

## ABOUT ENSAAF

Ensaaf's mission is to end impunity and achieve justice for mass state crimes in Punjab, India by documenting and exposing human rights violations, bringing perpetrators to justice, and organizing survivors to advocate for their rights. Impunity means the institutional refusal to hold perpetrators of human rights abuses accountable.

Ensaaf, which means "justice" in many South Asian languages, believes that impunity is the root cause of ongoing abuses and perpetually violates survivors' rights to truth, justice, and reparations. Therefore, we must defeat impunity for mass state crimes in order to protect and enforce human rights in India.

## ENSAAF LAUNCHES NEW WEBSITE

In November 2006, Ensaaf launched its new website, making it easier to stay informed and contribute to the movement for truth and justice for victims of gross human rights violations in Punjab, India. The new website includes an expanded "Info and Resources" section, a comments page where you can submit feedback to Ensaaf, and a donations page from which you can sign up for recurring donations. As little as \$10 per month can make a great difference. Please visit our website at [www.ensaaf.org](http://www.ensaaf.org).

## INSIDE THIS ISSUE

- 1 NHRC Issues Final Order
- 3 Commission in Amritsar to Identify Remaining Cremations
- 3 High Court Stalling Efforts to Prosecute KPS Gill
- 4 PHR/Bellevue Respond to NHRC's Attacks
- 5 Police Admit to Faking Over 300 Deaths
- 6 Op-Ed by Ram Narayan Kumar
- 7 Ensaaf Thanks its Interns

## NHRC ISSUES FINAL ORDER: DENIAL OF TRUTH, JUSTICE, AND REPARATIONS

### Background

In January 1995, human rights defender Jaswant Singh Khalra used government cremation records to expose over 6,000 mass cremations in Amritsar District—then one of 13 districts in Punjab. Subsequently, the Committee for Information and Initiative in Punjab (CIIP) moved the Supreme Court to demand a comprehensive inquiry into disappearances and police abductions throughout Punjab. The Supreme Court ordered the Central Bureau of Investigation (CBI) to investigate these crimes. In December 1996, the Supreme Court referred the matter to the National Human Rights Commission (NHRC), observing that the CBI's inquiry report disclosed "flagrant violations of human rights on a mass scale." The December 1996 report by the CBI showed 2,097 illegal cremations at three cremation grounds in Amritsar District. However, this number does not accurately represent the total number of individuals illegally cremated in Amritsar. Interviews with cremation ground workers disclosed that multiple people were often cremated with the firewood normally required for completely burning one body.

### October 2006 Orders of NHRC

Over the past ten years, the NHRC limited its mandate to illegal cremations recorded in the CBI lists. In its October 9, 2006 order, which effectively closed the matter of police abductions leading to disappearances and secret cremations in Amritsar, the NHRC compensated the next of kin of 1,245 individuals for the wrongful cremation of their relative, where the Punjab Police did not follow the rules for proper cremations. It also appointed a Commissioner in

Amritsar for conducting an inquiry to identify the remaining 814 bodies from the CBI lists, if possible, within eight months. Thus, in ten years of litigation, the NHRC merely found that the police had not followed the rules, guidelines, and procedures required before cremating 1,245 identified bodies, but did not pass judgment on how those individuals were killed.

On October 10, the NHRC rejected the independent report prepared by experts on torture and forensic evaluation from Physicians for Human Rights (PHR) and the Bellevue/New York University School of Medicine Program for Survivors of Torture (Bellevue). The NHRC made several false statements attacking the team's professional credibility. PHR/Bellevue responded to the order in an open letter on December 8, 2006. See *article on page 4*.

*"[W]e are not expressing any opinion about the culpability or otherwise of any police officer or officials, nor shall we be understood to have expressed any opinion about the responsibility of any of the officials of the state for the unlawful and unceremonious cremations of the deceased..."*

- NHRC

### Major Failings

The conclusion of the matter in front of the NHRC is the culmination of a decade of denials and refusals to acknowledge the suffering of the families of the disappeared and the widespread and systematic violations of the rights to life and liberty. The state promoted the perpetrators who organized and committed the crimes, rather than punishing them. The counter-insurgency strategies employed in Punjab continue to be executed in all corners of the country. The NHRC's refusal to investigate the disappearances amounts to a sanction of these practices and betrays India's claim to be the world's largest democracy.

