



Immigration and  
Refugee Board of Canada  
Refugee Protection  
Division

Commission de l'immigration  
et du statut de réfugié du Canada  
Section de la protection  
des réfugiés

RPD File: VC1-00839

## NOTICE OF DECISION

[*Immigration and Refugee Protection Act*, subsection 107(1)]  
[*Refugee Protection Division Rules*, rule 67]

Megan Kammerer

Member

In the claim for refugee protection of:	Date of birth:	UCI:
SARABJIT KAUR	January 1, 1978	92859880

The claim was heard on March 29, 2021 and April 9, 2021.

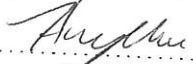
The Refugee Protection Division determines that **the claimant is a Convention refugee and therefore accepts the claim.**

The reasons for the decision are attached.

April 14, 2021

A. Luong, Registry Officer  
For the Registrar  
Tel: 1-866-787-7472

**Certified True Copy**  
**Copie Certifiée Conforme**

  
IRB Representative  
Représentant de la CISR

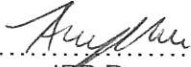


RPD File / Dossier de la SPR : VC1-00839  
UCI / IUC : 92859880

*Private Proceeding / Huis clos*

## Reasons and Decision – Motifs et décision

<b>Claimant(s)</b>	SARABJIT KAUR	<b>Demandeur(e)(s) d'asile</b>
<b>Date(s) of Hearing</b>	March 29, 2021 and April 9, 2021	<b>Date(s) de l'audience</b>
<b>Place of Hearing</b>	Heard by Virtual Hearing	<b>Lieu de l'audience</b>
<b>Date of Decision</b>	April 12, 2021	<b>Date de la décision</b>
<b>Panel</b>	Megan Kammerer	<b>Tribunal</b>
<b>Counsel for the Claimant(s)</b>	Gurpreet Khaira	<b>Conseil(s) du (de la/des) demandeur(e)(s) d'asile</b>
<b>Designated Representative(s)</b>	N/A	<b>Représentant(e) désigné(e)</b>
<b>Counsel for the Minister</b>	N/A	<b>Conseil du (de la) ministre</b>



IRB Representative  
Représentant de la CISR

## REASONS FOR DECISION

[1] This is the decision of the Refugee Protection Division (RPD) in the claim of SARABJIT KAUR (“the claimant”) as a citizen of India who is claiming refugee protection pursuant to section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act* (the “Act”).<sup>1</sup>

[2] In hearing and assessing this claim, I have considered and applied the Chairperson’s *Guideline on Women Refugee Claimants Fearing Gender-Related Persecution*,<sup>2</sup> which offers guidance in recognizing women as members of a particular social group and also with respect to other gender specific issues present in this claim.

### ALLEGATIONS

[3] The claimant alleges that she was subjected to severe physical, emotional, and financial abuse by her ex-husband and his family. She alleges that she is unable to return to her home in Khanna, India, because her ex-husband’s family continues to threaten her.

### DETERMINATION

[4] I find that the claimant has a well-founded fear of persecution on the basis of her gender and is therefore a Convention refugee under section 96 of the *Act*.

### ANALYSIS

#### Identity

[5] I find that the claimant’s identity as a national of India has been established on a balance of probabilities by her testimony and a copy of her passport.<sup>3</sup>

<sup>1</sup> *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

<sup>2</sup> Immigration and Refugee Board of Canada (IRB) Chairperson’s *Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution*, Ottawa, Canada, March 1993, updated November 1996.

<sup>3</sup> Exhibit 1.

## **Credibility**

[6] When a claimant swears to the truth of her allegations, this creates a presumption that those allegations are true, unless there is reason to doubt their truthfulness. In this case, the claimant was frequently emotional during her testimony, was confused about the dates of many significant events, and had to be prompted to provide detail. The majority of her testimony was elicited through leading questions which were posed by her counsel. However, despite this, I do not doubt the claimant's truthfulness. I attribute the difficulties she experienced testifying to cultural differences, the fact that the claimant has a limited formal education, and the significant abuse that she has endured. I am cognizant that trauma can have an impact on memory and the ability to recount a coherent narrative. I note that in this case the claimant was abused in profound ways by her ex-husband and his family for a number of years.

