

ABOUT ENSAAF

ENSAAF—a U.S.-based organization fighting impunity in India for mass state crimes—works to document and expose human rights violations, bring perpetrators to justice, and organize survivors to engage in advocacy. ENSAAF has four programs: Community Organizing, Documentation & Education, Legal Advocacy, and United Nations. ENSAAF, which means *justice* in many South Asian languages, acts to implement the international rights to truth, justice, and reparation.

PROJECT UPDATE

Media and Archival Research: ENSAAF continues to research the archives of the Punjab daily, *The Tribune*. It has collected relevant articles from 1989 to 1995, the peak period of abuses during the counter-insurgency operations. Among other issues, ENSAAF's analysis will include a list of killings, discussions of human rights cases, the functioning and role of security forces, and government and security responses to human rights violations.

INSIDE THIS ISSUE

- 1 The Murder of Human Rights Defender Jaswant Singh Khalra: A Summary of the November 2005 Order
- 3 Arbitrary Detention of Sikh Author Ajmer Singh
- 4 Department of State Releases 2005 Country Report on Human Rights in India
- 5 News Flashes
- 6 The Widow Colony Premieres in Los Angeles
- 7 Thirtieth Anniversary of Argentina's Coup

THE MURDER OF HUMAN RIGHTS DEFENDER JASWANT SINGH KHALRA

A Summary of the November 2005 Order

Please visit <http://www.ensaaf.org/khalra.html> for the judge's order, as well as a detailed summary prepared by ENSAAF that discusses the evidence presented in the case and intimidation of witnesses during the trial.

On Friday, November 18, 2005, Additional District Judge Bhupinder Singh in Patiala convicted six Punjab police officials in the 1995 abduction and murder case of human rights activist Jaswant Singh Khalra. The court sentenced Deputy Superintendent of Police (DSP) Jaspal Singh and Assistant Sub-Inspector (ASI) Amarjit Singh to life imprisonment for murder, seven years for abduction with intent to murder, two years for destruction of evidence, and five years for criminal conspiracy. The court sentenced Station House Officer (SHO)/Sub-Inspector (SI) Satnam Singh, SHO/SI Surinderpal Singh, Head Constable (HC) Pritpal Singh, and SHO/SI Jasbir Singh to seven years imprisonment for abduction with intent to murder and five years imprisonment for criminal conspiracy. All sentences will run concurrently. Senior Superintendent of Police (SSP) Ajit Singh Sandhu, the primary

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accused, and DSP Ashok Kumar died during the trial of the case. A revision is pending in the High Court of the earlier discharge of accused Rashpal Singh.

In his order, Judge Bhupinder Singh defined four points for determination in this case: (1) whether there was a motive behind the abduction and killing of Khalra by the accused; (2) whether the accused

Continued on page 2

criminally conspired to abduct Khalra with an intention to murder him; (3) whether Khalra had been abducted by the accused with an intention to murder him; and (4) whether Khalra had been murdered. After extensively reviewing the evidence, the judge answered in the affirmative for each point. Further, he accepted all the testimony given by the prosecution witnesses.

Witness testimony and documentary evidence proved that the accused police officers had a motive to abduct Khalra. In the months before his disappearance, a press battle ensued between Khalra and Director

Singh witnessed Balwinder Singh Ghora and Arvinder Singh throw Khalra's bleeding body into the trunk of a vehicle, and then dispose of his body in the Harike canal.

General of Police (DGP) KPS Gill over Khalra's investigations into police abductions leading to illegal cremations. Khalra also criticized the reposting of SSP Ajit Sandhu to Tarn Taran after Khalra announced his findings of mass secret cremations. Prior to Khalra's murder, police issued death threats to him, warning Khalra that he would also become an unidentified dead body if he did not cease his investigations.

Judge Singh determined that SSP Sandhu criminally conspired with his subordinate officers "to abduct Jaswant Singh Khalra with an intention to cause him to [be] secretly and wrongfully confined. . . and . . . to eliminate him or to put him in danger of being murdered." After thoroughly discussing the eyewitness testimony, Judge Singh established the abduction and the illegal confinement of Khalra by the accused. Next, Judge Singh discussed the testimony of Special Police Officer (SPO) Kuldip Singh, who witnessed Khalra's illegal detention, torture, murder, and the disposal of his body. SPO Kuldip Singh was instructed by SHO Satnam Singh to guard and serve meals to Khalra during his secret detention. During this time, he witnessed police officers beat Khalra and observed DGP KPS Gill question Khalra when the police took Khalra to the residence of SSP Sandhu. On the trip back from Sandhu's residence to police station Chabbal, Judge Singh discussed how SHO Satnam Singh told Khalra that Khalra should have accepted DGP Gill's advice, and thus saved both himself and the police officers.

