LIVES UNDER THREAT: a study of Sikhs coming to the UK from the Punjab
SECOND EDITION

“Sixteen countries accounted last year for 14,000 [asylum] applications, almost every single one of which was abusive and neither genuine nor well founded. They include...India.”

Jack Straw MP, Home Secretary, debate on Report and Third Reading, Immigration and Asylum Bill, 16 June 1999
(Hansard Parliamentary Debates, Commons. Vol 333, col 413-414)
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Summary

*Lives under Threat* looks at the persecution of Sikhs in India, specifically through studies of Sikh clients of the Medical Foundation for the Care of Victims of Torture. Using India as an example, the report examines the British Government’s asylum policies.

- Chapter 1 provides a general background to the present situation in the Punjab.
- Chapter 2 analyses the personal testimony and medical evidence of a group of 95 Sikh torture survivors seeking asylum in the UK, 39 of whom are added to the 56 reviewed in the first edition.
- Chapter 3 examines the legal situation of 36 asylum seekers (seven of whom are among the 39 added to chapter 2) who have been refused asylum by the Home Office since October 1996, in order to identify and analyse reasons why Sikh asylum seekers are rarely granted refugee status in this country.
- Chapter 4 makes recommendations based on our findings.
- An Appendix summarises four illustrative case histories.
Introduction
to the first edition

Although the Punjab is not the only area of India experiencing unrest, it is this province, with its large Sikh population, which most often comes to the attention of people in the UK. This unrest has caused the death or “disappearance” of many thousands of Sikhs and made thousands of others flee their homes and villages in fear for their lives, becoming internal refugees. A tiny minority of these manage to escape to the UK to seek asylum, but are finding it increasingly difficult to persuade the authorities that they are genuine political refugees under the terms of the 1951 United Nations Convention Relating to the Status of Refugees.

The Medical Foundation for the Care of Victims of Torture is concerned about asylum determination procedures because over 95% of its clients are asylum seekers and refugees. These procedures can have a potentially damaging effect on the well-being of its clients and deprive them of the treatment they need. The first need of anyone fleeing torture is to know that they have reached safety. In practice, however, our clients often suffer acute and prolonged anxiety about the uncertain outcome of their asylum applications. Many feel that their account of their experiences is not believed by the authorities, or that they have not been given enough opportunity to explain the often complex reasons for their flight.

The Medical Foundation condemns the British Government’s intention to create a designated list of countries from which claims will be deemed to be ill-founded. India is one of seven countries so far selected for this list. Undoubtedly others will be added soon. Asylum seekers from these countries will be given significantly less time to gather evidence for an appeal and the presumption by the authorities that their claim is unfounded will create a further obstacle for our clients in demonstrating that they are genuine refugees. Although there will be exemption from this abbreviated procedure for some who can show they have been tortured, we are still apprehensive that our clients will not have time to collect the necessary evidence at the appeal stage. While the Medical Foundation welcomes this safeguard, we do not yet know whether the details of torture will emerge soon enough to prevent “fast tracking” and its associated risks for our clients.
The danger is compounded by the Home Office practice of interviewing as many asylum seekers as possible immediately upon arrival in the UK (the Short Procedure). Our clients will probably find it hard to say everything they need to in order to convince the interviewing officer. Without advice they do not know what is relevant, and some may be too traumatised, exhausted or confused to be able to reveal all the necessary details so soon after arrival. With only a brief time to put in further evidence, the Short Procedure makes it likely that their claim will not be properly assessed. As a result, clients from countries on the designated list, may now be at greater risk of being sent back to face further persecution or even death.

October 1996
Introduction
to the second edition

Since the publication of the first edition a general perception has developed that the political situation has stabilised in the Punjab and that terrorist activity has abated. However, torture survivors still reach the UK, and many claim that the Punjab police continue to target Sikhs and that gross ill-treatment in police stations persists. In the UK the designation of certain countries, including India, considered by the British Government to be free of political persecution (the so-called White List), is to be abandoned. Nevertheless, there still appears to be a reluctance among asylum officials to accept that individual Punjab Sikhs have been tortured, and the application of the asylum procedures seems to be more stringent than ever.

In spite of the Indian Government’s protestations that security agents accused of torture are being identified and punished, there is clear evidence that police still practise routine discrimination, bribery and torture without fear of retribution. We have continued to see clients from the Punjab who allege that they were tortured, some quite recently. Of the 39 clients who have been medically examined since the first edition, seven claim to have been detained in Indian police stations between May 1997 and July 1998. They all exhibited much the same pattern of abuse and injury as those previously examined.

July 1999
CHAPTER 1

The situation in the Punjab

The background

There are around 13 million Sikhs in the world, the majority of whom live in the Indian subcontinent, predominantly the Punjab in the north-west, divided since the 1947 partition between India and Pakistan, where the religion was founded in the fifteenth century by the Guru Nanak. The word Sikh means “learner” and, more specifically, any person who believes in one God, the ten Gurus (spiritual teachers) and scriptures of the Sikh religion.

Sikhism is both a religion and a cultural tradition which affects every aspect of family and moral life. Singh, meaning “lion”, is a surname given to most Sikh men, while women are given the name Kaur, which translates as “princess”.

Devout Sikhs who have undergone the baptism ceremony of *amrit* abstain from alcohol, meat and tobacco and wear at all times the five Ks, so-called because in Punjabi they all begin with K. The five, which are both protective and symbolic, are uncut hair (*Kesh*, usually worn under a turban), a comb (*Kangha*), a sword or dagger (*Kirpan*), a steel bracelet (*Kara*) and undershorts (*Kachcha*). However, many Sikhs are not baptised and have nowadays abandoned these strict observances though they retain the surnames and may attend the temple (*gurdwara*) regularly. Some young Sikhs have told us that they shaved their beards and cut their hair in order to escape the attentions of the police.

Sikhs, who were given status and power under British rule, have felt that since independence the Indian central government has eroded their control. In the 1970s Sikh leaders demanded greater autonomy with the creation of an independent state (*Khalistan*), and the conflict turned violent with militant groups committing widespread human rights abuses against elected officials, civil servants and Hindu and Sikh civilians. In April 1982 the main opposition group, the Akali Dal, organised a civil disobedience campaign to demand return of water rights which are so vital to Punjab, India’s foremost agricultural state. In response the government broke off talks with the Akali Dal and banned a number of militant Sikh groups, many of whom retreated into the holiest of...
Sikh shrines, the Golden Temple in Amritsar. The protests and violence continued throughout Punjab, resulting in the arrest of thousands of activists by the Indian security forces. Suspected militants and Sikh civilians alike were killed in “false encounters”, i.e., extrajudicial executions presented by the security forces as armed engagements.

The violence reached fever pitch during 3-6 June 1984 when the Indian Government raided the Golden Temple to expel the militants. Thousands, including families on pilgrimage, died in the attack. In retaliation, Sikh bodyguards assassinated Prime Minister Indira Gandhi on 31 October 1984. Angry mobs took to the streets in cities across northern India, murdering thousands of Sikhs. A decade of violence and retribution ensued.

From 1992, after political appeasement and negotiation failed to quell unrest in the Punjab, a new state government pursued a strategy of counter-terrorism “based on the massive use of force...[which] succeeded in tiring out the militants and a return to normal with none of the rebel demands being met” (Nathan, D, 1996, quoted by the UNHCR).

Death, “disappearance” and torture: tools of the Punjab police

In their efforts to suppress the militant Sikh movement, Punjab police have committed gross human rights violations, ranging illegally beyond their home state, against those they suspect of involvement. The abuses include widespread torture, “disappearance”, extrajudicial killings, unacknowledged detentions and deaths in custody. Although baptised male Sikhs in the 15-35 age range have been particularly targeted, family members and friends of suspected militants, regardless of age or gender, are also routinely threatened or tortured. Prisoners have been detained for months or even years without trial, a situation made possible by legislation such as the Terrorist and Disruptive Activities (Prevention) Act (TADA), which took away normal legal safeguards.

Detainees are routinely tortured, either in official places of detention such as police stations, interrogation centres such as “CIA Staff” (belonging to the Central Investigation Agency), or secret detention centres located in private houses. They are generally not allowed contact with the outside world, and the detention is often unacknowledged.

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The police appear to act with virtual impunity. Although a few cases against the police do reach the courts, scores of others are never brought to trial. Thus the judiciary, which has a good reputation, proves ineffective in controlling police abuses. Amnesty International and other human rights organisations have repeatedly expressed concern that the state and central governments have not taken sufficient measures to halt human rights violations by the police. Evidence from a number of our clients suggests that the police make random arrests of innocent young Sikhs purely to extract large bribes for their release from parents or village elders, and that this corruption reaches right to the top of the police hierarchy.

Indian Government officials deny that atrocities still occur, claiming that “the activities of Sikh militant groups, who have committed numerous human rights abuses themselves, have been nearly halted, that law and order has been re-established, and that with an elected state government in place since 1992, the situation in Punjab is now near normalcy.”

The present situation

One academic source cited in the Home Office Country Assessment of India concludes that “conditions in Punjab have greatly improved since the worst days of the early 1990s, and it is no longer accurate to say that any Sikh is at risk of persecution simply because of his religion”; nevertheless, the same source concludes that “human rights abuses continue to occur in Punjab, the police are still out of control in many areas, and human rights workers have themselves been targets of harassment and abuse.” TADA is still in force and it is obvious that the police are determined to resist any tendency for recurrence of “terrorist” activity. Still at risk are “people with a local history of abuse at the hands of the police, who may continue a personal vendetta; and militants together with their close relatives and supporters who continue to be followed as potential seeds for further rebellion.” Many police detentions, “disappearances” and deaths during “false encounters” are unrecorded, few detainees are charged and, if brought to court, are seldom convicted of political crimes. A released prisoner can be rearrested as soon as he leaves court, to be returned to the police station for further ill-treatment.

This analysis of the present situation is supported by the stories recounted to us by our clients, many of whom tell us that, though
not directly politically involved or else only low-level members of a political organisation, they have been persistently targeted by the police, sometimes apparently because their parents are sufficiently well-off to pay substantial bribes to the police. It is clear that individuals who have suffered persecution at the hands of the police for whatever reason and have been forced to flee, are still at risk of being rearrested and ill-treated if they return to India.

References
CHAPTER 2:

A Study of 95 Sikh refugees seeking asylum in the UK

by Duncan Forrest FRCS

Introduction
As a result of the violence in the Punjab described elsewhere, there has been an increase in the numbers of Sikhs coming to the UK from the Punjab to escape harassment. Some of these have come to the Medical Foundation for treatment or for examination by a doctor who may then write a medical report to assist their asylum application. Doctors and other health workers at the Foundation see a large number of clients who allege torture from over 90 countries. Those from the Punjab, like clients from many other countries or districts, show a consistent pattern in their histories, pointing to a systematic abuse of power on the part of the security forces.

