warrant officer to undertake an immediate investigation of the detention. If the local police had already agreed to take on the case then the High Court could not get involved.

The human rights lawyer Navkiran Singh commented that most lawyers tried to get cases brought before the High Court, as this was faster than introducing the case in the district courts. The lawyer *Ranjan Lakhanpal* confirmed that lawyers first tried to go directly to the courts with cases involving human rights violations. He mentioned another problem: the police often threatened families which tried to bring cases about human rights abuse. Thus people did not dare to bring cases to the High Courts, and there were those who did not even dare go to Lakhanpal to ask him to bring their case.

If they did not succeed in bringing a case, either by the police proceeding with it, through a civil suit at the district courts, or through the High Court appointing a warrant officer, then the lawyers referred the matter to the National or State Human Rights Commissions (NHRC or SHRC). See the section on the Human Rights Commissions.

The human rights lawyer Ashok Agrawal pointed out that there are far too many cases in the system and far too few judges. The lack of resources leads to circumstances where the courts appear to act

in an ad hoc fashion in many situations. The procedures are old-fashioned, the necessary guidelines are not issued, people are bribed; according to Agrawal, the High Courts and Supreme Court are responsible.

Agrawal asserted that many charges were false. Because of the overworked judicial system, people may risk spending five or six years in detention on false charges. When the case came to court, they might be released, but it was very difficult to bring claims for compensation since the court did not necessarily decide that the charge was false but simply that there was not enough evidence to support it.

N. Gopaldaswami, NHRC, reported that during prison visits the NHRC had noticed that many people who could have been released on bail had been remanded in custody awaiting trial. On the recommendation of the NHRC a large number of remand prisoners had been released on bail.

The retired High Court judge Jaspal Singh maintained that the judicial system was good and that the courts were fair but that corruption did occur. None of the Supreme Court judges was a Sikh. The system made mistakes because of an extremely heavy workload. Ordinary Indians would often lose their cases because they could not afford to pay for legal assistance.

Another former judge, Ajit Singh, considered that the legal system was basically good. However, all minorities were subject to discrimination in the legal system. Only four or five judges in the Punjab High Court were Sikhs. *The human rights lawyer Ranjan Lakhanpal* also mentioned that there were few Sikh judges employed in the courts.

Former Advocate-General G.S. Grewal considered that everyone in India was able to bring a case about human rights violations to the High Courts. However, few were sentenced, because of the high level of proof required.

The human rights lawyer Navkiran Singh felt that the courts were corrupt but that the corruption took place in the lower courts. *Amrik Singh Muktsar and Harshinder Singh of the CCDP* had had bad experiences with the legal system, which they found very slow.

8.3. Prosecutions of those in authority who commit injustices

The Director of the South Asia Human Rights Documentation Centre, Ravi Nair, stressed that the legal system in India looked fine on paper, but did not function in practice. Besides other problems, there were many illegal arrests, even in Delhi. One of the most basic problems was the impunity enjoyed by police officers. In practice, senior policemen were not accountable for their actions. *One Western diplomatic mission* also raised the question of police immunity for abuse committed in the 1980s and the early 1990s as a problem with which human rights organisations were very concerned. Police appointed in the late 1980s had received no training, but were only appointed for one thing, namely to shoot. Those policemen are still employed and it has become normal to let them off.

The lawyer Navkiran Singh also mentioned that no policemen had been convicted. Those who had been charged had all been released on bail and were back in their old jobs. Funds for their defence had been set up in the police stations.

R.P. Singh of the Punjab police maintained that about 100 policemen were in prison for their actions.

A senior official commented that in Punjab special secret funds had been established to cover the legal expenses of the police.

The same official also reported that compromises were often reached between the victim and the police, by which the police avoided being convicted at a trial. The police reportedly bribed their way out of trouble. There were also cases of senior police officers bribing witnesses. For example if someone has disappeared, the police pay 100 000- 200 000 rupees (approx. DKK 20 000-40 000).

The human rights activist Jaspal Singh Dhillon also reported that people had received unofficial compensation from the police. The police persuaded people not to bring cases by paying them financial compensation. This problem was also raised by the human rights lawyer *Ranjan Lakhanpal*, who said that in some police stations special funds had been set up to be used to pay compensation for abuse.

N. Gopaldaswami, NHRC, considered that police violence had to do with their lack of training and said that it would take a long time to change the police's attitude. However, a policeman who had violated human rights would be punished and there were examples of policemen being condemned to death.

T.S. Cheema, member of the PHRC, asserted that policemen were never imprisoned. They were released on bail or they conspired with doctors or their colleagues in the police.

Amrik Singh Muktsar and Harshinder Singh of the CCDP explained that one of the reasons why cases were not brought against the police was that in 1997 a senior police officer had committed suicide after accusations were made against him. This had led to a great deal of debate in the media, and demands had been made that officials should enjoy impunity partly given the fact that it was they who had brought about "peace".

8.4. Conditions of detention and imprisonment

8.4.1. Conditions for and control of arrests

*Many sources*¹⁸ asserted that the police were still arresting and accusing people on false grounds. The authorities often cited the laws on the illegal possession of explosives¹⁹ or drugs as the reason for arrest. People were arrested and detained so that they could be made to pay bribes. Police wages were low, and the police received fewer resources than they had done in the 1980s. By demanding bribes they could increase their income. Only very few of the accused were convicted in these false cases.

¹⁸ *A senior official who wished to remain anonymous, Jaspal Singh (former judge), Ravi Nair (Executive Director SAHRDC), Herkawaljit Singh (News Bureau Chief), Baljit Kaur (co-Convenor MASR), Navkiran Singh (human rights lawyer), Jaspal Singh Dhillon (human rights activist), Ajit Singh Bains (Punjab Human Rights Organisation), Ranjan Lakhanpal (human rights lawyer) and others.*

¹⁹ See the information on special legislation in the section on the judicial system.

Many of our sources ²⁰ agreed that arrests were no longer being made under the Terrorist and Disruptive Practices (Prevention) Act (TADA) which lapsed in 1995.

The human rights lawyer *Ranjan Lakhanpal* added that previously the police arrested people under the TADA; now they just arrested people without reference to any legislation.

On the other hand, *Jaspal Singh Dhillon and Navkiran Singh* maintained that people were still being arrested under the TADA. In those cases, the arrests took place with reference to participation in cases which were already pending under the provisions of the TADA. Dhillon added that 90% of detainees were innocent. A senior official confirmed that cases were still pending under the provisions of the TADA. It was his belief that the vast majority were false cases which had been brought to get bribes from those involved. *T.S. Cheema, member of the PHRC*, remarked that even though the TADA had lapsed people were still afraid of being arrested under its terms.

The human rights lawyer *Navkiran Singh* commented that every day the High Court in Punjab received at least 20 complaints about illegal detention. At most two of those were connected with the political situation. Not all Sikhs were at risk of being charged on false grounds, but this was the case for former members of the Khalistan movement – including those who had previously been arrested and had been released. Most of the charges were without foundation.

Retired Delhi High Court judge *Jaspal Singh* said that much had improved in Punjab. However, people still complained that the police brought false cases, even if the number of such complaints was lower than previously. The police might have an interest in maintaining a feeling of insecurity amongst the population, as this could create a basis for demanding bribes from people.

Rajesh Chhabra of the Department of Home Affairs and Justice, Punjab, and former Advocate-General G.S. Grewal maintained that there was now law and order in Punjab and that no-one risked being arrested without any reason, or on political grounds.

Amrik Singh Muktsar and Harshinder Singh of the CCDP considered that it was peaceful in Punjab now, but that those who had been active in militant movements within the last 10-15 years still risked harassment. They were regularly called in to police stations and interviewed. This was particularly the case when a new police officer had been appointed. Not much happened at these interviews; the individual was held for a few hours or days and then released. However, if the individual did not have anyone to intervene on his behalf, he would have to pay a bribe to secure his release.

