

Indian APSO Claims

Eliciting Testimony

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Roadmap

- Preliminary considerations
- Identity of persecutor
- Possession of protected characteristic
- Seriousness of harm and state action
- Internal relocation
- Chen/other serious harm
- CAT

Areas for emphasis

- Credibility
- Burden of proof
 - Possession
 - Internal relocation
- This presentation will provide strategies, suggested lines of inquiry, and samples for eliciting testimony in these areas.

This will take too long. I have 5 cases.

- In all cases we spend additional time eliciting testimony on the aspects of the claim that are outcome determinative.
- Be strategic in where we devote our interview time.

Standard of Proof in CF

- CF Standard of proof: significant possibility
- EXCEPT for credibility
- Applicants must provide specific facts to meet their burden.
- Statements of belief on their own are not enough.

Credibility vs. Lack of Specific Facts

- **Credibility:** First you said they only used hands and feet to beat you, now you say they used hockey sticks.
- **Specific Facts:** What makes you believe that supporters of the BJP could find you anywhere in India?

Persecutor identity: Specific Facts

- Recognize the attacker? Locals? Did they know your name? How know your name?
- Were attackers party supporters? Party members? Gov't officials?
 - What makes you think that?
 - What did they do or say that makes you think that they were X?
- COI: Some evidence of politically-motivated mob violence but limited evidence that political parties or government targets individual, low-level party workers.
 - BUT absence of reporting doesn't mean events don't occur. Applicant can meet their burden through testimony.

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Persecutor identity: Specific Facts

I'm sorry to hear that sir. My question was who was it that harmed you exactly, who were these people?	Congress workers
How do you know the people who hurt you were Congress workers?	Their logos were on their shirts
When you say workers what do you mean that they were workers?	They work for the present government
How do you know based on their shirts that they work for the government?	It was a logo on the shirts
Was there something about the logo that makes you think they work for the government?	It was also written Congress party
Based on what you are telling me it sounds like you are telling me they were affiliated with a political party. What makes you think they work for the government?	I worked for the opposite party
Was there more you were going to say about that?	No
Was there anything else you saw or heard or knew that makes you think these people work for the government?	When they were beating me they said come to Congress party
Is there any other reason you think the people who beat you work for the government?	I'm sorry?
I was asking if there was any other reason you think the people who beat or threatened you work for the government?	Like I work for the party and they are also workers and they work for the party

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Possession of protected characteristic

- What level of detail can applicants reasonably be expected to provide?
 - Low-level worker vs. active member
- Most applicants claim to be low-level workers, attacked soon after began attending party events.
- Ask about personal experience rather than quizzing on party trivia.

Possession of protected characteristic

When did you start working for Mann Party?

When did you stop working for Mann Party?

Who introduced you to the party? How introduced to party?

What actions did you have to take to join the party?

What specifically inspired you to start working for Mann Party?

What does a “worker” mean? How is it different from “member?” Why are you distinguishing between “worker” and “member?”

What did you do to help the party?

What else? What else? Anything else? [get to “no”]

How many times did you [help at weddings/camps]?

Did you [help at weddings/camps] with other party workers? What were their names? Is there a reason you cannot remember?

What was purpose of these camps? How specifically did these camps help poor people?

When did you help at [weddings/camps]?

Where did [the weddings/camps] take place?

What specifically did you do at [wedding ceremonies/camps]? What else?

Explain in detail what you did to [build tent]? What else? Is there a reason you are unable to provide me with more detail?

Who told you what to do? How did you meet this person?

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Possession: Posters

How many times did you put up posters?

How many posters would you put up in an hour?

How many hours would you work putting up posters in a given day?

Did you do this on foot, bike, car, or bus?

Did you put up posters with other party workers? If so, who?

How many people would you do this activity with?

Where did you put up posters?

How many villages?

How far from your village?

Where in the village would you put the posters?

What would you use to put up the poster? What did the posters say?

What did they look like?

How big were the posters?

How would you get the posters?

Who did you get them from?

How did you know to get them from this person?

How many posters would they give you?

How did you carry them?

Possession: Foundation-laying

Q: What party did you work for?

A: Commonly known as the Mann party.

Q: What is the full or formal name of the Mann party?

A: I do not know, I was a low-level worker. We called it the Mann party.

Q: What was your role as a worker?

A: I helped at camps and hung posters.

Q: Apart from helping at camps and hanging posters, did you do anything else for the party?

A: No

Q: How many camps did you work at?

A: 4

Q: Apart from those 4 camps, did you ever do any other work for the party?

A: No

Possession: Moving off script

Q: How would you hear when camps were going to be held?

A: It was known in the village.

Q: But how were you specifically told when to arrive to help?