[7] Despite the difficulties mentioned above, the claimant was able to provide some details about the abuse that she has endured, the profile of the individuals in her ex-husband's family who continue to target her, and the reasons why she remains at risk in India. As noted above, many of the questions posed by counsel could be viewed as leading, but in this case, given the difficulties outlined, I find that this was appropriate, that the answers corroborate the information provided in the claimant's Basis of Claim form and narrative, and I accord full weight to those answers.

[8] I note as well that the claimant frequently minimized her experiences, referring to the abuse that she suffered as being "bothered" by her ex-husband's family, when in fact she was violently assaulted, threatened, and forced against her will, and without her knowledge, to undergo an operation designed to prevent her from becoming pregnant. I find that this further adds to the claimant's credibility.

[9] Finally, I note that the claimant has provided a copy of a judgment dated May 24, 2018 issued by a district court in India and which corroborates the allegations that the claimant has made with respect to the risks that she faces in India. I find that this further adds to the claimant's credibility.

[10] I find that the claimant is a credible witness and I believe what she has alleged in support of her claim.

### **Nexus**

[11] The claimant alleges that she has been abused by her ex-husband and his family and that his family continues to target her. I find that the persecution the claimant fears has a nexus to the Convention ground of particular social group, namely women.

### **Well-Founded Fear of Persecution**

[12] I find that the claimant has a well-founded fear of persecution for the reasons that follow. I find that the claimant has established on a balance of probabilities all of the allegations she made in respect of her claim.

[13] The claimant testified that she and her ex-husband were married in 2003. At the time of the marriage the claimant was approximately 25 years old. She testified that her husband was 15 years older and had a son from a previous marriage who was in the tenth grade.

[14] The claimant testified that the abuse started following the death of her brother several years after she was married. She indicated that she inherited some land and that her ex-husband's family wanted it to be transferred to them so that her stepson could eventually inherit it. She explained that there was significant pressure on her to transfer the land and that her ex-husband, mother-in-law, father-in-law, sisters-in-law, and their husbands would physically assault her, including by hitting her, slapping her, and beating her with a stick. She testified that ultimately her stepson also beat her.

[15] The claimant testified that her ex-husband's family arranged for her to undergo an operation that would prevent her from having children. She indicated that she was not aware that this procedure had been performed. She believed that she had undergone an operation designed to address stomach pains until a doctor mentioned it at a later time. She testified that this

procedure was performed because her ex-husband's family wanted any inheritance to go to her stepson.

[16] The claimant testified that her ex-husband's family also defrauded her of some money that her mother obtained from selling a portion of land. She indicated that they asked her to sign some forms and that later on she became worried about them and checked her bank accounts and found that the money was missing. She was told by the bank manager that her husband had withdrawn all of the money. When she confronted her ex-husband and his family about it they physically beat her and locked her out of the house. The claimant attempted to file a complaint with the police, but was unsuccessful as her ex-husband's brother in law and uncle are both police officers. The claimant ultimately returned back home to live with her ex-husband and her in-laws. She testified that she wanted to make her marriage work because divorce is considered a "very shameful thing" in her culture.

[17] The claimant testified that she traveled with her ex-husband to Canada in 2015. The purpose of the trip was to visit her stepson, who had moved to Canada. Three days after they arrived in Canada, the claimant's ex-husband abandoned her. He simply did not return home to the basement suite they had rented.

[18] The claimant testified that she was extremely distraught and did not know what to do. She solicited assistance from a local Sikh temple. She eventually learned from her mother that her ex-husband had returned to their hometown in Khanna, India.

[19] The claimant returned to India in January 2016. She testified that she still hoped she could save her marriage. Upon her return to India, the claimant's in-laws refused to allow her to enter the family home. She and her mother submitted a complaint to the police. The police refused to take any action to address the complaint. The claimant testified that this is because her ex-husband's brother-in-law is a police officer.

[20] Following her decision to submit a complaint to the police, the claimant's in-laws began threatening her. She testified that they threatened to kill her on multiple occasions. The claimant

is particularly fearful of her ex-husband's brother-in-law who has accused her of tarnishing his reputation and who has threatened to kill her for naming him in her complaint.

[21] The claimant returned to Canada in July 2016. She testified that she was scared because she continued to receive threats from her in-laws and she did not know where else to go.

