

## 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

**10th Anniversary Remembrance Event for Human Rights Defender Jaswant Singh Khalra:** On October 16, 2005, ENSAAF will give a presentation on the work of Mr. Khalra at Fremont Gurdwara, California. Mr. Khalra investigated and gathered government records documenting how Punjab police abducted and killed Sikhs, and then cremated the victims as "unidentified" from 1984 to 1995. Punjab police abducted him on September 6, 1995, and brutally tortured and killed him in late October. The program will also feature poets and Dr. Ami Laws, who traveled to Punjab in 1997 and documented over 200 cases of torture.

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## NEW REPORT

### PUNJAB POLICE: FABRICATING TERRORISM THROUGH ILLEGAL DETENTION AND TORTURE

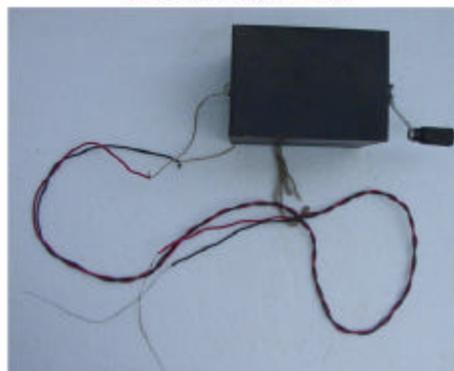
ENSAAF today released its report, *Punjab Police: Fabricating Terrorism through Illegal Detention and Torture* (<http://www.ensaaf.org/ft-report.html>). This report details human rights violations committed by Indian security forces in recent militancy-related arrests. From June 2005 to August 2005, Indian police claim to have arrested several dozen individuals intent on reviving or supporting militancy in Punjab. These arrests center around the apprehension of Jagtar Singh Hawara, the main accused in the 1995 assassination of Punjab's chief minister.

**ENSAAF**  
Fighting Impunity in India

**PUNJAB POLICE:**

**FABRICATING TERRORISM THROUGH  
ILLEGAL DETENTION AND TORTURE**

*June 2005 to August 2005*



An ENSAAF Report  
October 2005

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## RECENT OP-EDS ON PUNJAB HUMAN RIGHTS ISSUES

VanessaPon

On July 17, 2005, the eve of Indian Prime Minister Manmohan Singh's visit to the White House, the *Boston Globe* published an op-ed by ENSAAF Executive Director Jaskaran Kaur. "The Legacy of India's Counter-Terrorism" discusses India's record of human rights abuses since the counter-insurgency movement began in the 1980s, and the judiciary's refusal to protect fundamental rights in the face of these abuses.

*From 1984-95, Indian security forces tortured, "disappeared," killed, and illegally cremated more than 10,000 Punjabi Sikhs in counter-insurgency operations. Many perpetrators of these abuses are now championed as counter-terrorism experts.*

The article also examines the Punjab illegal cremations matter pending before the Indian National Human Rights Commission. This landmark lawsuit addresses police abductions that led to mass cremations during the counter-insurgency operations of 1984 to 1995. As the commission is acting as a body of the Supreme Court, it has the ability to both address the violations of fundamental rights of the victims and set a precedent for other cases. However, the commission has not heard testimony from a single survivor in the past eight years and recently announced its intention to further narrow its mandate. Instead of determining whether the police had wrongfully killed those cremated, the commission plans to only determine whether the police had properly cremated victims.

*With this move, the commission rejected the victims' right to life and endorsed the Indian government's position that life is expendable during times of insurgency....*

*India's counter-terrorism practices have left a legacy of broken families, rampant police abuse, and a judicial system unwilling to enforce fundamental rights. As India ignores its past, it continues to employ the same Draconian measures in places such as Kashmir. While Prime Minister Singh extols*

*Continued on page 3*

*Fabricating Terrorism*

*Continued from page 1*

In August and September 2005, ENSAAF documented 28 cases of detention of Punjabis accused of militancy-related activities. Its study reveals that, in contravention of international and domestic laws, Indian security forces routinely resorted to illegal and incommunicado detention. Further, the Punjab police frequently tortured the detainees. Torture methods included electric shocks, tearing the legs apart at the waist and causing pelvic and muscle injury, and pulling out the hair and beard of the detainees, among other techniques. The police also threatened and detained immediate family members of the targeted individual.