A: Somebody told me.

Q: Was it the same person who told you when to arrive every time?

A: Yes

Q: Who was this person?

A: I don't know.

Q: How would they contact you?

A: They would just tell me.

Q: Can you give more details how you were contacted? Or who contacted you?

A: No.

Q: You said you participated in 4 camps but can't provide me with much detail about who contacted you or how you were contacted. Are there any reasons why you cannot provide more detail?

A: I was just a low-level worker.

Possession: Lack of detail

Q: What did you do when you helped at camps?

A: I just helped.

Q: Yes but tell me how exactly you would help at the camps?

A: I did what needed to be done. I cleaned.

Q: What was the purpose of the camps?

A: To help poor people.

Q: I need you to provide more detail in your answers to my questions. Please explain to me how the camps helped poor people?

A: The camps did good things for poor people.

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Possession: Lack of detail

Q: Can you provide any additional details about how the camps helped poor people or what you did at the camps?

A: The camps were to help people and I did whatever was needed.

Q: You told me that you were a worker for the party for one year, however you have not been able to provide detailed testimony about how the camps helped the poor or what your duties were at the camps. Are there any reasons why you are unable to provide more details?

A: I was only a worker. I was not a member.

Q: How are the roles of a worker different from the roles of a member?

A: I do not know.

Severity of Harm

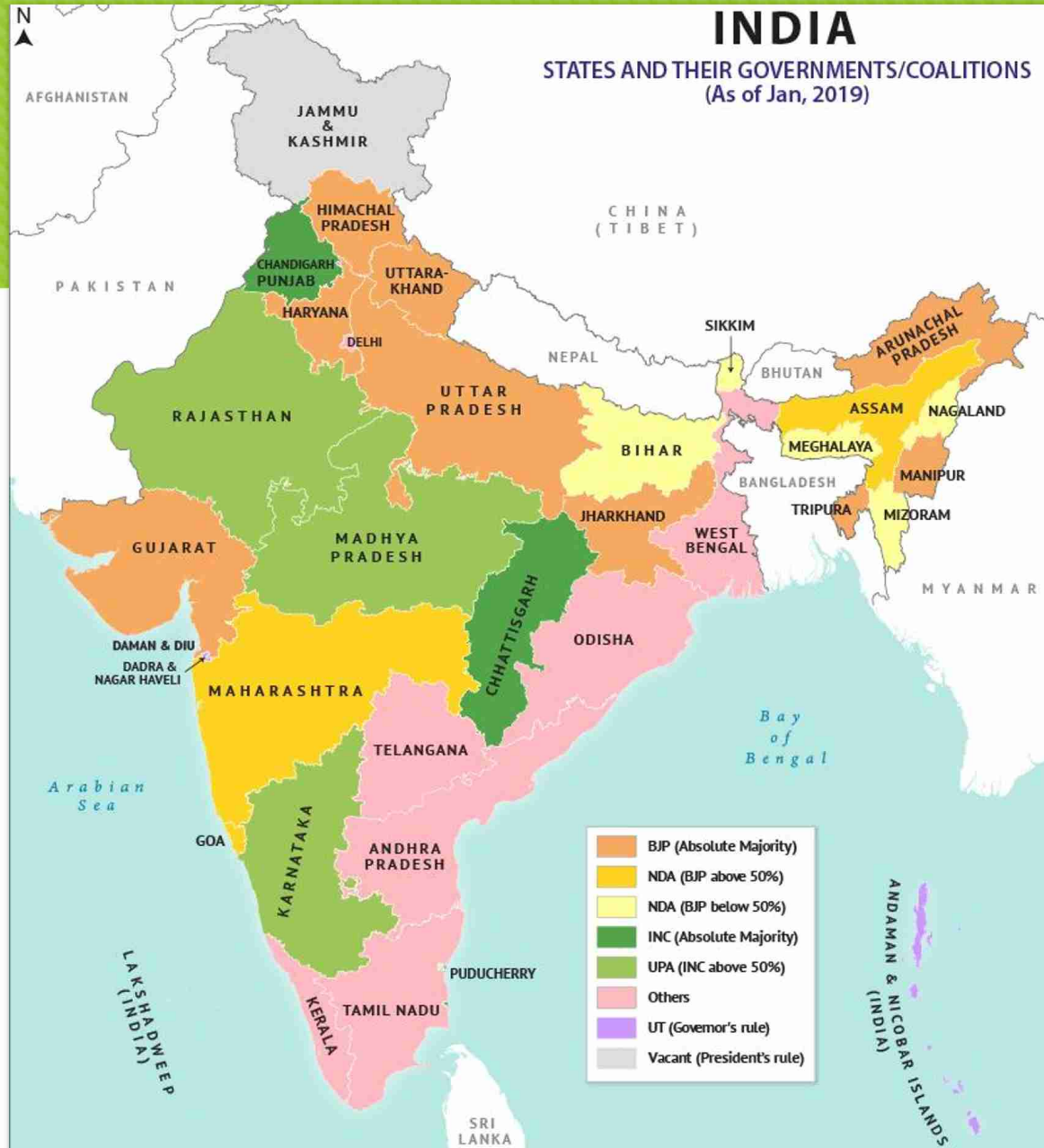
- How serious was harm the applicant suffered?
- Describe medical treatment, if any?
- If threatened, why take threats seriously?

