

## ABOUT ENSAAF

Ensaaf, which means *justice* in many South Asian languages, is a U.S.-based 501(c)(3) organization fighting impunity in India for mass state crimes. Impunity means the impossibility of holding human rights abusers accountable because they are shielded by law or protected by political institutions and powers.

Ensaaf combats impunity by documenting and exposing human rights violations, bringing perpetrators to justice, and organizing survivors to become active participants for change. Ensaaf advocates for survivors' international rights to truth, justice, and reparations. Ensaaf has four programs: Community Organizing, Documentation & Education, Legal Advocacy, and United Nations.

## STAFF UPDATE

Ensaaf welcomes its new Program Associate, Jasmine Marwaha to the team. Jasmine is a 2006 graduate of Harvard Law School (HLS) and a recipient of the Irving R. Kaufman Fellowship from the school. During her time at HLS, she was President of the National South Asian Law Students Association and Coordinator for the Asia Initiative of the HLS Advocates for Human Rights. She has also interned with the Committee for Information and Initiative in Punjab.

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## KHALRA'S LAST INTERNATIONAL SPEECH HIGHLIGHTS MASS CRIMES OF KPS GILL

In his last international speech made to a Canadian audience, released on August 30, 2006 with subtitles by Ensaaf, Jaswant Singh Khalra discusses his investigations into the disappearances and killings of thousands of Sikhs by the Punjab police and his readiness to die to expose the truth about these crimes. The video is available at: <http://www.ensaaf.org/Khalravidео.html>. The video includes footage from his speech made at Dixie Gurdwara (Sikh house of worship) in Toronto, Canada in April 1995, at a conference organized by the radio station Ankhila Punjab.

*"A mother's heart is such that even if she sees her son's dead body, she does not accept that her son has left her. And those mothers who have not even seen their children's dead bodies, they were asking us: at least find out, is our son alive or not?"*

- Jaswant Singh Khalra, April 1995

In this speech, Khalra describes how he traced the fate of many disappeared Sikhs to Amritsar's municipal cremation grounds. Through government records obtained from these municipalities, Khalra exposed a sordid pattern of systematic human rights violations in which security forces abducted, murdered, and secretly cremated 6,017 Sikhs in three municipal crematoria in Amritsar district alone--then one of 13 districts in Punjab--from 1984 to 1995.

Just a few months prior to the speech, a Punjab Member of Legislative Assembly told Mr. Khalra that senior police officers wanted him to drop his investigations or prepare to become "an unidentified dead body" himself. Khalra called a press conference

in response to the threat and declared 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.” On September 6, 1995, Punjab police abducted Khalra, illegally detaining and torturing him for nearly two months before murdering him in late October.

Six Punjab police officers were convicted and sentenced for Khalra's abduction and murder in November 2005. The architect of these crimes, however, remains free. In his Toronto speech, Khalra pinpoints KPS Gill, then Director General of Punjab police, as the person in charge of the systematic murders perpetrated by the Punjab police, and discusses Gill's standard responses to cover-up the mass secret cremations. Khalra further describes his struggle before the Punjab and Haryana High Court for accountability for these mass state crimes.

Khalra's prescient words call attention to the need to document the thousands of disappearances in Punjab and end impunity and achieve justice for the families of the disappeared. India's obligations under international law require it to fully investigate human rights violations and identify and prosecute all perpetrators. The government cannot fulfill its international legal obligations until it ends Gill's impunity for his role in Khalra's abduction, illegal detention, torture, and murder.

*Human rights defender Jaswant Singh Khalra was born in 1952 in Khalra village of Amritsar district. In October 1987, after the central government dismissed the elected government in Punjab, Jaswant Singh Khalra formed the Daman Virodhi Front, or Anti-Repression Front. He devoted himself full-time to conducting advocacy for people who faced imminent torture or extrajudicial execution by Indian security forces. Later, Mr. Khalra joined the human rights wing of the political party Akali Dal. In 1994, while investigating the disappearance of a personal friend, Mr. Khalra discovered that the police had cremated his friend's body at Durgiana Mandir cremation ground in Amritsar district, labeling it “unidentified and unclaimed.” The police tried to cover up their crime by trying to destroy the identity of their victim. Mr. Khalra launched a wider investigation into mass secret cremations that catalyzed the movement for justice in Punjab.*

