

**The Punjab Mass Cremations Case:
India Burning the Rule of Law**

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Ensaaf
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“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 Khaira,
human rights defender
murdered by Punjab
Police October 1995



The Punjab Mass Cremations Case: India Burning the Rule of Law

The Punjab Mass Cremations Case represents the best opportunity to challenge institutionalized impunity in India. Its ultimate resolution will set precedent in India on the redress of state-sponsored human rights violations.

Impunity occurs when perpetrators of human rights violations are not held accountable by the state for their actions. Impunity has been rampant in Punjab, where in even well-documented abuse cases, there is no political will to prosecute because of state support for the abuses and the protection of high-ranking officials. Furthermore, India has several provisions in its laws aimed at shielding its military personnel and civilian officials from legal accountability for their human rights abuses. Such laws are contrary to the right to an effective remedy and reparations for gross violations of international human rights law. These forms of impunity encourage more human rights violations and send a particularly negative message to victims about state indifference and complicity in their suffering. The Punjab Mass Cremations Case can challenge impunity for gross human rights violations in India because:

- (1) the abuses are thoroughly documented;
- (2) violent conflict in Punjab has ended, allowing room for advocacy; and
- (3) the Supreme Court has jurisdiction over the case.

These circumstances have created an extraordinary opportunity to end impunity and achieve justice for human rights violations in India.

Indisputable Evidence of Mass Cremations

From 1984 to 1994, Punjab security forces engaged in counter-insurgency operations that included widespread and systematic human rights abuses such as torture, disappearances, and extrajudicial executions, which claimed an estimated 10,000 to 25,000 lives. In the early 1990s, Director General of Police (Punjab) KPS Gill expanded upon a system of rewards and incentives for police to capture and kill militants, leading to an increase in disappearances and extrajudicial executions of civilians and militants alike. Hundreds of perpetrators, including all of the major architects of these crimes, have escaped accountability.

Proof of these human rights violations emerged in early 1995, when human rights activist Jaswant Singh Khaira used government crematoria records to expose over 6,000 mass cremations in just one of then 13 districts in Punjab. After threatening his life because of his human rights work, Punjab Police abducted Jaswant Singh Khaira on September 6, 1995, secretly detained and tortured him for almost two months, and murdered him in late October 1995.*

The extrajudicial executions, custodial deaths, disappearances and widespread torture perpetrated by the Punjab Police in the name of national security are clear violations of international human rights law. These violations are not the result of a few rogue police officers fighting terrorism, but symptoms of a deeply embedded system indifferent to human life and the rule of law.

► **The ultimate resolution of the Punjab mass cremations case will set precedent in India on the redress of mass state crimes.**

► **“It is horrifying to visualize that dead-bodies of large number of persons—allegedly thousands—could be cremated by the police unceremoniously with a label ‘unidentified’.”**

—Indian Supreme Court

* On November 18, 2005, a district court in Patiala convicted six Punjab police officials in Khaira’s 1995 abduction and/or murder.

Legal Proceedings

In 1995, the Committee for Information and Initiative on Punjab (CIIP) moved the Supreme Court to demand a comprehensive inquiry into the mass cremations. 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 of 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, and Khalra himself discussed over 6,000 cremations in Amritsar district.

The Supreme Court appointed the NHRC as its *sui generis* body, with the powers of the Supreme Court under Article 32 to redress fundamental violations of human rights, in the Punjab mass cremations case. Unfortunately, over the past ten years, the NHRC 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 right to life and liberty.

Refusing to investigate a single cremation, and thus never hearing any evidence from survivor families.

Refusing to hold any officials accountable for the violations, repeatedly stating in its orders: "[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, without following the rules, conventions and the humanitarian law."

Refusing to apply international law to develop criteria for reparations.

Rejecting briefs and reports by international groups. In its October 10, 2006 order, the Commission attacked the credibility and report of Physicians for Human Rights and Bellevue/NYU Program for Survivors of Torture.

In its October 9, 2006 order, which effectively closed the case, the NHRC compensated the next of kin of 1,245 individuals for the wrongful cremation of the decedent, where the Punjab Police did not follow the rules for proper cremations. It also appointed a Commissioner for conducting an inquiry to identify the remaining 814 bodies under its consideration, if possible, within eight months. Thus, in ten years of litigation, the NHRC only found that the police had not followed the rules, guidelines, and procedures required before cremating 1,245 identified decedents.

