

ABOUT ENSAAF

ENSAAF—a U.S.-based organization fighting impunity in India for state-sponsored human rights abuses—works to bring perpetrators to justice, investigates and exposes human rights violations, and organizes survivors to engage in advocacy. ENSAAF has four programs: Community Organizing, Documentation & Education, Legal Advocacy, and United Nations. ENSAAF, which means *justice* in many South Asian languages, acts to implement the international rights to knowledge, justice, and reparation.

ONGOING PROJECTS

Media and Archival Research: From 1985 to 1995, Punjab newspapers regularly reported on "encounters" between militants and police, giving numbers and names of people killed in "encounters." Indian security forces faked the vast majority of these "encounters," disguising extrajudicial executions. ENSAAF is currently researching the archives of Punjab daily newspapers from 1985 to 1995 and creating a record of reported encounters and names of victims.

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TORTURE AND TRAUMA EVALUATION STUDY IN PUNJAB

ENSAAF, Physicians for Human Rights & Bellevue/NYU Program for Survivors of Torture

To assess the physical and psychological impact of human rights violations on families of victims of disappearances in Punjab, ENSAAF organized a study by six health professionals from Physicians for Human Rights (PHR) and the Bellevue/NYU Program for Survivors of Torture (Bellevue). During ten days in late May and early June 2005, the research team interviewed 130 families in Amritsar, Punjab.

These families are part of the Punjab illegal cremations case proceeding before the National Human Rights Commission (NHRC) since 1996. The Committee for Information and Initiative in Punjab (CIIP) filed this case after the Punjab police disappeared human rights activist Jaswant Singh Khalra for his discovery of police abductions leading to secret cremations. In this case, by order of the Supreme Court, the NHRC is acting as a designated body of the Supreme Court with all of its powers. Thus, its decisions will serve as precedent for victims of state-sponsored human rights abuses all over India.



ENSAAF and the PHR/Bellevue research team at Harmandir Sahib in Amritsar city, Punjab

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ENSAAF AND ACLU FILE LAWSUIT TO PROTECT RELIGIOUS LIBERTY OF IMPRISONED ASYLUM SEEKER HARPAL SINGH CHEEMA

On May 18, 2005, the American Civil Liberties Union (ACLU), with ENSAAF and the law firm Wilson Sonsini Goodrich & Rosati, filed a lawsuit in federal court challenging restrictions on an asylum seeker's right to wear a religious head covering. The plaintiff, Harpal Singh Cheema, is a devout Sikh, imprisoned since 1997 while awaiting a decision on his asylum application.

"It is deeply troubling that a person seeking refuge from persecution can not only be locked up for years on end but also be deprived of the religious freedom one expects to find in America," said Robin Goldfaden, staff counsel with the ACLU Immigrants' Rights Project.

Fleeing persecution, Cheema, a human rights lawyer and political activist in India, escaped to the United States after enduring brutal torture at the hands of Indian authorities. Since 1993, his application for asylum and other immigration relief has been making its way through the immigration and federal courts.

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--Robin Goldfaden, ACLU Immigrants' Rights Project

While the Sikh faith requires men to cover their heads at all times, Yuba County Jail authorities will not permit Cheema to leave his bed with his head covered. "Confinement to bed should not be the price of complying with religious obligations," Goldfaden said.

Along with Yuba County Jail officials, the lawsuit names as defendants federal immigration authorities who are responsible for Cheema's detention. The federal government contracts with local facilities such as Yuba County Jail to house individuals who are detained pending the outcome of their immigration proceedings. U.S. Immigration and Customs Enforcement remains responsible for ensuring that each facility complies with national

detention standards. These standards include guidelines stating that immigration detainees should be allowed to wear religious head coverings.

Wearing a turban is one of the Sikh religion's central requirements. For Mr. Cheema, having his head uncovered is a deeply humiliating and defiling experience.

--Jaskaran Kaur, ENSAAF

The lawsuit charges that the restrictions on Cheema's religious practice violate religious freedom as guaranteed by the First Amendment and federal laws, including the Religious Land Use and Institutionalized Persons Act and the Religious Freedom Restoration Act. "At a time when the world is watching how America treats its detainees abroad, it is important that our government respect the fundamental rights of people detained in this country," said Margaret Crosby, an attorney with the ACLU of Northern California.