The Punjab police maintained that there was no persecution in Punjab now. However, the police did have lists of about 300 people who were still wanted in Punjab for terrorism.

Ajit Singh Bains (PHRO) remarked that policemen were obliged to give their names when making arrests, but that the rule was not observed. Also, the police were obliged to inform families about arrests, but that did not happen either. *Jaspal Singh Dhillon* said that on arrest one was not allowed to have contact with a lawyer or with relatives.

²⁰ A senior official, *Ravi Nair, Jaspal Singh Dhillon, Navkiran Singh, Baljit Kaur, Ajit Singh Bains, Ranjan Lakhanpal, Rajvinder Singh Bains*

Our sources did not give a clear picture of the length of detention in cases involving unlawful arrest. They gave differing information, varying from a few hours or days to several years. *The human rights lawyer Ranjan Lakhanpal* reported that he knew examples of people being detained for three and a half years, and that no authority was given for this in any legislation. On the other hand, *Jaspal Singh Dhillon* felt that the situation had changed a great deal and that people were usually brought before a judge after three or four days' illegal detention.

8.4.2. Risk groups

Most sources agreed that the human rights situation in Punjab had now generally improved, which was connected with the fact that the conflict in Punjab had died down.

Two foreign diplomatic missions remarked that the human rights situation in Punjab had fundamentally improved both compared with the situation in Kashmir and Bihar and with the last ten years. They added that false charges, torture and deaths in police custody did nonetheless still occur.

One diplomatic mission also commented that the situation was not perfect but that Sikhs in general were not being persecuted. Nowadays the problems were of a different nature from before, and were often due to problems in local society, e.g. disputes over land, etc. The source also remarked that there were computerised lists of wanted persons. The ordinary police and the immigration police did not have access to these lists except in the case of high profile people. Earlier it would have been completely unthinkable to hold demonstrations such as the Sikhs had recently held in connection with the massacre of Sikhs in Kashmir. S.S. Mann, who had previously been imprisoned in connection with the murder of Indira Gandhi, was now a member of Parliament.

Dr Vineeta Gupta (People's Union for Civil Liberty), a foreign diplomatic mission and former judge Jaspal Singh considered that no distinction was made between religion or political allegiance and that all sorts of people were at risk of being falsely accused. *The human rights activist Jaspal Singh Dhillon* observed that the uneducated were at greater risk of being harassed by the police.

Several other sources (Ravi Nair, Herkawaljit Singh and Ranjan Lakhanpal) considered that members of a Khalistan movement, or those with a connection to one, risked arrest. Former terrorists were now leading normal lives in Punjab. However, if it was discovered that they were former terrorists then they risked arrest.

Ravi Nair (SAHRDC) observed that generally the human rights situation had considerably improved in relation to the 1980s and 1993/1994. If an individual, who was a member of a militant group or had been active on behalf of one, came to the authorities' attention, then that person had the same problems as before. If someone had been suspected once, then they remained so. It was important to have connections or belong to the right family, if one was suspected of having connections with militant groups and was arrested. If this was not the case then the chances of being released were small. Anyone who had been arrested was unable to ring his family, lawyer, etc. Ravi Nair also said that the level of information available to the police was much better now and that they reacted to concrete enquiries, which is why not everyone was taken in by the police. The police also had computerised lists of wanted persons. For this reason the police did not carry out general house searches, etc.

Herkawaljit Singh observed that it was more peaceful in Punjab than it had been previously, and that there were fewer cases against the police than formerly. When the police forces were increased

in the 1980s, the police learnt only to shoot and to kill. Akali Dal had not been able to reduce the occurrence of violence by the police, even though there had been clear signals that infringements by the police were not acceptable. Herkawaljit added that members of groups supporting Khalistan, and people with connections with those groups, still risked persecution by the authorities, but that there had not been many cases in the last two or three years of harassment on political grounds.

The human rights lawyer Ranjan Lakhanpal stated there was no doubt that the situation was generally much better. Extrajudicial killings no longer occurred but torture and unlawful arrest did still take place. In fact there had been an increase in the number of cases involving torture, since the police could no longer just kill those involved. All those who had a connection with a Khalistan movement risked arrest. The simple fact that one opposed the government could be enough to lead to arrest. Arrests were not quite 100% random – but nearly so.

The lawyer Navkiran Singh added that politically motivated arrests were rare, but that those who had previously come to the attention of the authorities, plus writers, lawyers, journalists and human rights activists risked arrest.

Baljit Kaur (Movement Against State Repression) and CCDP believed that Sikhs who had been baptised were regarded as suspicious and risked arrest. Both also held the view that those who had previously been active in a movement still risked arrest. Baljit Kaur did not believe that people as young as 10-15 were arrested, and said that most of those arrested were aged between 18 and 35. She added that all young Sikh men risk arrest and severe torture.

Jaspal Singh Dhillon explained that individuals who had previously been arrested were photographed and had to give information about family members, which was recorded. If the situation changed and unrest broke out again then these lists were in existence and the police would easily be able to identify them again. The police kept a watch on those who had previously given shelter to militants.

8.4.3. Relatives

Rajesh Chhabra, Department of Home Affairs and Justice, Punjab, observed that relatives who hid or in any other way helped a terrorist might have problems with the police. *Ravi Nair, Director of the South Asia Human Rights Documentation Centre* agreed that members of suspects' families risked having problems with the police. Throughout India relatives risked being arrested instead of the suspect if the latter was not there.

The human rights lawyer Navkiran Singh said that members of the families of individuals who have supported the Khalistan movement were not at risk of being falsely accused. However, relatives might risk being questioned about the whereabouts of the person sought. The relatives of wanted persons are therefore recorded in police lists.

The News Bureau Chief Herkawaljit Singh commented that the authorities stopped harassing relatives when they were sure that person they were interested in was overseas.

The human rights activist Jaspal Singh Dhillon maintained that if the wanted person had fled, spouses and children were at risk of being beaten and kicked, with the aim of making them reveal where he was living. If the police could not get hold of the person they were interested in then they harassed his family.

Former judge Ajit Singh Bains and Baljit Kaur of the Movement Against State Repression both reported that formerly children risked being detained with the aim of making them give information about their fathers, but that this no longer occurred.

8.4.4. The occurrence of physical abuse/torture

India signed the UN Convention against Torture in 1997, but it has not yet been ratified. The occurrence of torture and the human rights situation in India was a central theme in the mission's terms of reference.

The majority of sources ²¹ considered that torture and other inhuman treatment took place all over India. Many sources ²² added that in Punjab there had been many cases of torture and that such cases were still arising. However, there were not so many cases as previously, because the conflict had died down. *Another foreign diplomatic mission* also reported that torture and deaths in custody did still occur.

Rajesh Chhabra, Department of Home Affairs and Justice, explained that there were three forms of torture. Torture was used on suspects who would not confess. In that sense torture was a well-known phenomenon, which according to Chhabra also occurred in the West. Torture was also carried out in a more refined form, as it was in the years 1981 to 1991. Torture was also used with the aim of extorting money from the detainee. As an example Chhabra mentioned that torture could be used by police to put pressure on someone who did not want to sell his land. Finally, Chhabra said that torture may nowadays also be used on rapists, murderers and thieves, and that it was deplorable and should not happen.

A senior official from the local authorities in Punjab, who wished to remain anonymous, said that it was normal for those taken in by police to be beaten up, just as in some cases the police took bribes.

Former Advocate-General G. S. Grewal said that torture was not unusual and that it was used to clear up a case as police investigation methods were insufficient.

The human rights lawyer Rajvinder Singh Bains observed that the first days following arrest were very brutal.