The Supreme Court appointed the NHRC as its *sui generis* body in the Punjab mass cremations case, with the vast powers of the Supreme Court under Article 32 of the Indian Constitution to redress fundamental violations of human rights. Unfortunately, over the past ten years the NHRC consistently ignored the fundamental rights violations that had occurred throughout Punjab and shielded perpetrators from accountability. The Commission's major failings in the Punjab mass

cremations litigation include:

- **Territorially restricting its mandate** to three crematoria in Amritsar district, ignoring disappearances, extrajudicial executions, custodial deaths and illegal cremations throughout Punjab.
- **Limiting its mandate** to the narrow issue of the procedural correctness of the cremations, ignoring the violations of the rights to life and liberty.
- **Refusing to investigate a single cremation**, thus never hearing any evidence from survivor families.
- **Refusing to hold any officer or agency accountable** for the violations.
- **Refusing to apply international law** to develop criteria for reparations.
- **Rejecting briefs and reports** by international groups.

### International Legal Principles for Reparation

International law obligates States to investigate each disappearance, custodial death and extrajudicial execution and provide an effective remedy to those whose rights have been violated. A victim's right to an effective remedy imposes an obligation on the state to identify and prosecute the perpetrators of human rights violations. The responsible state is further obligated to provide comprehensive reparations for the damage caused by the violations, which includes restitution, compensation, rehabilitation, and satisfaction and guarantees of non-recurrence.

The satisfaction and guarantees of non-recurrence include, among other initiatives: full public disclosure of the truth and investigation of the facts; the search for bodies of the killed and disappeared; public acknowledgment of the abuses and acceptance of State responsibility; and judicial or administrative sanctions against the perpetrators. Further, reparation is premised on the principle of non-discrimination, where all victims who have suffered like violations receive like reparations.

The National Human Rights Commission has failed to provide an effective remedy equally before the law by refusing to investigate extrajudicial executions, custodial deaths, and disappearances throughout Punjab, shielding perpetrators from accountability, and

awarding arbitrary compensation amounts without reference to the full spectrum of rights violations and other components of reparations.

The ultimate resolution of the Punjab mass cremations case will serve as precedent for victims of mass state crimes throughout India and will give content to the rights to life and redress. Thus, it is imperative to challenge the NHRC's ten-year denial of justice and create precedent based on international human rights and Indian law. The Supreme Court retains seisin over the Punjab mass cremations case, and its ultimate resolution will occur there. Ensaaf is working with the CIIP to coordinate advocacy and further litigation. For more information on the case, please visit: <http://www.ensaaf.org/docs/nhrc.php>.

## COMMISSION IN AMRITSAR TO IDENTIFY REMAINING CREMATIONS IN PUNJAB MASS CREMATIONS CASE

Of the 2000-plus illegal cremations acknowledged by the NHRC, 814 bodies have yet to be identified. The National Human Rights Commission (NHRC) appointed a Commissioner, retired High Court Judge K.S. Bhalla, for receiving evidence and conducting an inquiry to identify the remaining bodies, if possible, within eight months. In its October 9, 2006 order, the NHRC stated the Bhalla Commission must complete the identification in association with petitioner Committee for Information and Initiative in Punjab (CIIP) and other parties who wished to provide relevant evidence.

The first official hearing took place on December 15, 2006. Ram Narayan Kumar represented the CIIP. At this hearing, it became apparent from discussions that Commissioner Bhalla had held at least one ex parte meeting with other parties, excluding the CIIP. Further, without informing or consulting the CIIP, the Bhalla Commission had issued a public notice in three newspapers on one day in November, receiving 219 claims from families.

In his oral presentations, Kumar discussed issues of methodology and the need to resolve the identity of forged cremations, admitted by the police to be greater than 300, in order to ascertain the true victims. He

further stressed the need to explore additional sources of information, such as arrests, abductions, disappearances and encounters in other districts of Punjab, since these cremations had remained unidentified over the ten-year litigation before the NHRC. The Commission had itself demonstrated that many of the decedents came from outside of Amritsar in its identification of the 1,245 bodies.