"Wearing a turban is one of the Sikh religion's central requirements," said Jaskaran Kaur, Executive Director of ENSAAF, a nonprofit organization working with survivors of human rights abuses from India. "For Mr. Cheema, having his head uncovered is a deeply humiliating and defiling experience." The daastar, as the Sikh turban is known, is a mandatory symbol of devotion to the faith, explained Kaur.

Representing Cheema are the ACLU Immigrants' Rights Project, ACLU of Northern California, ENSAAF and the law firm of Wilson Sonsini Goodrich & Rosati.

The case is *Cheema v. Chandless*, filed in the United States District Court for the Eastern District of California.

The Complaint

The complaint, available at <http://www.ensaaf.org/Cheema-complaint.pdf>, describes the Sikh religion and its requirements for Harpal Singh Cheema, an Amritdhari Sikh; Cheema's experiences of torture in Punjab and his immigration proceedings in the U.S.; his detention at Yuba County Jail and the restrictions he faces in wearing a headcovering; and Cheema's

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UPDATE ON HEARINGS IN THE PUNJAB ILLEGAL CREMATIONS MATTER

After its December 2004 hearing, the National Human Rights Commission (NHRC) held two hearings in the Punjab illegal cremations matter proceeding since December 1996. The Commission cancelled the March 4, 2005 hearing on the day of the hearing itself. The next hearings were then held on May 5, 2005 and July 5, 2005.

At the May hearing, the Chairperson of the Commission, Justice Anand, indicated that he would conclude the matter at the next hearing on July 5, despite the Commission's failure to address and remedy the thousands of claims of illegal cremations before it. The petitioners, Committee for Information and Initiative in Punjab (CIIP), emphasized that many

In the eight years that this matter has dragged before the Commission, the Commission has not heard the testimony of a single survivor; nor has it found a single security official or agency liable for the thousands of disappearances and extrajudicial executions leading to illegal cremations.

unresolved issues remained, including: adjudicating the claims filed before the Commission after its public notice published in July 2004; beginning the process of fully identifying over 1500 people in the partially identified and unidentified lists; investigating all claims in order to determine liability; and determining final compensation based on the full spectrum of rights violations suffered by the deceased victims and their surviving family members.

At the May 5 hearing, Justice Anand stated that he saw no need to investigate the facts of each claim, even though the Punjab police and petitioners have drastically conflicting accounts on the fate and status of the victims. The Punjab police maintains that individuals were either not in its custody or those in its custody were captured militants killed in crossfire with other militants. The petitioners maintain that security forces illegally detained and executed or disappeared the victims. At the July 5 hearing, in order to address Justice Anand's focus on the illegality of the procedure

of the cremation, CIIP submitted a complete analysis of post-death facts, as stated by the Punjab Police and the Central Bureau of Investigation (CBI), with respect to each of the identified cases. This analysis demonstrates the illegality of the cremations, based on statements made by Indian security and investigative agencies.

The Commission repeated clearly its intent to investigate only the legality of the cremation, and not the violations of fundamental rights to life and liberty, among others.

Although the Commission did not conclude the case at the July 5 hearing, it repeated clearly its intent to investigate only the legality of the cremation, and not the violations of fundamental rights to life and liberty, among others. Ashok Agrwaal, lead counsel for the CIIP, objected to this interpretation of the Commission's mandate. The Commission is trying to reduce the case to determining whether the cremation itself was conducted according to police rules, ignoring the foundational question of whether security forces violated the individual's right to life.

In the eight years that this matter has dragged before the Commission, the Commission has not heard the testimony of a single survivor; nor has it found a single security official or agency liable for the thousands of disappearances and extrajudicial executions leading to illegal cremations. The Commission has regularly reformulated and changed its mandate, failing to follow through with different initiatives. For

The Punjab police maintains that individuals were either not in its custody or those in its custody were captured militants killed in crossfire with other militants. The petitioners maintain that security forces illegally detained and executed or disappeared the victims.

example, despite having solicited claims from the public last year, the Commission has not adjudicated a single claim. The Commission has also twice tried to offer a small fraction of the survivors an arbitrary award of compensation,

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without any relation to their loss or harms suffered, or any admission of liability or wrongdoing for violations of the rights to life and liberty.

