

PERSECUTION IN PUNJAB: THE HIDDEN STORY OF SIKH ASYLUM

James A. Sonne & Sven (Trip) Henningson***

INTRODUCTION

This Essay examines a persistent yet growing crisis causing many Sikhs in India to flee to the United States and, in turn, the obstacles they can face on seeking asylum here. To make matters worse, this sequential problem is too often ignored or misunderstood in the American immigration system. To help fill the gap and aid those suffering, this Essay explores the persecution of Sikhs in India and tackles the typical barriers to asylum they confront.

As a minority faith surrounded by competing religious and civic visions, and in a part of the world scarred by political and military conflict, Sikhs have faced hostility in the Punjab area of modern-day India since their founding five centuries ago. Unfortunately, the conflict has become acute in recent years due to the rise of nationalism and other trends that cast Sikhs as the “other” in Indian society. These dynamics have led to religious and political violence, and, resultantly, the need for many Sikhs to look to the West for asylum.

Unfortunately, Sikh asylum applicants to the United States are too often rejected because those involved in the asylum process do not understand their predicament; and, in particular, a common variant of their suffering that arises from Sikhism’s integration of theology and civic duty. Nor do Sikh applicants or their counsel always present their cases effectively. This combination of forces creates a distinct problem,

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* Professor, Stanford Law School; Director, Stanford Religious Liberty Clinic.

** J.D. 2021, Stanford Law School; Judge Thelton E. Henderson Prize recipient for work representing clients in the Religious Liberty Clinic.

This Article draws from work the authors did for the Sikh Coalition in its report “Well-Founded Fear: Understanding Legal Challenges and Best Practices for Sikh Asylum Applicants and their Attorneys” (2021). The authors thank the Sikh Coalition for its support, as well as colleagues Heather Hedges, Jason Muchlhoff, Matt Bendisz, and Leslie Bruce for their help on the report.

as an asylum claimant's success hinges on her ability to convey her trauma in an already daunting setting.

This Essay addresses this problem in four parts and a conclusion. Part I surveys Sikh tradition and history in India, focusing on its dual legacy of perseverance and persecution that is based not only on the faith's theology but also its concomitant belief in civic action. Part II next describes challenges that many Sikhs face in contemporary India, with examples of violence culminating in the recent farmers' protests. Pivoting to asylum in the United States, Part III outlines the general requirements. And, in closing, Part IV explores several common obstacles Sikhs can face in pursuing asylum that, when equipped with the perspective the Essay provides, might be more readily overcome.

I. PAST AS PROLOGUE: A HISTORY OF HOSTILITY

To understand the Sikh asylum problem requires, at a minimum, a basic understanding of Sikh history and culture in India. This Part therefore briefly surveys the founding and colonial eras of Sikhism there, and then provides an overview of its post-colonial experience.¹ Through these summaries, it becomes clear that generations of persecution inform the Sikh reality in India and the understandable need of many for asylum—perhaps today more than ever.

A. *The Founding and Colonial Eras*

Guru Nanak Dev Ji founded the Sikhi religion in the late fifteenth century in the Punjab region straddling modern-day India and Pakistan.² In many ways, it was a peaceful period in that part of the world compared to prior centuries marked by Turkish and Afghan invasions. But it was still a time of religious and political fragmentation, as well as bitter rivalry between and among those of the region's two dominant religions: Islam and Hinduism.³

Guru Nanak founded Sikhi as a monotheistic belief system that stresses unity and equality over what he saw as the more divisive aspects of the cultural and religious currents of his time.⁴ For although Nanak had been born into a Hindu family⁵ and the new Sikh faith incorporated Hindu and Muslim concepts,⁶ Nanak “fashioned out his

1 Sikhism is more formally called Sikhi in the Punjabi language. This Essay alternatively uses the term Sikhism due to its more recognizable status in the American immigration system.

2 W.H. MCLEOD, *THE A TO Z OF SIKHISM*, at xix (2005).

3 See JAGBIR JHUTTI-JOHAL, *SIKHISM TODAY* 2 (2011).

4 See *id.*; ELEANOR NESBITT, *SIKHISM: A VERY SHORT INTRODUCTION* 22–23 (2005).

5 OPINDERJIT KAUR TAKHAR, *SIKH IDENTITY: AN EXPLORATION OF GROUPS AMONG SIKHS* 6 (Routledge 2016) (2005).

6 See NESBITT, *supra* note 4, at 7. JHUTTI-JOHAL, *supra* note 3, at 1.

own philosophy” that, in his view, “elevat[ed] truth to the highest status.”⁷ Accordingly, Nanak is famous for having remarked that “[t]here is no Hindu, [t]here is no Musalman,” but only one God over all.⁸

In defying these distinctions, however, Guru Nanak paradoxically set his followers apart from dominant religious traditions that took a more exclusive view.⁹ And this perspective carried over into cultural and political matters, again at odds with the status quo. Despite Nanak’s having been born into a highly ranked caste,¹⁰ for example, he rejected a caste society and championed equality and a commitment to social justice for the betterment of all.¹¹

Sikhism’s founding era continued after Guru Nanak with a succession of nine other human gurus who advanced Nanak’s vision in these dimensions. Notably for asylum seekers who may want to emphasize the faith’s commitment to civic advocacy, after the martyrdom of the Fifth Guru, his son and successor pronounced the dual importance in Sikh belief of aspiring to both temporal authority (*miri*) and spiritual authority (*piri*) by wearing two swords at his investiture.¹²

Indeed, this foundational embrace of both temporal and spiritual dimensions in the exercise of the faith was exemplified even more starkly in the martyrdom of the Ninth Guru for his support of the oppressed.¹³ Specifically, this guru, who had promoted a Sikh identity “based on the concept of ‘soldier saint’: spiritually pure people who uphold the principles of equality, justice and compassion by force when necessary,”¹⁴ laid down his life in defense of a civic ideal of religious freedom—quite notably, the right of Hindus to practice their faith.¹⁵ And this tradition of faith-in-action continues in the Sikh community today.¹⁶

For much of their history, Sikhs have been ruled by non-Sikhs and have often suffered as a result. From nearly the start, they faced violent

7 JHUTTI-JOHAL, *supra* note 3, at 2–3 (emphasis omitted).

8 TAKHAR, *supra* note 5, at 6. See MCLEOD, *supra* note 2, at 22–23.

9 TAKHAR, *supra* note 5, at 5–6.

10 MCLEOD, *supra* note 2, at xx.

11 *Id.*; JHUTTI-JOHAL, *supra* note 3, at 3.

12 JHUTTI-JOHAL, *supra* note 3, at 3–4; GURHARPAL SINGH & GIORGIO SHANI, SIKH NATIONALISM: FROM A DOMINANT MINORITY TO AN ETHNO-RELIGIOUS DIASPORA 36 (2022).

13 See JHUTTI-JOHAL, *supra* note 3, at 4.

14 *Id.* at 90.