[22] The claimant returned to India on two occasions in 2016 and 2017. She testified that she returned because she hoped to reconcile with her husband and save her marriage. Ultimately, however, the threats from her in-laws intensified and the claimant realized that she could no longer safely live in Khanna. She met with a lawyer, who advised her that he would initiate divorce proceedings in her name but that she should leave the country for her own safety. The claimant agreed to provide her mother with power of attorney so that she could pursue the divorce proceedings on the claimant's behalf.

[23] The claimant testified that following her departure for Canada in June 2017 her in-laws began to threaten her mother. The claimant testified that her mother became so scared that she left Khanna to go live with relatives in another village.

[24] The claimant does not know where her ex-husband currently resides. She is unsure if he is in India. However, she remains scared of his relatives, particularly her ex-husband's brother-in-law, who is a member of the police force and who has threatened to kill her.

[25] The claimant's testimony with respect to the violence that she has endured can be understood in the context of a prevailing culture of patriarchy, discrimination, and gender-based violence. As stated by the United Nations Special Rapporteur:

According to numerous interlocutors, the physical, sexual and psychological abuse of women in the private sphere is widely tolerated by the State and the community. The perpetrators include husbands, in-laws and other family members. Many victims live in family settings that are rooted in deeply entrenched patriarchal and customary practices that are sometimes harmful to women. The widespread socioeconomic dependency of women subordinates them to their husbands and other family members. The fear of social

exclusion and marginalization, and the lack of effective responses to violence, keeps them in a context of continuous violence and intimidation.<sup>4</sup>

[26] There is a recognition amongst the objective sources that domestic violence can be perpetrated by a woman's "extended family" or "in-laws."<sup>5</sup> In such cases, there is a "societal tendency" to "silence the victims to protect family honour" and "tremendous pressure on women to bear the abuse in silence."<sup>6</sup>

[27] I find that the claimant faces a significant forward-facing risk of serious harm from her ex-husband's family should she return to India. I make this finding based on all the evidence before me, including the claimant's testimony about the violent abuse perpetrated by both her ex-husband and his family, their continued and intensifying threats against the claimant, and the threats they have made against the claimant's mother.

[28] Considering all the evidence that is before me, I find that the claimant would face a serious risk of persecution were she to return to India.

### **State Protection**

[29] The next element in my analysis is whether there is adequate state protection for the claimant in India. While there is a presumption of state protection, this presumption can be rebutted with clear and convincing evidence that protection would not be forthcoming to the claimant.<sup>7</sup>

[30] According to country condition evidence, the government of India has taken some steps to address gender-based violence. The Protection of Women Against Domestic Violence Act

---

<sup>4</sup> Exhibit 3, National Documentation Package, 17 July 2020, Item 5.9: Country Policy and Information Note. India: Women fearing gender-based violence. Version 2.0. United Kingdom. Home Office. July 2018.

<sup>5</sup> Exhibit 3, NDP India, Item 5.2: Domestic violence against women; legislation, state protection and services available; whether victims have recourse to the law; support services available to victims of domestic violence. Immigration and Refugee Board of Canada. June 18, 2020.

<sup>6</sup> Exhibit 3, NDP India, Item 5.2: Domestic violence against women; legislation, state protection and services available; whether victims have recourse to the law; support services available to victims of domestic violence. Immigration and Refugee Board of Canada. June 18, 2020.

<sup>7</sup> *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, 103 D.L.R. (4th) 1, 20 Imm. L.R. (2d) 85.



came into force in 2006 and enables victims of domestic violence to seek interim protection and residence orders, as well as compensation and maintenance. The Act protects women not only from abuse by a spouse but also members of the spouse's family. Its definition of violence against women encompasses physical, sexual, psychological, verbal, and economic abuse.<sup>8</sup>

[31] Despite legislative advances, however, the objective evidence indicates that there are barriers to justice for women and persistent gaps in enforcement. For example, in 2017 the Supreme Court weakened the Protection of Women Against Domestic Violence Act by requiring that complaints be initially assessed by "family welfare committees."<sup>9</sup>

[32] Moreover, sources indicate that the prosecution and punishment for crimes committed against women is low.<sup>10</sup> Sources attribute this to lack of capacity, lack of resources, and widespread corruption, all of which is compounded by patriarchal attitudes.<sup>11</sup>

[33] According to the United Nations Special Rapporteur, deeply entrenched patriarchal attitudes of police officers, prosecutors, judicial officers and other relevant civil servants contribute to victims not reporting, withdrawing complaints, and not testifying. Few police stations have specialized women's mechanisms to address the concerns of women and to provide the assistance and protection that is required during the investigation phase. Notably:

Fair trial rights, equality before the law and equal protection of the law were affected by numerous challenges, beginning with the reporting of cases of violence against women to the police. Many interlocutors said that victims were often discouraged from reporting to the police and that many women did not file a complaint owing to fear of reprisals or lack of guarantees of adequate shelter and access to livelihoods. Informal dispute settlement alternatives are often sought, allegedly by police, family members or community leaders. Many interlocutors described the complete or partial absence of legal, housing, security and financial assistance measures for victims. To be able to officially report complaints

---

<sup>8</sup> Exhibit 3, NDP India, Item 5.9: Country Policy and Information Note. India: Women fearing gender-based violence. Version 2.0. United Kingdom. Home Office. July 2018.

<sup>9</sup> Exhibit 3, NDP India, Item 5.9: Country Policy and Information Note. India: Women fearing gender-based violence. Version 2.0. United Kingdom. Home Office. July 2018.

<sup>10</sup> Exhibit 3, NDP India, Item 5.9: Country Policy and Information Note. India: Women fearing gender-based violence. Version 2.0. United Kingdom. Home Office. July 2018.

<sup>11</sup> Exhibit 3, NDP India, Item 5.2: Domestic violence against women; legislation, state protection and services available; whether victims have recourse to the law; support services available to victims of domestic violence. Immigration and Refugee Board of Canada. June 18, 2020.

and continue throughout the often lengthy judicial process in safety and with an adequate standard of living is not an option for many women.<sup>12</sup>

[34] Amnesty International reports that women were not adequately protected from sexual and domestic violence, harassment and discrimination.<sup>13</sup> Human Rights Watch reports that women seeking justice face significant barriers, including police refusal to register cases, victim blaming, intimidation and violence, and lack of witness protection.<sup>14</sup> The same report mentions that “police failed to properly investigate the crimes, stalled investigations, ignored procedures, and filed criminal cases against witnesses to harass and intimidate them” and highlights a “continued lack of accountability for police abuses and the failure to enforce police reforms.”<sup>15</sup>

[35] Given the above, sources report that only 3 percent of women who experienced physical or sexual violence in 2015 and 2016 sought help from the police.<sup>16</sup>

[36] In this case, the claimant testified that she did approach the police for help on two occasions, when she found out that her ex-husband and his family had defrauded her and when her ex-husband and his family refused to allow her to access her home following her return to India from Canada. She testified that the police never took any action to investigate or follow up on the complaints and she suspects that this is because her ex-husband’s brother-in-law and uncle are both members of the police force in Khanna. The claimant is not sure what either of their ranks are but believes that they have both have high ranks.

[37] In view of both the objective evidence and the claimant’s testimony, I find that state protection for gender-based violence in India is inadequate. While the government has made efforts to address violence against women, these efforts have not been effective on the operational level. The objective country information evidence demonstrates that given

---

<sup>12</sup> Exhibit 3, NDP India, Item 5.9: Country Policy and Information Note. India: Women fearing gender-based violence. Version 2.0. United Kingdom. Home Office. July 2018.

<sup>13</sup> Exhibit 3, NDP India, Item 2.2: India. Human Rights in Asia-Pacific: Review of 2019. Amnesty International. 29 January 2020. ASA 01/1354/2020,

<sup>14</sup> Exhibit 3, NDP India, Item 2.3: India. World Report 2020: Events of 2019. Human Rights Watch. January 2020.

<sup>15</sup> Exhibit 3, NDP India, Item 2.3: India. World Report 2020: Events of 2019. Human Rights Watch. January 2020.

<sup>16</sup> Exhibit 3, NDP India, Item 5.2: Domestic violence against women; legislation, state protection and services available; whether victims have recourse to the law; support services available to victims of domestic violence. Immigration and Refugee Board of Canada. June 18, 2020.

prevailing patriarchal attitudes, state protection is not readily accessible or available to women, particularly women who are marginalized and who do not have external support and financial resources. Furthermore, the evidence demonstrates that the claimant in this case has not been able to access meaningful assistance from the authorities in Khanna given the fact that two members of her ex-husband's family hold positions in the police force. I therefore find that the presumption of state protection has been rebutted in the case of the claimant.