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*"The majority of detainees whose experiences are discussed in this report remain in the illegal custody of Indian security forces and continue to be at risk of further torture, among other abuses. Government officials have not publicly acknowledged, investigated or redressed the violations."*

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*-Jaskaran Kaur, Executive Director, ENSAAF*

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"The majority of detainees whose experiences are discussed in this report remain in the custody of Indian security forces and continue to be at risk of illegal detention and torture, among other custodial abuses," said ENSAAF Executive Director, Jaskaran Kaur. "Government officials have not publicly acknowledged, investigated, or redressed the violations," she said.

The Indian police have constructed and presented elaborate stories of thwarted militant crimes, recovered weapons, captured human bombs, and the discovery of an international network to revive militancy in Punjab. These stories have concealed the escalation in human rights abuses committed in the name of national security and indicate that police fabricated evidence to support criminal charges. Because of conflicting reports between the government and families of detainees regarding dates and circumstances of arrest and detention, these cases should be immediately investigated by an impartial body.

*India as a leading democracy, the international community must weigh the devastation and insecurity wrought by a national security policy based on systematic human rights abuses and impunity.*

Human Rights Watch researcher Meenakshi Ganguly published an op-ed, "Other Screams of Terror," in the *Asian Age* on September 27, 2005, discussing the Punjab illegal cremations case before the National Human Rights Commission. She began by stating that although the Indian government has recently apologized for the 1984 anti-Sikh pogroms, victims need more than hopeful words:

*There is also a need for justice, for those responsible to be held accountable, for an accurate account of events to be established, and for compensation to be paid to victims or their families. Only when those responsible for wrongdoing have accepted responsibility or been dealt with by the law, will those who have suffered be able to find peace.*

Ganguly discussed how the Indian Government has ignored the use of "enforced disappearance" and extrajudicial execution by police during the counter-insurgency of the '80s and '90s in Punjab.

*Instead of responding within the law, the Punjab police were given free rein to contain the militancy. Thousands of alleged militants, human rights activists, and ordinary Sikhs in Punjab were summarily executed by security forces, based on the merest suspicion or, perhaps, not even that. Most were young men, "disappeared," never to be seen again. Their bodies were then cremated to destroy the evidence.*

Human rights defender Jaswant Singh Khalra discovered thousands of secret cremations in Punjab before he, too, was "disappeared" by the police.

*Khalra's crime? He had undertaken an investigation into the "disappearance" of other Sikhs. His investigation led him to enquire into the purchase of firewood by security forces. He found that thousands of*

*so-called unidentified or unclaimed bodies were being secretly cremated by the police with this firewood. Many of these bodies belonged to those that had "disappeared."*

*In reality, these bodies were not unidentified: their killers knew their identities. They were not unclaimed: their families simply did not know that they were dead. Many, sadly, are still hoping for their return.*

Ten years later, Khalra's family still waits for justice. Ganguly gives an extensive description of the hurdles faced in his family's quest for justice, as well as in the Punjab illegal cremations matter. Throughout Khalra's trial, there have been complaints of police harassment and intimidation of witnesses, and although six men were charged with kidnapping, no one has been charged with murder. Further, there has been no investigation into the thousands of other bodies that were secretly cremated in other parts of Punjab.

*The government of Punjab and the government of India have failed to identify and prosecute those responsible for these murders.*

*Thus far, the Supreme Court and the National Human Rights Commission (NHRC) have failed the victims.*

Ganguly describes the different restrictions placed on the original mandate given to the NHRC. Although the NHRC initially planned to investigate all cases of "disappearances," it later limited its investigation to only three cremation grounds in Amritsar. Since then, the NHRC has further limited its mandate and only investigated whether the cremations were legal – ignoring the issue of the arrests and murders that preceded the cremations.

*This is absurd. Unless a credible body like the NHRC is allowed to freely conduct a full investigation, it will be difficult to hold the government accountable and force it into providing justice by prosecuting those found responsible.*

Ganguly ends by calling for an independent and criminal investigation into the murder of Jaswant Singh Khalra.