In this case, the Commission is acting as a *sui generis* body of the Supreme Court, with all of the Court's remedial powers under Article 32. Thus, the Commission is empowered to forge new tools and strategies to remedy the full spectrum of violations of fundamental rights.

JUNE 26: INTERNATIONAL DAY IN SUPPORT OF TORTURE VICTIMS

ENSAAF supports torture survivors in their fight for reparations in India for state-sponsored human rights abuses. On June 26, UN Secretary General Kofi Annan issued a statement, stating:

The International Day in Support of Victims of Torture is an occasion to... pause and remember torture victims who have not survived, to listen to the stories of those who have, and to support their quest for justice for torture victims and their families.

"The International Day in Support of Victims of Torture is an occasion to reaffirm our commitment to eradicate torture and cruel, inhuman or degrading treatment or punishment, in whatever guise or manifestation they occur. It is an occasion to pause and remember torture victims who have not survived, to listen to the stories of those who have, and to support their quest for justice for torture victims and their families -- including by supporting the United Nations Voluntary Fund for Victims of Torture.

We must also remind ourselves that the absolute nature of the prohibition of torture is non-negotiable, and that torture cannot be justified by any circumstances whatsoever. This includes an absolute ban, in accordance with Article 3 of the Convention, on transferring any person to another jurisdiction where there are reasonable grounds to believe that the person is at risk of torture."

claims and prayer for relief.

Indian security forces tortured Cheema during several periods of detention between 1987 and 1990,

During several periods of extended illegal detention and torture between 1987 and 1990, Indian security forces beat Mr. Cheema with a wooden stick; stretched his legs apart until the muscles began to break; stretched him repeatedly on a pulley; rolled a solid steel roller over his thighs; and broke his leg twice in the same place.
--Complaint by Harpal Singh Cheema, ¶20

and again in 1992. In 1992, the security forces also subjected Cheema to electric shocks and a mock execution, among other horrific torture methods.

Harpal Singh Cheema has deferral of removal. His petition for asylum and withholding of deportation is currently before the Board of Immigration Appeals on remand from the Court of Appeals for the Ninth Circuit.

ENSAAF solicited the study by PHR and Bellevue in 2004, and consulted with the research team in the U.S. for one year prior to the study, providing substantive guidance and background on the research feasibility and legal proceedings. ENSAAF then hired three fieldworkers in Punjab to organize the logistics of the study. These individuals worked tirelessly and personally visited each family selected randomly from the sample, explaining the purpose of the study and soliciting their participation. The ENSAAF fieldworkers also prepared the study site and organized all travel, lodging and other logistics for the research team during their stay in India.

ENSAAF organized a study in Punjab by six health professionals from Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture.

PHR and Bellevue will submit an independent report to the National Human Rights Commission, expected to be completed by the end of the summer.

ENSAAF WELCOMES ALISON A. HILLMAN, MIE LEWIS & RICHARD J. WILSON TO ITS BOARD OF DIRECTORS

ENSAAF Update on Program Areas

Alison A. Hillman, Mie Lewis and Richard J. Wilson have joined ENSAAF's Board of Directors, adding a wealth of experience in fighting for civil and human rights.

ENSAAF has completed several projects this past year, including organizing the torture and trauma evaluation study; filing a lawsuit on behalf of Harpal Singh Cheema; publishing a ground-breaking report on the November 1984 pogroms; conducting research on the likelihood of torture faced by returned asylum-seekers; interviewing 30 survivors now living in the U.S.; making 17 presentations on human rights issues; and conducting legal research and writing for the Punjab illegal cremations matter proceeding before the Indian National Human Rights Commission.

Board of Directors

Sukhman Dhani, Co-founder and Legal Director, was the recipient of the 2004 Unity Award from the San Francisco Coalition of Minority Bars and South Asian Bar Association for his outstanding service to the legal community. Dhani also received a two-year fellowship through the Ford Foundation to address issues of impunity for human rights abuses in India. Prior to joining ENSAAF, he volunteered for the Lawyers' Committee for Civil Rights Under Law and the Public International Law and Policy Group. At the American University, Washington College of Law, he worked for the War Crimes Research Office and the International Human Rights Law Clinic. Dhani graduated with an M.A. and J.D. from the American University's School of International Service and Washington College of Law in 2002.