## HIGH COURT CASE FILED AGAINST FORMER POLICE CHIEF KPS GILL

On September 6, 2006, Paramjit Kaur Khalra, the widow of human rights activist Jaswant Singh Khalra, filed a legal petition calling for the investigation and prosecution of former police chief KPS Gill for the abduction, illegal detention, torture, and murder of her husband. Mrs. Khalra, represented by High Court attorney Rajvinder Bains, filed the petition in the Punjab and Haryana High Court after the Central Bureau of Investigation refused to investigate Gill. The petition demonstrates that the weight of Indian and international law, applied to the evidence, provides a clear framework to investigate and prosecute Gill.

Last year, on November 18, 2005, a district court in Patiala convicted six Punjab police officials in Khalra's 1995 abduction and murder. The court found that these police officials, operating under Gill's command, illegally detained and tortured Khalra for nearly two months before murdering him in late October 1995.

During the Khalra trial in February 2005, Special Police Officer (SPO) Kuldip Singh testified that he witnessed KPS Gill interrogate Khalra in illegal detention several days prior to Khalra's murder. SPO Kuldip Singh also testified that Khalra had been tortured and that Khalra's body bore evidence of torture prior to the interrogation. SHO Satnam Singh later told Khalra that if Khalra had agreed to the advice of KPS Gill, Khalra would have saved himself and the police officers. Despite this testimony, the Indian government has refused to investigate or charge KPS Gill for his role in murdering Khalra.

Ensaaf drafted the international law arguments on the doctrine of superior responsibility, which imposes liability on superiors where the superior knew or had reason to know of the unlawful acts, and failed to take the necessary and reasonable measures to prevent and/or punish those acts. The petition argues that, based on his acts and omissions as a superior officer, KPS Gill is liable under the doctrine for Khalra's abduction, illegal detention, torture, and murder. For more information on the petition, including the international legal arguments, please visit: <http://www.ensaaf.org/Gill-petition.html>.

## NATIONAL HUMAN RIGHTS COMMISSION ENDS HEARINGS IN PUNJAB MASS CREMATIONS CASE

On September 12<sup>th</sup>, the NHRC stated that there would be no further hearings on the matter of police abductions leading to disappearances and secret cremations in Punjab. Chief Justice Anand gave the Committee for Information and Initiative in Punjab (CIIP) another week to submit its written arguments before issuing a final written order. The closing came as a surprise to the petitioners. Nitya Ramakrishnan and Ram Narayan Kumar, along with Ensaaf's support through legal research and writing, drafted the final arguments on behalf of the CIIP.

### Summary of the Case History

Approximately 11 years ago, on November 15, 1995, the Supreme Court directed the Central Bureau of Investigation (CBI), India's premier investigative agency, to enquire into Jaswant Singh Khalsa's abduction and the facts contained in Khalsa's press note of January 1995, which brought the issue of mass cremations in Punjab to public attention. The December 1996 report by the CBI showed 2098 illegal cremations at three cremation grounds of Amritsar district. Of these, the CBI identified 582, partially identified 278, and failed to identify 1238 bodies.

The Supreme Court found that the CBI's report disclosed a "flagrant violations of human rights on a mass scale" by Punjab security forces. In December 1996, the Supreme Court referred the matter of disappearances and secret cremations in Punjab to the National Human Rights Commission (NHRC) as Reference Case No. 1 of 1997.

The NHRC, as a *sui-generis* designate of the Supreme Court, ruled that it had all the powers of the Supreme Court to decide on the matter, including ordering further investigation into the disappearances. However, the NHRC limited the scope of its inquiry to the 2,098 cremations noted in the CBI report, and refused to order an inquiry into possible disappearances outside the district of Amritsar, then only one of 13 districts in Punjab. In over 10 years, the Commission has not yet heard a single victim's testimony. According to the Punjab government, 814

bodies of the original 1238 remain unidentified.

The NHRC has offered some arbitrary monetary compensation to a select number of applicants, but without admission of responsibility. The Government maintains merely that the detainees were killed in the cross-fire after militants attacked police convoys searching for hidden weapons. The Commission has subsequently limited its investigation to the legality of the cremations alone, ignoring the question of whether the police had wrongfully killed those cremated.