Commissioner Bhalla stated that he will base his identifications solely on claim forms received by the NHRC. Bhalla refused to give CIIP access to the claims that had been filed before the NHRC in response to two earlier notices. He maintained that he was upholding the NHRC's order in this regard.

Ensaaf is assisting in preparing CIIP's submission to the Commission. This submission will propose methodology for further identification, discuss the need to resolve the forged cremations and solicit claims from outside of Amritsar, and also call for records of complaints/habeas corpus petitions, and newspaper reports, incident reports, and first information reports on encounters between 1992 and 1994. These submissions will be made prior to the second hearing, scheduled for January 2, 2007.

## HIGH COURT STALLING EFFORTS TO PROSECUTE KPS GILL IN KHALRA CASE

On October 23, 2006, the Punjab and Haryana High Court held the first hearing in the petition filed against former police chief KPS Gill for the murder of human rights activist Jaswant Singh Khalra.

### History of the Case

On September 6, 2006, Paramjit Kaur Khalra, the widow of slain 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. Ensaaf worked with Bains to draft the petition and apply the international law doctrine of superior responsibility.

Last year, on November 18, 2005, a district court in Patiala convicted six Punjab police officials in Khalra's 1995 abduction and/or 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.

#### Current Status

A division bench consisting of Justices Vinaj Mittal and HS Bhalla heard the petition on October 23, and transferred it to another division bench. The bench that has now received the petition has also admitted the appeals from the November 2005 convictions. Contrary to normal practice, the bench has not called a hearing since late October. The bench could decide to hear the petition first, or the appeal first. If it hears the convicted officers' appeals first, it could inordinately delay the petition against Gill.

## PHYSICIANS FOR HUMAN RIGHTS AND THE BELLEVUE/NYU PROGRAM FOR SURVIVORS OF TORTURE RESPOND TO NHRC'S ATTACKS

On October 10, 2006, the Indian National Human Rights Commission (NHRC) issued an order rejecting an independent report prepared by experts from Physicians for Human Rights (PHR) and the Bellevue/New York University School of Medicine Program for Survivors of Torture (Bellevue). The report was an independent assessment of the torture and trauma suffered by 127 family members who were part of the NHRC Punjab

mass cremations case. On December 8, 2006, PHR/Bellevue submitted an open letter to the NHRC, responding to their allegations.

The results of the assessment were submitted to the NHRC in October 2005 in order to inform a comprehensive reparations package "based on a detailed understanding of the nature and scope of violations suffered by the decedents and their surviving family members." The PHR/Bellevue report demonstrated that the families of the missing suffered severe human rights violations, including torture, severely impacting the mental and physical health of the survivors. The study found alarming rates of current and past psychological and physical suffering among the survivors:

Rates of depression, posttraumatic stress disorder, and global psychological distress were extremely high, with nearly 80% of those individuals interviewed reporting a past or present major depressive disorder and more than half reporting symptoms more than ten years after the traumas occurred.

Just one day before rejecting the report, however, the NHRC issued an arbitrary compensation amount to the next of kin of 1,245 individuals cremated by police, without reference to any criteria for compensation.

The Commission not only ignored the veracity of the independent report prepared by PHR/Bellevue experts, it made several false statements attacking the team's professional credibility, including accusing the team of failing to file an affidavit with the report, which the team did file at the time. Additionally, the Commission claimed the report was "hopelessly vague" and "lack[ed] transparency." As the PHR/Bellevue letter stated:

The Commission did not attempt to resolve any of its objections, in writing or at the multiple hearings that occurred.... Our 25-page report provides extensive statistical analysis, including six detailed tables, supported by illustrative narratives. The inquiry and report were carried out according to the highest standards

of forensic evaluation by internationally respected health professionals.

The PHR/Bellevue letter called the NHRC's dismissal of its report as "inappropriate and unwarranted." It concluded by stating:

We regret that the Commission has chosen to patently disregard evidence that is critical to the determination of fair and reasonable compensation for the extraordinary losses of surviving members and willfully neglected credible allegations.

The letter thus countered the NHRC's attacks on the study's credibility and exposed the Commission's careless disregard for information describing the full extent of survivors' suffering.

