

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 abuse 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.

INDIA BURNING THE RULE OF LAW

In January 2007, Ensaaf released a summary report on the Punjab mass cremations case. The report, *India Burning the Rule of Law*, describes the history and legal proceedings in the Punjab mass cremations case and analyzes the major failings of the National Human Rights Commission (NHRC). The ultimate resolution of the case will serve as precedent for victims of mass state crimes throughout India and will give content to the rights to life and redress. Ensaaf is working in partnership with the Committee for Information and Initiative on Punjab, an original petitioner in the case, to challenge the NHRC's ten-year denial of justice and create precedent based on international human rights and Indian law. The report is available on Ensaaf's website, www.ensaaf.org.

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ENSAAF, HUMAN RIGHTS WATCH PUBLISH OP ED IN THE ASIAN AGE

Injustice cost votes in Punjab polls

By Jasmine Marwaha and Meenakshi Ganguly
 Published in *The Asian Age* (Feb. 27, 2007)

Mumbai: As Punjab went to the polls to elect a new state government this month, political pundits attributed the lack of a clear Congress victory in exit polls to frustration with the rising consumer prices under the UPA Central administration.

The newly-elected Punjab government, however, may not realise that the cost of ignoring human rights violations in Punjab is also increasing exponentially. The problem of widespread impunity for "disappearances" is being put to the test with the handling of the Punjab mass cremations case. This case will determine the Indian state's willingness to uphold the rule of law in the face of internal security challenges. The consequences of this case will be felt throughout the country for years to come.

The legal battle is the bitter fruit of the violent Sikh secessionist movement and the brutal counter-insurgency efforts that followed, most infamously symbolised by the Army's attack on the Sikh "Golden Temple" in Amritsar in 1984, which militants were using as a base. Hundreds of civilian pilgrims died when Prime Minister Indira Gandhi sent in tanks. After Gandhi's Sikh bodyguards exacted revenge by assassinating her, the government unleashed a pogrom against Sikhs in Delhi and other cities, with thousands massacred. None of the organisers or senior officials involved has been held criminally responsible.

For the next ten years, Indian security forces engaged in a murderous counter-insurgency operation perpetrating torture, enforced "disappearances" and extrajudicial executions of tens of thousands of Sikhs in false encounters. A small percentage of victims have received compensation. Only a handful of victims have received justice.

The family of Udham Singh is among those still waiting. Singh, 62, was abducted by the Punjab police in front of his family on July 1, 1992, taken to an interrogation centre with his son, and a few days later killed and cremated by the police. After a 10-year legal battle for justice, his family has been granted a paltry

Rs 250,000 (US \$5,663) without any admission of wrongdoing by the government.

A public interest lawsuit on “disappearances” and secret cremations in Punjab, filed in 1995, has yet to be resolved. The Indian National Human Rights Commission (NHRC), cited often by the government as the symbol of its commitment to the protection of human rights, granted compensation in 1,245 cases—but only on the grounds that the Punjab police did not follow the rules for cremating a body. Sadly, it has refused to investigate how those individuals were killed in the first place, hear the testimony of any survivor, or hold a single official liable. And it has only agreed to look at cases of people who were cremated in Amritsar district—one of the then 13 districts in Punjab.

After its decade-long inquiry, the NHRC has established yet another one-man commission in Amritsar to identify and compensate a last group of 814 secret cremation victims. The commission, due to hold its fourth hearing on March 3, is not empowered to investigate the killings or hold those responsible to account.

Mohinder Singh, a member of the Association of Families of the Disappeared in Punjab, says that cash compensation is not enough. Over the past decade, he has collected evidence of his son’s abduction and secret cremation by Punjab Police in 1995. He has repeatedly appealed to politicians, police and the courts to prosecute his son’s killers. Even as he appears before this latest Punjab commission, he has little hope for justice. “Why doesn’t the judiciary take any action against the police?” he asks.

The answer to his question exposes the duplicity of a system that equates compensation with justice and accountability. It is a strategy that covers up gross human rights violations and makes a mockery of the rule of law. The NHRC’s final decree of compensation aims to silence the victims and put the matter to rest with as little disruption as possible to the status quo.