15 See *id.* at 4.

16 See, e.g., Simran Jeet Singh, *Indian Farmer Protests Are Animated by Sikh Faith, Punjabi History of Fighting Injustice*, BERKLEY CTR. FOR RELIGION, PEACE & WORLD AFFS.: BERKLEY F. (Mar. 1, 2021), <https://berkeleycenter.georgetown.edu/responses/indian-farmer-protests-are-animated-by-sikh-faith-punjabi-history-of-fighting-injustice> [https://perma.cc/A277-AMB6].

persecution under the Mughal empire.¹⁷ And although Sikhs enjoyed a time of self-rule in the early nineteenth century, this came to an end with British annexation of most of the Punjab region in 1849.¹⁸

British rule, while less overtly oppressive, brought its own challenges by driving a wedge between Sikhs and other communities. The British census, for example, consolidated other distinct religious groups under a label of “Hindu,” leaving Sikhs in a compounded minority position.¹⁹ The British then deepened divisions between Sikhs and Hindus in recruiting Sikhs to the British Army, where they were accommodated in part “to preserve them from the contagion of Hinduism.”²⁰ Notably, the British also contrasted Sikhs from Hindus as “a brave and ‘martial’ race.”²¹ Regardless of its merit, this comparative regard has sparked enmity to this day with currents of Hindu nationalism that resent it.²²

B. *The Modern Era*

Although it could have been a source of relief across the subcontinent, independence from the British empire unfortunately marked the beginning of a new era of suffering for Sikhs.

Politically, the controversial 1947 partition between India and Pakistan along the lines of majority Hindu and Muslim communities caused the Sikh population in Punjab to be split between the two new countries and stymied their push for follow-on independence.²³ But even more directly, the partition triggered a tragic migration that caused the death of 500,000 and the dislocation of 12 million more—

17 See JHUTTI-JOHAL, *supra* note 3, at 4.

18 See, e.g., PATWANT SINGH & JYOTI M. RAI, *EMPIRE OF THE SIKHS: THE LIFE AND TIMES OF MAHARAJA RANJIT SINGH*, 48–52 (2008); J. S. GREWAL, *THE SIKHS OF THE PUNJAB* 99–127 (1990).

19 See NESBITT, *supra* note 4, at 74; MEMORANDUM ON THE CENSUS OF BRITISH INDIA OF 1871–72, at 17 (1875) (“In dealing with the population of the Punjab it is necessary to take into consideration a third religion, that of the Sikhs, who in this province form an important element, though in the others they are so few as to be merely reckoned among the higher castes of the Hindoos [sic]. In every 100 persons in the Punjab there are, on an average, 53 Mahomedans, 34¾ Hindoos [sic], and 6½ Sikhs.”).

20 NESBITT, *supra* note 4, at 72 (quoting A. BARSTOW, *HANDBOOK FOR THE BRITISH ARMY* (1928)).

21 Shyamal Kataria, *Sikh Historical Memory as an Ideological Justification for Khalistan*, 14 SIKH FORMATIONS 71, 84 (2018).

22 See Ravi Agrawal, *Why India’s Muslims Are in Grave Danger*, FOREIGN POL’Y (Mar. 2, 2020), <https://foreignpolicy.com/2020/03/02/india-muslims-delhi-riots-danger/> [https://perma.cc/YZ7B-SZ4Y].

23 See NESBITT, *supra* note 4, at 79–80; MARK JUERGENSMEYER, *GLOBAL REBELLION: RELIGIOUS CHALLENGES TO THE SECULAR STATE, FROM CHRISTIAN MILITIAS TO AL QAEDA* 118 (2008); Chaim D. Kaufmann, *When All Else Fails: Ethnic Population Transfers and Partitions in the Twentieth Century*, 23 INT’L SEC. 120, 138 (1998).

many Sikhs among them.²⁴ It also led to the destruction of scores of Sikh holy sites.²⁵ The partition therefore understandably festers in the consciousness of Sikhs today, who are known to “join[] the dots between past genocidal violence and present threats of genocide.”²⁶

Moving forward, the post-partition relationship between Sikhs and the government of modern India has continued to be a fraught one—and violently so at times. Most acutely, the launch and aftermath of the Indian military’s June 1984 raid of the Golden Temple complex at Amritsar, one of the holiest sites in the Sikh faith, stands out in the collective memory of Sikhs.²⁷

The immediate objective of the 1984 raid—codenamed “Operation Blue Star”—was the arrest of Jarnail Singh Bhindranwale, a Sikh separatist and face of a movement for an autonomous Sikh state.²⁸ But not only was the government’s legal basis for its actions widely disputed, the operation was launched on a Sikh holy day—the anniversary of the martyrdom of the Fifth Guru—and precipitated widespread violence in Punjab.²⁹ When the dust settled, hundreds of Sikhs had died and myriad of their holy sites were destroyed.³⁰

In retaliation, two Sikh bodyguards to Prime Minister Indira Gandhi murdered her.³¹ This in turn precipitated wholesale violence against Sikhs in India. According to Human Rights Watch: “Over three days, at least 2,733 Sikhs were killed [in Delhi], their property looted and destroyed. Many women were raped in the capital. Hundreds of Sikhs were killed elsewhere in the country.”³² Only a handful of individuals were prosecuted for these crimes.³³

24 NESBITT, *supra* note 4, at 80.

25 *Id.*; MCLEOD, *supra* note 2, at 79.

26 Shruti Devgan, *Faith, Trauma, and Transnational Connections in India’s Farmer Protests*, GEO UNIV. BERKLEY CTR. FOR RELIGION, PEACE & WORLD AFFS.: BERKLEY F. (Mar. 1, 2021), <https://berkeleycenter.georgetown.edu/responses/faith-trauma-and-transnational-connections-in-india-s-farmer-protests> [<https://perma.cc/79DU-ZVS8>].

27 *Id.*; MCLEOD, *supra* note 2, at 75, 90.

28 NESBITT, *supra* note 4, at 81–83.

29 *Id.* at 82–83. See Poonam Taneja, *Why 1984 Golden Temple Raid Still Rankles for Sikhs*, BBC NEWS (Aug. 1, 2013), <https://www.bbc.com/news/world-asia-23514583> [<https://perma.cc/WQY5-SX6G>].

30 NESBITT, *supra* note 4, at 82–83 (describing likely thousands of deaths and destruction of holy sites); *Golden Temple Attack: UK Advised India but Impact ‘Limited’*, BBC NEWS (June 7, 2014), <https://www.bbc.com/news/uk-26027631> [<https://perma.cc/469E-2RZE>] (on reports of a death toll up to 3000); William K. Stevens, *Punjab Raid: Unanswered Questions*, N.Y. TIMES, June 19, 1984, at A11 (describing casualty estimates, from government’s 576 to 1200 or more).

31 See NESBITT, *supra* note 4, at 83.

32 *India: No Justice for 1984 Anti-Sikh Bloodshed*, HUM. RTS. WATCH (Oct. 29, 2014), <https://www.hrw.org/news/2014/10/29/india-no-justice-1984-anti-sikh-bloodshed> [<https://perma.cc/DE2R-62FB>].

