



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: XXXXXX  
XXXXXX

## NOTICE OF DECISION

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

XXXXXX

Member

**In the claims for refugee protection of:**

**Date of birth:**

**UCI:**

XXXXXX  
XXXXXX

XXXXXX  
XXXXXX


XXXXXX  
XXXXXX

The claims were heard on April 16, 2024 and June 5, 2024.

The Refugee Protection Division determines that **the claimants are persons in need of protection and therefore accepts the claims.**

The reasons for the decision are attached.

**Certified True Copy  
Copie Certifiée Conforme**

  
IRB Representative  
Représentant de la CISR

June 25, 2024

RL, Registry Officer

For the Registrar

Tel: 1-866-787-7472



RPD File / Dossier de la SPR : XXXXXX  
XXXXXX  
UCI / IUC: XXXXXX  
XXXXXX

Private Proceeding / Huis Clos

**Reasons and Decision – Motifs et décision**

<b>Claimant(s)</b>	XXXXXX XXXXXX	<b>Demandeur(e)s d'asile</b>
<b>Date(s) of hearing</b>	April 16, 2024 and June 5, 2024	<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 and reasons</b>	June 25, 2024	<b>Date de la décision et des motifs</b>
<b>Panel</b>	XXXXXX	<b>Tribunal</b>
<b>Counsel for the claimant(s)</b>	Simrit Birdi	<b>Conseil(s) du (de la/des) demandeur(e)s d'asile</b>
<b>Designated representative</b>	XXXXXX	<b>Représentant(e) désigné(e)</b>
<b>Counsel for the Minister</b>	N/A	<b>Conseil du (de la) ministre</b>

**Certified True Copy**  
**Copie Certifiée Conforme**  
**REASONS FOR DECISION**

  
IRB Representative  
Représentant de la CISR

[1] Principal claimant (PC) **XXXXXX**, and minor claimant (MC) **XXXXXX**, citizens of India, claim refugee protection pursuant to sections 96 and 97(1) of the Immigration and Refugee Protection Act (IRPA).

[2] In coming to this decision, I have taken the *Chairperson's Guideline 4: Gender Considerations in Proceedings Before the Immigration and Refugee Board* into consideration. This Guideline addresses the challenges women and gender-diverse individuals may face in presenting their cases before the Board and I was mindful of these issues in coming to a decision in this claim.

[3] The PC was appointed as the designated representative for the MC at the outset of the hearing.

**DETERMINATION**

[1] For the reasons that follow, I find that the claimants are Persons in Need of Protection, pursuant to section 97(1) of the Act.

**ALLEGATIONS**

[4] The claimants' full allegations can be found in their Basis of Claim forms and narrative in Exhibit 2. Summarized briefly, the claimants are mother and son who fear harm from the PC's brother-in-law and his two sons (MC's uncle and cousins, referred to as "N and sons") based on the MC's ability to reclaim his portion of a family inheritance.

[5] The PC married her husband in 1992. The PC's father-in-law had passed and left his carpentry business and land in equal parts to his six sons, including the PC's husband. N, the eldest brother, made moves to keep the entire inheritance and excluded the PC's husband from

his portion; by the time the PC married him, her husband was completely cut off from the inheritance. In 1998, the PC's husband left India to work in Dubai.

[6] The PC and her two daughters continued to live with her husband's family, where they were mistreated and forced to be subservient to other family members. In 2006, the PC and her husband purchased a home in Jalandhar, where her family is located, and moved there with her children. Later that year her son, the MC, was born.

[7] The birth of the MC signalled a male in the family who could claim his portion of the inheritance. N and his sons started to harass the claimants, coming to their home, and threatening to kill the MC if he tried to claim his portion of the inheritance.

[8] In 2014, the PC and her husband separated informally but remained married legally. In 2015, the PC purchased a new home in Jalandhar and moved, hoping to hide from N and his sons. She also took out a business loan and started a business, a clothing store.