Several sources ²³ asserted that torture was one of the police's **investigation techniques**. The police used to be trained in the use of torture. *A member of the Human Rights Commission in Punjab, T.S. Cheema*, explained that the police carried out their investigations by beating people. If there was an improvement in police investigation methods this would improve the situation. As an example, Cheema mentioned that torture could occur because a police chief had demanded that a

²¹ Two foreign diplomatic missions, one international organisation, a senior official from the authorities in Punjab, the human rights lawyer Ranjan Lakhanpal, the human rights lawyer Ashok Agrawal, former judge Jaspal Singh, the Director of the South Asia Human Rights Documentation Centre, Ravi Nair, former Advocate-General G.S. Grewal, the human rights lawyer Jaspal Singh Dhillon, the human rights lawyer Navkiran Singh, the Principal Secretary Department of Home Affairs and Justice, Rajesh Chhabra, and Dr Vineeta Gupta of the People's Union for Civil Liberty.

²² Former judge Jaspal Singh, Director for South Asian Human Rights Documentation Centre, Ravi Nair, former Advocate-General G.S. Grewal, Professor Dipankar Gupta and several foreign diplomatic missions.

²³ Including former Advocate-General G. S. Grewal, the Principal Secretary of the Department of Home Affairs and Justice and human rights lawyer, Rajvinder Singh Bains.

crime should be solved within a week. The only way in which the police could meet that demand was by torturing someone until he confessed and then creating the evidence afterwards.

The human rights activist Jaspal Singh Dhillon observed that torture and beatings did not occur in the prisons but in police custody.

The human rights lawyer Ranjan Lakhanpal remarked that torture occurred throughout the police. The number of cases involving torture had increased compared with previously. As a reason for this Lakhanpal suggested that previously the police had simply killed detainees, but that that possibility no longer existed.

The Inspector-General of Police (Punjab), M.P.S Aulakh, considered that torture was no longer widespread, but said that the police could be very heavy-handed. According to Aulakh the police had committed abuses for which they had been punished. Nowadays there was an opportunity of approaching the courts if one had been tortured, and cases against the police involving torture were pending. Aulakh also pointed out the possibility of approaching the Human Rights Commission.

Several of our sources ²⁴ expressed concern over the police's behaviour and pointed out that a lack of training in investigative methods, amongst other factors, was a reason for widespread police violence. Previously, the police were only taught to shoot and kill. It was difficult to change police attitudes, and it took time and required training and resources. However, the sources agreed that the Human Rights Commissions had brought the problems of police behaviour and the use of torture into the limelight.

As regards methods of torture, *a foreign diplomatic mission* reported that the authorities used sophisticated methods which did not leave visible injuries. However, there were methods which did leave scars, such as burning with cigarettes. False claims of torture were also made, and similarly physical injuries could be the results of things other than torture.

The human rights lawyer Ranjan Lakhanpal reported that since 1992 he had dealt with 2 000 cases involving torture, rape, disappearances, etc., but that the situation had improved because the conflict had wound down. There were special torture rooms which one could see if one visited a detention centre. According to Lakhanpal torture could involve tying someone's hands behind his back and hanging him from the ceiling, beating him with "batar" (broad belts of leather or similar), forcing his legs apart until they bled, giving electric shocks including on the sexual organs, holding his head under water until he was near drowning, and pouring burning sand on his feet.

The human rights lawyer Rajvinder Singh Bains maintained out that there were instruments of torture at every police station, including chains and rollers. The High Court had issued a decree that instruments of torture should be removed but this had not happened.

Rajesh Chhabra, Department of Home Affairs and Justice, believed that detainees should be transferred to prisons at night and not be held at police stations, as torture tended to take place in police stations at night. As examples of forms of torture Chhabra mentioned beatings, legs and arms being broken, and electric shocks.

²⁴ Human rights lawyers, authorities and foreign diplomatic missions.

A member of the human rights commission in the Punjab, T.S. Cheema, also mentioned that torture most often took place at night, and that the policemen were often under the influence of alcohol. Cheema added that instruments of torture were not on view at police stations when the Human Rights Commission visited them.

Former judge Ajit Singh Bains believed that those who were arrested nowadays were subjected to the same forms of torture as previously, and that some of those forms were very serious. The consequences of torture, such as impotence, were a very large problem which was often overlooked. Those who had been tortured did not mention it themselves.

The human rights activist Jaspal Singh Dhillon also said that forms of torture had not changed but nowadays there were fewer cases. People were hung up by their arms, subjected to electric shocks, etc.

Dr Vineeta Gupta of the People's Union for Civil Liberty said that methods of torture nowadays typically consisted of rolling a piece of wood over the legs, and electric shocks. Gupta said that doctors were not present when torture was carried out but that they subsequently participated in manipulating the reports so that the offence was covered up.

A senior official from the local authorities in Punjab, who wished to remain anonymous, believed that torture took place throughout India in police custody but not in the prisons. The forms of torture used did not leave physical scars. The individual would be taken to hospital if there were visible injuries, and a case would be brought against the police.

*As regards the **target group** for torture, the human rights lawyer Ranjan Lakhanpal commented that everyone was at risk of being tortured and no group was at greater risk of this treatment than any other. Another human rights lawyer, Rajvinder Singh Bains, pointed out that influential people and those with money did not have problems. It might help a victim if the case was mentioned in the press, but that the press did not always see the news value in that sort of case. A foreign diplomatic mission observed that torture primarily affected people from the lower social classes.*

Professor Dipankar Gupta added that torture and other forms of police brutality had more or less stopped with the change in the political and security situation in Punjab. However, cases of torture could still arise, but nowadays torture was not politically motivated and was more incidental.

Gupta mentioned that women were also tortured, for example by rape. The human rights lawyer Ranjan Lakhanpal also mentioned women as a group, who were subjected to rape.

Dr Vineeta Gupta believed that the number of people who were victims of violence had increased and that woman-related violence did occur.

Most of our sources²⁵ replied that they were not aware of any children being tortured within the last two or three years. However, human rights lawyer Ranjan Lakhanpal believed that young and old risked being tortured and mentioned a 76-year-old, a 17-year-old and a 14-year-old.

²⁵ The Director of the South Asia Human Rights Documentation Centre, the human rights lawyer Rajvinder Singh Bains, the human rights activist Jaspal Singh Dhillon, member of the Human Rights Commission in Punjab T. S. Cheema, and Baljit Kaur of the Movement Against State Repression

Former Advocate-General G.S. Grewal pointed out that nowadays cases concerning human rights abuse were different from before, in that now the abuse was individual and had specific reasons. Sikhs were not subjected to torture just because they were Sikhs or because of the general political situation.

Baljit Kaur of the Movement Against State Repression considered that anyone returned to Punjab would be regarded as a suspect and be arrested and subjected to torture. *Another member of the movement (MASR), Inderjit Singh Jaijee*, added that individuals who were sent back to India as refused asylum seekers would automatically be questioned and that questioning would involve torture.

Several sources discussed the problem of **death in the custody of the authorities**.

The NHRC's annual report for 1997-1998 (the most recently published) states that the Commission was not satisfied with the reports which it had received following deaths in police custody. To avoid manipulation of doctors' post mortem reports the NHRC had for example recommended to the State governments that video recordings should be made of the post mortem investigations and the tapes sent to the NHRC.

The human rights lawyer Ranjan Lakhanpal believed that the number of people who died in police custody had increased. He could not give the number. The Supreme Court had issued an order that all those who died in the custody of the authorities should be videotaped post mortem, and a special report should be drawn up to be forwarded to the National Human Rights Commission. However, this had had no result as the doctors worked with the police and participated in covering up the police's crimes. The Human Rights Commission therefore concluded that the death had nothing to do with the authorities' custody but was natural. If death was natural, no report needed to be drawn up.

