

## The “Disappeared” and the Disappearance of Justice in India

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Congressional Human Rights Caucus  
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Dear Co-Chairman Lantos, Co-Chairman Wolf, and Members of the Congressional Human Rights Caucus:

Ten years ago today, Indian security forces abducted, tortured and murdered human rights defender Jaswant Singh Khalra because of his courageous work exposing the “disappearances” and killings of thousands of Sikhs in the state of Punjab. A decade on, the Indian government has failed to bring his killers to justice and continues to thwart any investigation into the “disappearances” and killings that Mr. Khalra brought to light. We write to you today to voice our concern that the movement for accountability and human rights in Punjab will end as a mockery of justice as the Indian government fails to hold any perpetrators of “disappearances” and killings accountable and denies survivors an effective remedy. We urge you to hold hearings into these “disappearances” and killings and urge the Indian government to comply with its obligations under international law to provide justice and redress to the victims of human rights violations committed by its security forces.

This year’s U.S. Department of State Country Report on Human Rights Practices in India notes:

In Punjab, the pattern of disappearances prevalent in the early 1990s ended; however, during the year, the Government failed to hold accountable hundreds of police and security officials for serious human rights abuses committed during the counterinsurgency of 1984-94, despite

the presence of a special investigatory commission.... The Government took no action in any of these cases, and none was expected.

Security officials who engaged in human rights violations have been rewarded and promoted instead of being brought to justice.

Through government records, Mr. Khalra demonstrated that security forces had abducted, extrajudicially executed and secretly cremated thousands of Sikhs in Punjab. Mr. Khalra's investigation revealed over 2,000 secret cremations from a single district alone, and he alleged that a similar pattern of police abductions, murders and secret cremations would emerge in the other sixteen districts of Punjab. Subsequent investigations by human rights groups confirmed that secret cremations had occurred throughout the state, and that cremation was only one form of disposing of victims' bodies. Security forces threatened Mr. Khalra with death if he did not desist from investigating and publicizing the secret cremations. But Mr. Khalra refused to be silent. On September 6, 1995, armed commandos abducted Mr. Khalra from outside of his home.

To date, the Central Bureau of Investigation (CBI), the agency charged with prosecuting the case by the Supreme Court of India, has failed to charge the nine officers implicated in Mr. Khalra's "disappearance" with torture and murder. Instead, it has filed reduced charges of kidnapping, ignoring evidence of the more serious crimes. Moreover, the CBI has not been able to win the conviction of a single person in connection with Mr. Khalra's "disappearance," despite eyewitness testimony identifying the police officers involved in his abduction, torture and the disposal of his body. Additionally, the prosecution and police have intimidated key complainants and witnesses. Paramjit Kaur Khalra, the wife of Mr. Khalra, for example, was threatened on numerous occasions by Punjab police to withdraw her petition. These threats were conveyed during phone calls and visits to her home. Mrs. Khalra was also falsely charged in a bribery case as a method of intimidation and harassment. Kikkar Singh, a witness to Mr. Khalra's detention and torture, has been detained and maliciously prosecuted in five different cases. If those associated with Mr. Khalra's case continue to face intimidation and detention, there is little chance that those responsible for Mr. Khalra's murder will be brought to justice.

The problem does not end with the prosecutor's failure to act against Mr. Khalra's killers. In addition, the Indian National Human Rights Commission (NHRC), an independent body established by an act of Parliament in 1993 to implement India's international human rights obligations, has failed to adjudicate the thousands of police abductions, extrajudicial executions and secret cremations in Punjab entrusted to it by the Supreme Court. Since 1997, when the Commission received its mandate from the Supreme Court, the Commission has not called a single survivor to testify, nor has it investigated any officers or agencies that engineered or participated in "disappearances," killings and secret cremations. Despite the fact that the Supreme Court has granted the Commission powers to investigate and remedy fundamental human rights violations under the Constitution, the Commission has arbitrarily limited its inquiry to just one out of

seventeen districts in Punjab, and refuses to consider other ways in which security forces eliminated the bodies of their victims, such as burying.

Because the Commission is operating by order of the Supreme Court, its decisions on the secret cremations matter will serve as precedent for other mass crimes in India. Further, the Commission is the only federal body designed with the purpose of addressing human rights violations. In many respects, the Commission's work represents the last hope for justice for survivors. At its last hearing on July 5, 2005, however, the Commission stated that it will dismiss the mass cremations case after rendering a decision on the circumscribed issue of whether the cremations occurred according to police rules. The Commission added that it will not inquire into whether the victims were wrongfully killed, thereby establishing that there is a right to a legal cremation, but not a right to life. The Commission's position contradicts established international human rights norms, and defeats the purpose for which it was established: to provide justice to survivors of state crimes.

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

India's relationship with the United States on terrorism and defense should not diminish U.S. expectations for the end of impunity and atrocities in India. We urge the Congressional Human Rights Caucus (CHRC) to hold congressional hearings on the "disappearance" of Jaswant Singh Khalra and secret cremations in Punjab. The CHRC should also send a delegation to India to observe the disappearance trial of Mr. Khalra and the NHRC hearings, and meet with families of the disappeared who are petitioners in these proceedings. In its bilateral dealings with India, the United States should urge India to:

- Speedily and impartially investigate Mr. Khalra's abduction, torture and murder, and prosecute his killers;
- Immediately desist from intimidating or harassing petitioners, witnesses and attorneys in Mr. Khalra's case;
- Ensure immediate investigation and adjudication of the secret mass cremations case before the NHRC, publicize the results of this investigation and initiate appropriate prosecutorial and administrative measures against those responsible;
- Take disciplinary or criminal action as appropriate against all personnel responsible for "disappearances" and extrajudicial executions in Punjab;
- Enact legislation that criminalizes "disappearances" and torture;
- Approve requests for invitations by the U.N. Special Rapporteurs on Torture and Extrajudicial Executions; and
- Ratify the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Please find enclosed reports providing further information on the issues raised in this letter. We thank you for your consideration of these matters and would welcome the opportunity to meet with you or your staff to discuss any of these issues.

Sincerely,

/s/

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