The problem for the Indian government, as with governments all over the world that fail to address past crimes, is that there are many people like Mohinder Singh who will not accept a cash payoff in return for silence. They want justice.

Mohinder Singh and others are ready to take their cases to the Indian Supreme Court. While it will be under great pressure from the state not to recognise these claims, it is crucial that the Supreme Court—one of the most respected in the world—acts to establish the principle of accountability, which is as fundamental to protecting human rights as it is to protecting the economy.

Together, the newly elected government in Punjab and the Supreme Court can change a government’s system focused on silencing victims and avoiding embarrassment into one that is accountable to all its citizens.

Jasmine Marwaha is Program Associate at Ensaaf. Meenakshi Ganguly is South Asia researcher for Human Rights Watch.

ENSAAF RELEASES 2ND EDITION OF TWENTY YEARS OF IMPUNITY

The second edition of Ensaaf’s groundbreaking report, *Twenty Years of Impunity*, is now available online for purchase or download. The report serves as a critical wake-up call to the Indian government to implement the rule of law and redress mass state crimes in India. The victims of the November 1984 massacres of Sikhs continue to suffer, silenced by recent inquiries that allowed major perpetrators to remain in power.

More than two years have passed since the publication of the first edition. During that time, the Justice Nanavati Commission of Inquiry submitted its report to the Indian government, the Congress administration submitted an Action Taken Report to Parliament, and Prime Minister Manmohan Singh apologized, but refused to accept state responsibility for the massacres. The passage of two years has not brought survivors closer to the realization of their rights to truth, justice, and reparations.

Twenty Years of Impunity clearly demonstrates that senior political party officials and police sponsored, organized, and executed the November 1984 massacres of thousands of Sikhs following the assassination of Prime Minister Indira Gandhi. The second edition further establishes that the recent government ignored evidence implicating specific perpetrators.

“Each day the survivors are denied their rights to knowledge, justice and reparation, their anguish is compounded, their nightmare prolonged, and their alienation deepened. Until India ends impunity for these genocidal killings,” states the report, “it will continue to be a nation ruled by men, and not the law.”

The supplement reflects on the recent developments and includes analyses of the Nanavati Commission’s report and Prime Minister’s speech, which failed to actively acknowledge or confront the horror of the massacres. The report succinctly articulates the failings of the Nanavati Commission and the Action Taken Report after a thorough consideration of the evidence at the government’s disposal.

The report will be available online in April at www.elliottbaybook.com, for \$10. Proceeds go directly towards Ensaaf's programs, including legal advocacy. Ensaaf is currently working with the Committee for Information and Initiative on Punjab to litigate the Punjab mass cremations case in the Indian Supreme Court. The ultimate resolution of this case can lay the groundwork for real reparations to all victims of mass state crimes, including the November 1984 pogroms. The report is also available as a PDF download at www.ensaaf.org/docs/20years.php.

ENSAAF WELCOMES DR. ELVIS FRASER TO BOARD OF DIRECTORS

Ensaaf is delighted to welcome Dr. Elvis Fraser to its Board of Directors. Dr. Fraser brings a wealth of experience and skills as the Vice President and Director of the Evaluation and Knowledge Services Group at the consulting firm QED. Dr. Fraser has 20 years of experience in international and domestic development research and program evaluation. His primary expertise is in social science research and evaluation; policy analysis; economic analysis; ethnographic studies; process and impact evaluation; performance monitoring; operations research; and translational research. Dr. Fraser is experienced in working with organizations to design and development knowledge management systems. He is skilled in the application of a wide range of quantitative and qualitative methods.

Dr. Fraser has implemented research and evaluations of programs across different sectors including: education, workforce development, youth development, health, microenterprise, community development, and the environment. He has served as a senior consultant for different organizations including the World Bank, Inter-American Development Bank, USAID, Health and Human Services Agencies, and multiple foundations.