Subjects and method
Between November 1991 and March, 1999, 341 Sikhs attended the Medical Foundation. Of these, only five were women. This imbalance between the sexes perhaps indicates a cultural difference: more men than women arrive in the UK as refugees; perhaps fewer women have been detained and tortured, though it is reportedly not uncommon for women to be raped in the home at the time of their male relatives' arrest.

I personally interviewed and examined 95 men, who are the subjects of this chapter. This represents an unknown but certainly small percentage of all the Sikhs applying for asylum in the UK. All but three, who were fluent in English, were interviewed with the aid of Punjabi-speaking interpreters to ensure accurate communication.
Three of them were seen in detention, one each in Bedford Prison, Pentonville Prison and Haslar Detention Centre. All the others came to the Medical Foundation in London, one after having been recently released from Pentonville Prison. All were asylum seekers.

At interview, documents relating to their asylum applications were available, in all cases the Home Office Political Asylum Questionnaire or Interview, completed when they first claimed asylum, and in most cases, also the statement given to their solicitor. Three brought medical reports or affidavits from India, but none of these were of sufficient quality to assist the application for asylum.

The examination of clients seeking asylum has some distinctive features. The need to obtain a complete picture of the detentions means that every possible detail about the circumstances and methods of interrogation and the weapons used for beating has to be elicited, but this often conflicts with the patient’s real fear of talking about his experiences. Consequently, the interviews have to be conducted with extreme patience and are accordingly often very time-consuming. Occasionally, recalling certain details causes the subject extreme distress, and on several occasions these interviews were interrupted by weeping.

Similarly, physical examination is likely to induce painful reminders of torture and has to be conducted gently. Occasionally the physical examination could not be carried out fully at the first interview because it caused undue distress.

Findings

The 95 men studied were aged from 17 to 58 years when seen (Table 1), but had been aged between 14 and 53 when first arrested (Table 2).

| Table 1: Age at interview at the Medical Foundation |
|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|
| 17-24 | 25-29 | 30-34 | 35-39 | 40-44 | 45-49 | 50-54 | 55-58 |
| 12 | 25 | 20 | 14 | 9 | 8 | 5 | 2 |

| Table 2: Age at first detention. |
|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|
| 15 | 36 | 14 | 5 | 15 | 3 | 7 |
The subjects came from a rather narrow social spectrum. All but eight (who had left school by the age of 12) were educated at least to secondary level, and nine were graduates. Thirty-nine came from farming families and, after finishing their education, had worked on the family farm, while six others had jobs related to farming such as cattle dealing or milk delivery. Nine were employed in professions, eight were skilled workers, while 15 were still students.

Thirty-eight of them had joined the All India Sikh Students' Federation (AISSF) while at school or college, and many worked actively for the organisation. Thirty belonged to other political organisations, while 27 admitted to no political affiliation at all and claimed that their detentions were arbitrary, due to mistaken identity or else were caused by the political activities of relatives or friends. Three of these claimed they had been arrested simply because they were strangers in hiding in the locality.

All the men except one claimed that before their first arrest they were fit and had not suffered from serious disease or injury. One of them was a full-time athlete (a middle-distance runner), one was a professional hockey player who had played for India, one had played volleyball for the Punjab and one was a professional kabbadi player. Others had played active sports at school or college, one playing football for his university. Several displayed scars sustained at sports, in childhood or at work but only one had been disabled by injury (a leg fractured at kabbadi).

They reported detentions between the years 1978 and July 1998: the longest interval between release from the last detention and interview at the Medical Foundation was 8 years 3 months and the shortest 6 months. The number of detentions overnight or longer (i.e. excluding those of only a few hours) is shown in Table 3.

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The man who reported 35 detentions might not have been believed had he not produced police records detailing them. Detention was usually for a comparatively short time on each
occasion, ranging from one to 10 days, but totals ranged from two days to eight months in police custody. Four of the earlier arrests (in 1984) were by the Indian Army, and the detainees were held in army barracks, but the rest (since the withdrawal of the army from the area) were all taken by police and held in police stations, often in their own village. Eighteen were later transferred to a special investigation unit of the Central Investigation Agency (CIA). Of the 95 only 18 were charged and tried; two were convicted. The large majority were never charged with any offense. In addition to the detentions listed, several stated that they had many times been held, questioned and threatened but not detained overnight.

**Methods of ill-treatment**

All reported severe ill-treatment, usually worst in the first few days of detention. An indication of the severity of their beating was the statement by 82 of them that on one or more occasions they had been beaten unconscious. One man said that he was beaten only with truncheons, but the others all claimed to have been beaten with an assortment of weapons, including fists, boots, blows with *lathis* (long stout bamboo canes), leather belts with metal buckles, *pattas* (leather straps with wooden handles) or rifle butts. One was beaten with a branch torn from a thorn bush, five with metal rods and one with a metal chain. In addition, 57 reported being suspended by the wrists, ankles or hair and then beaten.

A particularly painful method of suspension, which was suffered by 20 men, is to tie the wrists or arms behind the back and then suspend the whole body weight by them (Fig.1). Most survivors of this treatment have permanent damage to the shoulder joints. Eleven men had their arms twisted behind the back, 22 had their hands trodden on or hammered and ten were repeatedly thrown against a wall or onto the floor. Thirty five were given electric shocks, either by a magneto or from a mains socket. One man was forced to pass urine into a bucket and another passed urine into an electric fire, giving painful electric shocks in the penis. One was given shocks while in a water tank. Fourteen suffered burns, and seven had their nails pulled out by pliers.

While these methods of torture are found in many countries, there are some which appear to be peculiar to the Indian police, using local items of equipment. The *lathi* is the standard weapon issued to the Indian police. Being long and stout it delivers...
punishing blows which often cause unconsciousness. However, it tends not to cause an open wound except over a bony point. There is often a metal knob on the end which in one case was claimed to be sharpened to a point and used to poke the victim painfully.

One method we have not seen practised in other countries (though it has been reported in neighbouring Kashmir) is given the nickname of cheera ("tearing" in Punjabi). It consists of forcing the hips strongly apart, often to 180°, sometimes repeatedly and at other times continuously for 30 minutes or more. This is often done with the victim sitting on the floor with a policeman behind him pulling the head back by the hair while pressing a knee into the back (Fig.2), but in three cases was achieved when the victim was strapped to a manja or charpoi (a wooden bed frame). Forty-eight men reported this torture, four of them stating that they heard and felt the muscles tearing while others reported that extensive bruising appeared in their groins immediately afterwards. Two men, on examination, had severe scarring in the groin which could have been caused only by excessive stretching of the skin.

Another method, alleged by 69 men, involves the use of a thick wooden roller. The police sometimes have a thick log of wood or a steel tube kept for the purpose, but they often use a ghotna, the pestle about four feet long and four inches in diameter which is used locally for grinding corn or spices. One man reported being beaten on the back with a ghotna, one had the ghotna placed between the thighs and then the ankles tied forcibly together, 19 had the ghotna placed behind the knees and then the legs flexed over it (Fig.3), but the commonest method, applied in 63 cases, was for the ghotna to be rolled slowly down the thighs or calves with one or more of the heaviest policemen standing on it (Fig.4). Fourteen men suffered both of the last two methods. Usually the roller was said to be smooth and caused no break in the skin, though the pain was unbearable. One man, however, stated that the surface was rough and cut the skin, while another said that a square-section table leg was used. Sometimes the roller was made of stone or metal and clearly made specially for the purpose. One had "Welcome" written on it and another was labelled "75kg".

Much of the abuse took place during interrogation sessions, but police also beat detainees randomly at other times. Twenty-seven men reported having been beaten late at night when the officers were drunk.
Some forms of torture which are common in other countries were rarely found, emphasising the fact that torture methods are a geographically selective phenomenon. Whereas in Sri Lanka, for example, burning with cigarettes is extremely common, in this group it was seen only twice. Burns were inflicted with a hot iron rod in eight cases, an electric iron in one, hot candle wax in four, caustic liquid in one and, in one case, the victim was suspended head down over an electric fire. Similarly, sexual abuse, usual in Algeria or the former Zaire, for example, was uncommon in this group though five men had hot chillies or petrol pushed into the rectum.

**Sites of injury**

The majority were beaten principally on the back, the legs or the buttocks, while 20 said they had been beaten all over and 20 had been beaten over the head. Nine had been beaten about the ears resulting in bleeding and deafness. Beating the soles of the feet was used on 37 victims. It is an extremely painful method widely used in the Middle East, where it is known as *falaka* or *falanga*. It does not appear to have a special name in India. Six men described having their ankles fixed in a wooden frame (*khaath* or *sakanga*) so that their soles could be beaten. Forty-two men said that their heads had been forcibly pulled back by the hair while a knee was held in the back. One man had chilli powder thrown into the eyes, one had salt rubbed in the eyes and one other lost an eye as a result of a blow from a sharp implement.

**Psychological abuse**

Forty-nine men reported being threatened with further punishment, death or harm to family. Six experienced mock executions, and others were told that the police could easily make it appear that the detainee had been shot in a gun battle or when attempting to escape (“false encounter”). Twenty suffered extreme humiliation, often with removal of the five sacred objects (the five Ks) which baptised Sikhs wear at all times. One particularly devout man had cigarette smoke and ash blown in his face, alcohol poured into his mouth and threats of having his beard and hair cut off. He remembered this as worse than his (very severe) physical abuse.
Release

Most men were released without charge, usually after representations by the village elders (the panchayat), a politician or lawyer, but in 44 cases, only after the payment of a large bribe. One man estimated that, after his five detentions, his family had paid out 4 lakh of rupees, equivalent to about £7,400. Five men were forced to sign statements before release, exonerating the police from blame for injury. On release, 61 were unable to walk. Three were thrown out of a police car close to their village. In several cases the relatives had to hire a taxi to take the victim home from the police station and one man was twice sent home in a rickshaw. Twenty-two were hospitalised but some were refused admission to a government hospital on the grounds that they were “police cases”. Most stayed in bed at home for up to two months and were treated by a private doctor or received traditional treatment.

Present condition

Most of the Medical Foundation examinations were conducted long after the last detention, the shortest interval being six months and the longest eight years (Table 4), but nevertheless, all subjects had physical symptoms and signs which they attributed to the ill-treatment they had received and which they claimed had not been present prior to detention.

| Interval from last detention to interview. |
|-----------------|-----|-----|-----|-----|-----|-----|-----|-----|
| 6-12mths        | 1-2yrs | 2-3yrs | 3-4yrs | 4-5yrs | 5-6yrs | 6-7yrs | 8-12yrs |
| 11              | 14   | 14   | 25   | 4     | 7     | 9     | 9     |

The most common complaints were of back pain and pain on walking, principally but not only, by those who had suffered beating on the soles of the feet, cheera of the hips and/or crushing by the ghotna. Permanent damage to the shoulder girdle was common among those who had suffered suspension, especially with the arms tied behind the back, or arm-twisting or both. Eight men had visual disturbance that they attributed to blows on the head with rifle butts. The man who had had chilli powder thrown in the eyes still had severe lachrymation, while the man who had lost an eye through injury with a sharp implement had an unsatisfactory prosthesis which caused pain. Eight had deafness or
discharging ears attributed to blows. Four had sensory loss and one had vascular impairment in the lower limbs attributed to application of the **ghotna**.