[9] In June 2018, the claimants went to Dubai to visit the PC's husband and explore the option of living there safely, but the PC's husband refused to see them and did not allow them to stay. In July 2018, N and his sons found their new home and continued to harass them, banging on the doors, and making threats. The PC tried to file a report with the police, but they wouldn't file the report due to it being a family matter. N found out about the police report and came back to the claimants' home, threatening that if they ever go back to the police, he will kill them.

[10] The PC applied for a visitor's visa to seek safety for herself and her son in Canada. In 2019, the PC went to Canada on her own to see if it would be safe to relocate there and returned about six months later. The claimants then returned to Canada in November 2021 when COVID restrictions eased and made their claim in November 2022 when they heard about the process from a lawyer.

[11] Since the claimants arrived in Canada, N and his sons have visited their home and tried to take the PC's daughters back with him against their will until a neighbor intervened. They also

told the PC's daughter that N gave the claimants' photos to the airport police, and if they try to return to India they'll get arrested at the airport.

[12] All of N's other brothers have now left India permanently, meaning the claimants' family are the only ones still in India posing a threat to the inheritance for N and his sons. One brother, P, tried to make a claim to the inheritance, but soon after his son got into a serious car accident under mysterious circumstances. After the son was released from hospital, P and his family left for Australia and have not returned.

## ANALYSIS

### Identity

[13] I find that the claimants have established their personal identities and identities as nationals of India on a balance of probabilities by the documents provided, including their Indian passports.

### Nexus

[14] The Federal Court of Canada has held the victims of crime, corruption, and vendettas, are generally unable to establish nexus to the Convention for refugee protection. I find, on a balance of probabilities, that the fear which the claimants allege to face in India is not linked to their race, nationality, religion, real or imputed political opinion or membership in a particular social group. Instead, the claimants are being targeted because of a long-standing family feud with N and his sons, relating to the possibility that the MC will try to claim his portion of the family inheritance. The claimants are being targeted based on a personal vendetta. Accordingly, having found no nexus to the Convention in these claims, they are being assessed under section 97(1) of the Act.

[15] I note that counsel in this claim suggested a nexus to particular social group for the claimants in this case, namely gender for the PC and inheriting male for the MC. As for the PC, I find on a balance of probabilities that the harm she faces is not due to her gender, nor is it particularly exacerbated by her gender; it is because of a family vendetta, and particularly

because she is the parent to a potential inheritor of the family inheritance. I note that in this case, the PC owned, purchased, and sold properties under her name while living in India, took out her own business loan, and ran a successful business on her own before coming to Canada, all while her husband was living in Dubai. As for the MC, I note that the federal court has upheld that disputes over inheritance and inheritors do not constitute a nexus to the Convention.<sup>1</sup>

## **Credibility**

[16] When a claimant swears to the truth of certain allegations, the allegations are presumed to be true unless there is reason to doubt their truthfulness.<sup>2</sup> I note that this presumption applies to facts and statements of facts, not to speculations and inferences drawn from those facts. In this case, I found the claimants to be generally credible, consistent, sincere, and forthright in their testimony. The PC spoke with clarity and emotion about the instances of harm she and her family have experienced, and the frustrations of her husband's lack of effort and interest to the difficulties of his family while working and living in Dubai. She spoke to why N and his sons would not want to let this go, and the importance of the inheritance, and stated that N was shot at once several years ago and since then he always carries weapons with him, including guns. She spoke about the connections N has within police and government, because when living in his home she was forced to serve tea frequently when N would have visits from police, and because when she relocated in Jalandhar N did not find her until shortly after she changed her address on her Aadhaar card, indicating he has connections to view that information somehow.

[17] The claimants also submitted the following documents into evidence to support their allegations:

- i. A copy of the business card and invoices for the PC's company in Jalandhar, a clothing store;
- ii. Various documents on the purchase and sale of the claimants' homes in Jalandhar, listed and owned under the name of the PC;
- iii. An affidavit from the PC's two daughters, the family friend who took care of the PC's children, and a neighbor who witnessed the attempted kidnapping of the PC's daughters, and the PC's husband;
- iv. A photo of N holding 2 guns, one handgun and one large rifle; and

v. Country conditions documents on honour killings and ancestral property.