Alison A. Hillman is the Director of Mental Disability Rights International's (MDRI) Americas Advocacy Initiative. In collaboration with attorneys from the Center for Justice and International Law (CEJIL), she presented the first petition in the Inter-American Commission on Human Rights (IACHR) challenging ongoing abuses in a psychiatric institution. In 2005,

Hillman was the winner of the documentary film category in "Picture This," Canada's international disability film festival, for her film *Human Rights Violations in Paraguay's Neuro-Psychiatric Hospital: Petition to the Inter-American Commission on Human Rights*. Hillman is the primary author of *Human Rights & Mental Health in Peru* (2004), a legal analysis documenting abuses against people with mental disabilities in Peruvian mental health and social service systems. Hillman received her law degree cum laude from the American University, Washington College of Law in 2002.

Jaskaran Kaur, Co-founder and Executive Director, has authored several seminal reports on human rights abuses in India, including *Twenty Years of Impunity: The November 1984 Pogroms of Sikhs in India*, and, as a contributing author, *Reduced to Ashes: The Insurgency and Human Rights in Punjab*, analyzing over 600 cases of extrajudicial execution and disappearance by Punjab's security forces. From 2003 to 2005, Kaur was the recipient of the Irving R. Kaufman Fellowship from Harvard Law School. In 2001, she went to Punjab on a Harvard Human Rights Summer Fellowship to study the role of the judiciary in handling habeas corpus petitions filed before the Punjab and Haryana High Court by families of the disappeared; her study was published in the *Harvard Human Rights Journal*. Kaur graduated with distinction from Yale College in 2000 and Harvard Law School in 2003.

Mie Lewis is an attorney specializing in human rights and immigrants' rights. As an Aryeh Neier Fellow with Human Rights Watch and the American Civil Liberties Union, Lewis works to strengthen respect for human rights by conducting research and advocacy regarding human rights violations within the United States. Previously, as a participant in the New Voices fellowship program, Lewis represented survivors of

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human trafficking, advocating for their rights as immigrants and workers. Lewis has served as a judicial law clerk to the Honorable Judge Susan Y. Illston of the United States District Court for the Northern District of California, and has also served a clerkship at the Legal Advisory and Policy Section of the International Criminal Court, Office of the Prosecutor. Lewis earned her J.D. with distinction from Stanford Law School in 2000.

Peter Rosenblum is the Lief, Cabraser, Heimann & Bernstein Associate Clinical Professor in Human Rights at Columbia Law School. From 1996 to 2002, Professor Rosenblum served as Associate Director of the Human Rights Program at Harvard Law School, and became Clinical Director in 2003. Professor Rosenblum also held an academic appointment as Lecturer at Harvard Law School, when he wrote the preface to *Reduced to Ashes: The Insurgency and Human Rights in Punjab*. Professor Rosenblum has engaged in human rights research and field missions in Africa, Eastern Europe, and Asia. He was formerly Program Director for the International Human Rights Law Group and Human Rights Officer for the United Nations Centre for Human Rights. He has served on the International Advisory Council, Swedish NGO Foundation for Human Rights; UN Secretary General's Resource Group on the Democratic Republic of the Congo; Harvard University Committee on African Studies; and advisory board of *Buffalo Human Rights Law Review*.

Richard J. Wilson is Professor of Law and Director of the International Human Rights Law Clinic at the American University, Washington College of Law. He specializes in clinical education, international human rights, asylum law, and criminal law and procedure and has served as an expert witness on international law and the death penalty. In 2004, Professor Wilson received the Pauline Ruyle Moore Scholar Award for scholarship. Professor Wilson was a Peace Corps volunteer and trainer in Panama from 1966-1969, a public defender with the Office of the Illinois Appellate Defender from 1972 to 1980, Director of the Defender Division of the National Legal Aid and Defender Association from 1980 to 1985, and a Fulbright Scholar in Colombia in 1987. Professor Wilson has also directed or taught at several international programs or

universities in Chile, Japan, Oxford and the Washington College of Law.