# 10TH ANNIVERSARY OF THE MURDER OF JASWANT SINGH KHALRA: JOINT LETTER TO THE CONGRESSIONAL HUMAN RIGHTS CAUCUS

*ENSAAF, Human Rights Watch, NYU Law School's Center for Human Rights and Global Justice*

Vanessa Pon

On the tenth anniversary of the “disappearance” of human rights defender Jaswant Singh Khalra, ENSAAF, Human Rights Watch, and the Center for Human Rights and Global Justice at New York University School of Law released a joint letter to the directors and executive directors of the Congressional Human Rights Caucus (CHRC).

Jaswant Singh Khalra was born in 1952 in Khalra village of Amritsar district. In 1987, he established the Daman Virodhi Front, or Anti-Repression Front, to address widespread police atrocities. He worked on cases of people who were illegally arrested by Indian security forces and under threat of torture and extrajudicial execution. Khalra eventually joined the human rights wing of the political party Akali Dal.

In 1994, the police illegally arrested a friend of Khalra's, then tortured and killed him as an unidentified militant in a faked encounter. Khalra investigated the case and discovered that his friend had been cremated at the Durgiana Mandir cremation ground and labeled as “unidentified and unclaimed.” This discovery prompted him to begin a larger investigation into illegal mass cremations by the police. By 1995, Khalra had discovered thousands of illegal cremations at cremation grounds throughout Amritsar. In January 1995, Jaswant Singh Khalra and Jaspal Singh Dhillon filed a writ petition in the Punjab and Haryana High Court to impel it to investigate their discovery of illegal cremations by the police. The High Court, however, dismissed the petition on grounds of vagueness.

Despite threats to his life by the police, Jaswant Singh Khalra continued to search for the truth and pursue his investigation of the illegal cremations. In February 1995, he announced in a press conference that the Punjab government was “highly mistaken in thinking that by eliminating him the matter relating to 25,000 unclaimed bodies” in Punjab “can be put to an end.” Khalra also stated that he was prepared to die for the cause of justice, and that if he was killed, police

chief KPS Gill and Chief Minister Beant Singh were to be held responsible. On September 6, 1995, Punjab police abducted Jaswant Singh Khalra from his home. The police subsequently tortured him and killed him in late October, before dumping his dead body into the Harike canal.

The trial for Khalra's disappearance has been a mockery of justice. The court reduced the charges against the nine accused Punjab police officers so that they did not include torture and murder. Since the case began in 1996, it has been plagued with police intimidation and harassment of witnesses; from 1996 until August 2004, only two witnesses had completed their testimony, and one of them turned hostile. Some of the accused police officers remain at their posts.

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On the anniversary of the “disappearance” of Jaswant Singh Khalra, the joint letter to the Congressional Human Rights Caucus cautions us not to forget the truth he lost his life defending. The letter states:

*The “disappearances,” killings and secret cremations of thousands of Sikhs are crimes against humanity. India has a responsibility to the victims, their families and to the world to redress these crimes. Nevertheless, the Indian government continues to reject country visit requests by the U.N. Special Rapporteurs on torture*

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and extrajudicial executions. Moreover, India has yet to ratify the U.N. Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

The joint letter also urges the CHRC to hold congressional hearings on the "disappearance" of Jaswant Singh Khalra and illegal cremations in Punjab. The CHRC should also send a delegation to India to observe the disappearance trial of Jaswant Singh Khalra and the National Human Rights Commission hearings, and meet with the petitioners in these cases. Further, in

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*-Joint Letter*

bilateral dealings with India, the US should urge India to immediately investigate the disappearance of Jaswant Singh Khalra and the mass illegal cremations, take action against those responsible for "disappearances," criminalize "disappearances," allow visits by the UN Special Rapporteurs, and ratify the UN Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

The letter was signed by Jaskaran Kaur, Executive Director of ENSAAF; Brad Adams, Executive Director of Human Rights Watch/Asia; and Smita Narula, Executive Director at the Center for Human Rights and Global Justice, and Adjunct Assistant Professor of Clinical Law at New York University School of Law.