State action

- Eliciting testimony about police reporting is opportunity to probe credibility and informs internal relocation and CAT analysis.
 - Apart from refusal to take a report, any other interactions with police?
- COI: COI indicates that some groups fear harassment from police if they report (Muslims, LGBT, DV victims). However, we are not aware of any COI supporting the notion that police don't protect supporters of political parties.

Internal relocation: Avoid persecution

- If applicant establishes past persecution, burden shifts to DHS to establish that applicant able to internally relocate.
 1. Could applicant avoid future persecution by relocating?
 2. Would applicant's relocation be reasonable?
- Consider India COI and geography when eliciting testimony on internal relocation.
- Elicit specific facts that form the basis for applicant's belief that they could not relocate.
- Explore internal relocation to other state or city, including areas where local gov't controlled by another party.



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Internal relocation: Avoid persecution

- If attackers were local supporters, what makes you think that supporters elsewhere in India would target you? Did you try living elsewhere in India?
- Did attackers ever come to your house? If not, what makes you think they would look for you?
- Do you know other workers who relocated and were targeted? If not, why do you believe that you can't live elsewhere in India? Supporters ever come to your home?
- Consider COI related to localized nature of parties/intra-party communication if applicable.
- Keep in mind that party supporters may be present in states or cities controlled by another party.

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Internal relocation: Avoid persecution

Q: Could you live elsewhere in India and be safe from the Congress party supporters?

A: No. There are supporters of the Congress party all over the country.

Q: Before coming to the US did you try living in another part of India?

A: No

Q: Why did you not try living in another part of India before coming to the US?

A: My parents told me to come here.

Q: What do you think would happen to you if you lived in another part of India?

A: I do not know.

Internal relocation: Avoid persecution

Q: Do you know other Mann party workers who were attacked, lived elsewhere in India, and were attacked again?

A: No

Q: If you didn't try living elsewhere in India, and you don't know anybody who tried living elsewhere in India, what makes you think that you couldn't live elsewhere in India and be safe from Congress party supporters?

A: I don't know. My parents told me to come here so I came.

Q: I have reports that say that low-level workers of political parties, including the Mann party, generally aren't targeted for their political opinion. However, you told me that you can't live anywhere in India and avoid being targeted. Can you explain the difference between what I read in these reports and what you are telling me?

A: Congress supporters are everywhere and they could find me anywhere.

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Internal relocation: Avoid persecution

- Applicants often claim that it would be possible to trace them online through their ID. Explore the applicant's basis for believing that this happens.
 - Where did you hear that this could happen?
 - Explain how party supporters would find you online? Would know ID number?
- Who do you fear will track you through ID? Party supporters? Police?
- Do you know anybody who this happened to?
- Present COI if applicable.

Aadhaar card



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Internal relocation: Avoid persecution

Q: Why could you not live elsewhere in India?

A: They can track me through the Aadhaar ID.

Q: Who could track you through the Aadhaar ID?

A: The BJP supporters who attacked me.

Q: Can you explain how the BJP supporters would track you using your Aadhaar ID?

A: Everything is online.

Q: Earlier you told me you did not know whether the BJP supporters knew your name or ID number. I do not understand how they could track you through the Aadhaar ID. Can you please explain what makes you think that they could track you?

A: I do not know how it works but they could use the ID to find me online.

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Internal relocation: Avoid persecution

Q: Do you know anybody who was tracked through the Aadhaar ID?

A: No.

Q: What makes you think that the supporters could track you using this card?

A: I have heard that.

Q: Who did you hear that from?

A: I don't know, people. I have heard it.

Q: I have a report that says that the government authority that created the Aadhaar card says it is "technically impossible" to track people using the Aadhaar card. You said party supporters could track you using the Aadhaar card. Can you explain the difference between what you told me and what is written in this report?

A: I don't know how they could do it but I'm afraid they could do it.

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Internal relocation: Avoid persecution

Q: Apart from what we've talked about, are there any other reasons why you think you could not live elsewhere in India?

A: If I want to buy a SIM card or open a bank account, I need the Aadhaar card.