Judge Singh next discussed a portion of the defense's case. The defense argued that the prosecution's witnesses did not initially identify the accused, and their main witness to the abduction, Rajiv Singh, and Khalra's wife, Paramjit Kaur, improved upon their testimony in court. The defense cited the First Information Report (FIR) allegedly recorded by the Islamabad police based on an interview with Paramjit Kaur. Judge Singh rejected the defense's arguments, instead agreeing with the prosecution that Paramjit Kaur consistently named the accused and stated to different officials that the police did not record her FIR as she reported it. Paramjit Kaur had also filed a habeas petition during the week after Khalra's abduction which, although not mentioning all of the accused, did name their commanding officers, such as SSP Sandhu and DGP Gill. The judge thus held that the prosecution witnesses had fully identified the accused. Judge Singh also refuted the defense's attempts to discredit witnesses Kulwant Singh, who saw Khalra in detention, and SPO Kuldip Singh.

Judge Singh then discussed whether the accused had murdered Khalra, and if so, who had done it and on whose order. He recalled the death

Kuldip Singh's unrefuted testimony that former DGP KPS Gill interrogated Khalra directly implicates Gill in Khalra's abduction, illegal detention, torture, and murder.

threats made by the police to Khalra, and SPO Kuldip Singh's testimony regarding the murder of Khalra and the disposal of his dead body. Kuldip Singh testified that he saw police officers beating Khalra. SHO Satnam Singh directed Kuldip Singh to bring a glass of water; while he was doing so, he heard two shots fired. Kuldip Singh witnessed Balwinder Singh Ghora and Arvinder Singh throw Khalra's bleeding body into the trunk of a vehicle, and then dispose of his body in Harike canal.

Judge Singh deconstructed the police alibis and concluded that: all of the accused had motive to abduct and eliminate Khalra because he openly challenged illegal acts committed by Punjab Police; the accused then criminally conspired to abduct and silence Khalra; they executed this conspiracy by

Continued on page 3

abducting Khalra on September 6, 1995, keeping him in illegal confinement, torturing and beating him; and the accused killed him about a week after Diwali in October 1995.

Judge Bhupinder Singh then convicted all of the accused for criminal conspiracy to abduct and eliminate Khalra, and also convicted all of the accused for abduction with intent to eliminate Khalra. The judge further convicted DSP Jaspal Singh and ASI Amarjit Singh for murdering Khalra. He stated: "No doubt [sic], the other accused have also played part in causing the death of Jaswant Singh Khalra but only accused Jaspal Singh and Amarjit Singh have been charged under Section 302 IPC." The judge also convicted Jaspal Singh and Amarjit Singh for destruction of evidence, with intent to shield the offenders.

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The petitioner Paramjit Kaur has appealed the leniency of the sentences, given that the judge awarded life sentences to only two police officers. The leniency of the sentences is due, in part, to the reduced charges framed against some of the police officers. The bail applications for the convicted police officers are also currently being argued.

On December 10, 2005, Paramjit Kaur wrote a letter to the Director of the Central Bureau of Investigation, requesting it to conclude the investigation and bring charges against former DGP KPS Gill. In the letter, she stated that evidence emerged during the trial indicating that Gill was one of the main conspirators, and was also guilty of criminal omission to save Khalra's life while her habeas corpus petition was pending before the Supreme Court. Kuldip Singh's unrefuted testimony that KPS Gill interrogated Khalra directly implicates Gill in Khalra's abduction, illegal detention, torture and murder. Further, she wrote, the participation of so many senior officers in the conspiracy to abduct and murder Khalra would not have been possible without Gill's sanction.

ARBITRARY DETENTION OF SIKH AUTHOR AJMER SINGH

On the evening of Thursday, January 5, 2006, Indian police abducted Sikh author Ajmer Singh from a residence in Chandigarh, India. The police refused to reveal Singh's whereabouts to his family or acknowledge his detention. The police failed to invoke a legal basis for the deprivation of liberty, violated Indian laws on arrest and detention, and indicated by their actions that they targeted Ajmer Singh for the exercise of his freedom of opinion and expression. The police held Ajmer Singh in incommunicado detention.