Psychological damage was obvious in all cases, with elements of post-traumatic stress disorder, such as loss of concentration (65 cases), memory loss (34), confusion (11), intrusive thoughts (37), flashbacks (eight), panic attacks (20), and especially, recurrent nightmares reproducing events experienced during detention (56). Thirteen men claimed to be depressed (though only two were receiving treatment for clinical depression), and five confessed to suicidal thoughts (strongly condemned by their religion). On the other hand 15 stated that they were strongly supported during detention and afterwards by prayer and religious observance.

**Discussion**

The first problem in interviewing alleged torture victims is the great difficulty many have in talking of their experiences. Some have never before seen a doctor who seemed sympathetic or who was not the employee of the authorities. Immigration offices, HM prisons or detention centres are not the most reassuring environments for an interview. Confidence is much more easily gained in a friendly and welcoming environment. The importance of a knowledgeable and sympathetic interpreter cannot be over-emphasised.

A great deal of time needs to be spent in slowly eliciting the account of detention and torture. Many subjects experience great distress at the recollection, and in several of the present cases the interview had to be temporarily halted while the man wept bitterly. Many had not previously described the most painful, and perhaps humiliating, events to a living soul, not even their wives. In almost every case, relevant material that did not appear in the original interview record or questionnaire was elicited by patient questioning.

With one exception all these men gave a history of abuse with a variety of techniques that show a pattern peculiar to the region, partly due to the use of materials easily available to the police, such as the *lathi* and the **ghotna**. Several factors are evident:

- Severe physical and psychological ill-treatment is routinely employed during interrogation in police stations and interrogation centres.
• Clearly, torture is at least a semi-official policy since several detainees affirmed that the torture occurred during questioning by senior officers, some of whom were named by the victim.
• Ill-treatment was clearly aimed at obtaining information about dissident groups.
• An additional purpose seems to be to terrorise the supposedly disaffected population.
• Forty-two subjects stated that they were released without charge only after a substantial bribe was paid. It has been alleged that this is sometimes the sole motive for the repeated arrest of the sons of well-to-do parents.
• The beating was often very severe, as shown by the fact that 82 of the 95 reported having lost consciousness on one or more occasions during interrogation.

The visible scars months or years after the detentions were often few. This could be explained partly by the passage of time, but more particularly by the fact that much of the physical injury was superficial. Many men described how they were covered in bruises that faded and disappeared after a few weeks, but had few open wounds that would leave scars. Others described how their arms or legs had been wrapped in towels before suspension, which could only have been with the intention of avoiding abrasion and scarring.

The police seemed to be aware of the need to avoid gross visible injury in detainees who may have to be presented in court, hence the common finding that suspension had left no visible scars round wrists or ankles. Several men advanced the information voluntarily that soft cotton ropes or turban cloth were used, or ordinary rope was bound with cotton cloths when suspending detainees, clearly with the specific purpose of avoiding permanent scarring to the wrists or ankles. One man described having his back covered with a wet towel before the police beat him. However, though the police are cautious about causing visible scarring, they often do not avoid more insidious damage. A recent paper from neighbouring Kashmir, reports 10 cases of kidney failure due to products of muscle breakdown escaping into the bloodstream following police beating. In addition to official interrogations, 26 detainees reported beating, apparently random, by drunken police, usually late at night. There is often clear...
evidence of long-lasting damage to the joints or muscles of the shoulders, hips and knees as a result of the techniques of suspension and crushing used by the Indian police.

In taking a history from torture victims, it is sometimes difficult to decide if the description is accurate and credible. In any medical interview it is, of course, imperative to make an estimate of the patient’s credibility. An important feature is that the history obtained at a medical examination often brings out features that have not been mentioned in previous statements. This should not cause surprise, because the doctor seeking specific information (while attempting to avoid leading questions) about the methods of torture and their effects, elicits descriptions which have not been asked for by solicitors or immigration officers. Many studies have documented the fact that when giving a medical history, a patient will often not reveal quite important facts until a second or subsequent interview. It is hardly to be expected that a man who has suffered horrific treatment will be able to recall and reproduce every detail at once to a stranger. One who has suffered many detentions will naturally have difficulty in recalling accurately what happened on each separate occasion. Indeed, it might be suspicious if he did so.

It is often alleged that asylum seekers embroider or invent their experiences. If this were so, one would expect them to attribute every scar or deformity to their torture. In fact 70 of the 95 men in the present study pointed out scars that they said were due to childhood injury or accidents at work and were often at pains to dismiss them as unimportant. Only two of the present group gave the impression that they were embroidering the truth, and consequently no report was written for them. The subjects normally gave a strong impression of transparent honesty and, if anything, belittled their injuries. The longer the interviews went on and the more details of their ill-treatment came to light, the more credible their stories sounded. In addition, some gave details so bizarre that they could hardly have been invented. One man recounted how the police, before beating him with a patta, showed him the flat wooden handle upon which was written “Welcome”, and at the end of the session, showed him the other side with the legend “See you again”. Another told how the police brought in an electrical apparatus, evidently new, which they experimented with,
at first achieving only gentle shocks, but after further testing, were able to deliver graduated shocks of greater severity.

A common finding of those who see a variety of torture victims is that asylum seekers from a particular region tend to produce very similar histories of torture. This is sometimes taken to indicate that they are colluding with one another to fabricate a story they hope will further their cases. In the present study it appears that there is a pattern of abuse in a region and that police have a limited repertoire of techniques, some of which are traditional and some developed using locally available materials. Indeed, the only subjects whose credibility was in doubt were those who described conditions of detention and methods of torture which had not been heard before. The descriptions of ill-treatment given by all the other men closely corresponded to descriptions previously collected in the Punjab and described independently by Dr Pettigrew in her book (see Chapter 1), and by Amnesty International. By contrast, other methods of torture found in many countries around the world, such as burning with cigarettes or sexual abuse, were found only occasionally in this group.

In all but one of the men there was physical evidence such as scars or damage to joints and muscles to support their allegations. In no case was there categorical proof of torture, though in 32 cases there were scars that appeared highly suggestive that they had been caused as described and unlike any accidental wound. Concrete proof, often expected by solicitors or asylum officials, is almost never available unless, as is seldom the case, the victim can be examined within a few days or weeks after the injury. Even apart from the fact that there is often conscious effort on the part of interrogators to avoid any permanent visible evidence, there is no way after a lapse of years to prove that a scar or deformity could have been caused only in the manner and at the time alleged. Whereas in many countries that practise torture, interrogators are not restrained by any attempt to hide it, in India the possibility that the victim may have to appear in court makes them go to some lengths to avoid causing severe external injury.

Nevertheless, the ghotna and cheera, routinely used by the Indian police, do leave long-standing changes in the joints and muscles which are characteristic and quite unlike signs caused by natural disease or other forms of trauma.
X-rays or other imaging, biochemical tests or muscle biopsy may supplement clinical examination but are unlikely to provide proof that cannot be elicited by physical examination. Consequently, in the present group, it was not considered justified to subject anxious subjects to an additional burden.

Psychological changes, though very real, were even less specific than the physical. All the subjects showed clearly that they were suffering from the long-term effects of trauma, but in none could it be causally related with any certainty to their history of torture. It is inevitable that at least some of the psychological damage must be due to the harmful effects of exile, separation from family, social deprivation and uncertainty about the future.

**Conclusions**

It must be admitted that this group of asylum seekers who came to the Medical Foundation for medical reports are a highly selected sample of all the refugees who find their way to the UK: they all allege that they have suffered torture; their lawyers have decided that documentation of their alleged torture is relevant to their asylum claim and that the torture has left some residual evidence; their application for a medical report was accepted by the Medical Foundation; and in all but two cases the examining doctor decided that their history and examination gave sufficient support to their allegation of torture to justify the submission of a medical report.

The total number of refugees arriving in the UK is in turn a tiny minority of all those have suffered gross police harassment. The vast majority remain in their own country. Dr Pettigrew’s study suggests that many of those detained by the police in the Punjab, often on trumped-up charges, “disappear” or are killed in “false encounters”. Only those with considerable financial means are able to obtain release from detention (the family of one of my patients had to sell a plot of land in order to pay the bribe for the release of their son), and it may take several months to find the money to pay an agent for false documents and transport to the country of refuge. It is no surprise, therefore, that all the men included in this study came from families of substantial farming, business or professional stock. None of them showed evidence of having come to this country as “economic migrants”. They all had well-established life-styles before their peace was shattered by police harassment and persecution. Many of them were politically active.
or had given food, shelter or assistance to rebel groups and thus were at risk of detention, but a significant number had no political or criminal history and were caught up by accident or by a friend or relative giving their name under torture. Some were arrested simply for being young Sikhs. One young man who had moved to another part of India for safety was once more arrested, simply, he claimed, for being a stranger and therefore suspect. Two others had similar experiences while visiting a distant village.

There are many reasons why an applicant, having arrived in the UK, may not present his case for asylum to the best advantage. The initial interview or questionnaire is the key document which is used throughout the asylum process, and any subsequent amendment or addition is viewed with mistrust. It is often conducted at the port of entry, when the applicant has just arrived in the UK, often still suffering physically and psychologically from recent experiences of detention, torture and flight into exile. The victim of torture may suffer from confusion or loss of memory because of the trauma he has suffered, as exhibited by 45 men in the present study. He often suffers from cultural inhibitions that induce deep shame for any transgression he may have committed or felt he has committed against the mores of the community (see Chapter 1). This is particularly true of sexual attacks which victims from many countries never reveal even to their spouse. The agent who has sold him false documents, wishing to cover his own tracks, may have instructed his client to destroy all documents before landing and warned him not to mention torture or imprisonment, one reason being that the UK authorities might take this as a sign that he is a criminal and therefore undesirable. He may have deep distrust of the interviewer or interpreter, having learnt by bitter experience that it is safest to reveal as little as possible to those in authority. With all these inhibitory factors, is it any wonder that many initial interviews produce errors, omissions and apparent discrepancies?

The uncomfortable conclusion is unavoidable - that at least some asylum applicants are being unjustly labelled as “economic migrants”, “bogus refugees” or “abusive claimants” and refused asylum to which, by any humane or legal standards, they are fully entitled. They are in danger of being sent back to an environment they rightly fear, of summary detention, torture, “disappearance” or execution in a “false encounter”.

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All the evidence provided by human rights agencies as well as the continuing number of clients at the Medical Foundation who claim that they have been tortured in the late 1990s suggests that, although terrorist activity has largely died out, police brutality is still rife. Fresh examples of torture are still surfacing in the Punjab as well as other parts of India. The traditional methods that the Indian police have employed from time immemorial appear still to be in common use. Seven of the cases I have seen recently have reported severe torture, including all the methods described here, during detentions between May 1997 and July 1998. The fears that these Punjabi Sikh asylum seekers entertain are both real and justified.