Before joining the QED Group, Dr. Fraser was Vice President and Director of the Center for Applied Behavioral and Evaluation Research at the Academy for Educational Development. He was an Assistant Research Professor and Co-Principal Investigator at the American University in Cairo, Egypt. Dr. Fraser has a doctorate in sociology, with a concentration on international development. He has conducted research and has published on democracy and international human rights, political instability, and the interrelationships among social, political, and economic development. He has experience working in Croatia, Russia, Egypt, Jordan, India, China, South Africa, Honduras, Peru, Brazil, and the Caribbean. Dr. Fraser has working proficiency in Egyptian Arabic and Spanish.

BHALLA COMMISSION OF INQUIRY: UPDATE ON PROCEEDINGS

In its October 9, 2006 order, which effectively closed the matter of police abductions leading to disappearances and secret cremations in Punjab, the National Human Rights Commission (NHRC) appointed a Commissioner of Inquiry in Amritsar, retired High Court Judge K.S. Bhalla, to identify the remaining 814 cremation victims from the CBI lists, if possible, within eight months. The NHRC stated that the Bhalla Commission shall complete the identification in association with petitioner Committee for Information and Initiative on Punjab (CIIP) and other parties who wished to provide relevant evidence.

So far, the Bhalla Commission has held official hearings on December 15, 2006, January 2, 2007, February 3, 2007, March 3, 2007, and March 24, 2007. The NHRC held three official hearings on February 5 and 15, 2007, and March 7, 2007, regarding the proceedings before the Bhalla Commission and the identification of 54 victims by the Punjab Police. The next hearing of the Bhalla Commission is scheduled for April 10, 2007.

Ensaaf provides litigation support and investigates and documents disappearances and extrajudicial executions in Punjab for the hearings before the Bhalla Commission and NHRC.

Lack of Impartiality and Transparency

The Bhalla Commission and NHRC have held ex parte meetings, excluding the petitioner CIIP. As a result of these secret meetings, the NHRC issued an order on October 30, 2006, that restricted participation in the Bhalla Commission proceedings to those families who had submitted claims in response to notices issued in 1999 (88 claims) and 2004 (1,769 claims), resulting in a total of 1,857 claims. The NHRC also severely restricted all 1,857 claimants from participating in the proceedings by requiring the claimants to resubmit their claims in response to a notice issued in November 2006. The end result is that only 70 of 1,857 claimants are eligible to participate in the Bhalla Commission proceedings. Thus, victim families whose relatives are among the 814 unidentified bodies and 1,857 prior claimants, but who failed to respond to the Commission's latest November 2006 notice, cannot appear before the Bhalla Commission. Similarly, victim families whose relatives are among the 814 unidentified bodies and who submitted claims in response to the November 2006 notice, but failed to submit claims in 1999 or 2004, have been excluded.

The failure to conduct proceedings in a transparent and impartial manner continued at the January 2nd hearing, when Justice Bhalla left the courtroom to hold private discussions with representatives of the Punjab Police, before returning to start the hearing. Neither the Commission nor the Punjab Police have informed the CIIP of what transpired in Justice Bhalla's chambers.

At the February 3rd hearing of the Bhalla Commission, when a survivor attempted to testify about the abduction and murder of his son, Justice Bhalla, at the objection of the Punjab Police, refused to allow the survivor to testify. Instead, Justice Bhalla instructed the CIIP to privately discuss the survivor's claim with the Punjab police, stating that he would accept the identification if the Punjab Police agreed to it. The CIIP refused to make an off-the-record deal with police, arguing that it would be a serious breach of transparency and ethics. It argued that the Commission had the responsibility to identify the cremation victims and could not be dependent on the police. The CIIP urged the Commission to verify the claim itself and adopt a methodology to identify the secret cremation victims, but Justice Bhalla refused. CIIP submitted the survivor's affidavit at the March 3rd hearing as per Justice Bhalla's directions; CIIP is awaiting a response by the Punjab Police and Bhalla Commission. Justice Bhalla stated that victim families cannot submit claims directly to the Commissions, although they may provide information for the limited purpose of identification through CIIP or other petitioners. He failed to explain how families excluded by the October 2006 NHRC order and November 2006 notice would know that they have this limited option. It is clear, however, that Justice Bhalla will not allow these families to testify.