Program Areas

Through the **Community Organizing** program, ENSAAF has identified 30 torture survivors from Punjab, now living in the U.S. ENSAAF will work with survivors to build an association of families living in the United States, who have survived human rights violations in Punjab. This association will strive for reparations and accountability. It will be guided and motivated by the principles of truth and justice. Only persons and families who have suffered state repression can join the association. Human rights advocates will support and advise the association.

"We wish to work to build ...[a country] where Justice shall exist. Where no one can be detained and made to disappear as has happened with our children and grandchildren. Where a system of laws shall prevail and where one may live in an atmosphere of freedom, tolerance, and mutual respect." --Declaration of Principles of the Grandmothers of the Plaza de Mayo. The Grandmothers began in Argentina in October 1977, searching for two generations: their disappeared children and their disappeared grandchildren.

Under the **Documentation & Education** program, ENSAAF counters the systematic denial of human rights violations by documenting abuses and producing educational materials to create an authentic record of these violations. We cannot allow abuses to be obscured by secrecy and denial; both government and society must acknowledge, remember, and remedy past abuses to restore dignity to survivors and prevent the recurrence of such violations. This program includes the Punjab Torture and Trauma Evaluation Study, the Narratives Project, and Media and Archival Research.

Completed projects under the Documentation & Education program include ENSAAF's 150-page report *Twenty Years of Impunity: The November 1984 Pogroms of Sikhs in India*, and numerous presentations at workshops, panels and conferences.

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NEWS FLASHES

Read ENSAAF's blog on human rights in India.

- Students and supporters of a people's tribunal in Orissa have started an online petition in protest against the Sangh Parivar's violent targeting of the Indian People's Tribunal on Environment and Human Rights (IPT) on June 14, 2005. The Tribunal was conducting hearings in Orissa to investigate issues of communalism. During a hearing with Hindu nationalist organizations, a fax arrived from the Vishwa Hindu Parishad-Orissa, which made libellous and defamatory claims against the Tribunal members and process. After the arrival of this fax, Sangh Parivar members threatened Tribunal members (including the threat to rape and parade naked the female members), and sought to seize information gathered during the investigations. For more information about the threats, please visit: <http://www.petitiononline.com/ipt1/petition.html>.

- Simranjit Singh Mann, leader of the Shiromani Akali Dal (Mann) and former Member of Parliament, was arrested on June 14 in Punjab for making speeches in favor of an independent Sikh state. He was charged with sedition. In the following days, the police arrested other members of his party. Although Mann was placed in judicial custody, the police procured his custody against normal procedure. While he was under police custody, Mann stated that he was tortured and feared extrajudicial execution.

- Twenty-one survivors of the 2002 Gujarat pogroms have filed a damages lawsuit against nationalist Hindu organizations, such as the Bhartiya Janata Party (BJP), Vishwa Hindu Parishad (World Hindu Council) and Rashtriya Swayamsewak Sangh (National Volunteers Corps). The lawsuit concerns an attack on a housing society in Ahmedabad, during which 39 people were killed.

- Over twenty years after the November 1984 pogroms, a Delhi Court sentenced five men to life imprisonment for the murder of Baba Singh.

Visit the blog for more updates regarding recent custodial torture and death in Punjab.

Under the **Legal Advocacy** program, ENSAAF fights for justice for survivors of human rights abuses and advocates for the implementation of international human rights law. We pursue tactical legal strategies to combat impunity in India. Ongoing projects include the lawsuit filed on behalf of Harpal Singh Cheema, and the Punjab illegal cremations matter proceeding before the National Human Rights Commission.

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Under the **United Nations** program, ENSAAF advocates for the promotion and protection of human rights in India, by raising these issues with individual UN member nations, and UN human rights bodies and mechanisms, such as working groups, special rapporteurs, independent experts, commissions, and committees.

Please visit ENSAAF's website for more information on completed and current projects.

ENSAAF's work has been covered in local, national and international media this past year, including the *World Policy Journal*, *BBC News*, *L.A. Times*, *The Hindu*, *San Jose's Metro*, *The East Bay Express*, *Yuba City's Appeal-Democrat*, and the *Indian Express*.

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