References
CHAPTER 3:

Decisions on 36 asylum claims

by Simon Malcolm

The sample
This chapter is a study of 36 cases documented by the Medical Foundation since the publication of the first edition of this report. The subjects are Sikhs of Indian nationality whose applications for refugee status to the Home Office were refused after October 1996, the date of the first edition of this report. All 36 cases were initially rejected by the Home Office. Of these, documentation was available for analysis in 17 cases which were appealed to the Immigration Appellate Authority. Only three of these appeals were successful. Documentation was also available for one case which was taken to the Immigration Appeal Tribunal. This case was unsuccessful.

Home Office refusals
An application for asylum is made either at the port of arrival or at some stage after gaining entry into the UK. Asylum seekers may be given a self-completion questionnaire, and may be subsequently interviewed by an Immigration Officer. The Integrated Casework Directorate of the Home Office then determines the application. Applications are meant to be judged according to the standards laid down by the United Nations Convention Relating to the Status of Refugees 1951 (Articles 1 and 33), and an applicant must show that he or she has a well founded fear of persecution for reasons of race, religion, nationality, membership of particular social group or political opinion.

The United Nations High Commissioner for Refugees (UNHCR) recommends that for a fair determination of an asylum claim the following must occur: there is no pre-judgement of the merits of an individual’s case; fair opportunity is given to present
the claim (which includes access to legal advice and time to prepare for an oral interview); reasonable opportunity is given to have a negative first decision reviewed on its merits by an independent body; and the standard of proof must be maintained, although the burden of proof rests with the applicant.

The standard of proof used in asylum cases in the UK has always been low, certainly much lower than in criminal cases, where it rests at “beyond reasonable doubt”, and lower than the standard of proof in civil cases, which rests at “on a balance of probabilities”. The repercussions of an incorrect decision, which could result in a refugee being returned to face persecution, is of such gravity that the standard of proof has always been low. After using the generally accepted test of “a less than even chance” (that persecution would occur on return to the country of origin), the standard of “a reasonable degree of likelihood” was set down in the House of Lords case of Sivakumaran in 1987. In their Lordships’ judgement, this was described as a real risk and a serious possibility. Real, as opposed to unrealistic, and serious, as opposed to trivial.

In criminal cases, the burden of proof rests with the prosecution. In asylum cases, the burden of proof is with the applicant: he or she must prove what he or she asserts to be true. If the burden of proof lay with the Home Office and it had to show that an applicant was not a refugee, the rate of recognition of refugees would be very much higher. This is because it would be necessary only to establish plausibility to found a claim to asylum. Because the burden rests with the applicant, however, the apparently low standard is in fact not easy to meet. Thus the asylum applicant making an allegation of torture in the Punjab, for example, must show to a reasonable degree of likelihood that what he or she says is true. He or she must also show that there is a reasonable degree of likelihood of being persecuted upon return to India.

It can be seen from many of the cases below that the Home Office often questions the credibility of the applicant by offering alternative causes of injury other than torture. In this situation an alternative explanation does not displace the reasonable degree of likelihood that the cause of injury was torture. This may help to explain, however, the high rate of refusal in Sikh cases.
The Home Office issues directions for its staff, instructing them how to deal with asylum applications. Instructions are given on how to treat an applicant's expressed fear of being returned to their home country, and to assess whether this fear amounts to a genuine fear of persecution. As mentioned in the Medical Foundation's report on Turkey, there are several situations, such as unjustifiable attack on life and limb, and torture, which would always amount to persecution. There are also incidents such as arbitrary arrest and detention, which may amount to persecution. The Home Office's instructions also ask the officer to consider any objective evidence of prejudice to the applicant, as well as taking into account the applicant's own subjective evidence and opinions.

Home Office refusal letters are supposed to address all the substantive issues of the asylum claim, and should explain to the applicant why their claim does not fulfil the criteria of the 1951 Convention. The refusal letters are also meant to provide an assessment of the human rights situation in India. Staff are instructed to use "standard paragraphs" in their refusal letters, which raises the important issue of whether asylum claims are given fully individual consideration by the Home Office. Unfortunately, it seems apparent that a number of identically dubious assertions were made by the Home Office in a large proportion of the asylum claims in this sample.

The Home Office used several types of assertion when denying asylum claims. The frequency of these assertions illustrates the difficulties facing Sikh asylum seekers arriving in the United Kingdom.

**Human rights situation in the Punjab**

In the refusal letters addressed to the 36 individuals in this sample, the Home Office repeatedly argued that the human rights situation in the Punjab had improved. One of the most common standard paragraphs used by the Home Office in their asylum refusal letters was:

"The Secretary of State has, of course, had his attention drawn to allegations of the abuse of human rights by the police and security forces in India but he does not condone any such violations of human rights and he considers that these actions arose from failures of discipline and
supervision and not from any concerted policy on the part of the Indian authorities.

"Moreover he considers that the breakdown of law and order of which these violations were a part resulted directly form the activities of Sikh terrorists and in particular their strategy of intimidation and provocation of members of the security forces.

"He does not accept that they are evidence of persecution, within the terms of the United Nations Convention, against Sikhs generally in the Punjab, nor against supporters of an independent Sikh homeland nor against alleged Sikh terrorists.

"The Secretary of State notes that these violations have not been condoned by the Indian or State Governments and that action has been taken by the authorities against officers suspected of being involved.

"Furthermore in 1993 the Indian Government established an independent National Human Rights Commission which has a remit to investigate all credible allegations of wrong doing, including those against public servants."

Of the 36 files analysed in this sample, 30 refusal letters contained these standard paragraphs.

The 1951 Convention makes it clear that international protection is to be provided not only to those who suffer persecution at the hands of the state, but also those whom the state is unwilling or unable to protect. The Home Office asserts that violations are not condoned by Indian State Governments, but then fails to examine properly the extent to which the state remains unable (perhaps despite its best efforts) to offer effective or sufficient protection. Scrutiny of international human rights instruments reveals that the thrust of human rights protection is now in their delivery, rather in the promise of delivery.3

It is therefore wrong in international law for the Home Office to hide behind the argument that the Indian authorities do not condone torture by police, and that the Indian Government is
making its best efforts to control police activity. If the Indian Government cannot deliver protection, and persecution is occurring, then a claim to asylum is well founded under Article 1(A) of the 1951 Convention.

The Home Office clouds the issue by referring to “the activities of Sikh terrorists”. The critical factor, however, is the need for sufficient protection from persecution. In that context, how or why the failure of protection arose is immaterial. The argument that the Indian Government is not responsible for the breakdown of law and order is therefore irrelevant. If persecution for a Convention reason occurs, and protection from persecution is not delivered, a claim to asylum is well founded.

The refusal letters depict the scope of the National Human Rights Commission as wider than it is. In fact the Commission is prohibited from investigating abuses by army or paramilitary officers, a restriction criticised by the UN Human Rights Committee recently. Any prosecution of security forces has to be approved by the Government. In addition, the Commission, funded by the Indian Government, is seriously understaffed. Again, all these facts point to a lack of real commitment by the Indian Government to punish and eliminate human rights abuses. Yet the Home Office refusal letters have used selective facts concerning the National Human Rights Commission to point to a different conclusion.

The Home Office maintains that a sufficiency of protection now exists in India. The legal adage “he who asserts must prove” applies, and the burden of proof is reversed. It is therefore not enough for the Home Office to refer to the establishment of human rights checks in India; it must demonstrate that those human rights checks provide sufficient protection from persecution. The Home Office’s own Country Assessment of India, compiled by its Country Information and Policy Unit (CIPU), acknowledges the limits of this system of protection: “Many police officials have not been held accountable for the serious human rights abuses of the early 1990’s, but steps have been taken against some of them.”

**CIPU assessment of human rights in the Punjab**

Refusal letters for this group of Sikh asylum applicants were written between October 1996 and February 1998. One of the
reasons given by the Home Office as to why the applicant’s claimed fear was not well-founded was the improved situation in the Punjab. Version 0.3 of the Home Office’s Country Assessment on India, dated May 1999, makes it clear, however, that human rights abuses continued to be perpetrated in the Punjab between October 1996 and February 1998.

The Country Assessment relies heavily on two reports from the Documentation, Information and Research Branch (DIRB) of the Canadian Immigration and Refugee Board, one dated January 1997 and the other June 1997. These reports, cited at paragraphs 5.3.109-116, contain evidence of continuing torture and other human rights violations in the Punjab at that time. Torture and ill-treatment in custody were said to remain serious problems, not only in the Punjab, but throughout India. It was concluded that the Punjab state government had not been able to bring about a greater improvement in human rights observances.

The CIPU assessment also refers to the views of an academic (May 1997, April and May 1998) to the effect that human rights abuses continue to occur in the Punjab, the police are still out of control in many areas, human rights workers are harassed and the authorities put pressure on individuals to withdraw charges of human rights violations against individuals. This academic author concludes that the current improvement does not represent a durable and fundamental shift in the Indian human rights climate.

The standard paragraphs about the human rights situation in the Punjab contain assertions that are contradicted by information included in the CIPU Country Assessment. It is improbable that the Home Office was unaware of this information at the time of decisions reflected in this sample of refusal letters. Yet the terms in which the letters were written do not reflect the view which the Home Office now thinks appropriate to include in the Country Assessment.

The refusals suggest that the human rights violations arose because of the actions of Sikh terrorists. However, even when the Sikh terrorists were no longer active, torture and ill-treatment in police custody continued. The refusals state that the Indian authorities have taken action against police suspected of abuses. But the CIPU Assessment reports the view that the Indian Government is providing senior lawyers to defend those accused and is posting many officer to areas in which they are alleged to
have committed abuses. These facts cast doubt on how far the Indian Government seriously wishes to end the climate of impunity for Punjabi police, a climate which the Country Assessment reports as being deeply ingrained over many years and which will take a long time to change.

Although the view of the Canadian DIRB referred to in the Country Assessment at 5.3.128-129 was given in January 1999 (and thus unavailable to the Home Office at the time these refusal letters were written), the CIPU Assessment also cites an Amnesty International report of May 1995 that Punjabi police illegally travelled outside their state borders to pursue operations that resulted in serious human rights violations. Evidence that this was so should therefore have been available to the Home Office at the time these refusal letters were written.

One can hardly escape the conclusion that a closer reading of their in-house CIPU Assessment would encourage asylum caseworkers to view with greater scepticism the claims of the Indian Government that it provides safety and redress in the Punjab or elsewhere in India to Sikhs who have been tortured.

**Torture**

Another recurring theme in the Home Office refusal letters was to cast doubt upon the credibility of an asylum seeker’s claims of torture. All 36 of the asylum seekers in this study claimed to have been tortured at the hands of the Indian authorities. In 18 cases, the Home Office responded with a similar statement dismissing these claims of torture:

> “Although he would not seek to condone the maltreatment which you claim to have experienced at the hands of the police, the Secretary of State has noted that you were released on each occasion without charge and there is no evidence that you would be of any continuing interest to the police if you were now to return to India. However, in the unlikely event that charges have been raised against you in your absence, and should they be pursued on your return to India, the Secretary of State is satisfied that you would receive a fair trial from India’s independent and properly constituted judiciary.”