[18] I give high weight to the documents submitted, and I find them to be authentic and probative in establishing, on a balance of probabilities, the credibility of the claimants' core allegations.

[19] I note here that the PC stated on multiple occasions that she firmly believes in the veracity of the threat that she and the MC would get arrested at the airport because of N's threat to her daughters. While I find, on a balance of probabilities, that this threat did happen, I find the veracity of the risk to be speculative. The claimants were unable to present any evidence as to why N and his sons might have the required connections with police, customs, and airport staff at the federal level to have the claimants placed on a list to arrest them on arrival, nor does the NDP present any objective evidence of this taking place in other circumstances. The claimants have never had trouble with the police before and have no reason to believe the police are looking for them or investigating them for any crime, despite N having connections with the police. I find, on a balance of probabilities, that while the claimants do face a genuine risk in India from N and his sons, they do not face a risk of being arrested on arrival at the airport.

[20] I also accept the central tenets of the claimant's case as outlined in the allegations section above. In short, I accept that the claimants have faced continuous threats of harm from N and his sons, due to the possibility that the MC can claim his portion of the family inheritance, even though the claimants have never tried to claim any portion of the inheritance. N and his sons have made many threats to the lives of the claimants and tried to kidnap the PC's daughters on at least one occasion.

**Section 97(1) risk:**

[21] Pursuant to s. 97(1) of the IRPA, a person in need of protection is a person in Canada whose removal to their country of nationality would subject them personally to a danger, believed on substantial grounds to exist, of torture, or to a risk to their life or to a risk of cruel and unusual punishment or treatment.

[22] There is a two-step process for determining whether the claimant would be subjected personally to a risk to life or a risk of cruel and unusual treatment or punishment that is not faced generally by others. First, the claimant must establish, on balance of probabilities, that they face a future risk to life or a risk of cruel and unusual treatment or punishment if returned to their country of nationality. It is only after a finding that there is a risk that a decision-maker must continue to consider whether that risk is one faced generally by others.

[23] Having found the claimants to be credible witnesses, I therefore accept that the claimants, along with their immediate family, have been continuously and personally targeted by N and his sons, due to the possibility that the MC will try to claim his stake in the family inheritance, including properties and a business.

[24] I note that in *Sanchez v Canada (Citizenship and Immigration)*,<sup>3</sup> the Federal Court of Appeal held that “claimants who are able to make reasonable choices and thereby free themselves of a risk of harm must be expected to pursue those options.” This principle does not apply where the choice would involve a deprivation of fundamental human rights.<sup>4</sup> Generally, this would include the relinquishment of inheritance rights. A Quick Response<sup>5</sup> from the Research Directorate disclosed in this file also discusses the relatively simple process to legally relinquish an inheritance. There are, however, processes by which the inheritor can cancel the relinquishment, particularly in the first three years. This can be done for specific reasons, for example, coercion.

[25] In this case, however, the claimants have at no point attempted to acquire the inheritance, or ever stated they would attempt to acquire the inheritance in the future. The PC’s husband, the original inheritor, has also never attempted to acquire his share in the inheritance. Because the claimants have faced continuous harm and threats of harm without ever attempting to acquire the inheritance, I find, on a balance of probabilities, that giving up the inheritance would not stop N and his sons from harming the claimants, particularly because that document is revocable within the first three years of issuance. I find that N and his sons would still view the claimants as a threat due to the potentiality that the MC could make a claim at some point in the future, which was the cause of N’s threats and harm starting from when the MC was a young child, causing him to make threats to their lives, attempt to kidnap family members, and attempt to break into



their home on many occasions. Even with the claimants living in Canada, N and his sons have continued to threaten the PC's two daughters, attempting to kidnap them on one occasion. I find that, on a balance of probabilities, this would continue regardless of the MC processing the document to relinquish his portion of the inheritance.

[26] The claimants further presented several newspaper articles<sup>6</sup> speaking to the vicious nature of internecine disputes among family members relating to land ownership. In each of the reported articles the dispute had ended with the murder of one or more of the inheritors by one or more of members of the family to secure access to inherited land or other items/funds. The articles report on incidents that took place in various states throughout India and are reportedly on the rise.