### **Internal Flight Alternative**

[38] The final issue is whether the claimant has a viable internal flight alternative (IFA) in India. In order to determine whether an IFA exists, I must assess whether there is any location in India in which the claimant would not face a serious possibility of persecution and whether it would be reasonable to expect her to move there.<sup>17</sup> In this case, Delhi was proposed as a possible IFA location.

[39] However, I find it is objectively unreasonable to expect the claimant to relocate to Delhi or indeed anywhere else in India due to the stigmatization and marginalization that she would face as a divorced woman with limited education and no work experience.

[40] The National Documentation Package indicates that women in India are exposed to a "continuum of violence" throughout their lives.<sup>18</sup> Government data indicates that a woman is raped in the country approximately every twenty minutes.<sup>19</sup> The United Nations Special Rapporteur has noted that there is a "general sense of insecurity for women in public spaces" and that women are "easy targets" for attacks, including while using public transportation or sanitation facilities or on the way to collect wood and water.<sup>20</sup> Similarly, according to statistics

<sup>17</sup> *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589 (C.A.); (1993), 22 Imm. L.R. (2d) 241 (F.C.A.).

<sup>18</sup> Exhibit 3, NDP India, Item 5.3: Tackling Violence Against Women: A Study of State Intervention Measures (A comparative study of impact of new laws, crime rate and reporting rate, Change in awareness level). Bharatiya Stree Shakti. March 2017.

<sup>19</sup> Exhibit 3, NDP India, Item 5.3: Tackling Violence Against Women: A Study of State Intervention Measures (A comparative study of impact of new laws, crime rate and reporting rate, Change in awareness level). Bharatiya Stree Shakti. March 2017.

<sup>20</sup> Exhibit 3, NDP India, Item 5.9: Country Policy and Information Note. India: Women fearing gender-based violence. Version 2.0. United Kingdom. Home Office. July 2018.

released by India's National Crime Records Bureau, in 2018 there were 378,277 reported crimes committed against women which translates into a crime rate of 58.8 percent.<sup>21</sup>

[41] Given this culture of patriarchy, discrimination, and gender-based violence, it is particularly difficult for women to establish independent households. The UN Special Rapporteur on adequate housing indicates that women, especially single women, face multiple forms of discrimination in access, control, ownership and inheritance of housing.<sup>22</sup> Likewise, according to a Response to Information Request (RIR), single women in India face "serious struggles with basic life issues such as getting a flat on rent or being taken seriously as a start-up entrepreneur or getting a business loan." The RIR states that "nobody wants to rent to single women" and documents how single women may need to visit numerous apartments in order to secure one and face intrusive questioning and prejudice in the rental process. Single women often have to depend on the good will of a family member, including in-laws, parents, and brothers in order to provide for them and to help them to obtain housing.<sup>23</sup>

[42] In this case, the claimant has a grade-six level education. She has never held a job outside of the home and she does not have any relatives that she can live with in Delhi. Her only remaining family member is her elderly mother. Based on the evidence before me, I find on a balance of probabilities that the conditions the adult female claimant would face should she attempt to relocate to Delhi could jeopardize her life and her safety. I therefore find that she does not have a viable internal flight alternative within India.

---

<sup>21</sup> Exhibit 3, NDP India, Item 5.2: Domestic violence against women; legislation, state protection and services available; whether victims have recourse to the law; support services available to victims of domestic violence. Immigration and Refugee Board of Canada. June 18, 2020.

<sup>22</sup> Exhibit 3, NDP India, Item 2.8, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, on her mission to India. United Nations. Human Rights Council. 10 January 2017. A/HRC/34/51/Add.1.

<sup>23</sup> Exhibit 3, NDP India, Item 5.11: Situation of single women and of women who head their own households without male support, including access to employment, housing and support services, particularly in Delhi, Mumbai, Chandigarh and Bengaluru. Immigration and Refugee Board of Canada. 3 May 2019.

**CONCLUSION**

[43] For these reasons, I find that the claimant is a Convention refugee and I accept her claim.

*(signed)*

**Megan Kammerer**  
\_\_\_\_\_  
**Megan Kammerer**

**April 12, 2021**  
\_\_\_\_\_

**Date**

**Certified True Copy**  
**Copie Certifiée Conforme**



\_\_\_\_\_  
IRB Representative  
Représentant de la CISR