(MF case no. 11175)
In this case the Home Office applied the wrong standard of proof in asserting that there was "no evidence" of continuing interest because of release in the past. In effect, the Home Office was asking the applicant to know what was in the mind of his persecutors when he was released, and to predict what might be in their minds in the future. The Home Office must look to the objective evidence before them, such as is presented in the CIPU and DIRB reports, to determine whether or not a pattern of release and arrest is persecution.

Furthermore, past persecution, especially in the absence of a change of regime, can be evidence of a real risk of persecution in the future.9

Two applicants were told the following by the Home Office:

"The Secretary of State would not, in any way, wish to condone the treatment you claimed to have received whilst allegedly being held by the police. However, he would expect anyone who had experienced such ill-treatment to have lodged an official complaint with the police directly upon release, in order to give them every opportunity to bring those responsible to justice. In light of the information above, the Secretary of State is unable to attach any credence to this claim."

(MF case numbers 12931 and 11920)

The idea that a persecuted individual would have recourse to an arm of the state which had persecuted him, and that he would choose to avail himself of the protection of his persecutors, is completely unreasonable.

Furthermore, there is no obligation under the 1951 Convention or the UNHCR Handbook for an individual to place himself at further risk of persecution in order to establish that his fear of persecution is well founded.

The Home Office's CIPU reports of November 1998 and May 1999 indicate that the vestiges of a climate of impunity still exist for police officers in the Punjab. The failure of the individual to report his torture to the authorities would appear to indicate his mistrust of them, which ought to have strengthened rather than weakened his case.
Figure 1: A particularly painful method of suspension. The officer is using a pin to test for consciousness.
Figure 2: Cheera. The legs are forcibly stretched apart until the muscles tear.
Figure 3: Use of the *ghotna* to disrupt the knee joints
Figure 4: Use of the *ghotna* to crush the thigh muscles
When the Home Office declined to attach any credence to the claim for asylum because of a single factor (failure to complain), it failed to examine adequately the claim in its entirety. Even if the failure to complain in India was a cogent reason for disputing the well-foundedness of the claim to asylum, it may not have outweighed other factors. Each strand of a claim to asylum must be assessed individually on its merits and only then weighed in the totality of the claim. Disbelief of one strand of a claim to asylum cannot influence, of itself, the assessment of another strand of the claim. In the example above, the attachment of “any credence to this claim” cannot be correct. That the applicant had not reported his torture cannot imply that the torture had not taken place.

The issue of torture can be of some importance to the legal status of the asylum seeker. The Asylum and Immigration Act 1996 curtailed the rights of appeal introduced in the Asylum and Immigration Appeals Act 1993. The Secretary of State can now certify certain asylum applications, thereby removing the right to apply for leave to appeal to the Immigration Appeal Tribunal, in particular specified circumstances. In a certified case the only recourse against the adjudicator’s decision is by way of judicial review in the High Court.

Among the categories of certified cases was the so-called “White List” of seven designated countries, including India, where there was a presumption that persecution did not occur, notwithstanding evidence presented to Parliament concerning human rights abuses in the Punjab. However, applications where assertions of torture were made were exempt from certification, following a late amendment to the 1996 Act.

Therefore, in all cases where Sikh applicants recounted episodes of detention and torture, their applications should not have been certified. In fact, 25 of the 36 sample cases were certified, despite testimony of torture in each case.

**Medical evidence**

The majority of Home Office decisions in the sample were reached without access to a medical report. Nevertheless, there are still several examples in this study of the Home Office disregarding expert medical testimony from the Medical Foundation, for example:
“The Secretary of State has also considered the Medical Foundation Report you have submitted which was completed on 19 April 1997, following your examination by Dr Forrest on 18 April 1997. The Secretary of State noted, however, that many of the scars found on the examination were described as ‘not specific’. Furthermore, he also noted that the medical opinion given was based entirely on your explanation for the cause of these scars. The Secretary of State took the view that you have provided no independent corroborating evidence to prove that these injuries were sustained during your alleged detention.”

(MF 11381)

When a doctor states that “this is the history as recounted to me”, it implies more than a mere acceptance of the story. A doctor is trained to take a case history at the same time as observing injury, the demeanour, affect and overall presentation of the patient. Doctors are thus skilled in using both their eyes and ears while listening to the patient’s own story.

It is difficult to imagine how this asylum seeker could possibly corroborate his story of torture independently, other than seeking an expert medical opinion. The Home Office did not provide a contradictory expert opinion of its own when it made this assertion, even though the medical report in question was strongly supportive of the claim of torture:

“This previously healthy and athletic young man has many signs of severe injury. His explanation of their causes is completely consistent with their nature. Particularly significant are the scars from electric wires and the pain in the neck, back and knees. These are quite characteristic of the late result of the well-documented types of treatment administered by the Indian police and would be most unlikely to be seen in an otherwise fit young man. They are not sports injuries nor due to any known rheumatic or neurological disease.

“He is clearly suffering from severe psychological distress and the nature of his nightmares points to at least some of its origin in ill-treatment under police detention.
"I consider that there is strong medical evidence of his having suffered in the way he describes."

(Dr Duncan Forrest, report on MF 11381, dated 19/4/97)

The special adjudicator took an opposing view to the Home Office, and found the asylum seeker “to be entirely credible”, and that his accounts of his experiences were “not only consistent but also extremely detailed”. Of the medical report, she found that it was “extremely supportive of the appellant’s claims about ill treatment and I therefore feel bound to give it a good deal of weight in my considerations...” (MF 11381) The appeal in this case was allowed. (For further details, see Case 1 in the Appendix.)

As explained in the previous chapter, there are limits to what the medical evidence can provide in supporting a claim of torture. However, it is clear that in some cases in this sample, the Home Office dismissed medical evidence that satisfied the appropriate standard of proof to a claim of torture.

**Method and timing of departure**

A major issue was made of the nature of the asylum seeker’s passport, and the way they had departed the country. In 13 cases out of the 36 in this sample, a negative finding regarding credibility was made on this tenuous basis, such as in the following case:

“The Secretary of State has also had regard to the fact that you have admitted having at one time held a passport issued in your own identity by the Indian authorities which, notwithstanding the assistance you claimed to have received from an agent, was used to facilitate your departure from India. He notes too that you were able to leave the country without apparent difficulty, which suggests to the Secretary of State that the authorities have no interest in you.”

(MF13703)

This argument ignores the ample evidence of local corruption and the reasonable likelihood that an agent could arrange for a smooth exit from the country, through payment of a bribe or by some other means of influence. It also ignores the very nature of the extra-judicial threat: the people whose cases are presented in
this study are fleeing from torture in the Punjab. The Home Office’s own India Country Assessment cites the Canadian DIRB’s finding that Punjabi police can and do act outside the law in pursuing suspects, both inside and outside the state. In this situation, it may well be the case that the Punjabi police would purposely avoid informing the national authorities of their interest, or placing a suspect on a national wanted list.

In two cases the Home Office took exactly the opposite stance, condemning the credibility of two men in part because they departed India on an illegal passport:

“The Secretary of State has also taken into account your previous immigration history. He has had regard to the fact that you have admitted having at one time applied for and legally obtained a passport issued in your own identity. He notes too that you were able to leave the country without apparent difficulty, albeit with a passport in another identity but which contained your own photograph. This suggests to the Secretary of State that neither the police or the authorities have any interest in you.”

(MF 12020)

It is possible to argue in this case that a contrary explanation could be given for this applicant’s actions. It is quite plausible that the precautions he took to use a passport in an identity other than his own were consistent with the actions of someone who feared the attentions of the authorities. In any case, it is difficult to see how his actions could in any way be taken to suggest “that neither the police or the authorities have any interest in you”. Dissidents are rarely given documents by their own authorities, yet a ‘Catch-22’ situation arises: if an applicant owned and used his own passport, the Home Office deduced that the applicant was of no interest to those authorities; but if the applicant used a passport in another name, the Home Office likewise deduced that the applicant was of no interest to the authorities.

“In considering your application, the Secretary of State has taken into account your alleged movements upon leaving Delhi, on 1 April 1994. In doing so, he has noted your claim to have travelled by air, to Moscow using a passport to
which you were not entitled...In all the circumstances, the Secretary of State does not consider these to be the actions of a person genuinely fleeing his country in fear of his life and in need of protection. He considers, therefore, that your application significantly lacks credibility as a whole.”

(MF 9285)

Asylum seekers are also routinely subjected to inferences regarding the length of time it took them to depart India. If an applicant was deemed to have waited too long before fleeing India, the Home Office deduced that there could be no causal link between their torture and their departure from the country. In 21 cases in this sample, this was then used to cast doubt on their credibility:

“The Secretary of State also noted that your last arrest took place in May 1996 yet you did not leave India until 5 months later, which suggests to the Secretary of State that your last arrest was not instrumental in precipitating your eventual departure from India...”

(MF 12931)

The longest time between the final arrest and eventual departure from India was 11 years (MF 9441). The shortest period mentioned in this sample of cases between arrest and departure was only 3 months (MF 12512). There appears to be little agreement between Home Office staff themselves as to what minimum length of time constitutes an unreasonable delay in departure.

There are often compelling economic reasons which can explain delays in leaving India. The cost of reaching a safe country can be extremely expensive, especially when using the services of an agent. Land or other holdings may have to be sold, so gathering enough money to depart can take some time.

The Home Office cast doubt upon the credibility of the majority of cases in this sample, even when their assertions would appear to defy logic:

“The Secretary of State has also had regard to the fact that, by your own account, you remained in India, for some 7
months, after your alleged arrest, albeit in hiding, without any apparent difficulty.”

(MF 9285, emphasis added)

In the remaining 15 cases, no such inferences were drawn, although in many there were similar delays.

**Journey to the UK**

The Home Office places weight on the asylum seeker’s first point of arrival after departing India. Those who passed through other countries without claiming asylum, before arriving in the UK, were judged to be lacking in credibility:

“Finally, the Secretary of State considers the fact that you did not claim asylum in the first country you reached is inconsistent with the actions of someone fleeing his country in fear of his life and this further undermines the credibility of your asylum claim.”

(MF 12373)

“The Secretary of State notes that you travelled from India to Ukraine by air, and then travelled overland to the United Kingdom concealed in a lorry. He is of the opinion that a genuine refugee, fleeing persecution, would claim asylum at the first available opportunity in order to establish a right of abode, and the fact that you did not apply for asylum in any of the European Countries through which you must have passed (many of which are signatories to the 1951 UN Convention) casts doubt upon your claims to fear persecution.”

(MF 11382)

This is to misunderstand the nature of the journey by lorry undertaken by many applicants from the subcontinent. The applicants cannot and do not leave the lorries in which they travel. They rarely know the exact details of their journey, which may cross several European borders.

The Home Office also ignores the historical, cultural and linguistic links between India and the UK. Many Sikh applicants speak English, many have family and friends in the UK, and some
may have visited the UK in the past for family weddings or other celebrations. Furthermore, the UK enjoys the largest Sikh population outside India.