Dr Vineeta Gupta also discussed the rule that persons who died in police custody should be filmed post mortem in hospital to show whether torture had occurred. She claimed that the photographers did not understand what they should be looking for when filming.

The human rights lawyer Navkiran Singh reported that he knew of cases where people had died in the custody of the authorities. *Amrik Singh Muksar and Harshinder Singh from the Committee for Coordination on Disappearances in Punjab* also remarked that cases still arose of death in police custody, but that the number of cases was smaller than it had been.

Finally *several sources*²⁶ made the point that India was generally a violent society and that torture was not restricted to particular political or religious groups. Violence occurred in police custody, in the family, in connection with demonstrations and other political activities. *Other sources*²⁷ also remarked that the situation in other parts of India, including Kashmir, Bihar and Uttar Pradesh was worse than in Punjab.

Rajesh Chhabra (Department of Home Affairs and Justice) explained that a meeting for police officers was being planned, with a view to implementing the guidelines for police behaviour which

²⁶ A foreign diplomatic mission, an international organisation, a senior official who wished to remain anonymous, the human rights lawyer Ranjan Lakhanpal, former judge Jaspal Singh, the human rights lawyer Ashok Agrawal, Ravi Nair, former Advocate-General G. S. Grewal and Dr Vineeta Gupta of the People's Union for Civil Liberty.

²⁷ Jaspal Singh, Ravi Nair, G.S. Grewal, Dipankar Gupta and several foreign diplomatic missions.

the National Human Rights Commission had issued²⁸. Chhabra also reported that the authorities had set up a training programme for employees.

A symposium was held in Delhi from 22 to 25 September 1999 on the victims of torture. The symposium was arranged by the IRCT (International Rehabilitation Council for Torture Victims) and the National Human Rights Commission in cooperation with the Indian Medical Association and the Indian Law Institute²⁹. The delegation met a member of the IRCT India programme, *Dr Jagdish C. Sobti*. He was optimistic as regards the effects of work at the centre but underlined that it would take time. As the project was still in its infancy it was not yet possible to take a view on its effect.

8.4.5. Official and unofficial detention centres

Rajesh Chhabra (Department of Home Affairs and Justice, Punjab), said that 10 666 people were being held in various prisons in Punjab. About 3000 (28%) of these had been convicted but about 7 000 had a case pending and had not been released on bail. The delegation was not given any information on why these people were being detained. We were told that there are about 300 police stations and 37 prisons in Punjab.

T.S. Cheema, member of the Punjab State Human Rights Commission, reported that the Commission visits prisons. The situation in prisons had greatly improved and they had better sanitary provision, ventilation systems, food, visiting conditions, etc. However, the Commission pointed out that they had to give advance warning of their visits. Cheema said that there were special sections of prisons for young people and for women.

The human rights lawyer Ranjan Lakhanpal considered that conditions in the prisons were very bad, that the inmates were obliged to do all sorts of work day and night, and that they only just received enough food to survive. However, if prisoners had money, they could pay for better conditions.

A foreign diplomatic mission remarked that the prisons are overcrowded which leads to violence amongst the prisoners themselves and between prisoners and warders.

The UNHCR does not have a presence in Punjab itself. It reported that prisons in and around Delhi are generally very overcrowded.

Ajit Singh Bains, Ranjan Lakhanpal, Ravi Nair and Jaspal Singh said that there were unofficial detention centres all over Punjab, but were unable to say where they were or how many there were. Jaspal Singh and Ranjan Lakhanpal added that there are some special police headquarters and special rooms in police stations which are used for torture.

Ravi Nair asserted that the number of unofficial centres was much smaller than before, but that they did still exist. It was difficult to name and place them geographically. An unofficial detention centre might for example be in an abandoned school.

²⁸ The Danish Embassy provided the delegation with a copy of the human rights programme included in police training. The Embassy had obtained the programme from Kiran Bedi, head of the police academy in Delhi. The programme shows that it is planned to hold a number of courses in Chandigarh in 2000-2001.

²⁹ The target group for the symposium was officials in the health service, the police and judicial administration, education and the media. The main aim was to reduce the occurrence of torture in India through preventive work and knowledge, and to reinforce the rehabilitation assistance available to the victims of torture. At the end of the symposium a "Delhi Declaration" was drawn up called "Freedom from Torture".

G. S. Grewal, former Advocate-General, maintained that there were no unofficial detention centres in Punjab. Prisons in India were generally bad but in fact those in Punjab were some of the best compared with the rest of the country. However, he did observe that they were generally overcrowded.

Rajvinder Singh Bains reported that relatives approach the High Court to try to obtain information on members of their families who they think have been illegally detained by the police. However, to act on this requires a lot of resources, and it is often a matter of luck if they do succeed in finding the people in question and getting them released. In some cases the detainees have been held in private houses in police compounds.

8.4.6. The occurrence of disappearances

The delegation met Amrik Singh Muktsar and Harshinder Singh of the Committee for Coordination of Disappearances in Punjab (CCDP). The Committee's mandate is to investigate disappearances in the period June 1984-1997, and the Committee is not taking on any new cases. The Committee has published a report on disappearances in the period 1984-1997. The report analyses 838 cases, indicating the social and educational backgrounds of the victims. *There was general agreement between the sources we asked*³⁰ that disappearances and extrajudicial executions almost never occur, or only in very small numbers. This applies to both ordinary criminals and political activists.

Amrik Singh Muktsar and Harshinder Singh, Committee for Coordination of Disappearances in Punjab, observed that extrajudicial executions no longer took place in Punjab. This was not because of a change in the attitude of the police but because there was no terrorism left in Punjab. However, they believed that the problem of disappearances and extrajudicial executions would crop up again, if there was a return to the problems of 1984.

Ravi Nair considered that the CCDP had done good work and that its work had helped to prevent the occurrence of disappearances.

S.S. Mann asserted that disappearances and extrajudicial executions had not stopped.

See also the section on the Human Rights Commissions.

8.5. The Human Rights Commissions

The National Human Rights Commission (NHRC) was set up in 1993. Its legal basis is the Protection of Human Rights Act, 1993 (see Annex 4).

The Commission is an independent body with five members: a Chairman, who must have been a Chief Justice of the Supreme Court, one member who is or has been a judge of the Supreme Court, one member who is or has been Chief Justice of a High Court and two members with practical experience of human rights work.³¹

The Commission has a secretariat headed by a General Secretary.

³⁰ *Rajvinder Singh Bains, Ravi Nair, two foreign diplomatic missions (Germany and UK), Ranjan Laxmanpal.*

³¹ The members are appointed by the President on the recommendations of a committee made up of senior politicians from the Government and the opposition. The Chairman is appointed for a five-year period. The other members are also appointed for a five-year period, with the possibility of extension for a further period of five years. The age limit for the Chairman and the other members is 70 years.

Besides the National Human Rights Commission, individual Human Rights Commissions have been set up in a number of States, including Punjab (Punjab State Human Rights Commission, PHRC). The composition corresponds to that of the National Commission, except that the Chairman must have been a Chief Justice in a High Court, a second judge must have been a High Court judge, and the third judge must have been a judge at a district court in the State in question. The Commission's functions also correspond to those of the National Commission.

The tasks of the Commissions

The Commissions must investigate human rights violations either at the request of the victim of the offences, or of someone who represents that victim (a lawyer), or on their own initiative. The Commissions may also become involved in court cases in which claims of human rights abuses are made. The Commissions' members also visit detention centres and prisons. They have advisory functions in relation to the Government in connection with the implementation of international human rights standards in national legislation. Finally, the Commissions are to give information about and spread knowledge of human rights, including giving support to NGOs and institutions which work with human rights³².

The Commissions may only deal with human rights violations committed by public servants³³. Furthermore, the Commissions are only empowered to deal with cases which are brought at the latest one year after the abuse has occurred³⁴.