33 See *id.*

Whatever the merits of the Bhindranwale controversy, the memory of 1984 continues in the Sikh community the world over, and particularly when Sikhs feel threatened. As one expert remarked in the context of the recent farmers' protests described below, "the temporal divide between 1984 and 2021 . . . is getting compressed—trauma that is not finite and finished, but chronic and persistent, is manifesting itself all over again."³⁴

II. NATIONALISM'S RISE: THE CONTEMPORARY EXPERIENCE

Unfortunately, Sikhs in India continue to face a formidable combination of political, religious, economic, and social hostility. And although many of these challenges have percolated for some time, the situation has deteriorated in recent years due in particular to the rise and prominence of the Hindu nationalist movement. As the bipartisan U.S. Commission on International Religious Freedom (USCIRF) has warned, Sikhs and other religious minorities in India now "face challenges ranging from acts of violence or intimidation, to the loss of political power, increasing feelings of disenfranchisement, and limits on access to education, housing, and employment."³⁵

To unpack these challenges, this Part outlines their dominant religious and political dynamics. It then reviews illustrative instances of persecution against Sikhs in India and the particular hostility to Sikh independence. The Part closes by exploring the recent farmers' protests as the latest manifestation of the crisis facing many Sikhs that would cause them to seek asylum.

A. *Political and Cultural Currents*

To contextualize the present threat to Sikhs in India, we begin with the rise of Hindu nationalism—and in both its political and cultural dimensions. Anthropologists define Hindu nationalism as a movement aimed at "transform[ing] Indian public culture into a sovereign, disciplined national culture rooted in what is claimed to be a superior ancient Hindu past . . . [while] impos[ing] a corporatist and

34 Devgan, *supra* note 26.

35 U.S. COMM'N ON INT'L RELIGIOUS FREEDOM, ANNUAL REPORT 2019, at 175 (2019). It should be stressed that the hostility Sikhs have encountered from nationalist forces is no outlier. Indeed, Muslims have faced particularly virulent forms of oppression. *See id.*; *see also* Sameer Yasir, *As Hindu Extremists Call for Killing of Muslims, India's Leaders Keep Silent*, N.Y. TIMES (Dec. 25, 2021), <https://www.nytimes.com/2021/12/24/world/asia/hindu-extremists-india-muslims.html> [<https://perma.cc/5WZF-WUL7>]. Christians, too, are increasingly being targeted. *See* Jeffrey Gettleman & Suhasini Raj, *Arrests, Beatings and Secret Prayers: Inside the Persecution of India's Christians*, N.Y. TIMES (Dec. 23, 2021), <https://www.nytimes.com/2021/12/22/world/asia/india-christians-attacked.html> [<https://perma.cc/NDT3-FVPG>].

disciplined social and political organization upon society.”³⁶ Hindu nationalism’s political vanguard has been the Bharatiya Janata Party (BJP)—a powerful influence in Indian politics since the 1970s and now the ruling party.³⁷ And although the United States and India have generally enjoyed good relations, the current of nationalism stands out as a point of unease.³⁸

To be sure, Sikhs have their own political organizations. But these have historically been weak and fragmented. The oldest Sikh political party³⁹ is the Shiromani Akali Dal (SAD), which also functionally controls the Golden Temple Complex and many gurdwaras.⁴⁰ The SAD’s capacity for political action is limited, though, as it occupies about 13% of the seats in the regional Punjab legislature and far fewer in the national legislature.⁴¹

The SAD is further limited by internal faction. Although the details of this struggle are beyond our scope, it is important to note that Simranjit Singh Mann founded a small SAD faction that more directly seeks independence: the Mann Party.⁴² Specifically, Mann has pushed for the creation of a Sikh nation-state of Khalistan, and, in turn,

36 THOMAS BLOM HANSEN, *THE SAFFRON WAVE: DEMOCRACY AND HINDU NATIONALISM IN MODERN INDIA* 4 (1999).

37 See MILAN VAISHNAV, *THE BJP IN POWER: INDIAN DEMOCRACY AND RELIGIOUS NATIONALISM* 10 (2019).

38 See, e.g., U.S. COMM’N ON INT’L RELIGIOUS FREEDOM, ANNUAL REPORT 2020, at 21 (2020). The present leader of the BJP is Prime Minister Narendra Modi, a figure whose responsibility for religious violence in Gujarat once caused the United States to cancel his visa for “severe violations of religious freedom.” James Mann, *Why Narendra Modi Was Banned from the U.S.*, WALL ST. J. (May 2, 2014), <https://www.wsj.com/articles/SB10001424052702303380004579520041301275638> [<https://perma.cc/DFB6-GKER>]; David C. Mulford, U.S. Ambassador to India, Statement on the Issue of Gujarat Chief Minister Narendra Modi’s Visa Status (Mar. 21, 2005), <https://2001-2009.state.gov/p/sca/rls/rm/2005/43701.htm> [<https://perma.cc/92G7-EEPH>].

39 Vishal Joshi, *Leaders Recall Service, Sacrifice as Akali Dal Marks its 100 Years*, HINDUSTAN TIMES (Dec. 15, 2021), <https://www.hindustantimes.com/india-news/leaders-recall-service-sacrifice-as-akali-dal-marks-its-100-years-101639509001729.html> [<https://perma.cc/9J3C-93UR>].

40 See NESBITT, *supra* note 4, at 79, 132.

41 *Punjab MLAs List 2022*, ELECTIONS.IN, <https://www.elections.in/punjab/assembly-constituencies/mla-list.html> [<https://perma.cc/3PYE-AGWJ>]; see also *Seventeenth Lok Sabha: Members’ Biographical Sketch (Alphabetical)*, PARLIAMENT OF INDIA LOK SABHA, <http://164.100.47.194/Loksabha/Members/AlphabeticalList.aspx> [<https://perma.cc/YBZ8-KYF3>] (showing two SAD members in the lower house of the bicameral Indian legislature, the Lok Sabha); *Alphabetical List of the Sitting Members of Rajya Sabha*, PARLIAMENT OF INDIA RAJYA SABHA, https://rajyasabha.nic.in/rsnew/member_site/memberlist.aspx (showing three SAD members in the upper house of the bicameral Indian legislature, the Rajya Sabha).

42 IMMIGR. & REFUGEE BD. OF CAN., *INDIA: THE SHIROMANI AKALI DAL (SAD) POLITICAL PARTY, INCLUDING DIFFERENCES BETWEEN THE SAD (BADAL) LED BY PARKASH SINGH BADAL AND THE SAD (AMRITSAR) LED BY SIMRANJIT SINGH MANN; RELATIONS WITH AUTHORITIES* (2016–APRIL 2018) § 2 (2018).

has drawn hostility from the government and Congress Party actors.⁴³ More generally, though, Sikh political power is also limited by the reality of parliamentary politics, where even SAD members are known to make alliances that at times undermine certain Sikh interests.⁴⁴

Beyond electoral politics, Sikh marginalization in India extends to the cultural and legal realms as well. Sikhs, for example, are often denied the full expression of their identity—to the point of many Hindu nationalists refusing to recognize Sikhism as a distinct religion.⁴⁵ This sort of cultural diminishment is in turn reflected in the Indian Constitution, which characterizes Sikhs as a type of Hindu;⁴⁶ or, until recently, in Indian marriage laws that classified Sikh marriages as “Hindu.”⁴⁷ More immediately, Sikhs can be at physical risk if they break from nationalist currents. Two years ago, for example, hardline Hindu groups targeted Sikhs who opened gurdwaras to Muslims as places of refuge during a series of riots spurred by the government’s opposition to Muslim refugees.⁴⁸

43 See *id.* §§ 2–3. See also *Kaur v. Wilkinson*, 986 F.3d 1216 (9th Cir. 2021) (reviewing asylum claim of Mann Party member based on the beating and sexual assault she suffered by INC partisans).