In the latter case the Immigration Appeal Tribunal did not agree with the Home Office’s assessment of credibility, and allowed the appeal. In spite of such precedents, the Home Office used this justification in 17 cases from this study.

It is clear from this examination of Home Office refusal letters that many applicants are being denied asylum in the UK on weak, illogical or incorrect grounds. In the next section, it will be seen how the next stage of the asylum process, the appeal to an adjudicator, can be heavily influenced by the Home Office’s original findings.

### Immigration Appellate Authority decisions

After the Home Office has rejected the initial application for asylum, the next step is to appeal to the Immigration Appeals Authority (IAA). As well as considering the appeal, the adjudicator must rule on the suitability of any certificate, which may have been placed on the application by the Home Office. In cases where the application remains certified, this is the only appeal that can be mounted in front of the IAA.

A special adjudicator hears the appeal. The adjudicator is usually a qualified barrister or solicitor, who has practised for at least 10 years. They receive limited training in asylum matters from the Office of the United Nations High Commissioner for Refugees, and most sit as special adjudicators on a casual basis.

The Home office is represented by a presenting officer at the appeal, although in one case in this sample, the Home Office was not represented (MF 12020).

There is no legal aid available for representation at appeal, although several agencies offer free representation, such as Asylum Aid, the Free Representation Unit, the Immigration Advisory Service and the Refugee Legal Centre.

It would seem, from this study, that adjudicators rarely overturn a refusal by the Home Office. There are 17 cases from this sample where the adjudicator’s determination was available for analysis. Of these, only three appeals were successful.
The nature of the determinations appears to be strongly influenced by the arguments presented in the original Home Office refusal letter. Many adjudicators seemed content to consider each of those arguments, and rule on whether they were justified. Unfortunately, the same logic seemed to be used to assess these arguments, and many were endorsed in spite of their dubious nature.

In the following case (MF 11611), for example, the adjudicator merely reconsidered each of the Home Office’s reasons for refusal:

"Even if I accept that the appellant [the asylum seeker] was detained by police, it is argued on behalf of the respondent [the Home Office] that, if the appellant really feared ill-treatment, he would not have remained in India, living in Delhi and Bombay, from the middle of 1995 until he left India sometime during the second half of 1996. The explanation put forward on behalf of the appellant for the delay in leaving India after his release is that the appellant put himself in the hands of the Temple Committee [the claimant was a Sikh priest] and that it may have taken some time to raise the funds for him to leave...I have, therefore, to make the difficult judgement as to why the appellant should have delayed in leaving India if he had been treated as severely by the police as he claims...It seems most likely that the appellant did not leave India following his claimed release from custody in 1995 because there was no likelihood at that time that he would be taken back into police custody."

The adjudicator applied the wrong standard of proof to this case. He found that “it seems most likely...there was no likelihood...that he would be taken into police custody”. The adjudicator failed to ask himself the proper question, namely, whether there was a reasonable degree of likelihood that the applicant would be taken back into police custody. He failed to consider the explanation given by the applicant as to why he did not flee into exile earlier. Despite the plausibility of the applicant’s claim, he merely interpreted the actions of the applicant by supplying his own hypothesis, which was not supported by the evidence.
"Even allowing for the appellant's ignorance of the possibility of claiming asylum in Greece, it is relevant to enquire why the Temple Committee who had paid for the appellant to leave India, the agent who travelled with him and, indeed, his lawyer in Phagwara could not have advised the appellant of the possibility of claiming asylum in Greece. I do therefore regard the delay in Greece as damaging to the appellant's claim to have fled from India to seek protection."

"I accept that there can be no justification for this treatment of the appellant in the way which seems probable from the Medical Foundation report but the remedy which presents itself is in the appellant's own country, through the National Human Rights Commission and its offices in the Punjab and not flight to claim asylum in the United Kingdom."

"I am bound to conclude that, with the political changes and the rise of interest in human rights in India, there is no reasonable likelihood that the appellant would be of interest to the police or needs to fear mistreatment by the police if he returns to India now." (MF 11611)

As has been shown, strong arguments can be made against each one of the assertions made above, though in this case the adjudicator simply endorsed them, and dismissed the appeal. Lawyers for the appellant applied for leave to appeal this decision to the tribunal, on the grounds that the adjudicator

"...had merely been content to narrate the decision of the respondent [the Home Office] and say that in his opinion that decision was justified. This is an error of law, as the Adjudicator as an appellate body is obliged to address its mind to the inferences and conclusion made by the respondent; the grounds of appeal submitted and all documentary evidence submitted in support of the appellant's appeal."

(MF 11611)
Leave to appeal this decision was denied by the Immigration Appeal Tribunal, on the grounds that although the adjudicator accepted that the applicant had been tortured, he did not accept that this was by the police, nor that the police had a continuing interest in the applicant.

The adjudicator and the Tribunal applied the wrong standard of proof. The law does not require the examining doctor to have been present at the time the injuries were sustained and to have witnessed their occurrence. It requires him to have found, only to a reasonable degree of likelihood, that the injuries were sustained in a manner that is consistent with the applicant’s testimony.

It is also highly dubious to assume that an agent, a local Temple Committee, or indeed a lawyer in Phagwara, assisting an applicant fleeing into exile would take into consideration the concept of “first country of asylum”. Indeed, it can be argued that no such concept exists in international law and that the Dublin Convention is no more than a multi-lateral agreement among states, designed for state burden-sharing. Its relevance is therefore to state parties and not to individuals seeking asylum.

Medical evidence

Of the 17 cases in this sample where an adjudicator’s determination was available for analysis, a medical report was submitted at appeal in 12.

In two cases an application was made for an adjournment so that a medical report could be prepared. In both cases this request was denied, and the appeals were dismissed. When medical reports were later prepared, the examining doctor concluded in both cases that torture had occurred:

“This man gives a consistent account of torture...He has a number of scars, the most striking being the two involving being burnt with an iron. Also the tearing of the tendons at his knee fits his description of simultaneous forced bilateral abduction at the hips, which is commonly seen in those tortured in the Punjab. I am therefore convinced of this man’s account of torture.”

(Dr John Joyce, report on MF 12373, 21/10/97)
“This man gives a consistent account of his ill-treatment and has scars consistent with this account. He also has significant neurological damage to his right arm which is accounted for his repeated hangings. It is difficult to see how this could otherwise be caused in a young man with no other significant cause...I do not therefore doubt this man’s account of torture.”

(Dr John Joyce, report on MF 12983, 20/1/98)

Both of these applications were also certified by the Home Office and were not allowed to proceed beyond this adjudicator stage. In both cases, the applicants’ made specific reference in their Home Office interviews to being tortured. This evidence should have precluded their cases from being certified, because of the concession in section 5(5) of the 1996 Act.

Several special adjudicators took issue with the findings of the medical report. One adjudicator, Mr A.R. Lawrence, said:

“I have also considered the medical report to which my attention was drawn by Mr Palmer. This medical report in my view is valueless. It states the appellant was detained at the end of February 1995 and that he was seriously tortured. However the appellant makes no mention of any arrest or torture in his SCQ [self-completion questionnaire] or at his interview...The medical report in my view merely goes to demonstrate that there is no merit whatsoever in this appellant’s claim and that it totally lacks credibility.”

(MF 12600)

This was despite a clear conclusion by the examining doctor:

“Mr Singh gives careful information concerning what was clearly a savage beating followed by an unusual and brutal torture on his right leg. The dramatic scars on his right knee which have nothing to do with his previous polio support his other statement. Other scars on his lower limbs are in keeping with his statements of torture and beatings.”

(Dr Alec Frank, report on MF 12600, 11/11/97)
In another case the adjudicator accepted the medical evidence of torture, but then raised doubts as to the origin of the torture:

“It therefore seems reasonably likely that the appellant did suffer a beating in 1995 as he has claimed but I am not satisfied that it is credible, even to the lower standard required in this appeal, that the ill-treatment was by the police, or that there is any police interest in the appellant.”

(MF 11611)

The injuries were examined and documented by an expert in whose opinion the applicant had been tortured in the way he described. The Home Office did not seek an expert opinion on the applicant’s injuries, and the adjudicator did not request a further opinion. The adjudicator has again applied the wrong standard of proof. The law does not require the examining doctor to have been present at the time the injuries were sustained and to have witnessed their occurrence. It requires him to have found, to a reasonable degree of likelihood, that the injuries were caused in the manner alleged by the applicant.

If an account of torture is implausible, and the injury found by the examining doctor is not consistent with the applicant’s testimony, a medical report will not be prepared by a Medical Foundation doctor. When preparing a report, Medical Foundation doctors take into account the Medical Foundation’s extensive knowledge of the various methods of torture applied in the Punjab. A Medical Foundation medical report therefore corroborates an already plausible account of how the injuries were sustained.

A Medical Foundation medical report can only examine and document injury; it cannot and does not address the asylum claim as a whole. However, where the Home Office or adjudicators dismiss a claim for reasons other than medical ones, they must give due weight to the medical evidence. If their doubts about other aspects of the claim leave them to doubt the medical evidence, then they must seek to rebut the medical evidence with evidence of a similar expertise. It is inappropriate to dismiss expert medical evidence even though other strands of the claim to asylum may present apparent discrepancies.

Medical evidence alone can rarely prove conclusively that torture has taken place. It can only corroborate the asylum seeker’s
own story. Nonetheless, analysis of this sample suggests that both the Home Office and the adjudicators of the Immigration Appellate Authority frequently cast doubt upon firsthand testimony, backed by an expert medical opinion, often with insufficient justification to outweigh a finding in favour of the appellant and without the existence of any expert evidence to the contrary.

**Internal flight argument**

One of the most frequent reasons for denying an appeal was the argument for the possibility of internal flight. The Home Office believes that a Sikh forced to flee from his home can live safely elsewhere in India, even if he has been tortured by the Punjabi police and may still be wanted in the Punjab.

This is contrary to the beliefs of organisations such as Amnesty International, whom the Home Office themselves quote in the CIPU India Country Assessment:

"...Punjab police illegally transgressed their operational jurisdiction, travelling to other Indian states to carry out under cover operations which resulted in serious human rights violations.”

In many cases the adjudicator denied an appeal purely on the internal flight argument, even if torture and persecution had been substantiated:

"On the appropriate standard of proof I am satisfied that the appellant has a well founded fear of persecution in the Punjab for his perceived political opinion. Having been arrested, tortured, tried and imprisoned for a political offence he is more likely to be re-arrested and to suffer ill-treatment at the hands of the police of that state who are not under the effective control of central government in so far as the treatment of those who are perceived as militants or activists are concerned.

“I therefore have to determine the question of the internal flight alternative as considered by the Court of Appeal in Robinson. From the background documents I find that India

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is a democratic country with a central government that is committed to the protection of the human rights of its citizens and although this aim is not fully achieved the National Human Rights Commission plays an active if advisory role in seeking to implement this policy. There are substantial Sikh communities in New Delhi, Calcutta and Bombay where the appellant would not be at risk of persecution for a Convention reason and where it would not be unreasonable to expect him to relocate. As an Indian citizen he enjoys freedom of movement throughout the country with the exception of certain north eastern states and as a single man of 30 fit and experienced in farming and catering he should experience no difficulty in settling outside the Punjab. Accordingly he is not a refugee in need of international protection and his appeal is dismissed.”