The powers of the Commissions

Based on their investigations, the Commissions may:

- recommend the prosecution of the public servant who committed the human rights violation;
- recommend that the Supreme Court or the High Courts should take the necessary legal action;
- recommend that compensation should be paid to the victim or to the victim's family.

The Commissions must send a copy of their investigation reports to the relevant State government, which must respond to the Commission's recommendations within one month. The response must contain details of what steps the government intends to take. The investigation reports must be made public.

In the case of human rights violations by the armed forces, the Commissions' powers are limited to requesting a report from central Government, and on the basis of that report either taking no further action or making recommendations to the Government. The central Government must inform the Commissions of the steps it has taken within three months.

The Commissions must send an annual report to the central Government and to the State governments. The Commissions may also issue further reports whenever they wish on subjects which they believe to be so important or so urgent that they should not wait until the annual report.

³² See the Protection of Human Rights Act, 1993 12.

³³ Ibid. 12(a).

³⁴ Ibid. 36(2).

General Secretary N. Gopalaswami, NHRC, also stated that the central Government and the State governments tried to ensure that the reports were submitted to Parliament or to the State Assemblies with a note on what steps the Government had taken or intended to take on the basis of the Commission's recommendations. If the Government had chosen not to accept the Commission's recommendations, their reasons had to be stated in the note.

Assessment of the work of the Commissions in practice

Several of our sources considered that the Human Rights Commissions fulfilled an important function, as they had highlighted the question of human rights and respect for them. *UNHCR* felt that the NHRC was working well. For example, the UNHCR contacted the NHRC in cases where asylum seekers living in India suffered human rights abuses. However, UNHCR added that the NHRC was overburdened with cases and that cases were handled very differently by the various Commissions.

N. Gopalaswami, General Secretary of the NHRC, reported that most cases concerned police violence, and that the number of cases about police violence was due to the lack of training of the police. The Punjab police were always recruited from people from the Punjab, and police from other States would not be appointed. NHRC had its own investigation team, but the Central Bureau of Investigations (CBI) also undertook investigations for the NHRC.

Ravi Nair, Director of the South Asia Human Rights Documentation Centre, was very critical of the NHRC's role in relation to Punjab, and said that it was a waste of time to turn to the NHRC. The NHRC could not bring charges against armed forces personnel without the Government's permission. This was because of the Armed Forces Special Powers Act, which listed the situations where special powers may be used (see the section on special legislation in the legal system). In reality this meant that charges were not brought against members of the armed forces. Nair did not believe that a real possibility existed of receiving compensation for human rights abuses. He complained that the NHRC was not really an appeal body. He also questioned the recruitment of the members of the Commission, since such a limited group of people could be appointed to sit on it. At the same time, he said that generally the institution was held in great respect and that its profile was strengthened by its activities.

Former Advocate-General G.S. Grewal did not believe that the NHRC had been able to do very much. The NHRC only had confidence in investigations by the police. Policemen were employed to carry out the investigations, and according to Grewal the NHRC had given up undertaking its own investigations.

The human rights lawyer Ashok Agrawal felt that the legislation on which the work of the Commission was based should be amended. He drew attention to the problem that the Commission was only able to make recommendations and that it consisted of retired High Court judges who did not have a proper understanding of their task. He further criticised the fact that it could only be headed by a former Chief Justice, as that reduced the choice of chairmen. It was a very bureaucratic institution.

Ashok Agrawal also pointed out that NHRC was not sufficiently independent and mentioned that its investigative team consisted of policemen, and that the leader of the investigation team had a number of complaints outstanding against him from his time in the police.

The human rights lawyer Ranjan Lakhanpal also highlighted the problem that the NHRC may only make recommendations. Compensation had only been given in a few of the cases where the police had abused detainees. However, compensation had not been given after a trial in which the accused had been convicted. The Commission had had a psychological effect but its recommendations had not been followed up adequately.

Dr Vineeta Gupta deplored the unofficial compensation system and called the NHRC a sophisticated tool for giving bribes. It was unsatisfactory that the compensation which was granted did not come from the accused, but from the police and therefore from public funds. She criticised the NHRC as she did not find it effective, and pointed out that its recommendations were not followed. She knew of proper compensation being paid in only two cases.

The retired judge Ajit Singh considered it to be a problem that policemen carried out investigations for the NHRC. He also criticised the fact that the Commission could only handle cases which were less than one year old, and that unannounced visits could not be made to police stations, prisons, etc. However, he stressed the Commission's important role as a watchdog.

Judge T.S. Cheema of the Punjab State Human Rights Commission reported that the investigation groups consisted of policemen who were employed by the PHRC for a limited period. The Central Bureau of Investigation (CBI) was not used for the investigations as it took too long. The investigation groups undertook "fact-finding". On the basis of this, the PHRC made recommendations, after which the police at the police station in question had themselves to look at the case more closely. If the Commission was not satisfied with the investigation, it could ask for further investigations. Cheema underlined that the police had extremely wide powers and that people were therefore afraid to bring a case against the police to the PHRC. They feared reprisals from the policemen who had been appointed to investigate the cases.

According to Cheema, policemen were never imprisoned. They were either released on bail or conspired with doctors or police.

He also reported that in 1999 the HRC in Punjab had dealt with more than 2 000 cases. Over half of these cases were complaints about torture in police custody. About 12 cases concerned deaths in police custody. The HRC in Punjab received about 10 to 15 cases a day. To date the State had followed the PHRC's recommendations.

The choice of bringing a case through the NHRC or the PHRC was open. The Commissions may also take cases up on their own initiative. In the HRC, each member of the Commission worked on his own cases. Depending on the nature of the case, it was presented to the Chairman or to the whole Commission. Cases concerning the army or paramilitary groups were always sent to the NHRC.

A foreign diplomatic mission felt that the PHRC was one of the more active Human Rights Commissions and did a good job. The Chairman was very active and the Commission fulfilled an important role.

Human rights lawyer Rajvinder Singh Bains observed that the policemen employed by the PHRC could generally be trusted, just as he had confidence in the members of the Commission. There

were no formal requirements and a lawyer was therefore not needed. The Commission was of benefit to the poorly off as a case could be brought to the Commission for free. The Commission had had a political effect just by its existence. The HRC could work very effectively in small cases. However, in decisive cases of a political nature, the institution was ineffective. Since 1997, Singh Bains had himself raised more than 50 cases with the PHRC.

The case of the illegal cremations

In January 1995 the Human Rights Wing of the Shiromani Akali Dal (a political party) ³⁵ published the results of a comprehensive study of illegal cremations carried out by the police from 1983/1984 to 1994. The investigation showed that several hundred corpses from the Amritsar district had been cremated by the police. In many cases it was claimed that there was proof that the bodies were those of people who had "disappeared" (been executed) after being detained by the police ³⁶. The Human Rights Wing then asked the High Court in Punjab to undertake further investigations, but it refused. In April 1995 the Committee for Information and Initiative on Punjab (CIIP), a human rights organisation in Delhi, tried to persuade the Supreme Court to investigate the matter. The Supreme Court then gave orders to the Central Bureau of Investigation (CBI) to investigate the cases. In December 1996 the CBI then took the initiative to investigate a total of 2 097 bodies, and identified 585 of them. Since the CBI's investigations indicated widespread abuse of human rights, in December 1996 the Supreme Court asked the NHRC to investigate the matter in more detail.

This Supreme Court order to the NHRC has subsequently led to a certain amount of debate about the NHRC's mandate amongst other things ³⁷.

In January 1999 the NHRC announced that it would restrict its investigations to the illegal cremations which had taken place in the Amritsar, Tarn Taran and Majitha districts. The CIIP and many other human rights campaigners were infuriated by this restriction of the investigations and have since tried in vain to get the decision changed ³⁸.