44 Some factions of the SAD, for example, have allied with members of parliament who have been known to be complicit in human rights violations against Sikhs. See *India: Government Policies, Actions Target Minorities*, HUM. RTS. WATCH (Feb. 19, 2021), <https://www.hrw.org/news/2021/02/19/india-government-policies-actions-target-minorities> [<https://perma.cc/9UT7-AE3P>]; Aditya Menon, *Why Did Akali Dal Finally Dump BJP? It’s Not Just About Farm Bills*, QUINT (Sept. 27, 2020), <https://www.thequint.com/news/politics/akali-dal-quits-nda-sukhbir-badal-narendra-modi-bjp-congress-farmers> [<https://perma.cc/5FWG-GPPK>].

45 See Vivek Gupta, *Sikh Scholars Condemn ‘Distorted’ History in Booklet Released During Modi’s Kashi Corridor Event*, THE WIRE (Dec. 21, 2021), <https://thewire.in/politics/sikh-scholars-condemn-distorted-history-in-booklet-released-during-modis-kashi-corridor-event> [<https://perma.cc/TEB8-FJPK>].

46 See U.S. DEP’T OF STATE, *INDIA 2018 INTERNATIONAL RELIGIOUS FREEDOM REPORT 6* (2019) [hereinafter *STATE DEP’T 2018*]; IMMIGR. & REFUGEE BD. OF CAN., *INDIA: SITUATION OF SIKHS OUTSIDE THE STATE OF PUNJAB, INCLUDING TREATMENT BY AUTHORITIES; ABILITY OF SIKHS TO RELOCATE WITHIN INDIA, INCLUDING CHALLENGES THEY MAY ENCOUNTER* (2009–APRIL 2013) § 2 (2013).

47 See *STATE DEP’T 2018*, *supra* note 46, at 6; *Sikh Marriages and Registration Procedure in India*, HELPLINE L., <https://www.helpline.law/family-law/SIKHMRP/sikh-marriages-and-registration-procedure-in-india.html> [<https://perma.cc/PA9W-DGJQ>].

48 See Hannah Ellis-Petersen, *Inside Delhi: Beaten, Lynched and Burnt Alive*, THE GUARDIAN (Mar. 1, 2020), <https://www.theguardian.com/world/2020/mar/01/india-delhi-after-hindu-mob-riot-religious-hatred-nationalists> [<https://perma.cc/98KE-9SKP>].

B. Police Misconduct and Targeting of Sikhs

Human rights advocates have further warned that the government in India is using counterterrorism laws to crack down on activists.⁴⁹ Notably for our present purposes, Sikhs have accounted for 99% of those charged in Punjab under the Unlawful Activities Prevention Act (UAPA)⁵⁰—a law that its critics have described as more of a “political weapon” than an ordinary criminal law.⁵¹ The World Sikh Organization of Canada has thus commented that, “[s]ince June 2020, hundreds of Sikhs have been detained and interrogated in India due to their social media activities and some have been charged with offences related to support for Khalistan under the [UAPA].”⁵²

According to international observers, the Indian government has shown a willingness to use technology in particular to “target and prosecute Sikhs and members of other minority communities who advocate on human rights and political issues.”⁵³ Sikh youths have seemingly borne the brunt of this, with accounts of teens being arrested for supporting Sikh independence on social media becoming all too common.⁵⁴ An eighteen-year-old boy, for example, was recently detained for “liking” a poem on Facebook that promoted Khalistan.⁵⁵ In an even more alarming case, three youths were reportedly sent to prison for the crime of possessing pro-Khalistan photographs and books.⁵⁶

Extrajudicial suppression of Khalistani views can be even more extreme, with Mann Party affiliates facing harassment and intimidation for supporting an independence platform. As the Immigration and Refugee Board of Canada has noted, “Sikh communities that ‘advocate for and support a separate Sikh state’ . . . are ‘subject to monitoring and in some cases, detention and torture.’”⁵⁷

49 *India: Activists Detained for Peaceful Dissent*, HUM. RTS. WATCH (Apr. 15, 2020), <https://www.hrw.org/news/2020/04/15/india-activists-detained-peaceful-dissent> [<https://perma.cc/6ABA-EGGW>].

50 WORLD SIKH ORG. OF CAN., *ENFORCING SILENCE: INDIA’S WAR ON SIKH SOCIAL MEDIA* 3 (2020).

51 See Bilal Kuchay, *With 2% Convictions, India’s Terror Law More a ‘Political Weapon’*, AL JAZEERA (July 2, 2021), <https://www.aljazeera.com/news/2021/7/2/india-terror-law-uapa-muslims-activists> [<https://perma.cc/RN2W-4E7Q>].

52 WORLD SIKH ORG. OF CAN., *supra* note 50, at 2.

53 *Id.*

54 See IMMIGR. & REFUGEE BD. OF CAN., *TREATMENT OF SIKHS IN PUNJAB* (2013–APRIL 2015) § 2.4 (2015).

55 WORLD SIKH ORG. OF CAN., *supra* note 50, at 4.

56 See Gautam Dheer, *Youth Get Life Term for Having Literature Against State*, DECCAN HERALD (Feb. 7, 2019), <https://www.deccanherald.com/national/youth-get-life-term-having-717204.html> [<https://perma.cc/EQZ5-2GP3>].

57 See IMMIGR. & REFUGEE BD. OF CAN., *supra* note 54, § 2 (citations omitted). Khalistan supporters have even been spied on and pursued abroad. See *German Court*

For example, a twenty-five-year-old asylum applicant and Mann Party member named Chanpreet Kaur recently testified that Congress Party members “accosted her in the street, cursed her, and told her that she would not ‘be able to show [her] face to the world’ if she continued working for the Mann Party.”⁵⁸ After she maintained her affiliation, Chanpreet said another group “dragged her into the street” and attempted to rape her.⁵⁹ Even after fleeing the country, Chanpreet said she received phone calls from Congress Party agents threatening “‘to kill [her]’ and bring her ‘dead body back to India.’”⁶⁰

Another recent tragic report concerns twenty-three-year-old Lovepreet Singh, a Dalit Sikh who was detained by police in connection to the posting of Khalistan banners.⁶¹ After his detention under the UAPA, Lovepreet committed suicide, and his father is convinced that his “interrogation, and possible torture, by the [authorities] pushed him to take his life.”⁶² Among other things, Lovepreet’s detention had left him with wounds across his body.⁶³

According to news reports, it appears that the cases of Chanpreet and Lovepreet are sadly but two of “hundreds of cases of harassment, intimidation, torture and wrongful arrest in connection with the Khalistan movement.”⁶⁴

C. *Farmers’ Protests*

Contemporary anti-Sikh hostility is perhaps most acutely illustrated in the reaction to Sikh protests of the 2020 Indian farm laws. The laws have since been repealed after an international outcry,⁶⁵ but the government’s targeting of Sikhs who stood up against them and in

Sentences Indian Couple for Spying on Kashmiri and Sikh Groups, BBC NEWS (Dec. 13, 2019), <https://www.bbc.com/news/world-europe-50763008> [https://perma.cc/BS9S-7GYQ]; Malini Menon, *Khalistan: India Gives Justin Trudeau List of Sikh Separatists in Canada*, MINT (Feb. 22, 2018), <https://www.livemint.com/Politics/x6PHpOnoZDNpRTd77qV7MP/Khalistan-India-gives-Justin-Trudeau-list-of-Sikh-separatis.html> [https://perma.cc/CZ2M-SYFN].