At the February 5th NHRC hearing, the Punjab police submitted 54 identifications to the NHRC. Although the police made these identifications in January, it failed to share these identifications with the petitioners until the February 5th hearing. The NHRC gave CIIP ten days to respond to these identifications. Despite its responsibility and specific resources to investigate the mass cremations, the NHRC refused to verify these identifications, and placed the entire burden on the CIIP. As discussed below, CIIP discovered a fraudulent identification made by the police.

Arbitrary and Ineffective Approach to Identifying the Cremation Victims

The NHRC's October 30th order severely handicapped the Bhalla Commission's ability to identify the remaining bodies. The order required the 1,857 prior claimants, who may be among the 814, to resubmit their claims. Neither the NHRC nor the Bhalla Commission explained why the victim families, whose claims were

already on file with the Commissions, needed to resubmit their claims. Further, as these 1,857 claims were already on file, they should have been automatically reviewed by both Commissions to determine if they corresponded to the 814 unidentified bodies.

Moreover, the Commissions refuse to acknowledge the possibility that the remaining 814 unidentified bodies may not be identified from the pool of 1,857 prior claims, and that a more inclusive process of participation will be required if the Commissions are serious about establishing the identities of all 814 victims. At least ten percent of the victims previously identified by the NHRC as having been secretly cremated in Amritsar, lived outside of Amritsar district. The CIIP repeatedly suggested issuing a public notice throughout Punjab, inviting all victim families who believe their relatives may have been cremated in Amritsar to submit claims; these suggestions were rejected by the Commissions.

In addition to adopting a defective methodology to identify the remaining victims, the Commissions have also managed to un-identify cases that were previously identified. Of the 88 claims that were filed in response to the NHRC's first public notice in 1999, the Punjab Police had agreed to award compensation to 18 families with no admission of liability or guilt. All 18 families rejected the compensation. Because these families previously qualified for compensation, which cannot occur unless the bodies of their relatives are identified, they should be included among the identified cremations. However, many of these 18 victims reappear on the unidentified list of 814. Only after the CIIP raised this discrepancy at the February 3rd hearing, did the Bhalla Commission consider readmitting these 18 families. However, no decision has been made and the NHRC has indicated that these 18 families may again have to press their claims.

At the March hearings, Justice Bhalla has continued to collect and evaluate First Information Report (FIR) extracts submitted by the Punjab Police, noting that these extracts are not helpful as the Punjab Police continues to conceal information which could lead to the identification of the victims.

The Need to Investigate Each Case

Our investigations demonstrate that the Punjab Police cannot be trusted to make the identifications. First, the State of Punjab has admitted to forging the identities of over 300 cremation victims in order to protect police collaborators, who were alleged to have been killed in police encounters and then cremated as unidentified bodies, now living under assumed identities. This admission means that the true identities of the cremation victims cannot be established until the Punjab Police reveals either the identities of the police collaborators or

the identities of the victims cremated in lieu of the collaborators. This information is necessary to ensure that the disappearances are finally resolved, and that compensation is granted to the true victim families.

Second, the Punjab Police has made fraudulent identifications to claim compensation. After investigating five cases, chosen randomly, of the 54 cases identified in January by the Punjab Police, Ensaaf learned that one of the cases is a fraudulent identification, and survivors deny the police version of events in the other four cases. In the fraudulent case, the next of kin of the decedent readily admitted that his father, the alleged secret cremation victim, and brother, were both former police officers. However, his father had died of natural causes at home. The local villagers confirmed that his father had died a natural death. A police contact, with the allure of compensation, encouraged him to agree to having his father identified as a victim of a secret cremation. In the other four cases, the victim families reject the assertion of the Punjab Police that their relative was killed in an encounter, and are ready to testify about the extrajudicial execution of their relatives. The CIIP raised its objections to these cases at the February 15th hearing before the NHRC. With respect to the fraudulent case, the Chairperson of the NHRC, Justice Patil, responded by saying that the CIIP had no standing to challenge the identification and that it did not have the power of attorney to represent the victim family. The CIIP reminded the Commission that it had initiated the mass cremations case through a public interest litigation petition, and thus had standing to participate in the proceedings. Secondly, it was impossible for anybody to produce power of attorney where the victim remained unidentified, and the CIIP had no interest in representing the fraudulent victim family. Thus, the issue of power of attorney was not applicable in this situation. After some argument, Justice Patil instructed the State, which had submitted the incorrect identification, to investigate only that identification. Again, the issue of identifying the true victim and compensating the true next of kin arises.