[27] In summary, I find that on a balance of probabilities the claimants have faced violence and threats to their lives on multiple occasions at the hands of N and his sons. I find the violence and threats they and their family members have experienced was not randomized, but targeted and stated that it was targeted during the time of those events. Others in their community, or others in India, are not facing this risk from N and his sons.

[28] I therefore find, on a balance of probabilities, that the claimants would face a personalized risk to life and of cruel and unusual punishment and treatment should they return to India.

### **State Protection**

[29] There is a presumption that the state is capable of protecting its citizens except in situations where the state is in complete breakdown.<sup>7</sup> A claimant who alleges that state protection is not available must persuade the Board that, on a balance of probabilities, the evidence establishes that state protection is inadequate.<sup>8</sup> In this case, I have found that the claimants, along with the country evidence, have provided clear and convincing evidence of the state's inability to protect.

[30] The PC testified that she did go to the police on two occasions to seek police support, and on both occasions the police refused to take her complaint due to the nature of the complaint being a family matter. After the PC went to police in July 2018, N and his sons found out about the report, and as a result broke into the claimants' home and threatened to kill all of the PC's children if she ever went to police again.

[31] The documentary evidence indicates that the police in India are regarded as "the most corrupt in the world";<sup>9</sup> that political figures "often shape the conduct of enquiries"<sup>10</sup>; that the police are known to sometimes refuse to register victims complaints, thus thwarting justice<sup>11</sup>; and that the Indian police sometimes issue false charges against innocent civilians where they perceive it advantageous to do so.

[32] Further, the United Kingdom's Home Office<sup>12</sup> notes the following on corruption and the rule of law in India.

The rule of law in India has been massively undermined by political corruption. Officeholders who engage in corruption often slip through political, legal or procedural loopholes and are not effectively persecuted.

Corruption continues to be prevalent particularly in sectors such as the police, the judiciary, in public services and in public procurement. Corruption is prevalent at all levels and continues to affect citizens in many of their interactions with institutions.

Despite government efforts to address abuses, a lack of accountability for official misconduct persists at all levels of government, contributing to widespread impunity. Investigations and prosecutions of individual misconduct cases took place, but lax enforcement, a shortage of trained police officers, and an overburdened and under-resourced court system contribute to a low number of convictions.

There is a common perception that the police are corrupt and cannot be trusted. In some cases, police officers are involved in crime or are bribed to turn a blind eye.

[33] A report by the United States Department of State<sup>13</sup> indicates the following regarding in-custody treatment.

Significant human rights issues included credible reports of: unlawful and arbitrary killings, including extrajudicial killings by the government or its agents; torture or cruel, inhuman, or degrading treatment or punishment by police and prison officials; harsh and life-threatening prison conditions; arbitrary arrest and detention...

There were reports the government or its agents committed arbitrary or unlawful killings, including extrajudicial killings of suspected criminals and terrorists. There were reports that prisoners or detainees were killed or died in police and judicial custody.

There were reports that police beatings of prisoners resulted in custodial deaths... There were reports of abuse in prisons by guards and inmates, as well as reports of rape of detainees by police.

[34] In consideration of all the above-noted evidence, I conclude the presumption of state protection has been rebutted in these particular conditions.

### **Internal Flight Alternative**

[35] To find a viable IFA, I must be satisfied that (1) there is no serious possibility of the claimant being persecuted or, on the balance of probabilities, a danger of torture or subjected to a risk to life or cruel and unusual treatment or punishment in the proposed IFA and (2) that the conditions in that part of the country are such that it would be reasonable in all the circumstances, including those particular to the claimant, to seek refuge there.<sup>14</sup>

[36] I proposed the potential IFAs of Delhi or Kolkata. For the reasons that follow, I find that the claimants do not have a viable IFA.