In January 1999, through a public announcement in a number of newspapers, the NHRC urged relatives of those who had been cremated to contact them with their claims for compensation. The deadline for making a claim was set as 10 March 1999. In June 1999 it was reported that the NHRC had only received 80 claims for compensation as a result of the public announcement.

N. Gopaldaswami, NHRC, confirmed that the NHRC had only received approaches from relatives in 80 cases of illegal cremation. He also informed us that many lawyers had argued that the cremation cases should cover all areas of the Punjab, which had led to wide-ranging debate. NHRC would take steps to carry out investigations in the 80 cases. On the basis of those investigations the NHRC would make a number of recommendations to the State governments with the aim of offering compensation to the bereaved relatives. Gopaldaswami mentioned that some people had chosen to bring their cases in the High Courts as the level of compensation was higher there.

Former Advocate-General G.S. Grewal made the point that it was difficult to produce proof in the cremation cases, as they were difficult to investigate since they went back 10 years.

³⁵ The people behind the investigation subsequently founded the organisation Human Rights and Democracy Forum, chaired by Jaspal Singh Dhillon.

³⁶ *A vital opportunity to end impunity in Punjab*, Amnesty International, India, August 1999

³⁷ Ibid.

³⁸ Ibid.

8.6. **Freedom of religion**

India is a secular state, in which the freedom of religion is guaranteed by the Constitution. The country has many religions and a great variety of religious sects and groups. Hinduism is the dominant religion, with more than 82% of India's population being Hindus. As mentioned earlier, the Sikhs form about 2% of the Indian population, but in Punjab they are in the majority. According to several sources (*Herkawaljit Singh, Grewal, Navkiran Singh and Jaspal Singh Dhillon*) there are no restrictions on the practice of Sikhism in Punjab or elsewhere in India.

The lawyer Navkiran Singh stated that the Sikh temples were generally not under surveillance, with the exception of the Golden Temple in Amritsar. The authorities would not interfere with the content of ceremonies/sermons in the Golden Temple, but would watch who visited the temple, who lived there and what activities went on there.

According to *Amrith Singh and Harinder Singh, Coordination Committee for Disappearances in Punjab (CCDP)*, most Sikh temples were now infiltrated by police agents who were paid to keep an eye on the temples. Particularly in relation to the Golden Temple in Amritsar, there were people who reported regularly to the police on activities there. CCDP pointed out that a Sikh who had been baptised was in a particular risk group in relation to the police, and that 80 to 90% of Sikh militants had been baptised. Nowadays at most 5 to 10% of Sikhs were baptised, and they tended to come from the lowest social groups. There was no particular tradition for baptism, and no typical age for it amongst the Sikhs – according to CCDP it happened when the person in question was "ready". After their baptism, Sikhs commit themselves to following a strong moral code – for example they must not smoke or drink alcohol – and they must wear the five Ks.

CCDP also reported that there is a great difference in how other population groups regard the Sikhs. For example, if a Sikh is publicly against smoking, he will be regarded as a fundamentalist. Similarly, a Sikh lawyer who appears in court with his beard hanging loose will be regarded differently by the judges from a Sikh who has tied his beard up or who has shaved.

Jaspal Singh Dhillon of the Human Rights and Democracy Forum explained that since 1992 those administering Sikh temples had been obliged to provide the police with a list of guests staying there overnight. Similarly Sikh temples are obliged to provide the police with lists of Sikhs who are baptised. As for the observance of other Sikh rituals, Dhillon said that there were no restrictions, but that if a Sikh was imprisoned he would for example be forced to hand over the "five Ks". However, he would not be obliged to shave or to have his hair cut.

Dhillon also expressed concern over the fact that the fundamentalist Hindu organisation RSS (Rashtgriya Swayamsevak Sangh ³⁹) was very active in Punjab nowadays. The group had registered activities in 8000 of Punjab's 12 500 villages. RSS supporters visited Sikh temples and

³⁹ RSS, which was founded in 1925, is a widespread fundamentalist Hindu organisation, which was banned in 1992 in connection with the destruction of the mosque in Ayodhya. The ban was suspended in May 1993 by the Allahabad High Court and finally lifted in June 1993 by the Unlawful Activities Tribunal. According to several sources (see the India Country Assessment, CIPU, Home Office, UK, September 1999, p. 53) the RSS now exerts considerable pressure on the BJP government, with which it is said to be closely linked. In general, the movement is against reform and modernisation such as the liberalisation of trade, urbanisation and the importation of foreign technology. It has also been reported that the RSS is seeking to gain control in those states where the BJP is in power, either alone or in coalition with others.

held Hindu ceremonies, using the excuse that Sikhism was part of Hinduism. Dhillon said that the RSS had caused many problems for the Sikhs in connection with the celebration of the 300th anniversary of the Khalsa from April 1999 to April 2000. He also mentioned a particular occasion in Patiala in February 2000 when the RSS had burned a statue of Bhindranwale – four days after the Sikhs had held a ceremony to mark Bhindranwale's birthday.

Several other sources (*UNHCR, S. S. Mann, CCDP*) also expressed their concern about RSS and the increasingly fundamentalist right-wing tendency in Indian society. The sources were nervous about the consequences which the influence of the RSS movement might have for religious minorities in India in future.

8.7. Freedom of movement

Under Article 19 of the Indian constitution, there is freedom of movement in India. All the sources we asked ⁴⁰ confirmed that there is indeed freedom of movement there, with no restrictions on movement from one State to another. There are also no rules that one should register in connection with a move from one State to another.

However, *the human rights lawyer Ashok Agrawal, Professor Dipankar Gupta and former Advocate-General G.S. Grewal* pointed out that in practice it was difficult to move, unless one had the financial means to do so. There was high unemployment in India, and the State did not provide support for example for housing.

8.7.1. The possibility of taking refuge elsewhere in India

In connection with the question of the freedom of movement, the delegation also raised the question of the possibility of taking refuge elsewhere in India.

Ravi Nair, Director of the South Asia Human Rights Documentation Centre believed that a high-profile person would not be able to move elsewhere in India without being traced, but that this would be possible for low-profile people. Once someone was on a list of wanted persons he stayed there. If someone really was wanted, then he could not use an internal flight alternative. Nair explained that someone was regarded as high profile if he was a key person in fund-raising or building up the infrastructure of a movement. How important a role the individual played in the conflict was decisive. *The human rights lawyers Ashok Agrawal and Rajvinder Singh Bains* explained that formerly the police would go to other States to look for someone they wanted, but this did not happen so frequently now.

Ranjan Lakhanpal and Jaspal Singh Dhillon considered that it was not possible to go to other parts of India and seek refuge there as the police from Punjab would go there and find the person in question. Jaspal Singh Dhillon added that the police reporting system was effective and although there was no obligation to register, the police would watch new arrivals.

The foreign diplomatic missions considered that there was no reason to believe that someone who has or has had problems in Punjab would not be able to reside elsewhere in India. One of the missions mentioned that there are no controls on movement within the country and another referred to the fact that the authorities in Delhi are not informed about those who are wanted in Punjab. It was underlined that the situation had changed and that this had not previously been possible.

⁴⁰ Foreign diplomatic missions and several human rights lawyers, Ravi Nair, Agrawal and former Advocate-General G.S. Grewal.

One of the foreign diplomatic missions also reported that former "hard-core" terrorists who had been imprisoned in India or abroad had now come back to lead a normal life in India, even in Punjab.

Professor Dipankar Gupta believed that an individual could reside safely elsewhere in India, unless he was being politically victimised.

Several sources (Ashok Agrawal, Professor Dipankar Gupta, G.S. Grewal) considered that it was not possible in practical terms to move to other parts of the country unless one had the financial resources to do so. There was no possibility of assistance from the State with housing, etc. and there was high unemployment in India.