58 Kaur v. Wilkinson, 986 F.3d 1216, 1220 (9th Cir. 2021).

59 *Id.*

60 *Id.*

61 Rachna Khaira, *Dalit Man’s Suicide Reveals Grim Toll of India’s Khalistan Crackdown*, HUFFPOST (July 31, 2020), https://www.huffpost.com/archive/in/entry/uapa-punjab-referendum2020-nia-police_in_5f23709dc5b656e9b0997833 [https://perma.cc/8P8M-4FED].

62 *Id.*

63 *Id.*

64 *Id.*

65 Vibhuti Agarwal & Philip Wen, *Indian Farmers End Yearlong Protest After Government Retreat*, WALL ST. J. (Dec. 9, 2021), <https://www.wsj.com/articles/indian-farmers-end-yearlong-protest-after-government-retreat-11639068646> [https://perma.cc/RP7F-E785].

defense of local farmers encapsulates much of the political, religious, and cultural persecution outlined above.

In the fall of 2020, the Indian government passed a series of agricultural laws for the stated purpose of stimulating private investment and modernizing the domestic farming industry.⁶⁶ Farmer unions, however, opposed the laws because they saw them as a threat to the government marketing boards that had provided financial security by guaranteeing the purchase of surplus grain at set prices.⁶⁷ And although the new laws applied generally, they most acutely affected the Punjab and Haryana provinces as the hub of India's agriculture—meaning Sikhs in particular suffered, since a majority of them live there.⁶⁸

In any event, and no matter the purpose or benefits of these laws—which are hotly contested—Sikhs were villainized in protesting them.⁶⁹ There were, for example, apparent “attempts by some in the Indian media to paint the farmers as being overrun by Sikh separatists, or to claim they are working for Pakistan.”⁷⁰ Pro-government activists were known to hold “menacing rallies outside Sikh places of worship,”⁷¹ while protesters were reportedly subjected to excessive force by police⁷² and several were killed.⁷³ Even journalists who

66 Faizan Mustafa, *An Expert Explains: The Arguments for and Against the Three Central Farm Laws*, INDIAN EXPRESS (Sept. 29, 2020), <https://indianexpress.com/article/explained/an-expert-explains-farm-acts-and-federalism-6622769/> [<https://perma.cc/5LSB-98FC>].

67 See *Explained: What is MSP and Why Farmers Are Protesting Over It?*, INDIA TODAY (Sept. 29, 2020), <https://www.indiatoday.in/india/story/explained-what-is-msp-and-why-farmers-are-protesting-over-it-1726658-2020-09-29> [<https://perma.cc/B3UF-CV9N>]; Karan Deep Singh, *The Lockdown Killed My Father: Farmer Suicides Add to India's Virus Misery*, N.Y. TIMES (Nov. 11, 2020), <https://www.nytimes.com/2020/09/08/world/asia/india-coronavirus-farmer-suicides-lockdown.html> [<https://perma.cc/A3ZF-NU98>].

68 See Anilesh S. Mahajan, *The Land of Plenty: Punjab*, INDIA TODAY (Nov. 22, 2019), <https://www.indiatoday.in/magazine/state-of-the-states/story/20191202-the-land-of-plenty-1621276-2019-11-22> [<https://perma.cc/Z7FR-BULG>].

69 See IP Singh, *BJP Spreading Hate Against Sikhs to Discredit Farmers Movement: Punjab Congress*, TIMES OF INDIA (Feb. 3, 2021), <https://timesofindia.indiatimes.com/india/bjp-spreading-hate-against-sikhs-to-discredit-farmers-movement-punjab-congress/articleshow/80654637.cms> [<https://perma.cc/N487-X54P>].

70 Sunny Hundal, Opinion, *Why India's Farmers' Protests Have Sikhs Fearing Violent Attacks*, OPEN DEMOCRACY (Feb. 4, 2021), <https://www.opendemocracy.net/en/why-indias-farmers-protests-have-sikhs-fearing-violent-attacks/> [<https://perma.cc/JS4P-B4FB>].

71 *Id.*

72 Gujari Singh, *SALDEF Condemns Human Rights Violations at Kisaan Protests*, SALDEF: SIKH AM. LEGAL DEF. & EDUC. FUND (Feb. 2, 2021), <https://saldef.org/saldef-condemns-human-rights-violations-at-kisaan-protests/> [<https://perma.cc/VF6R-SBB9>].

73 Lauren Frayer, *India's Farmers Faced Down a Popular Prime Minister and Won. What Will They Do Now?*, NPR (Nov. 26, 2021), <https://www.npr.org/2021/11/26/1059200463/india-farmer-protests-modi-farm-laws> [<https://perma.cc/AZ4U-ZJZF>].

reported on anti-Sikh violence were jailed⁷⁴ or accused on social media of being part of an “anti-Indian conspiracy” for which they should be hanged.⁷⁵

In many ways, the farmers’ protests can be understood as the latest flashpoint in a decades-long struggle between Sikhs who see civic action as part of their religious identity and those in the Indian government who view such action as a dissident force that must be suppressed.⁷⁶

III. ESTABLISHING THE NEED FOR ASYLUM

Under the Immigration and Nationality Act (INA), individuals can apply for asylum affirmatively or as a defense to removal.⁷⁷ Although there are some differences depending on which of these postures their case arises under, asylum seekers must meet largely the same requirements either way.⁷⁸

As is relevant to this Essay, an asylee must show that he or she is “unable or unwilling to return to [their country], and . . . to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.”⁷⁹ And although immigration attorneys often split this standard into five elements,⁸⁰ we reduce them to two to highlight

74 Simran Jeet Singh, *The Farmers’ Protests Are a Turning Point for India’s Democracy—And the World Can No Longer Ignore That*, TIME (Feb. 11, 2021), <https://time.com/5938041/india-farmer-protests-democracy/> [<https://perma.cc/L2A4-RQW6>].

75 See Arshad R. Zargar, *Indian Journalist Speaks Out Against Death Threats for Reporting on Farmer Protests*, CBS NEWS (Mar. 3, 2021), <https://www.cbsnews.com/news/barkha-dutt-indian-journalist-intimidation-farmer-protests/> [<https://perma.cc/LD3X-SCLK>]. Cf. Hannah Ellis-Petersen, *Indian Journalists Face Criminal Charges Over Police Shooting Reports*, THE GUARDIAN (Feb. 1, 2021), <https://www.theguardian.com/world/2021/feb/01/indian-journalists-face-criminal-charges-over-police-shooting-reports> [<https://perma.cc/X7WK-Q6D9>]; *Indian Reporters Attacked by Local BJP Leaders at Meeting*, REPS. WITHOUT BORDERS (Feb. 4, 2019), <https://rsf.org/en/news/indian-reporters-attacked-local-bjp-leaders-meeting> [<https://perma.cc/8LGV-X59J>].