[37] The PC testified that when she purchased a new home in Jalandhar and moved to escape N and his sons, there was a period where N and his sons didn't know where the claimants lived and didn't come to bother them. However, when the claimant ultimately changed her formal address, including updating her Aadhar card and her address with local police as process dictates, N and his sons appeared at her new home shortly after. They again threatened the lives of the claimants and the PC's two daughters and broke into their home soon after. The PC stated that this is why she believes N and his sons have contacts to access her updated address either with police or with her Aadhar card, and if they were to return and change their address again, N and his sons would find out through those same connections.

[38] Due to the capacity of N and his sons to find out where the claimants moved to on two previous occasions, I find they have the means to locate the claimants throughout India. N and

his sons have also shown their continued motivation to harm the claimants, attempting to kidnap the PC's two daughters once and coming to their house to threaten them several other times since the claimants left India. I further note that it would be considered unreasonable for the claimants to return and hide their location from their other immediate family members and close friends in order to stay safe in the IFA location. I find, on a balance of probabilities, that the agents of harm have both the means and motivation to locate and harm the claimants throughout India.

[39] As I find the test for an IFA fails on the first prong, I find it unnecessary to consider the second prong.

[40] In summary, I find the risk of harm for the claimants persists throughout the country, and there is no viable internal flight alternative available.

## CONCLUSION


[41] I conclude that the claimants are Persons in Need of Protection according to s. 97 of IRPA and I therefore accept their claims.

Certified True Copy  
Copie Certifiée Conforme

(signed)

XXXXXX

June 25, 2024

  
IRB Representative  
Représentant de la CISR

<sup>1</sup> *Malik v. Canada (Citizenship and Immigration)*, 2019 FC 955 (CanLII); X (Re), 2020 CanLII 123631 (CA IRB).

<sup>2</sup> *Maldonado v. Canada (Minister of Employment and Immigration)*, [1980] 2 F.C. 302, 31 N.R. 34 (C.A.).

<sup>3</sup> 2007 FCA 99.

<sup>4</sup> *Sanchez v. Canada (Citizenship and Immigration)*, 2007 FCA 99; *Malik v Canada (Citizenship and Immigration)*, 2019 FC 955; *Singh v. Canada (Citizenship and Immigration)*, 2021 FC 595.

<sup>5</sup> Exhibit 6.

<sup>6</sup> Exhibit 4.

<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.

<sup>8</sup> *Flores Carrillo, Maria Del Rosario v. M.C.I. (F.C., no. IMM-822-06)*, O'Reilly, March 26, 2007, 2007 FC 320. Reported: *Flores Carrillo v. Canada (Minister of Citizenship and Immigration)*, [2008] 1 F.C.R. 3 (F.C.); *Flores Carrillo, Maria Del Rosario v. M.C.I. (F.C.A., no. A-225-07)*, Létourneau, Nadon, Sharlow, March 12, 2008, 2008 FCA 94. Reported: *Flores Carrillo v. Canada (Minister of Citizenship and Immigration)*, [2008] 4 F.C.R. 636 (F.C.A.).

<sup>9</sup> National Documentation Package, India, 31 May 2024, tab 10.14: India's Police Forces Turning Into Private Armies Of Elected Rulers. Article 14. Vipul Mudgal. 23 April 2021.

---

<sup>10</sup> National Documentation Package, India, 31 May 2024, tab 10.10: Country Policy and Information Note. India: Actors of Protection. Version 2.0. United Kingdom. Home Office. June 2023.

<sup>11</sup> National Documentation Package, India, 31 May 2024, tab 10.10: Country Policy and Information Note. India: Actors of Protection. Version 2.0. United Kingdom. Home Office. June 2023.

<sup>12</sup> National Documentation Package, India, 31 May 2024, tab 10.10: Country Policy and Information Note. India: Actors of Protection. Version 2.0. United Kingdom. Home Office. June 2023.

<sup>13</sup> National Documentation Package, India, 31 May 2024, tab 2.1: India. Country Reports on Human Rights Practices for 2023. United States. Department of State. 22 April 2024.

<sup>14</sup> *Rasaratnam*, [1992] 1 F.C. 706 (C.A.).