*For a detailed biography on Jaswant Singh Khalra, see Reduced to Ashes: The Insurgency and Human Rights in Punjab, available at <http://www.punjabjustice.org>.*

*Visit <http://www.ensaaf.org/khalra-letter.htm> for the text of the letter to the CHRC and <http://www.ensaaf.org/khalrapacket.pdf> for a background packet on the life of Jaswant Singh Khalra and related cases.*

## UPDATE ON NANAVATI AND ACTION TAKEN REPORTS

One day before the deadline expired, the Indian government tabled the 339-page final report of the Nanavati Commission established to investigate the 1984 pogroms of Sikhs. The government also tabled its Action Taken Report, in which it culled and responded to ten recommendations from the Commission's report.

Twenty-one years after the brutal massacres of Sikhs, organized by state and political institutions such as the Congress Party and Delhi Police, survivors are left grasping at fleeting dreams of justice. Once again, through yet another commission, the government has strengthened impunity for perpetrators of mass murder and stonewalled justice. Hundreds of victims took to the streets in New Delhi in protest:

*Gujjar Singh, who lost his father in the violence, said: "The mob entered our home in east Delhi and dragged my father out and cut him to pieces. "You cannot understand how I have been living since then. We do not need compensation. Just give us justice."*

According to media reports, the Commission's report exonerated the majority of the perpetrators from the Congress Party and Delhi police who have been identified by victims and witnesses. And for those leaders against whom the Commission found credible evidence of incitement to mass murder, the government has stalled action.

For example: the investigation found "credible evidence" against former Congress minister for non-resident affairs, Jagdish Tytler, "to the effect that very probably he had a hand in organising attacks on Sikhs". The inquiry recommended further investigation into Mr Tytler's role. In its Action Taken Report (ATR), the government, however, tried to avoid action against Tytler:

*However, the ATR observed that it is clear from the remark "very probably" against*

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## OCT. 14 TO 16: SPINNING WHEEL FILM FESTIVAL

On October 14, the Spinning Wheel Film Festival will premiere the award-winning movie AMU (<http://www.amuthefilm.com>), a film by Shonali Bose. AMU is the story of Kaju, a twenty-one-year-old Indian American woman who returns to India to visit her family. The film takes a dark turn as Kaju stumbles against secrets and lies from her past. A horrifying genocide that took place twenty years ago—the November 1984 pogroms of Sikhs—turns out to hold the key to her mysterious origins.

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Amu was awarded the International Federation of Film Critics (FIPRESCI) prize at the 2005 Bombay International Film Festival and made its North American debut at this year's Toronto International Film Festival where it screened to critical acclaim. According to the Hollywood Reporter, the film “beautifully personalizes a social and political tragedy... an engrossing tale without compromising political viewpoint.”

The Spinning Wheel Film Festival is entering its third year of being a forum for audiences and filmmakers to come together in celebration of Sikh film and culture at the Isabel Bader Theatre (93 Charles Street West ) in Toronto.

The changed landscape of the post 9/11 United States is a theme which is featured in several films at the Spinning Wheel Film Festival. Divided We Fall: Americans in the Aftermath (Oct. 16th, 7:30 p.m.) is a documentary which captures the loss, fear, hope and resilience of Sikh, Muslim and Arab communities across the United States immediately

after 9/11. This documentary also sets out again four years later to see how things have changed or failed to change and how discrimination divides Americans in times of war. Making its Canadian premiere at the Spinning Wheel Film Festival is the feature drama, Waterborne (Oct. 15th, 8:15 p.m. ). This film takes the next step and portrays a major American city after a devastating terrorist attack. Starring Indian film legend Shabana Azmi, the film follows three pairs of characters in Los Angeles as the city copes with a contaminated water supply.

Spinning Wheel Film Festival also offers free seminars for would-be filmmakers. “So You Want to Be a Screenwriter” hosts a panel of seasoned screenwriters, Amnon Buchbinder, Telefilm Canada 's PITCH THIS! winner, Richie Mehta and Sharat Raju, who talk about how to capture one's heritage in writing. On the flipside, “My Film is Finished, So Now What?” tackles the question of how to get a film distributed and screened. With a panel made up of experienced filmmakers and broadcast executives from OMNI Television and CBC Television, this seminar gives insight to both sides of film acquisition. All seminars will be taking place at the Isabel Bader Theatre.