A foreign diplomatic mission and a former member of the armed forces, K.S. Gill, observed that the Sikhs were very well organised and helped one another.

9. Passport issue and conditions for leaving/entering the country

The 1967 Passport Act still applies in India. *Gurjeet Singh* (Foreign Ministry) explained that since 1967 various amendments and additions had been made to the Act.

He observed that the authorities were currently changing the procedure for issuing passports, so that in future they would be written by machine, and photographs would be scanned into passports. Passport issue had become easier and the system had become more standardised and transparent. Criminals may still have problems in getting a passport issued. Before a passport is issued, the local police would be asked to investigate the individual's status, including a check whether there was a case pending against him, where he had been for the last few years, where he lived, what job he had and so on. This applied to everyone who applied for a passport and was a very thorough check.

Gurjeet Singh explained that passport applications may be submitted in person or by an authorised third party, or be sent by post⁴¹. The passport-issuing authority then sends the application with various documents to the local police for verification. The passport may be collected in person, by an authorised third party, or may be sent to the applicant by courier⁴².

According to Article 6 of the Passport Act the authorities may refuse to issue a passport to an applicant if there is a probability that the individual will be involved in activities harmful to India's sovereignty or integrity. Gurjeet Singh maintained that this was a very normal provision and that most country's laws contain similar provisions. The provisions allow the passport-issuing authorities to refuse to issue a passport, if the police find that it should not be issued following their investigation of the applicant's position. Gurjeet Singh was unable to offer any information on persons to whom this provision had been applied.

He did not have the impression that particularly many applicants from Punjab were refused. He stated that Punjab was one of the States with the greatest number of passport applications in India.

If someone loses his passport overseas and has to have a new one issued, the application may be made to the Embassy in the country in question. The Embassy will then send the application to the local police in India, which will examine whether the individual is entitled to have a passport issued to him.

⁴¹ The passport application is made on a special form; those residing in Punjab may submit their applications in Chandigarh or Jalandhar. Six black and white photographs have to be submitted with the application. Two photographs are inserted in the application without a signature, but four must be signed in such a way that half of the signature is on the photograph and half on the application form. The application must be accompanied by a number of documents. Attested copies are requested, but the original documents must also be included for verification. A photocopy of the applicant's ration card or similar document, and proof of the date of birth, must also be included. If the applicant has not had a fixed address within the last year, the applicant must complete special forms regarding his most recent addresses. See the Passport Information Booklet, Annex 6.

⁴² In principle it takes 35 days for a passport to be issued, but in urgent cases passports can be issued on the day the application is made. This is the case if there are very special reasons, for example state of health, participation in a funeral, work reasons or similar. The price for the issue of an ordinary passport is 300 rupees (approx. DKR 60) and in urgent cases it is 1 500 rupees (approx. DKR 350).

9.1. False passports and other documents

Gurjeet Singh admitted that it would not be impossible for a wanted person to obtain a passport if he paid a bribe. However, Singh could not say how much this bribe might be. Passport issue on false grounds was punished with a fine of 6 000 rupees (approx. DKK 1 200) and six months' imprisonment.

The other sources asked (foreign diplomatic missions, Ravi Nair, Rajvinder Singh Bains and Grewal) explained that throughout India it was very easy to obtain false documents. This applied to passports, birth certificates, certificates regarding education and career, marriage certificates and ID cards. It also applied to arrest orders and so-called FIRs (First Information Reports). Two foreign diplomatic missions stated that apparently it was not particularly expensive to obtain false documents, although passports probably were a little more expensive than other documents. One of the foreign diplomatic missions also reported that it was possible to obtain false letters from lawyers.

Two of the foreign diplomatic missions commented that spelling mistakes were very common in genuine documents. Documents which on first sight might appear to be false because of spelling mistakes, etc. may therefore often be genuine. One of our sources also pointed out that many passports were genuine but that it was not possible to say whether the data in them were correct. Passports may be issued on the basis of information which parents have given orally about dates of birth or names. A foreign diplomatic mission instanced marriage certificates where the person marrying was 17 or 18-years-old, even though legally one had to be 19 to marry. According to one of the missions, people were often found to have several passports or driving licences and there was no system to insure against the issue of several documents to the same person ⁴³.

A third foreign diplomatic mission reported that it was very normal for Indians not to have a birth certificate. Formerly there had been no obligation to have a birth certificate issued and it was for those involved to get one issued. Therefore many people only obtained a birth certificate immediately before their passport was issued. Nowadays there was an obligation to register a birth, but the fine for failing to register one was small. *Another foreign diplomatic mission* confirmed that most Indians had an identity document of some sort. However, one could choose for oneself whether to get a document issued and the lack of a marriage certificate did not necessarily mean that a marriage had not taken place. The source believed that driving licences in particular were difficult to forge.

9.2. Controls on departure

The Immigration Service, which comes under the Ministry of the Interior, is responsible for checking those leaving the country. *The foreign diplomatic missions* explained that wanted people may also leave India, with false or genuine passports, perhaps on payment of a bribe. Two missions informed us that there was no guarantee that the authorities in Delhi had information about those who were wanted in Punjab.

UNHCR reported that Indians who leave the country illegally ⁴⁴ may be prosecuted. Under the Passport Act, the maximum punishment is two years in prison or a fine of a maximum of 5 000 rupees (approx. DKK 800).

⁴³ *The foreign missions did not agree how long it took for documents to be verified. One source said that it could take between 18 months and two years, while another source maintained that it took about two to three months.*

⁴⁴ (The Passport Act, 1967, Article 12 and Passports (Entry into India) Rules, 1950).

Ravi Nair, Director of SAHRDC, remarked that the Indian authorities had information on high-profile wanted people. Wanted people would not be able to get a genuine passport issued to them. *Navkiran Singh* said that the authorities had lists of wanted people and said that the list was checked when entering or leaving the country. However, it was possible to leave if one paid a bribe. Two sources (a foreign mission and Navkiran Singh) agreed that it was easy to leave via Pakistan and Nepal ⁴⁵.

9.3. Route taken

The foreign diplomatic missions were asked about their experience of the routes taken by asylum seekers. However, they had no precise information about them. This was partly because asylum seekers often approached the authorities after they had entered the country and many had destroyed their travel documents. *One foreign diplomatic mission and the human rights lawyer Navkiran Singh* reported that some went over the border to Nepal, Pakistan or Bhutan, and some went via the international airports in India. One foreign diplomatic mission said that many apparently left via Moscow, for which they had acquired a Russian. The Canadian authorities observed that the journey to Canada was often made via European airports.

9.4. Controls on arrival

UNHCR observed that judging by their general information on Indians who returned after having their asylum applications abroad rejected returnees did not have problems if they returned with valid travel documents and if their departure had also taken place with valid travel documents. Those who had not complied with Indian laws on leaving and arriving in India ⁴⁶ might be prosecuted. According to the Passport Act the maximum punishment was two years' imprisonment or a fine of a maximum of 5 000 rupees (approx. DKK 800).

According to the UNHCR, refused Indian asylum seekers who returned to India with temporary travel documents could enter without any problems as such, but if they arrived after their passport had expired then they would be questioned about the reasons for this. These arrivals were questioned briefly and could then leave the airport. If the fact that the person returning had applied for asylum/refugee status abroad had not come to the knowledge of the Indian immigration authorities then he would not attract any particular attention other than prosecution for breaking the passport law.