76 See Singh, *supra* note 16.

77 8 U.S.C. § 1158(a)(1); 8 U.S.C. § 1225(b)(1)(A)(ii).

78 See *Obtaining Asylum in the United States*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/obtaining-asylum-in-the-united-states> [<https://perma.cc/PT2E-S7BM>] (outlining only procedural differences as “Key Differences Between ‘Affirmative’ and ‘Defensive’ Asylum Process”).

79 8 U.S.C. § 1101(a)(42)(A) (defining refugee under the title); *id.* § 1158(b)(1) (“The Secretary of Homeland Security or the Attorney General may grant asylum to an alien who has applied for asylum . . . if the Secretary of Homeland Security or the Attorney General determines that such alien is a refugee within the meaning of section 1101(a)(42)(A) of this title.”).

80 See NAT’L IMMIGR. JUST. CTR., BASIC PROCEDURAL MANUAL FOR ASYLUM REPRESENTATION: AFFIRMATIVELY AND IN REMOVAL PROCEEDINGS 11 (2021).

possible areas of difficulty for Sikhs. We then address burdens of proof, which can pose a challenge to any applicant but can also be tricky for Sikhs given the limited state of knowledge about their plight in India.

A. *Well-Founded Fear*

First, a candidate for asylum must demonstrate a well-founded fear of persecution. Generally, this is done by either “provid[ing] evidence that there is a reasonable possibility he or she would be singled out individually for persecution” or establishing “a pattern or practice . . . of persecution of a group of persons similarly situated” where her “inclusion in, and identification with” that group creates a reasonable fear of persecution.⁸¹

The INA does not define “persecution,” but courts have described it as “a sustained, systematic effort to target an individual,”⁸² or as “the infliction of suffering or harm.”⁸³ Notably, actionable persecution must be more than “mere discrimination or harassment.”⁸⁴ Rather, it is “an extreme concept that does not include every sort of treatment our society regards as offensive.”⁸⁵ To obtain relief, therefore, there must typically be the specter of violence or severe economic or mental harm.⁸⁶ This might manifest as detention and beatings by police;⁸⁷ sexual assault or kidnapping;⁸⁸ or death threats and attacks.⁸⁹

Actionable persecution may be perpetrated by state or non-state actors, but it must always occur under some form of state sanction—whether by act or omission. And where persecution is perpetrated by private actors, the central question is whether the government is “unwilling or unable to control” them.⁹⁰ Moreover, the standard in evaluating such control can be quite strict.⁹¹

81 8 C.F.R. § 1208.13(b)(2)(C)(iii).

82 *Gjetani v. Barr*, 968 F.3d 393, 397–98 (5th Cir. 2020) (emphasis omitted) (collecting citations from the First, Third, Fourth, and Eighth Circuits).

83 *Ghaly v. INS*, 58 F.3d 1425, 1431 (9th Cir. 1995) (quoting *Prasad v. INS*, 47 F.3d 336, 339 (9th Cir. 1995)).

84 *Id.* (quoting *Bastanipour v. INS*, 980 F.2d 1129, 1133 (7th Cir. 1992)).

85 *Id.* (quoting *Fisher v. INS*, 37 F.3d 1371, 1381 n.8 (9th Cir. 1994)).

86 See T. ALEXANDER ALENIKOFF, DAVID A. MARTIN, HIROSHI MOTOMURA, MARYELLEN FULLERTON, JULIET P. STUMPF & PRATHEEPAN GULASEKARAM, *IMMIGRATION AND CITIZENSHIP: PROCESS AND POLICY* 749 (9th ed. 2020).

87 See, e.g., *Singh v. Whitaker*, 914 F.3d 654, 657 (9th Cir. 2019).

88 *Kaur v. Wilkinson*, 986 F.3d 1216, 1223–24 (9th Cir. 2021).

89 *Maini v. INS*, 212 F.3d 1167, 1174 (9th Cir. 2000).

90 *McMullen v. INS*, 658 F.2d 1312, 1315 n.2 (9th Cir. 1981); cf. *In re O-Z- & I-Z-*, 22 I & N Dec. 23, 26 (B.I.A. 1998) (“unable or unwilling”).

91 Compare *Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1063–69 (9th Cir. 2017), with *Valdez Coria v. Garland*, No. 19-60707, 2021 WL 5579272, at *3–5 (5th Cir. Nov. 29, 2021). Some courts of appeal, though, have endorsed an interpretation of the “unwilling-or-

Importantly, though, an asylee need not prove that persecution would be more likely than not to occur upon removal.⁹² Rather, the inquiry focuses on the candidate's well-founded concerns from his or her subjective point of view.⁹³

B. Protected Ground

Second, the asylum seeker must also show that the feared persecution would occur on account of a protected ground of "race, religion, nationality, membership in a particular social group [(PSG)], or political opinion."⁹⁴

Persecution on account of religion is more or less straightforward, but the other two protected grounds relevant to Sikh applicants—political opinion or PSG—are more nuanced. For example, although one need not actually hold a political opinion to face actionable persecution for it, the evidence must show that the persecution would in fact result from politically motivated behavior.⁹⁵

Persecution on account of membership in a PSG can be even trickier. The INA nowhere defines a PSG, but courts like the Fifth Circuit have described it as a group that: (1) "share[s] a common immutable characteristic"; (2) can "be defined with particularity"; and (3) is "socially visible or distinct within the society in question."⁹⁶ Alternatively, other circuits have more flexibly defined a PSG as a group that "'share[s] a common, immutable characteristic,' one they 'either cannot change, or should not be required to change because it is fundamental to their individual identities.'"⁹⁷ Under any standard, however, affected asylees must show that their membership in the PSG exists apart from the harm they suffer; the group cannot be defined by its persecution.⁹⁸

unable standard" to encompass a situation in which a government appeared incapable of offering a murder victim's family protection from organized criminals, despite being willing to investigate. *Grace v. Barr*, 965 F.3d 883, 898–900 (D.C. Cir. 2020) (citing *Rosales Justo v. Sessions*, 895 F.3d 154 (1st Cir. 2018)).

92 *INS v. Cardoza-Fonseca*, 480 U.S. 421, 431 (1987).

93 As the Supreme Court observed in the landmark case of *Cardoza-Fonseca*: "One can certainly have a well-founded fear of an event happening when there is less than a 50% chance of the occurrence taking place." *Id.*

94 8 U.S.C. § 1158(b)(1)(B)(i). This evidence may be direct or circumstantial. *INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992).

95 NAT'L IMMIGR. JUST. CTR., *supra* note 80, at 14.

96 *Gonzales-Veliz v. Barr*, 938 F.3d 219, 229 (5th Cir. 2019).

97 *Grace v. Barr*, 965 F.3d 883, 888 (D.C. Cir. 2020) (quoting *Matter of Acosta*, 19 I. & N. Dec. 211, 233 (B.I.A. 1985)). This definition has also been accepted by the Third and Ninth Circuits. *See id.* (collecting citations).

98 *Gonzales-Veliz*, 938 F.3d at 232.