The Spinning Wheel Film Festival is a cinematic examination of Sikh life and culture in India and throughout the world, as well as universal themes of human rights, global peace, religious freedom, and tolerance. The **Spinning Wheel Film Festival** seeks to use the power of film and video to both entertain and educate, while also challenging conventional perspectives on complex and challenging issues facing the Sikh people and the world community alike. The aim of the Festival is to provide a forum for the community (Sikh and non-Sikh) to preview Sikh films, engage in discussions and inspire the next generation of Sikhs to pursue careers in the arts. The Festival also aims to build and maintain an archive of Sikh films and increase the accessibility of Sikh Films to the community.

*Tytler that the one-man panel itself was not absolutely sure about his involvement in the attacks.*

The ATR observed: "It may be pointed out that in criminal cases, a person cannot be prosecuted simply on the basis of probability".

The Commission also found credible evidence against Congress leaders Sajjan Kumar and Dharam Dass Shastri, and recommended the reexamination of cases against Kumar. To these and other recommendations, the government's Action Taken Report gave three standard responses: there were legal hurdles in taking any action since the police officers or government officials had retired, the government had taken note of the Commission's response and would consult another body for further action, and there was no evidence against the accused. Thus, the government found that there was no justification to reopen cases against Sajjan Kumar because there was no evidence against him. After protests, however, the government promised to take all possible steps to investigate politicians named in Nanavati's report. In late August, however, the Delhi High Court was forced to adjourn a hearing because the prosecuting authority was not prepared to argue their appeal to a 2002 acquittal of Sajjan Kumar in a case arising from the 1984 Sikh massacres.

After the protests generated by the Nanavati report and Action Taken Report, Jagdish Tytler resigned from his post as Minister of State for NRI Affairs; Member of Parliament Sajjan Kumar resigned as Delhi rural board chief. In his apology for the 1984 pogroms, however, Prime Minister Manmohan Singh failed to accept State responsibility. He reiterated that no other senior Congress party officials were involved, despite victim and witness statements to the contrary. To those who criticized the Nanavati report and the government's Action Taken Report, the Prime Minister raised the spectre of a return of "terrorism" in Punjab.

The government has constituted two committees to inquire into issues relating to relief and rehabilitation for the survivors of the November 1984 massacres of Sikhs. One Committee, led by Special Secretary in the Home Ministry KP Singh, will inquire into the "adequacy and uniformity" of compensation.

The second committee will inquire into "providing additional employment" to survivors and will be led by D.K. Shankaran, Secretary, Border Management in the Home Ministry. Both committees have been given two months to complete their tasks.

In its report, *Twenty Years of Impunity: The November 1984 Pogroms of Sikhs in India*, ENSAAF analyzes thousands of pages of previously unavailable affidavits, government records and arguments submitted to the 1985 Misra Commission, established to examine the Sikh Massacres in Delhi, Kanpur, and Bokaro. The report reveals the systematic and organized manner in which state institutions, such as the Delhi Police, and Congress (I) officials perpetrated mass murder in November 1984 and later justified the violence in inquiry proceedings.

ENSAAF's report demonstrates that police officers not only passively observed the violence, but also actively participated in the attacks and made promises of impunity to assailants. At all times, the police and their superiors had sufficient force and knowledge to effectively counter the violence. ENSAAF's report further demonstrates the involvement of the Congress Party in organizing the massacres. Senior political leaders provided for details such as deployment of mobs, weapons and kerosene, as well as for the larger support and participation of the police. They conducted meetings the night before the onslaught of the massacres where they distributed weapons, money, voter and ration lists identifying Sikhs and their properties, and in inflammatory speeches, instructed attendees to kill Sikhs. Grave lapses in police investigations, delays in filing cases, the failure to identify and investigate prosecution witnesses, the deliberate misrecording of witness statements, and the failure to comply with legal procedures has precluded effective prosecutions against major perpetrators.

*\*The above article is based on news reports regarding the conclusions of the Nanavati report (see ENSAAF's blog for links to the sources).*