At the next NHRC hearing on March 7, the Punjab Police admitted to falsely identifying the secret cremation. As the CIIP urged, the government's admission should have compelled the NHRC to conduct its own independent investigations into the other cremations identified by the police, but the NHRC has, thus far, failed to take action.

Third, the NHRC is basing the amount of compensation solely on whether Punjab Police admits or denies custody of the victims prior to their cremations. The NHRC has refused to challenge the police version of events and conduct its own investigations to determine whether the victims were killed in custody or in genuine encounters. Furthermore, the NHRC refuses to consider

evidence proffered by the victim families. The NHRC has declared that it will rely solely on First Information Reports (FIRs) to determine whether the victims were in the custody of the police prior to their cremations. The NHRC is explicitly ignoring the fact that the FIRs were recorded by Punjab Police, which would obviously not document its own extrajudicial executions. In the four other cases mentioned above, all of the victim families stated that their relative was killed in custody. The NHRC refused to consider the veracity of their contentions and sided with the police.

Finally, in response to the NHRC's first public notice issued in 1999, the Punjab Police disputed 44 claims of cremations that may be among the unidentified bodies. This dispute has not been resolved and the NHRC must independently investigate these cases.

At the initial hearings, the CIIP, with support from Ensaaf, argued for a rigorous methodology to resolve the unidentified cremations, urging the Commission to require the State to produce FIRs, post mortem reports, habeas corpus petitions, and news reports on abductions, disappearances and encounters. The CIIP pointed out that, in the past, it had identified many of the cremation victims by analyzing such records. The CIIP also urged the Commission to solicit claims from throughout Punjab and allow all prior and new claimants to participate in the proceedings. The Bhalla Commission rejected these arguments at the February 3rd hearing.

US STATE DEPARTMENT RELEASES 2006 INDIA COUNTRY REPORT ON HUMAN RIGHTS, CITES ENSAAF

On March 6, 2007, the U.S. State Department released its annual Country Reports on Human Rights Practices. According to the State Department, India "generally respected the rights of its citizens; however, numerous serious problems remained."

Among those serious problems, the State Department cited the lack of progress in holding police and security officials accountable for abuses committed in Punjab during the counterinsurgency campaign. The report noted the limited compensation amounts given to a relatively few individuals, in contrast to the thousands of disappearance cases reported to the Indian National Human Rights Commission (NHRC) and estimated by Ensaaf. The report referenced the NHRC case: "The government made little progress holding hundreds of police and security officials accountable for serious human rights abuses committed during the Punjab counterinsurgency of 1984-94, despite the presence of a

special investigation commission.”

The report also highlights the legal petition calling for the investigation and prosecution of former Punjab police chief KPS Gill for the abduction, illegal detention, torture and murder of human rights activist Jaswant Singh Khaira, citing Ensaaf in describing the petition. Ensaaf drafted the petition's international law arguments on the doctrine of superior responsibility, and continues to provide litigation support.

*The full country report can be found at:
<http://www.state.gov/g/drl/rls/hrrpt/2006/78871.htm>*

NEWS BRIEFS

Kashmir Police Implicated in False “Encounter”

In early February, several police officers in Indian-administered Kashmir were charged with murder after staging a fake “encounter” near the city of Srinagar in December 2006. Investigators later identified the man the police shot as 35-year-old Abdul Rehman Paddar, a carpenter who had no connections to militancy. The revelations have led police to exhume five bodies in the Sumbal region of Indian Kashmir to investigate their identities. Not only have the exhumations prodded the deep resentment of residents of Indian-administered Kashmir towards the police, they have once again forced the Indian government to confront allegations of security sector abuse.