C. *Burden of Proof*

As noted above, asylum candidates bear the burden of demonstrating a well-founded fear of persecution on protected grounds.⁹⁹ And in evaluating the case, the trier of fact considers the “inherent plausibility” and cohesion of the applicant’s story, the consistency of that story with external evidence (such as country conditions reports), “the demeanor, candor, [and] responsiveness of the applicant,” and any prior conflicting statements, inaccuracies, or falsehoods.¹⁰⁰ A candidate’s own testimony can suffice, but only if the trier of fact determines that the testimony is “credible, is persuasive, and refers to specific facts.”¹⁰¹

In any event, an asylee’s demonstration of past persecution can create a rebuttable presumption that she has a well-founded fear of persecution going forward.¹⁰² In that case, asylum is refused only if the government can show that a fundamental change in circumstances has taken place since the first instance of persecution or that the applicant could avoid future harm by reasonably relocating within her home country.¹⁰³

IV. CHALLENGES FOR SIKH ASYLEES

Although establishing the need for asylum may be a daunting prospect in any case, Sikhs can face particular difficulty. Much of this stems from the history and multi-faceted nature of the Sikh experience in India, which causes many Sikh asylees to defy neat categorization in the American immigration system. Moreover, the challenge can only multiply in light of the diversity of Sikh practice and the political context in which asylum from India is pursued.

In this Part, therefore, we take on these three dynamics—the nature of Sikh belief, the variety of Sikh practice, and the present reality for many Sikhs in India—and offer a few suggestions. First, because Sikhs can face persecution across multiple grounds it might help to take a combined approach rooted in the Sikh integration of faith and civic action. Second, no matter the ground(s) on which they seek asylum, the varied practice of Sikhs can present a challenge in telling an individual’s story where it might make sense to show how not

99 8 U.S.C. § 1158(b)(1)(B)(i) (placing the burden on applicants to show that they are refugees).

100 *Id.* § 1158(b)(1)(B)(iii).

101 *Id.* § 1158(b)(1)(B)(ii).

102 8 C.F.R. § 1208.13(b)(1).

103 *Id.* Unlike in cases of past persecution, where there has not been past persecution and the government is not the prospective persecutor, the claimant (and not the government) must overcome a rebuttable presumption that internal relocation is reasonable. *Id.* § 1208.13(b)(3)(i)–(ii).

all Sikhs are the same. Finally, ignorance about Sikh mistreatment in India can be a problem that offering this Essay's sort of background can mollify.

A. *Sikh Asylum Grounds*

As described above, asylum applicants must demonstrate a well-founded fear of persecution on one of the INA's five protected grounds; most notably for Sikhs: religious, political, or social identity. But unfortunately for many Sikhs, the American immigration system does not easily countenance the merger of religious and political identities embodied in their situation.

In certain cases, claims based on singular grounds of religious or political persecution may fail to capture the Sikh experience. Sikhs, for example, can face persecution when they exercise their faith in conflict with currents of Hindu nationalism. But a religious claim may fail if decisionmakers find that the applicant faces no "particular hardship in practicing their faith," as distinct from secular activity.¹⁰⁴ Conversely, casting a claim in political terms may not account for the religious suffering from Sikh activism that, when considered as a whole, rises to the level of actionable persecution. Decisionmakers might assume that Sikhs who stand up for injustice suffer only for "political opinions" in a way that could be insufficiently actionable.¹⁰⁵ But this can ignore the integrated *miri-piri* philosophy, for which speaking out is a religious duty for Sikhs.¹⁰⁶

One way to address this challenge is to pursue asylum on the multiple grounds of persecution based on religion, politics, *and* PSG membership. Above all, though, Sikh applicants can improve their odds by helping asylum officers and immigration judges understand that the Sikh experience—although not monolithic—is often rooted in an integrated philosophy that urges civic action in the exercise of the faith, such that being punished for speaking out against injustice triggers religious as well as political grounds for seeking asylum.¹⁰⁷

B. *Diversity of Sikh Practice*

In addition to the challenge of protected-ground categorization, Sikhs can also have difficulty in establishing they have been persecuted

104 *Singh v. Barr*, 790 F. App'x 941, 946 (10th Cir. 2019).

105 *Singh*, *supra* note 16.

106 *Id.* ("Protest is not new to Sikhs; rather, it permeates Sikh history, past and present."); WORLD SIKH ORG. OF CAN., *supra* note 50, at 2 (describing Indian authorities as targeting Sikhs who "advocate on human rights and political issues").

107 *See, e.g.*, *Singh v. Ashcroft*, 362 F.3d 1164, 1167, 1170 (9th Cir. 2004) (noting that the applicant's past "beatings and torture . . . for his believed association with militant Sikh separatists" substantiated his claims of both religious and political persecution).

because of their Sikh practice or identity where a given asylum seeker might not follow what the decisionmaker deems to be “standard” Sikh practices.¹⁰⁸ This issue is not unique to Sikhs; after all, authorities may doubt the sincerity of any asylee who claims membership in a group with a presumed orthodoxy but fails to follow it. In the Sikh context, however, it can be an acute problem given the combined visibility of certain Sikh practices and the variation by individual.

Many Sikhs, for example, observe the “Five K’s” of grooming and dress practices introduced by the last of the ten founding gurus.¹⁰⁹ But not every Sikh observes such practices; younger Sikhs, for example, are increasingly found not to abide by the most well-known practice of unshorn hair.¹¹⁰ According to scholars, rather, the very concept of a Sikh is one who is a disciple or student and it embraces members of the community at different points on a journey.¹¹¹ As one leading expert explains, “today one archetypal Sikh identity does not exist, and cannot be argued for. Not all Sikhs are the same.”¹¹²

In such cases, asylum applicants ought to clarify that there is no strict list that one must satisfy to be Sikh. Additionally, the candidate who does not fit the presumed mold should stress that First Amendment principles dictate that “a sincere religious believer doesn’t forfeit his religious rights merely because he is not scrupulous in his observance.”¹¹³ Further, the applicant might add—and be mindful of—that what counts isn’t the “ability (or inability) to recall doctrine” but her “personal explanation of religious beliefs.”¹¹⁴

Finally, and no matter the foregoing, an applicant hoping to increase her odds in showing religious persecution for asylum would nevertheless be wise to have at least a working knowledge of Sikh beliefs and practices, no matter her own personal practices.¹¹⁵

108 See *Singh v. Holder*, 720 F.3d 635, 643–44 (7th Cir. 2013) (stating that immigration judge inappropriately inquired into whether applicant followed common Sikh practices); cf. *Singh v. Ashcroft*, 362 F.3d at 1167 (noting that applicant’s “head was shaved, an affront to Sikh religious practice”).

109 See JHUTTI-JOHAL, *supra* note 3, at 95–96, 100 (describing “Five Ks,” including “*kesh* (hair)” as Sikhism’s “most recognized symbol”); NESBITT, *supra* note 4, at 51–52.

110 Amelia Gentleman, *Young Sikh Men Get Haircuts, Annoying Their Elders*, N.Y. TIMES (Mar. 29, 2007), <https://www.nytimes.com/2007/03/29/world/asia/29turban.html> [<https://perma.cc/C96M-EQRP>] (noting that turbans “make Sikhs easily identifiable in a crowd” but it is estimated “half of India’s Sikh men now forgo the turban”).