Q: I have reports that indicate that having an Aadhaar card is not required to buy a SIM card or open a bank account. You told me that it is required. Can you explain the difference between what I've read in the reports and what you're telling me?

A: I believe it is required for those things.

Q: Apart from what we've talked about, any other reasons why you could not live elsewhere?

A: I'm afraid to.

Internal relocation: Avoid persecution

Q: Why could you not live elsewhere in India?

A: I would have to register with the police.

Q: What do you mean when you say "register with the police?"

A: If I rent an apartment I have to tell the police and the BJP supporters would find out where I live.

Q: You told me that the people that attacked you are BJP supporters, not members of the government. If you register with the police, how would BJP supporters find out?

A: The police help the BJP.

Q: What have you seen or heard that makes you think that the police would pass information to BJP supporters?

A: When I went to report the attack to the police they told me they would not file a report because it was against the BJP.

Q. You told me that police did not even take your name or any information from you when you tried to file your complaint. Even if you registered with police, how would police know that you were the one who tried to file complaint against the BJP?

A: They are the government. They know everything.

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Internal relocation: Reasonableness

- Freedom of movement in India
 - Police are supposed to conduct a background check for new tenants in their jurisdiction. Insufficient resources to verify every new tenant.
 - Doesn't mean party supporters would have access to this information.
- Presence of different languages, religions, groups in various regions of India, particularly in cities.
- Explore last address (often Delhi for several weeks before leaving), location of family members, experiences living elsewhere in India.

Internal relocation: Reasonableness

Q: Other than b/c you think the BJP supporters could track you through the Aadhaar card, are there any other reasons why you cannot live elsewhere in India?

A: I only speak Gujarati. Where else could I live.

Q: Why could you not live in Mumbai, for example?

A: There are no Gujaratis in Mumbai.

Q: I have an [article](#) from the Times of India that says there are 3.5 million Gujaratis in Mumbai.

A: I do not know anybody in Mumbai.

Sample Checklist Analysis: Reasonableness

The record establishes that, under all the circumstances, it would be reasonable for the applicant to relocate within India. The applicant indicated that, aside from his fear of Congress Party members, there were no other reasons why he could not relocate within India. The applicant is a young man and in good health. He testified that he is able to work in construction and as a laborer. These are not geographically limited skills and would be transferable to other states in India. The applicant speaks Gujarati, a language spoken in cities and states outside the state of Gujarat. As such, it is reasonable to expect he could also relocate within India.

Chen-type Harm

- If an applicant has established past persecution and the presumption of WFF has been rebutted because the applicant can internally relocate, consider *Chen* and Other Serious Harm.
- Responses to questions we ask for other purposes can inform this consideration
- Was the past harm serious enough to constitute *Chen*-level harm?
 - Detailed testimony on harm suffered, including any lasting effects.
 - Consider applicant's testimony regarding treatment received after attack. Village doctor or extended hospital stay?

Sample *Chen* checklist analysis

There is also no significant possibility that asylum could be granted based on the severity of the past persecution. The applicant testified that that the worst incident of harm was when Congress party workers kicked, punched, and threatened him with death on February 28, 2018. His only injuries were bruises, for which he received an injection from the local village doctor. This is insufficient to establish a significant possibility that the harm he suffered was severe enough to warrant a grant of asylum in the absence of a well-founded fear. See *Matter of Chen*, 20 I&N Dec. 16 (BIA 1989).

Other Serious Harm

- Does the applicant fear any other serious harm not related to a nexus?
- Applicant's burden to establish OSH, so must provide specific facts
- Other than X, do you fear anything or anyone else in India?

What about CAT?

- Consider whether feared harm would amount to torture
- Consider internal relocation

Sample CAT analysis

The record does not establish a significant possibility that it is more likely than not the applicant will be subjected to severe pain or suffering in another state of India. While the applicant was harmed in Punjab and believes Congress party members could find him in another state and harm him, he did not provide any specific facts to support this belief. The Congress party members he specifically fears do not appear to know his name or even where he lived in Punjab as they never called him by name nor came to his home. Therefore, the evidence does not indicate they would locate him to harm him in other states of India. Moreover, he did not know anyone harmed by other Congress party members and country conditions reports “do not suggest that there exists a general risk in India of ill-treatment for members of the Shiromani Akali Dal (Amritsar/Mann) party.” Library of Congress, India: Feasibility of Relocation of Sikhs and Members of the Shiromani Akali Dal (Mann) Party.

<https://www.justice.gov/file/1068936/download>.

Recap

- Identity of persecutor
- Possession of protected characteristic
- Seriousness of harm and state action
- Internal relocation
- Chen/other serious harm
- CAT

Thank you!