(MF 12512)

In the single case in which a judgement was available for analysis, the Immigration Appeal Tribunal followed the above adjudicators and dismissed the case, based on the availability of internal flight within India.

In two out of the three successful appeals in the sample, however, the adjudicators explicitly agreed that the reach of the Punjabi police could extend far beyond the state’s borders. For example, adjudicator Mr M. Neuberger said:

“I also accept that the internal flight alternative is not available to the Appellant as his return to India, even if he were to live outside the Punjab, would almost definitely come to the notice of the Punjabi police who are able to operate outside their own State as mentioned in reports lodged by the Appellant’s representatives. Accordingly for these reasons, I allow this appeal.”

(MF 12020)

The third successful appeal was allowed on several grounds, including one which amplified the concerns of the above adjudicators in considering the alternative flight argument. The adjudicator in the case found that the concern for the safety of the
asylum seeker needed to start from the moment that they might be returned to India:

"I find that if this appellant were now to be returned to India, given that he arrived in an assumed identity, he would be screened, and it is reasonably likely that this screening process will result in checks with the local Punjabi police authorities who, having relatively recently detained him, may well identify the appellant as someone in whom they have an adverse interest. If this should happen it is in my view a serious possibility that the appellant would again be detained and mistreated."

(MF 11391)

Nor did this adjudicator accept that the situation in the Punjab had become safe for police suspects:

"In my view the actions of the police on this occasion are rather reflective not of individual or groups of policemen acting in abuse of their powers, but, unfortunately represent, despite the Indian Government's endeavours, general responses of police to those detained by them."

"...In addition while I recognise that SSF [Sikh Student Federation] is not a banned organisation in India, I take on board Mr Bild's references in the latest 1999 Human Rights Watch Report about fears, following BJP's election successes, of the rise of Indian nationalism and the likely effect this may have in relation to any peace initiatives that may hitherto have been showing signs of success in the Punjabi areas."

(MF 11391)
Conclusion

It is apparent from this study that a prevailing climate of disbelief exists among UK authorities toward Sikh asylum applicants. Many Sikhs in this sample clearly demonstrated they had a claim that fulfilled the 1951 Convention.

It was shown that the Home Office did not perform an independent assessment of these asylum claims, and thus did not comply with UNHCR recommendations in this area. Refusal letters were not written individually, but were assembled from a range of cover-all standard paragraphs, which did not necessarily reflect the distinctive circumstances of each case. Much was made of the fact that the general situation in the Punjab had improved, yet isolated but compelling evidence of continued human rights abuses by the Indian authorities were routinely ignored when assessing asylum claims. Claims of torture were largely disregarded by the Home Office, often in the context of an overall negative finding about the applicant’s credibility. It was also illustrated how credibility was regularly dismissed on a number of spurious grounds.

Adjudicators of the Immigration Appellate Authority also seemed unwilling to judge Sikh asylum claims on their merits, instead often relying on the Home Office’s own arguments in their determinations. It was clear that adjudicators rarely overturned a decision by the Home Office (only three of 17 in this sample), reinforcing the need for the Home Office to make a fair appraisal of the claim in its original decision.

Expert medical evidence was directly challenged, or diluted in weight by attributing evidence to possible causes other than torture by the authorities without expert testimony being offered to explain any opposing conclusion about how particular sequelae were received. (See case no. MF 11381 cited above under “Medical evidence” and as case no. 1 in the Appendix.)

The issue of incorrect certification is also of major concern, as it denies an asylum seeker the right to appeal a decision by the adjudicator. A large majority of cases were certified (25 of 36 in this sample), in contravention of section 5(5) of the 1996 Act, in spite of the fact that allegations of torture were made in each of those cases.

From the 36 cases documented since publication of the first edition of this report, the Medical Foundation concludes that Sikhs
in India are still suffering torture and ill-treatment at the hands of the Indian authorities. Despite ample evidence of this suffering, the asylum system in the UK denies sanctuary to Sikhs seeking to escape torture in their homeland.

References


3. See, for example, the International Covenant on Civil and Political Rights, the Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, the Convention for the Elimination of Discrimination against Women, and the Convention for the Elimination of Racial Discrimination.


7. *op.cit.*, para 5.3.114.

8. *op.cit.*, para 5.2.32.


CHAPTER 4:

Recommendations

The first edition of this report, published in October 1996, identified asylum determination procedures that “have a potentially damaging effect on the well-being of [Medical Foundation] clients and deprive them of the treatment they need”. Punjabi Sikhs whose cases were presented in that first report had experienced anxiety due to the long wait for decisions on their asylum applications, sometimes lasting years. Those who applied at port of entry, like many other asylum seekers, were often interviewed upon arrival, which led to incomplete and often inaccurate information being taken from fatigued, confused and frightened individuals. Some failed to say early on that they had been tortured. The difficulty that survivors of violence experience in recounting their history of atrocity is well documented. Many were not given an opportunity to explain the complex reasons for their flight from persecution. They were often disbelieved by the immigration authorities, which added to their distress. Even when they mentioned torture or ill-treatment at interview or in their self-completion questionnaire (SCQ), they were certified in contravention of the concession for survivors of torture in Section 5(5) of the 1996 Act.

The new cases presented in this second edition reveal no improvements to the asylum procedures affecting our Sikh clients. Interview upon arrival still occurs, and the Home Office has indicated that with greater resources this procedure would become more rather than less common. Section 5(5) of the Asylum and Immigration Act 1996, in effect prior to October 1996, requires the Secretary of State (in effect, the immigration authorities) to exempt asylum seekers with evidence of torture from being certified for the fast-track appeals procedure. Yet 25 of the 36 sample cases refused since October 1996 (see Chapter 3) were certified, despite testimony of torture in each case. The long wait for decisions continues for these and many other of our clients.¹

¹ The Home Office has committed itself to a programme of backlog clearance that will, we trust, benefit those of our clients whose undecided cases have languished since before 1 January 1997. This backlog clearance programme, however, does nothing to improve the decision-making procedures themselves.
Above all, these Punjabi Sikhs present evidence of torture that is discounted or disbelieved by UK immigration authorities.

The failure to address and improve these asylum procedures during the past three years has denied a fair asylum process to these Sikh (and many other) torture survivors. Sadly, the new Immigration and Asylum Bill now passing through Parliament is silent on improving procedures and regulations that would promote fairer decisions; it focuses instead on legislative measures to deter asylum seekers from seeking protection in Britain. The following recommendations are offered in the sincere hope that three years from now we shall not issue a third edition of this report, lamenting the same procedural faults in the asylum process and making many of the same recommendations.

The recommendations that follow arise from three main types of reason given by the Home Office and the IAA to deny asylum to Sikh clients from the Punjab: (a) assertions about the human rights situation in the Punjab and, for Sikhs fleeing the Punjab, elsewhere in India; (b) the standard of proof applied in asylum cases; and (c) doubts expressed about the credibility of these Sikh applicants.

In addition, we have concerns about the appeals procedure: first, about certification that leads to a truncated appeals process, and second, the failure by adjudicators to give a full and fair review of the arguments that led to the Home Office’s refusal.

**Human rights assessment**

Both the previous and the current CIPU Country Assessment of India, published by the Home Office in November 1998 and May 1999 respectively, contain well-attested information about continuing human rights abuses in the Punjab, including torture as well as the illegal operation of Punjabi undercover police elsewhere in India. Home Office refusal letters and the IAA decisions too often refer to nominal improvements in the situation in the Punjab as though the promise and the delivery of human rights protection were the same. They quote selectively from the Home Office’s own CIPU Country Assessment to belittle the danger to the applicant were he to be forcibly returned. They go on to argue that purported general improvements mean that there is no or minimal risk to a particular individual, which is an error in logic and in law.
• We recommend that asylum decision-makers acknowledge, as does the CIPU Assessment, that torture and persecution exist in the Punjab and that it is possible that Sikh asylum seekers might have a well-founded fear of persecution or torture. Until the Indian Government can actually deliver protection against torture and persecution to its Sikh population, asylum decision-makers in the UK should place no weight on promises to do so, no matter how well-intended.

• We further recommend that the internal flight argument should not be used to deny asylum to Sikh asylum seekers from the Punjab.

**Standard of proof**

Decisions that deny asylum because too high a standard of proof was applied are unlawful. Many of the Medical Foundation’s disagreements with the Home Office and the IAA derive from a fundamental misunderstanding about the nature of medical evidence and its relation to the standard of proof required in asylum cases. Case law (Sivakumaran) establishes the standard of proof at “a reasonable degree of likelihood”, lower than in either criminal or civil proceedings. It will be recalled that there is sound reasoning behind this decision: to incarcerate someone on criminal charges requires a high level of proof, namely, beyond reasonable doubt. To deny someone asylum and return him or her to possible detention, persecution, torture or death is a matter of grave consequence. The standard of proof in asylum cases is therefore low.

Medical evidence does not have to prove torture. Indeed, with few exceptions it can only correlate injury to testimony. If, however, medical evidence establishes that the physical and/or psychological signs are consistent with the applicant’s specific history of torture, the required standard of proof has, *ipsa facto* and *ipsa jure*, been met. Medical evidence cannot be set aside simply by setting other strands of evidence against it: it must be addressed and either accepted or rebutted on its own terms.

• We recommend that whenever medical evidence corroborates the testimony of torture, it should be accepted as achieving, *ipsa facto*, the standard of proof pertaining to asylum cases.
• We further recommend that if medical evidence is to be rebutted, it should be done only by another expert medical practitioner.
• The positing of unsubstantiated alternative explanations for an applicant’s injuries, without supporting medical evidence, is unprofessional and unacceptable and should be abandoned.

The applicant’s credibility
The most commonly repeated arguments used to deny asylum refer to the applicant’s supposed lack of credibility. Release by the Punjabi police, even multiple releases after multiple arrests, is taken to mean that the applicant is not and perhaps never was a wanted person. Failure to report one’s injuries to the very Punjabi authorities who caused them is interpreted as a sign of withholding full disclosure. Whether he was politically active in India, perhaps at a low level, or not active at all, he is regarded as a person of no importance to the Indian authorities. If he was charged with a political offence, he is said to have been engaged in terrorism and therefore of legitimate interest to the Indian authorities; if not charged, he must be “of no interest to the Indian authorities”. Whether he leaves India legally on his own passport or illegally using false documents, or if there is any delay between his last detention and his departure, he is likewise said to be of no interest to the Indian authorities – an argument that ignores the role and the great expense of bribery in the release and flight of torture survivors.