*"We submitted that information to the National Human Rights Commission. We submitted that information to the Supreme Court, also showing records of cremations in other districts, records of disappearances in other districts, following abductions and we said, 'Look, these are the patterns. Please, how can you restrict it to one district? How can you restrict it to the fact of cremation, but they have not so far considered any of our plea.'"*

– Ram Narayan Kumar,  
SBS Dateline interview  
Australia, 2002

### Outstanding Issues

In their final written arguments, the petitioner CIIP continues to insist on knowledge, justice, and reparations for the victim families. Because the NHRC is in this case--for the first time--acting as a designated body of the Supreme Court, its decisions will serve as precedent for victims of mass state crimes throughout India and will give content to the rights to life and redress. The CIIP's arguments in front of the NHRC thus do not specify a monetary amount to compensate the victims, but instead insist upon full acknowledgment of state actions, criteria for determining reparations, and a clear mechanism for implementing reparations.

The CIIP, moreover, relies on international law to establish that the NHRC must consider many components of a reparations package, in addition to direct monetary compensation. Principles established by the United Nations describe four forms of reparation that States should provide to victims of human rights

violations: restitution, compensation, rehabilitation, and satisfaction and guarantees of non-repetition. The European Court of Human Rights has also defined an effective remedy as including the “payment of compensation” and “a thorough and effective investigation capable of leading to the identification and punishment of those responsible.”

Thus, according to international law and precedent, the Punjab Government’s failure to discover the identities of the cremation victims cannot be accepted, nor the cases dismissed. The Government must explain its method of investigating the extrajudicial executions, and the NHRC and petitioners given an opportunity to examine the government’s investigation and conduct their own investigation. Perpetrators of the disappearances must be identified and brought to justice in order to ensure an effective remedy and non-repetition of the violations. Furthermore, the government must acknowledge its full role and responsibility in the disappearances and offer complete reparations that redress the entire scope of violations. This does not entail a uniform monetary amount for all victims, but requires individual determinations of compensation based on the family’s specific circumstances and violations, and according to criteria established by the Commission and international precedent.

The CIIP insists and the evidence shows that where an individual died in police custody prior to being illegally cremated, it must be presumed that the individual was extrajudicially executed. Moreover, the CIIP contends that evidence of over 2,097 cases in one district proves a larger pattern of disappearances throughout the state of Punjab, and that the NHRC is required to conduct a comprehensive and transparent investigation into these systematic and widespread crimes. Failure to investigate these mass state crimes violates the survivors’ rights to knowledge, justice, and reparations, and further entrenches impunity for gross human rights violators.

After the order’s issuance, which is expected very soon, the CIIP and other petitioners have the option of appealing to the Supreme Court of India. For more information on the case, please visit: <http://www.ensaaf.org/nhrc.html>.

## NEW YORK CITY BAR ASSOCIATION RELEASES REPORT CONDEMNING INDIA’S SECURITY LAWS

On September 25, 2006, the Committee on International Human Rights of the New York City Bar Association released a report, *Anti-Terrorism and Security Laws in India*, calling on the Indian government to limit its application of anti-terrorism laws. The 135-page report, based on extensive research and a two-week trip to India, provides a thorough analysis of the use and effectiveness of anti-terrorism laws in India, and the need for reform of the Indian police and criminal justice system in order to prevent further human rights violations. Anil Kalhan, Visiting Assistant Professor at Fordham University School of Law, serves as chairman of the committee’s India project. During their two week trip, project participants met with attorneys, government officials, detainees and their families, scholars, and human rights defenders throughout India.

The report analyzes the historical and institutional context and human rights concerns arising from three categories of laws:

- (1) constitutional provisions and statutes authorizing the declaration of formal states of emergency and the use of special powers during those declared periods,
- (2) constitutional provisions and statutes authorizing preventive detention during non-emergency periods, and
- (3) substantive criminal laws, such as TADA [Terrorist and Disruptive Activities (Prevention) Act], POTA [Prevention of Terrorism Act], and UAPA [Unlawful Activities (Prevention) Act], which define terrorism- and other security-related offenses and establish special rules to adjudicate them during non-emergency periods.