The UNHCR also remarked that in cases where the Indian authorities became aware that the person returning had been refused asylum, it was likely that the immigration authorities would detain the person in question briefly for questioning and then release him, unless he aroused their suspicion by his behaviour or was being sought by the Indian security services. Those in the latter group would be thoroughly questioned and if they were wanted, would be handed over to the security force in question. According to information available to the UNHCR, such questioning in international airports had not led to the use of violence. However, it could not be said with certainty what might eventually happen to those arrivals who were wanted by other security forces and were handed over to them. Strictly speaking they should appear before a judge within 24 hours. However, legal rights

⁴⁵ *In connection with the delegation's journeys into and out of Delhi airport, it should be noted that both arrival and departure are recorded on computer. We were informed by an airport employee that both foreign and Indian nationals are registered on computer on arrival and departure.*

⁴⁶ (The Passport Act 1967 and Passports (Entry into India) Rules, 1950).

were not always observed, e.g. torture took place, as did other human rights abuses such as a lack of medical treatment during detention, etc.

However, it would not be seen as an offence to have sought asylum in another country unless the person in question had connections with a terrorist group or a separatist movement and could be connected with activities which might damage India's sovereignty, integrity or security, or activities which might have a harmful effect on India's relations with other countries.

For Indian asylum seekers who were already wanted by the Indian authorities for earlier offences such as alleged involvement in a terrorist group, arrival in India would certainly lead to prosecution wherever the Indian citizen landed or went afterwards. According to UNHCR the Indian system is effective in tracing people who run from justice, even though it is not fully computerised. Thus it would depend entirely on the luck of the Indian national in question if he was able to avoid the administrative authorities on arrival and live in hiding elsewhere in India. According to UNHCR earlier cases of bribery at airports are not relevant in this context, as the authorities have launched a massive campaign against corrupt officials, particularly in the international airports.

A foreign diplomatic mission added that returnees might risk being detained with a view to getting money from them.

Another foreign diplomatic mission said that more attention was paid to returnees if they were being escorted by the authorities. The mission did not have any information about the extent to which returnees had problems on arrival and was not involved in returns.

Ravi Nair, Director of the South Asia Human Rights Documentation Centre, said that the situation varied from case to case. If the person was on the police list of wanted people, then he would be in difficulties and be subject to not particularly good treatment. If he was not wanted, he would probably be obliged to pay a bribe. If he did not pay a bribe, the possibility could not be excluded that he might suffer rough treatment from the police. People could also risk detention for at least 48 hours while it was established whether they were wanted by the police.

The human rights lawyer Ranjan Lakhanpal said that returnees would be questioned at the airport and tortured as all returnees would be regarded as suspect. Lakhanpal said that he knew of a case involving a person who had been returned from the USA two years previously. He had been released after two months. *Baljit Kaur (Movement Against State Repression)* also said that returnees would be regarded as suspects, detained and tortured. *Another member of MASR, Inderjit Singh Jaijee*, added that those who were sent back to India as refused asylum seekers would automatically be questioned, and according to Jaijee questioning entailed torture. Jaijee said that the questioning did not take place at the airport but that people were taken to police stations.

The human rights activist Jaspal Singh Dhillon said that those who had been active abroad might have problems if they returned. If those returning were able to contact their lawyers, there was a better chance that nothing serious would happen.

10. Individuals, authorities and organisations consulted

Foreign diplomatic missions:

The Danish Embassy in Delhi: Ambassador Ms Birgit Storgaard Madsen and Attaché Mr Jannich Sloth

Canadian High Commission: First Secretary Mr John R. Butt

The German Embassy: Political Counsellor, Head of Protocol Dr Michael Freudenberg, Third Secretary Mr Michael Dumke

The British High Commission: First Secretary (Political) Mr Adam Noble, First Secretary Mr Chris Dix and Political Adviser Mr Kamaljeet Rattan

International organisations:

UNHCR in Delhi: Chief of Mission Mr Augustine P. Mahiga.

ICRC in Delhi: Deputy Regional Delegate Mr Frank Kuenzi

International Rehabilitation Council for Torture Victims (IRCT): Member and Coordinator for the programme in India, Dr Jagish C. Sobti.

Indian authorities:

Principal Secretary to the Government of Punjab, Dept. of Home Affairs & Justice, Mr Rajesh Chhabra

Punjab Police: Inspector-General of Police, Mr M.P.S. Aulakh, Deputy Inspector-General of Police, Mr R. P. Singh

A senior official who wished to remain anonymous

State Human Rights Commission of Punjab: Commissioner Mr T. S. Cheema

National Human Rights Commission, Delhi: General Secretary Mr N. Gopaldaswami

Ministry of Foreign Affairs: Director, Protocol and Visa, Mr Gurjeet Singh

Non-governmental organisations:

South Asia Human Rights Documentation Centre (SAHRDC) in Delhi: Executive Director Mr Ravi Nair

Committee for Information and Initiative on Punjab (CIIP): Human rights lawyer Mr Ashok Agrawal

Punjab Human Rights Organisation (PHRO): Chairman Mr Ajit Singh Bains, retired judge

Movement Against State Repression (MASR), Punjab: Convenor Inderjeet Singh Jaijee, co-Convenor Ms Baljit Kaur, General Secretary Mr Bhai Ashok Singh
Mr Gurdashana Singh Dhillon, Prof. of History, Institute of Sikh Studies, Chandigarh
Mr K.S. Gill, ex-Director (retired) General Military Training, India

Human Rights & Democracy Forum (HRDF): Chairman Mr Jaspal Singh Dhillon

People's Commission for Human Rights: Mr Jaspal Singh (retired Delhi High Court judge)

People's Union for Civil Liberty: Dr Vineeta Gupta

Committee for Coordination on Disappearances in Punjab (CCDP): Mr Amrik Singh Muktsar and Mr Harshinder Singh

Individuals/human rights lawyers:

Human rights lawyer Mr Ranjan Lakhanpal, office in Chandigarh.

Ravi Nair, Executive Director of the South Asia Human Rights Documentation Centre.
Ravi Nair is a member of Amnesty International's Executive Committee and also cooperates with Asia Watch Group. Nair has an office in Delhi.

Human rights lawyer Mr Navkiran Singh

Human rights lawyer Mr Rajvinder Singh Bains

Former Advocate-General Mr G.S. Grewal

Mr Herkawaljit Singh, News Bureau Chief, The Daily Ajit

Mr Dipankar Gupta, Professor, Jawaharlal Nehru University in Delhi

Politicians:

Chief Minister of Punjab, Mr Prakash Singh Badal, Shiromani Akali Dal (SAD-Badal)

Punjab Congress Party, President Capt. Amrinder Singh

President of Shiromani Akali Dal (Mann) and Member of Parliament, Mr Siranjit Singh Mann

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12.**Abbreviations**

AISSF	All India Sikh Student Federation
BJP	Bharatiya Janata Party (Indian People's Party)
CCDP	Committee for the Coordination on Disappearances in Punjab
CIIP	Committee for Information and Initiative on Punjab
HRDF	Human Rights & Democracy Forum
ICRC	International Committee of the Red Cross
IRCT	International Rehabilitation Council for Torture Victims
MASR	Movement Against State Repression
NGO	Non-Governmental Organisation
NHRC	National Human Rights Commission
PHRDF	Punjab Human Rights and Democracy Forum
PHRO	Punjab Human Rights Organisation
PHRC	Punjab Human Rights Commission
PUCL	People's Union for Civil Liberty
RSS	Rashtriya Swayamsevak Sangh (National Union of Selfless Servers)
SAD	Shiromani Akali Dal
SAHRDC	South Asia Human Rights Documentation Centre
SGPC	Shiromani Gurdwara Prabandhak Committee
TADA	The Terrorist and Disruptive Practices (Prevention) Act
UNHCR	United Nations High Commissioner for Refugees

13. List of annexes – *The annexes are available on request*

- Annex 1: Map of India
- Annex 2: Map of Punjab
- Annex 3: UN Convention against Torture, Articles 1 to 3
- Annex 4: The Protection of Human Rights Act 1993
- Annex 5: Passport Application Form
- Annex 6: Passport Information Booklet