The PHR/Bellevue letter was signed by Leonard Rubenstein, JD, PHR's Executive Director and the co-authors of the report: Barry Rosenfeld, PhD, ABPP, Professor of Psychology, Fordham University and Research Consultant, Bellevue/NYU Program for Survivors of Torture; and Allen S. Keller, MD, Associate Professor of Medicine at NYU School of Medicine and Director, Bellevue/NYU Program for Survivors of Torture.

*The press release and letter can be found at:  
<http://www.ensaaf.org/news/pr2006-12-15.php>*

*The original PHR/Bellevue report can be found at: <http://www.ensaaf.org/docs/phr-bellevue.php>*

*The NHRC order is available at:  
<http://www.ensaaf.org/docs/oct06.php>*

## POLICE ADMIT TO FAKING OVER 300 DEATHS

In February of 2006, Director General of Punjab Police S.S. Virk admitted to the existence of over 300 militants who had allegedly died in encounters with police. These "cats" – former militants used to inform against other militants – were a key component of the Punjab counter-insurgency strategy.

Revelations of these fake deaths emerged when the media exposed Sukhwinder Singh Sukhi, believed to have been killed in an encounter with Punjab police, living with his wife in Jalandhar under an assumed name. In order to declare these former militants such as Sukhi dead, the police tagged their names on unidentified bodies. When individuals sought proof of Sukhi's "death", the police went so far as to make Sukhi lie on the ground pretending he was dead, sprinkling sauce all over his clothes and taking photographs, according to the Chief Minister of Punjab Amarinder Singh. Cremation records listed Sukhi's body as cremated by police after an encounter.

This raises the question of who the unidentified bodies were and how they were killed. The answers to these questions are not only important for the families of these unidentified bodies used by the police, but have grave implications for the new Commission set up by the NHRC in Amritsar.

The exact information on how many more such forgeries were made is vital for the purposes of the Amritsar Commission's mandate, charged with the task of identifying the remaining 814 cremations in the original CBI lists. The requirements to determine the true identities of the remaining unidentified cremations carried out in three crematoria of Amritsar district oblige this Commission to call for information on these admitted forgeries and to clearly determine the cremation grounds at which they were actually carried out. The Commission must demand information on the true identities of the individuals cremated under these false names.

## JUSTICE BHALLA'S MANDATE IS LIMITED

Ram Narayan Kumar

*This op-ed appeared in the December 31, 2006 issue of the Chandigarh Tribune at:*

*<http://www.tribuneindia.com/2006/20061231/edit.htm#1>*

THE matter of enforced disappearances leading to mass cremations in Punjab epitomises a unique combination of the legal process, under the fundamental rights jurisdiction of the Supreme Court, and a rigorous documentation of facts of human rights abuses, which the human rights community involved with the case has managed to develop.

Yet, the objectives of truth, justice and reparation remain unrealised. Though the facts of abuses have been established and partially acknowledged, the state agencies have found ways to evade the binding obligations of justice under the law and the imperatives of reform.

The matter has been pending before the National Human Rights Commission for a decade after the Supreme Court, in December 1996, mandated it to adjudicate all the issues and to award compensation following a report by the CBI, which disclosed "flagrant violations of human rights on a mass scale" and 2097 illegal cremations at three sites in Amritsar district alone.

After 10 years of litigation, exhausted mainly in futile legal wrangling and denials by the state agencies, the NHRC has effectively disposed of the matter with its October 10, 2006 order that awards arbitrary sums of monetary compensation to 1,245 victims.

The order also appoints Justice K. S. Bhalla, a retired judge of the Punjab and Haryana High Court, to ascertain, over the next eight months, the identities of the remaining persons cremated in the district. It is ironic that the NHRC should appoint a retired judge of the Punjab and Haryana High Court to do over the next eight months what it has not been able to accomplish over a decade, that too, without providing clear methodological principles and the necessary powers of discovery.

The appointment is ironic also for the reason that in course of a decade-long engagement with the matter,

the NHRC has failed to record the testimony of a single victim family. It refused to go into the systemic patterns of violations and declined to investigate the issues of rights to life and liberty.

Yet, the NHRC's October 2006 order affirms faith that Punjab and the Union Government will take appropriate steps to ensure that violations do not recur. How can there be a guarantee of non-recurrence when there is no knowledge of what occurred?