If he stops elsewhere before reaching Britain, he is said not to show the motivation of a genuine refugee – an argument that ignores the cultural and linguistic links between India and Britain. If he reveals his torture and the shame it causes him only some time after arrival in the UK, his story is dismissed as lacking credence. If, however, he mentions torture at interview or in his SCQ, the Home Office is likely to ignore it and not suggest that he seek medical evidence to support his claim. If he is confused or suffers from memory loss, perhaps due to blows on the head or other forms of torture, and gives different details at different stages of the asylum process, some of them very minor indeed, his testimony is dismissed as untrustworthy even though many of the
apparent discrepancies could be explained if only someone would take the trouble to ask.

- In order to assist with thorough fact-finding as early in the asylum process as possible, and to ensure that the asylum seeker’s own testimony of torture is not ignored, we recommend that the Home Office requires its caseworkers, before the initial decision is made, to make a written request to the applicant to provide for an independent clinical examination and a medical report where appropriate.

- To avoid the sometimes silly arguments based on minor discrepancies (e.g., between 8 and 18 January cited in Case 3 of the Appendix, which could be due equally well to interpreter’s error, the applicant’s confusion or the interviewer’s hearing or note-taking), we recommend that all decision-makers receive training in the difference between minor and significant discrepancies.

- More significant discrepancies may nevertheless be only apparent and not real ones. If apparent discrepancies are likely to form a part of grounds for refusal, we strongly recommend that they should be addressed (a) before the Home Office finalises its decision and not simply prior to any appeal by means of post-decision representations; (b) in writing, so as to make clear and precise the grounds for intended refusal; and (c) in all cases, with the onus on the caseworkers to raise the discrepancies that cause them to doubt the applicant’s veracity or credibility.

**Appeals**

Finally, there are legal problems of particular relevance to the appeals lodged by the Sikh cases presented in both the medical and legal chapters of this report. Many of these Sikhs gave testimony of torture, yet their cases were certified, thereby limiting their access to a full appeals process. For those whose cases were decided after the 1996 Act came into effect, it was unlawful, under Section 5(5) of the Act, to fail to exempt them from certification. When an adjudicator failed to note this error, or failed to re-examine fully all arguments presented by the Home Office, this too was unlawful.

- We recommend that all decision-makers in the Home Office and the IAA be trained to recognise and act on the
significance of torture testimony, which, under Section 5(5) of the 1996 Act, entails automatic exemption from certification, and should in addition lead to an invitation to submit medical evidence.

- We further recommend that adjudicators be given clear guidance as to the need to re-examine fully and critically all assertions and arguments put forward by the Home Office to deny a claim for asylum. Only in so doing will the IAA maintain its own credibility as an independent appellate body.
APPENDIX:

Case histories

The following four cases give typical histories of ill-treatment at the hands of the Punjab police and illustrate the difficulty of persuading the UK asylum authorities of the genuine nature of claims of torture.

Case 1: Mr R Singh. MF case no. 11381
(Aspects of this case are further discussed in Chapter 3.)

Mr R Singh reached the UK on a false British passport. His claim for asylum was refused in spite of the fact that he had disclosed a history of torture at his initial interview and submitted a corroborative medical report from the Medical Foundation.

Mr Singh was an active member of the All India Sikh Students’ Federation and used to distribute posters. The police raided a meeting of the Federation in May 1994 although it is not an illegal organisation. Many of his fellows were arrested but he escaped. Later the police heard of his activities, and although he went into hiding he was arrested in June 1996. During interrogation he was punched and kicked and beaten with lathis (long, stout canes) while suspended by the ankles. His legs were forcibly bent over a log (ghotna) placed behind the knees. Electric shocks were delivered while he was strapped to a chair. He several times lost consciousness. After a month he was released without charge when his parents paid a large bribe.

He still has pain in the shoulders and back and is anxious and depressed. At night he has nightmares and walks in his sleep.

A medical report from the Medical Foundation states:

“...This previously healthy and athletic young man now has many signs of severe injury. Particularly significant are the scars from electric wires and the pain in the neck, back and knees. These are quite characteristic of the late results of the well-documented types of treatment administered by the Indian police and would be most unlikely to be seen in an otherwise fit young man. They are not sports injuries nor due to any known rheumatic or neurological disease. He is clearly suffering from severe psychological distress.
I consider that there is strong medical evidence of his having suffered in the way he describes.”

He appealed against his refusal, and the appeal was granted.

**Case 2: Mr B Singh. MF case no. 5314**

Mr B Singh had three police detentions in 1988 and 1989. On each occasion he was repeatedly suspended by the arms tied behind the back. Then he was laid on the ground with a policeman behind him with a knee in his back and pulling the head back by the hair. The legs were stretched forcibly apart (*cheera*) and the thighs trodden on. Each time on release he was hardly able to walk and took about a month to recover. He went into hiding only to be arrested again. He came to the UK in 1990.

A medical report from the Medical Foundation in 1991 described severe pain in the shoulders, back and thighs and numerous scars on the legs consistent with the torture he described.

It was not until 1997 that his case was considered by the Home Office, when his application was refused. The refusal letter states:

“The Secretary of State has noted the report compiled by the ‘Medical Foundation for the Care of Victims of Torture’ in respect of your injuries, and its conclusion that your injuries are consistent with the kind of tortures described. However, the Secretary of State is not satisfied that the Medical Foundation’s findings amount to substantive evidence that the injuries you have are necessarily as a result of the torture you claim to have suffered at the hands of the Indian police.”

The Secretary of State has applied the wrong standard of proof: the law does not require the examining doctor to have been present at the time the injuries were sustained or to have witnessed their occurrence. The doctor need only find, to a reasonable degree of likelihood, that the injuries were caused in the manner alleged by the applicant.

A further medical report was requested in 1998 to support his appeal. On that occasion the pains, though somewhat diminished, were still troublesome. Sleep was disturbed by pain and intrusive thoughts. The report concludes:
“He demonstrated clearly the typical late effects of well-documented techniques of the Indian police, namely, suspension by the arms tied behind the back, crushing the thigh muscles and stretching the legs apart. Such long-lasting effects are not seen in otherwise healthy men of his age and strongly support his story.

“He did not make any attempt to exaggerate his symptoms and, indeed was at pains to dismiss most of his scars as having innocent origins. The absence of large numbers of scars is accounted for by the known practices of the Indian police who used soft turban cloth to bind and suspend him and did not cause any open wounds except for one on the right thigh.

“I have no doubt that he was treated in detention in the way he describes.”

The appeal was dismissed by the adjudicator on 15 April 1999 on the grounds that the applicant could have relocated within India. Leave to appeal to the Tribunal has been sought and granted.

**Case 3: Mr M Singh. MF case no. 11822**

Mr M Singh was a college student when he was first arrested in 1991. He was healthy and athletic and played kabbadi for local teams. He was first detained in 1991 when he was stripped naked and humiliated and threatened but not beaten. He was released after two days when the village leaders paid a bribe. He was arrested again in 1995 and severely beaten with lathis until he lost consciousness, given electric shocks to the tip of the penis, suspended by his hair and had his legs bent forcibly over a log placed behind the knees. A petrol-soaked rag was pushed into his rectum. Again he was released on payment of a bribe. Before he recovered he was arrested again. Once more he was released without charge on payment of a bribe. He arrived in the UK via Moscow in the back of a lorry.

When he was interviewed, he was reported as being confused and could not remember dates. His refusal letter, dated February 1997, states:
“In considering your application, the Secretary of State has noted a number of discrepancies between the account given in your self-completion questionnaire (SCQ) dated 1 November 1995, compared with what you said at your asylum interview. In particular, he has noted that you claimed in your SCQ that your uncle’s body was returned on 8 January 1991. However, you said at your asylum interview that your uncle’s body was returned on 18 January 1991... You also claimed in your SCQ that you were arrested on the third occasion in March 1995. However, you said at your asylum interview that you did not know the date of any of your arrests. In view of all these inconsistencies between your accounts, therefore, the Secretary of State considers that your application significantly lacks credibility as a whole.

“Nonetheless, in the extremely unlikely event that any of your account is true, the Secretary of State has carefully considered your claim... He has noted that you were released from your alleged detentions after relatively short periods and without being charged.”

It is astonishing that the Secretary of State could draw an adverse inference from such a minor discrepancy which could well be due to a mis-hearing of the verbal testimony of the applicant during interview.

At his medical examination at the Medical Foundation on 27 August 1997, Mr Singh showed significant physical signs supporting his story. In addition, he was clearly anxious and frightened, and it was felt that the poor showing he made at interview could easily be accounted for by his persistent confused state.

**Case 4: Mr E Singh. MF case no. 13846**

Mr E Singh left school at age 12 and worked on the family farm. He was strong and active and played *kabbadi*. He was a member of Dal Khalsa and was detained on three occasions in 1994 and severely beaten with *lathis*, burnt with hot iron bars and cigarettes while suspended by the wrists tied behind the back, subjected to the *ghotna* and *cheera* and given electric shocks. He lost
consciousness several times. A blow to the head deafened him. Each time he was released without charge on payment of a large bribe. After this he went into hiding but two years later was arrested at a routine checkpoint but managed to escape from detention.

The letter of refusal, dated 3 February 1998, states:

"The Secretary of State...notes that your claimed periods of detention were relatively brief and without in any way wishing to condone the mistreatment you claimed to have received whilst in detention, you were released without charge. Moreover, in view of the Secretary of State's doubts on the veracity of your application he does not believe that you were arrested or ill-treated as claimed in India.

"Furthermore, the Secretary of State notes that, by your own account, you were able to continue residing in another part of India for some three years, allegedly in hiding, without apparent difficulty. He therefore sees no reason why you could not have remained in that part of the country."

It is shocking that the Secretary of State can make such a statement; is there not an inherent contradiction between being in hiding for three years but living without apparent difficulty? Furthermore, the Secretary of State has created a circular argument which cannot fail him: the torture and detention are not condoned, if they did indeed occur, but nor are they accepted as true.

A medical examination at the Medical Foundation on 20 May 1998 showed a well-muscled young man who, nevertheless, walked carefully and could not bend down. He was deaf in the left ear and had marked tenderness and stiffness of the shoulders, hips and knees, characteristic of the forms of ill-treatment he alleged. There were typical cigarette burn scars. The medical report concludes: "In my opinion, examination strongly supports his account and no other credible explanation of his many signs is possible."

This appeal was dismissed although the certificate was discharged because there was found to be evidence of torture.
The Medical Foundation for the Care of Victims of Torture

- provides survivors of torture in the UK with medical treatment, social assistance and therapeutic support.

Clients may be offered a combination of medical treatment, practical help and advice, counselling, individual psychotherapy, family or group therapy, child psychotherapy, physiotherapy and a range of complementary therapies. All this is achieved with the aid of a team of experienced interpreters.

- documents evidence of torture.

Documentation of evidence of torture is principally used as part of a torture survivor’s asylum application. However, it also has a psychological benefit for the clients who, perhaps for the first time, are able to tell their stories to people who are willing to attend to their suffering.

- provides training for health professionals, educators and others in the UK and overseas in working with survivors of torture.

In the last few years the Medical Foundation has become increasingly involved in providing training, consultation and advice to fellow health and human rights workers in the UK and abroad.