Upon receipt of credible information on Ajmer Singh's incommunicado detention, ENSAAF immediately submitted an urgent communication to the United Nations Working Group on Arbitrary Detention on January 6, as well as communications to Punjab's Chief Minister and Director General of Police.

Despite denials of his detention by Chandigarh and Punjab police, Ajmer Singh's lawyer learned that Ajmer Singh was being detained by Sector 11 Crime Branch police.

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Ajmer Singh's lawyer announced this finding at a press conference, forcing the police to acknowledge their illegal detention of Singh and bring Ajmer Singh before a magistrate within 24 hours, as required by law. Since there was no pending case against Ajmer Singh, and the police did not find anything incriminating in his papers, the magistrate concluded that the police had falsely arrested him and ordered his release. Over eighteen hours after his abduction, the Indian police released Ajmer Singh.

The police returned the items they had confiscated from Ajmer Singh's study. However, during their search of his study the night before, they ransacked his room, tearing up documents.

DEPARTMENT OF STATE RELEASES 2005 COUNTRY REPORT ON HUMAN RIGHTS IN INDIA

Vanessa Pon

In early March, the US Department of State released its 2005 Country Report on Human Rights Practices in India. In the report, the Department of State cites numerous human rights abuses that occur in India, including: extrajudicial killings, torture and rape by police and security forces, and prolonged detention. It also states its findings regarding developments in Punjab human rights cases in the last year.

The Department of State reports that Indian police officials continue to routinely commit human rights violations: "Police routinely resorted to arbitrary and incommunicado detention, denied detainees access to lawyers and medical attention, and used torture or ill treatment to extract confessions." These abuses often go unpunished, despite India's numerous laws protecting human rights:

The lack of firm accountability permeated the government and security forces, creating an atmosphere in which human rights violations often went unpunished. Although the country has numerous laws protecting human rights, enforcement was lax and convictions were rare....Officers at all levels acted with relative impunity and were rarely held accountable for illegal actions. When an officer was found guilty of a crime, the most common punishment was transfer to a different position or post.

During the year, police committed extrajudicial killings by the use of staged encounter killings, and deaths in custody were common. According to the Department of State, the officers who committed these killings and other human rights abuses "generally enjoyed de facto impunity." The authorities often delayed prosecutions in custodial death cases, and according to the National Human Rights Commission (NHRC), state governments had not investigated at least 3,575 previous custodial death cases. The NHRC also reported that by the year's end, no state had fully complied with its 1993 directive to report all deaths in police and judicial custody. The NHRC regards failure to report as tantamount to

cover-up. When the courts awarded compensation to relatives in cases of custodial killings, the relatives often received no compensation, or had to pay bribes to receive it.

Custodial torture remained a severe problem, according to human rights groups cited by the report; the report states that evidence of torture was often found on the bodies of deceased detainees. Police often tortured detainees for money or to force confessions, and usually following an illegal and arbitrary arrest.

The report also states that prison conditions in India were "life-threatening" and that they did not meet international standards. Further, most detainees spent prolonged periods in prison while awaiting trial; thousands more remained in detention without charge:

Due to persistent inefficiencies in the judicial system, there were numerous instances in which detainees spent more time in jail under pretrial detention than they would have if found guilty and sentenced to the longest possible term.

The NHRC reported in 2004 that 75 percent of the country's inmates were in pretrial detention.

The Department of State report also cites cases of custodial abuse involving the Punjab police. The Department of State reports that in 2004, the Punjab Police received 17,000 complaints, including 6,261 from the Punjab State Human Rights Commission.

The report notes developments in the case of Jaswant Singh Khalra, the human rights activist who was abducted, tortured in illegal detention, and murdered by Punjab police after he exposed the disappearances and killings of thousands of Sikhs in Punjab. In March, Mrs. Khalra's attorney Brijinder Singh Sodhi said that a police officer threatened him; however, no action was taken against the police official. On November 18, ten years after Khalra's killing, police officers Jaspal Singh and Amarjit Singh were found guilty of murdering Khalra and destroying evidence related to the case (among other crimes), and were sentenced to life imprisonment. The court found four other officers guilty of kidnapping with the intent to murder (and criminal conspiracy) and sentenced them

Continued on page 5

to seven years imprisonment.