Despite this history, this writer will appear before the Justice Bhalla Commission at Amritsar on January 2, 2007 and try to assist it with information and evidence that it will need to resolve the remaining unidentified cremations listed in the CBI's report.

The state government officials are on the record saying that more than 300 "militant collaborators" who had publicly been killed and cremated got rehabilitated under assumed identities and that they will not reveal further details on how and where these forgeries were actually affected or who were the actual persons killed and burnt in lieu of such "militant collaborators".

The requirements to fix the true identities of remaining anonymous cremations carried out in three crematoria of Amritsar district oblige the Bhalla Commission to call for information on these admitted forgeries and to clearly determine the cremation grounds at which they were actually carried out.

Other source of information that this commission should avail itself of is in the incident reports of such police abductions and enforced disappearances that occurred outside Amritsar. This writer is able to clearly demonstrate that the police agencies in Punjab operated without respect for the norms and regulations of their territorial jurisdictions and that persons abducted and disappeared in one district were often confined, interrogated and killed in other districts. Many who belonged to Amritsar were abducted, killed and cremated outside Amritsar.

Likewise, many shown to have been cremated as unidentified bodies in the crematoria of Amritsar came from other areas. The task of resolving their true identities requires the commission to investigate and analyse all reports of police abductions resulting in enforced disappearances throughout Punjab and we will be able to assist the commission with methodology and the field work if it is able to take on the challenge.

This writer must also remind the Commission about the cases of 18 persons who Punjab had, in January 2000, categorised as qualifying to receive compensation without admitting liability or the merits of their claims. The families of all the 18 had rejected the offer on the ground that it came without the admission of wrongdoing and was fixed without any reference to the fundamental rights violations they had suffered. These 18 cases were out of a total of 88 claims that the NHRC had received in response to a public notice inviting complaints. Their claims and their objections to the terms of compensation being offered have remained unresolved.

The expert literature on the subject is unanimous in the view that for the concept of reparation to be meaningful, victims must be able to return to the state of being, as close as possible, at which they were before violations occurred. They must receive compensation for physical and mental injury, including lost opportunities, emotional and moral harm and legal costs. Their rehabilitation must include medical care, including psychological and psychiatric treatment.

Justice Bhalla's mandate is limited and he cannot be blamed for the perversions of the process that have interfered against the case becoming an experiment in social reconciliation through a judicial affirmation of accountability. However, Justice Bhalla can make a difference if he is able to approach his limited but important mandate with attention to the principles and the potential of the case, with the Supreme Court mandating the NHRC to marshal the powers of Article 32 to "forge new tools" in order to do "complete justice".

If this opportunity is not to be frittered away, under the culture of impunity that prevails, it is also important that the civil society in Punjab, across social divisions, gets involved in developing a climate of receptive dialogue and informed public opinion on the issues at stake.

## ENSAAF AROUND THE COUNTRY

In the past few months, Ensaaf has made presentations in all corners of the country as part of its Documentation and Education program.

Presentations have been hosted at universities, Gurdwaras, and community forums, including: the University of Washington in Seattle, Montana State University, and the Sikh Community in Raleigh, North Carolina.

## ENSAAF THANKS ITS INTERNS

Ensaaf works with a dynamic and diverse group of volunteers, including college and graduate students and professionals from all over the world. Our interns have been active in our UN Advocacy and Documentation and Education program areas. Ensaaf thanks those who helped in the fall months; your support was invaluable!

- Cynthia Heidelberg is a recent graduate of the University of Washington.
- Elizabeth Hooker is a graduate of Queens College in Canada, and currently resides in Portland, OR.
- Joshua Underhill is a student at Bond University Law School in Australia. Joshua was studying abroad at the University of British Columbia for the fall semester.
- Hermanjeet Kahlon is a senior at the University of British Columbia.
- Elizabeth Sadowski is a junior at the University of British Columbia.
- Ian Schwartz is a student at Hampshire College.

## DONATE TO ENSAAF

Ensaaf is an independent nonprofit organization supported by contributions from individuals and foundations. All donations are tax deductible. Ensaaf is also eligible for matching contributions through corporations. Recurring donations are now possible through our website: [www.ensaaf.org](http://www.ensaaf.org). Or you can send donations to:

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