CBI Appeals Acquittal of Sajjan Kumar, Charged With Murder in November 1984 Pogroms

On March 5th, the Delhi High Court admitted the CBI's appeal against the acquittal of Congress MP Sajjan Kumar and 8 others. Kumar is charged with the murder of Nevin Singh during the 1984 pogroms, as one of the leaders of the death squads in the Sultanpuri neighborhood in Northwest Delhi. As noted in *Twenty Years of Impunity*, numerous witnesses report Kumar instructing mobs to kill Sikhs during the pogroms.

Senior Advocate S.S. Gandhi appeared on behalf of the CBI to argue the appeal on March 12. His appointment is being contested by leading human rights advocates. According to an open letter signed by these advocates: “Having appeared for the Delhi Police before the Justice Nanavati Commission it is against professional etiquette and ethics for Sr. Advocate S.S.Gandhi to now represent the case of the victims through the State, in the Delhi High Court.” The next hearing of the appeal is scheduled for April 17.

Additionally, on March 29, 2007 an Indian court sentenced three men to life in prison for killing Niranjjan Singh during the 1984 pogroms.

Punjab State Human Rights Commission Condemns Police Torture, Recommends Immediate Compensation to Detainee

The Punjab State Human Rights Commission (PSHRC) last month recommended that the Punjab government pay Rs. 25,000 to a man from Mohali who was allegedly tortured by local police. This case is one of the first instances where the PSHRC has exercised its power to recommend compensation for victims of human rights violations under the recently amended Protection of Human Rights Act (November 23, 2006). However, the Commission cannot compel the government to provide the immediate compensation.

For more information on other recent developments on human rights in Punjab, please visit Ensaaf's blog at:

<http://blogs.law.harvard.edu/jaskaran>

ENSAAF WELCOMES ROMESH SILVA TO BOARD OF ADVISORS

Ensaaf is delighted to welcome Romesh Silva, a statistician with the Human Rights Data Analysis Group (HRDAG) based at the Benetech Initiative, to the Board of Advisors. Mr. Silva has led HRDAG projects in Sri Lanka, Timor-Leste, Chad and Bangladesh and also contributed to projects in Colombia, Sierra Leone, Guatemala and Liberia.

Mr. Silva has co-authored a number of policy-related reports and scholarly publications on the statistics of large-scale human rights violations in conflict zones.

Through his work in Sri Lanka, he has devised statistical methods to measure the reliability of data coding methods in human rights documentation projects. These methods have subsequently been used in human rights projects in Colombia, Guatemala, Sierra Leone, Ghana and Timor-Leste. His work in Timor-Leste also led to the adaptation of survey design methods used in public health to measure conflict-related mortality and conflict-related migration in Timor-Leste. His work in Chad has resulted in new ways to engage questions of command responsibility of the Chadian secret police using the secret police's own administrative records. In addition to his work with HRDAG, Mr. Silva is pursuing a Ph.D. through the Demography Department at the University of California, Berkeley.

*More information about Ensaaf's diverse and experienced Board of Advisors is available at:
<http://www.ensaaf.org/about/advisors.php>*

ENSAAF THANKS ITS SPRING SEMESTER 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 its Spring semester interns. Your support was invaluable!

- Angela Chaisson, University of British Columbia
- Andrea Lo, University of California, Berkeley
- Avril Ullett, University of British Columbia
- Cary Bassin, University of California, Berkeley
- Corey Barr, Hampshire College
- Phyllis Jeffrey, University of California, Berkeley

SUPPORT THE MOVEMENT FOR JUSTICE!

Ensaaf is an independent nonprofit organization supported by contributions from individuals and foundations. Together, we can defeat impunity for mass state crimes in order to protect and enforce human rights in India. Ensaaf represents your voice for justice and human rights in public forums, media outlets, judicial bodies, and at the United Nations, so that India cannot bury its crimes.

Recurring donations are now possible through our website: www.ensaaf.org. As little as \$10 a month will make a significant contribution to document human rights violations, advance key legal cases, and empower survivors to advocate for their rights. In addition to donating online, you can send donations to: Ensaaf, PO Box 25731, Portland, OR 97298-0731.

All donations are tax deductible. Ensaaf is also eligible for matching contributions from corporations. For more information, call 503.259.3235 or email: info@ensaaf.org.