111 See JHUTTI-JOHAL, *supra* note 3, at 95–96.

112 *Id.* at 95.

113 *Singh v. Holder*, 720 F.3d at 644 (quoting *Grayson v. Schuler*, 666 F.3d 450, 454 (7th Cir. 2012)). In *Singh v. Holder*, the Seventh Circuit admonished an immigration judge for doubting an applicant’s claims to be a Sikh based on his failure to adhere to certain elements of Sikhism found on Wikipedia. See *id.* at 643–44.

114 *Id.* at 644.

115 *Kaur v. Gonzales*, 232 F. App’x 634, 635 (9th Cir. 2007) (denying review of asylum denial when the applicant “could not identify basic Sikh concepts and holidays . . . although

C. Systemic Misunderstandings

Reflecting the educational point of this Essay, Sikh asylum applicants can also face challenges from a lack of awareness in the United States about the situation confronting many Sikhs in India—an ignorance that stems from the combination of a dearth of on-point information as well as misperceptions about India generally given its status as an ally. To make matters worse, courts are chronically under-resourced in Punjabi-language support.¹¹⁶

Notwithstanding the array of contemporary challenges facing Sikhs in India noted above, asylum officials have been known to rely on information that is outdated or fails to capture actionable persecution. For example, some decisionmakers have relied on older country conditions reports that do not cover the dynamics explored in this Essay or the sort of growing concern expressed by USCIRF leading it to now recommend naming India as a “country of particular concern” for religious freedom.¹¹⁷ Others have been swayed by the fact that some Sikhs have held high-ranking positions, or that Sikhs live in many parts of India.¹¹⁸ And yet still others have discounted persecution

she said she had been a devout Sikh who attended temple daily in India”). Similarly, a lack of knowledge about “India’s political landscape” will stymie political claims. *See* *Singh v. INS*, 70 F. App’x 405, 405 (9th Cir. 2003).

116 *See* Cristobal Ramón & Lucas Reyes, *Language Access in the Immigration System: A Primer*, BIPARTISAN POL’Y CTR. (Sep. 18, 2020), <https://bipartisanpolicy.org/blog/language-access-in-the-immigration-system-a-primer/> [<https://perma.cc/3NVY-K428>] (lamenting limited availability of interpretation services); Sonia Smith, *The Long Road to Asylum*, TEX. MONTHLY (Aug. 25, 2014), <https://www.texasmonthly.com/news-politics/the-long-road-to-asylum/> [<https://perma.cc/HNG5-SQ9W>] (detailing story of an “Albuquerque-based cab driver [relied on for translation] who ha[d] only conversational Punjabi skills and couldn’t communicate at the level that [the applicant’s attorney] needed to fill out his clients’ asylum claims in detail”).

117 *For Second Year, US Religious Freedom Body Sees India as ‘Country of Particular Concern’*, THE WIRE (Apr. 22, 2021), <https://thewire.in/communalism/us-body-religious-freedom-india-as-country-of-particular-concern> [<https://perma.cc/X2KS-HYCL>]. *See, e.g.,* *Singh v. Barr*, 801 F. App’x 819, 823 (2d Cir. 2020) (denying asylum in part because of 2016–2017 country reports that noted no Sikh discrimination); *Singh v. Barr*, 825 F. App’x 532, 533 (9th Cir. 2020) (accepting “[r]eliable government reports cited by the [BIA]” that offered only generalized information about Sikhs living in India). *But see* *Hehar v. Barr*, 800 F. App’x 540, 541 (9th Cir. 2020) (granting applicant’s petition for review in part because the “government only submitted two out-of-date country reports” and relied on general election data in Punjab).

118 *See, e.g.,* *Singh v. Att’y Gen. of the U.S.*, 433 F. App’x 63, 67–68 (3d Cir. 2011) (denying asylum claim in part because the Prime Minister at the time was Sikh); *Singh v. Holder*, 339 F. App’x 421, 422 (5th Cir. 2009) (“Sikhs are a majority ethnic group in Punjab; many of the police officers who interrogated and abused Singh were Sikhs themselves.”); *Singh v. INS*, 70 F. App’x at 405–06 (denying asylum claim in part because the members of the applicant’s political party “held substantial numbers of seats in both regional and national legislatures”).

claims because of the lack of similar mistreatment of members of an applicant's family.¹¹⁹

Misunderstandings about the challenges facing many Sikhs in India can be particularly detrimental for the requirement that, in the not-uncommon case of threatened persecution by private actors without direct government sponsorship, the applicant must affirmatively prove she cannot reasonably relocate within her home country.¹²⁰ Specifically, a lack of current information has caused difficulties for Sikh asylum applicants in showing they would be unable to relocate elsewhere in Punjab, where Sikhs comprise a majority of the population.¹²¹ If applicants cannot affirmatively present better, more current information, they should at least be prepared to argue that the mere existence of communities generally deemed safe for Sikhs ignores particularized threats that may follow certain individuals no matter where they go in the country.

Notably, the Ninth Circuit helpfully clarified recently that the relocation analysis should be tailored to the applicant's "individualized situation" and that it should further assume that the applicant will continue in his protected activity.¹²² Regardless, Sikh applicants would be wise to submit evidence that their protected beliefs or status would subject them to persecution throughout India; i.e., that their faith, civic advocacy, and/or membership in a disfavored group would prevent them from safely relocating within India.¹²³

Finally, and in any event, advocates for Sikh asylees have proven more successful when they play the dual role of educator in asserting their clients' claims. Although Sikhs may face systemic challenges due to resource gaps and political sensitivity, better information has been proven to make a difference.

119 *Singh v. Barr*, 801 F. App'x at 823 (affirming agency's reliance on the lack of attacks against sisters in India in concluding applicant did not have a well-founded fear of persecution).

120 See 8 C.F.R. § 1208.13(b)(3).

121 See U.S. DEPT OF STATE, INDIA 2019 INTERNATIONAL RELIGIOUS FREEDOM REPORT 4 (2020).

122 See *Singh v. Whitaker*, 914 F.3d 654, 661 (9th Cir. 2019); *Kaur v. Wilkinson*, 986 F.3d 1216, 1230–31 (9th Cir. 2021).

123 See *Whitaker*, 914 F.3d at 661 (holding that the BIA should have considered whether it was possible for Singh to relocate given his "stated intent to continue proselytizing for his party wherever he went" and the "potential harm Congress Party members, or other local authorities, might inflict upon Singh in a new state"). It should be noted, though, that the language used in *Whitaker* has yet to be applied outside the Ninth Circuit, and it remains unclear whether the Court's reference to persecution by "local authorities, or other actors" applies to persecution by private actors.

CONCLUSION

We therefore end where we began; namely, with the need for heightened awareness of the challenges facing the Sikh community in India and the tools to overcome the obstacles many face in securing asylum in the United States.

Sikhs have endured hostility in India for a long time, but the situation has recently become an acute and disturbing one for many. And although Sikhs are turning to America for asylum, they often face only further difficulty due to the nature of their faith and its practices, and surrounding politics.

We hope, however, that by examining the background and basics of these dynamics and suggesting some solutions, this Essay can help those in need.