The Association discusses the use of these laws in the counter-insurgency operations in Punjab. Prior to the Indian Army attack on Harmandir Sahib in June 1984, for example, the government relied upon its emergency powers under the Constitution

to repeatedly impose President's Rule and dismiss the state government. The report discusses the enactment and application of TADA in response to the violence in Punjab:

Considerable evidence suggests that in its application, TADA's sweeping powers were used predominantly not to prosecute and punish actual terrorists, but rather as a tool that enabled pervasive use of preventive detention and a variety of abuses by the police, including extortion and torture. In Punjab, advocates extensively documented evidence that thousands of individuals, virtually all of them Sikh, had been arbitrarily arrested under TADA and detained for prolonged periods without being told the charges against them. The availability of TADA's provisions as a means of coercion also helped facilitate many of the other well documented human rights violations by the police.

Fewer than one percent of the 14,557 individuals detained under TADA in Punjab were convicted. Similar violations occurred throughout India in the application of TADA.

The report highlights major human rights concerns with the anti-terrorism laws, such as overly broad and ambiguous definitions of terrorism, the use of special courts that infringe on the right to a fair trial, and broad immunities from prosecution for government officials that obstruct victims' right to an effective remedy, among other problems. The Association praises India for repealing the Prevention of Terrorism Act (POTA) in 2005 and taking steps to limit its use, but highlights concerns from the continued retroactive application of POTA. Further, the government of India preserved key provisions from POTA in amendments to the Unlawful Activities (Prevention) Act of 1967.

The authors further highlight the lack of effective mechanisms in India to ensure police accountability for human rights violations. In its recommendations to improve these mechanisms, the Association includes protection of lawyers and human rights defenders, the elimination of provisions granting official immunity, and the elimination of the requirement of prosecution sanction, among others. The Association insists on the need for further transformation of India's criminal

justice and police institutions in order to alleviate the pressure to enact anti-terrorism laws and fully address the human rights concerns.

## ENSAAF THANKS ITS SUMMER VOLUNTEERS

Ensaaf works with a dynamic and diverse group of volunteers, including college and graduate students and professionals. Ensaaf thanks those who helped in the summer months; your support was invaluable!

- Divneet Kaur researched foundations that would support Ensaaf's work and created a database organizing that information. Her development research allowed Ensaaf to identify a diverse range of potential funders. Divneet is now a freshman at Whitman College in Washington State.
- Anuradha Sawkar contributed to our database recording victims killed in "encounters" with Indian security forces. She researched archived Punjab newspapers, which regularly reported on "encounter" killings, giving numbers and names of individuals killed. Indian security forces faked the vast majority of these "encounters," disguising their extrajudicial executions. This ongoing project will help Ensaaf document the number of extrajudicial executions perpetrated by security forces from 1985-1995, explore key legal human rights cases, understand the functioning and role of security forces, and analyze government responses to human rights violations, among other issues. Anu also wrote for Ensaaf's human rights blog. Anu is currently a junior at Whitman College in Washington State.
- Jasjit Singh edited footage and added English subtitles to the video recording of Jaswant Singh Khalra's April 1995 speech. His painstaking work will allow Ensaaf to distribute Khalra's message of truth and accountability for human rights violations more widely. Jasjit is an entrepreneur who resides in Portland, Oregon.

## ENSAAF IN THE NEWS: 2006

- On July 12, 2006, radio host Neel Garlapati interviewed Ensaaf Co-Director Sukhman Dhani, along with Brad Adams, Asia Director at Human Rights Watch, regarding the extradition and risk of torture of Kulvir Singh Barapind. The interview was aired on KPFK 90.7, Los Angeles' Pacifica radio station, as part of Radio Intifada's program on South Asian Americans Organizing for Change.
- In its July 11, 2006 issue, *The Desi Connect* featured Ensaaf in its Non-Profit Spotlight.
- On May 18, 2006, the *Times of India*, Chandigarh edition, covered the 12-year anniversary of the disappearance of human rights attorney Sukhwinder Singh Bhatti, and Ensaaf's communication to the UN Special Representative on the Situation of Human Rights Defenders regarding Bhatti's disappearance.
- On May 4, 2006, the *Times of India*, Chandigarh edition, covered the joint letter issued by Ensaaf, Human Rights Watch, REDRESS, and the Center for Human Rights and Global Justice, calling for the prosecution of former Director General of Punjab Police KPS Gill for the murder of human rights activist Jaswant Singh Khalra.

Please visit <http://www.ensaaf.org/news.html> for more on Ensaaf's media coverage.

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