When the Supreme Court designated the NHRC as its body to investigate the human rights violations raised by the Punjab mass cremations case, it also entrusted the CBI with investigations into the culpability of po-

▶ **The Commission refused to investigate a single case, and thus never heard any evidence from survivor families.**

▶ **"A mockery has been made of the law."**

—Jaswant Singh Khalra

▶ **"We don't require any compensation. Even 50 lakhs, even a crore of rupees we don't require. We simply want justice and we want those people to be punished... compensation is not a matter of my child."**

—Gurcharan Singh
Father of victim

▶ **"He was just a boy. And I want to know what they did with him. I heard he was cremated in Amritsar. Will the Commission listen to my case or not?"**

—Darshan Kaur
Mother of victim
(pictured on cover)

lice officers. The CBI was ordered to submit quarterly progress reports. Ten years later, nothing is known of these investigations and whether there have been any prosecutions.

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 retains seisin over the Punjab mass cremations case, and its ultimate resolution will occur there.

International Human Rights

International law establishes that enforced or involuntary disappearances are grave human rights abuses that violate the right to be free from arbitrary arrest, the right to be free from cruel and inhuman treatment, the right to liberty, and the right to life, all of which are rights also guaranteed by the Indian Constitution. International law further 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 undertake investigations 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-repetition 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 reparations principles were developed in consultation with victim groups.

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.

International human rights groups have intervened in the Punjab mass cremations case because of its significance in measuring India's fulfillment of its obligations under international law.

Examples include:

A legal brief submitted by Human Rights Watch and Harvard Law Student Advocates for Human Rights in December 2003, demonstrating India's obligation under international law to investigate all allegations of disappearances in Punjab, and secondly, to allow circumstantial and testimonial evidence to be admitted and weighed in cases of disappearance.

▶ **International human rights groups have intervened in the Punjab mass cremations case because of its significance in measuring India's fulfillment of its obligations under international law.**

▶ **"Despite receiving praise as the world's largest democracy, India's human rights record falls dismally behind countries that have only recently shed their legacy of dictatorships."**

Jaskaran Kaur
Co-Director, Ensaaf
quoted in the **Boston Globe**

A torture and trauma report submitted by Physicians for Human Rights and Bellevue/NYU Program for Survivors of Torture in October 2005, revealing that deaths in custody and illegal cremations took place within a context of widespread human rights violations that included repeated torture, extrajudicial execution, and illegal cremation of the decedents. The experts also found alarming rates of current and past psychological and physical suffering among the survivors.

An open letter by Human Rights Watch to the NHRC in November 2005, urging it to order a full accounting of the systematic abuses that occurred in Punjab, determine liability after detailed investigations into the violations, and provide compensation to surviving family members based on a detailed understanding of the scope of violations suffered by each individual.

Recommendations

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. In order to fulfill its obligations under Indian and international law, the Indian government must, among other requirements:

Acknowledge its full role and responsibility in the widespread and systematic abuses that occurred throughout Punjab during the counter-insurgency period;

Investigate the abuses that occurred throughout Punjab during the counter-insurgency period;

Identify the perpetrators of the human rights violations, and conduct speedy and impartial investigations and prosecutions;

Provide reparations that redress the entire scope of violations, requiring individual determinations of compensation based on the family's specific circumstances and violations, and according to criteria established by international and domestic precedent;

Eliminate the requirement of prosecution sanction found in sections 45 and 197 of the Code of Criminal Procedure, which serve to prevent criminal prosecutions against government officials accused of committing human rights violations and other crimes;

Enact and ratify legislation ensuring that no military, police, law-enforcement, or other state agents receive immunity or amnesty from criminal prosecutions or disciplinary proceedings for past or future violations of the rights to life and liberty, and that in such prosecutions or proceedings, no defense of obedience to superior orders is available;

Engage in a public accounting of how the government has allowed its institutions to participate in the perpetration of gross human rights violations; and

As a member of the United Nations Human Rights Council, invite **UN human rights mechanisms**, such as the UN Special Rapporteur on Torture, into India to investigate the abuses.

Punjab is cited as a model for handling security crises. The result of such a model has been more killings, torture, fear, and a police culture that relies on violent repression rather than the rule of law. Ensaaf urges the Indian government to face responsibility for its past and create a new culture of respect for rights, so that victims of gross human rights violations can obtain truth, justice, and reparations, and India's citizens can truly feel secure.



Additional Resources

For a detailed background to the Punjab Mass Cremations Case, as well as links to major orders, please visit:

<http://www.ensaaf.org/docs/nhrc.php>.

For further documents on the human rights violations in Punjab, including *Reduced to Ashes*, the amicus brief by Harvard Law Student Advocates for Human Rights and Human Rights Watch, and reports on the Punjab Mass Cremations Case, please visit Ensaaf's online library at:

<http://www.ensaaf.org/info/>.

For links to international advocacy on the Punjab mass cremations case, please visit: <http://www.ensaaf.org/programs/advocacy.php#cremations>.

Ensaaf

Ensaaf means *justice* in many South Asian languages. Ensaaf works 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.

Ensaaf works in partnership with the petitioner Committee for Information and Initiative on Punjab to litigate the Punjab mass cremations case and organize advocacy.

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