The report also states that the government has failed to take action against the hundreds of police and security officials who committed grave human rights abuses during the 1984-1994 counterinsurgency in Punjab. The Central Bureau of Investigation (CBI) claimed to be pursuing charges against dozens of police officers implicated in these faked encounter killings and secret cremations. Regarding the mass illegal cremations case in Punjab, the report states:

NGOs and Human Rights activists alleged that police in Amritsar, Majitha, and Tarn Taran districts secretly disposed of approximately two thousand bodies of suspected Sikh insurgents they had murdered. Security forces abducted, extrajudicially executed, and cremated the alleged insurgents without the knowledge or consent of their families during the height of Sikh insurgency in Punjab....

The NHRC continued to investigate 2,097 cases of illegal murder/cremation that occurred between 1984 and the early 1990s....The NHRC has not released its findings, and no significant progress was made in bringing to justice those responsible for the killings. Families of victims petitioned the NHRC for redress, and a small percentage received a response in July 2004.

The Committee for Coordination on Disappearances in Punjab (CCDP), a Punjab-based human rights organization, also did not receive an NHRC response to its report documenting 672 cases of police abductions leading to secret cremations. These cases are part of the Punjab mass cremations case proceeding before the NHRC.

The Nanavati commission investigating the 1984 pogroms of Sikhs released its report in August 2005. The government has also set up two committees to provide compensation. Although the commission report indicted several prominent Congress party leaders for complicity in the massacres, no formal punishment has resulted.

NEWS FLASHES

Please visit ENSAAF's blog at <http://blogs.law.harvard.edu/jaskaran> to read regular news updates on human rights issues and continuing cases of custodial abuse.

- On February 19, Director General of Police SS Virk revealed that during the counter-insurgency of the mid-80s to mid-90s, militants who helped the police were falsely declared dead by the police. Cases against the militants were then closed.

In order to declare these militants dead, the police tagged their names on unidentified bodies. This raises the serious question of who the unidentified bodies were and how they were killed. Virk said he did not have details on how many militants owe their existence today to the thousands of unclaimed bodies that were illegally cremated by Punjab police. Since this revelation, Virk has faced criticism from human rights groups concerned about the identity of the falsely tagged bodies.

In response, former Director General of Police KPS Gill released a letter to Chief Minister Amarinder Singh defending Virk. According to the media, Gill argued in his letter that during the counter-insurgency, the judiciary was corrupt, faking deaths was normal procedure, and the Punjab police's anti-terrorism campaign was necessary and relatively humane. This rhetoric is typical of what Gill uses to deny or justify human rights violations, and ignores the extensive documentation of systematic violations of human rights, such as disappearances, extrajudicial executions, and torture, and judicial complicity in the abuses. Human Rights Watch and Physicians for Human Rights reported in 1994 that Gill's policies "appeared to justify any and all means, including torture and murder."

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The World Human Rights Protection Council, a Chandigarh-based organization, has filed a petition

Continued on page 6

seeking to initiate action against the police officers who falsely declared living persons dead, to end that practice, and to make public the names of those falsely declared dead.

- On February 24, nine of the 21 accused in the Best Bakery case, where 14 Muslims were burned to death during the 2002 Muslim pogroms in Gujarat, were sentenced to life imprisonment. Eight others were acquitted, while four others have yet to be found. The court also ordered that perjury charges be brought against Zahira Sheikh, the main witness who changed her testimony twice. The court cleared charges against activist Teesta Seetlavad, who was instrumental in bringing the case to court.
- The action taken report of the inquiry committee investigating the 2002 Gujarat pogroms against Muslims has revealed that the police will reopen cases relating to the pogroms. In addition to reopening 1,594 cases regarding the 2002 pogroms, the police will also probe 41 police officials for failing to adequately investigate the cases.
- At the request of the Union Home Ministry, the Central Bureau of Investigation (CBI) has moved the trial court in New Delhi to reopen the cases against Congress Member of Parliament Sajjan Kumar for his role in the 1984 pogroms of Sikhs. The CBI is also seeking the original documents of the cases, which were closed without filing the charge sheets. Several statements by witnesses implicate Kumar in organizing the massacres of Sikhs.

The government has so far demonstrated sloppiness in its prosecution of Kumar. CBI counsel was late in filing its appeal against Kumar's 2002 acquittal, and was so unprepared during an August 2005 hearing that the court was forced to adjourn.

- On December 29, the Indian government approved a Rs 715 crore (\$158 million) relief package for victims of the 1984 pogroms of Sikhs. Two months earlier, two committees from the Ministry of Home Affairs recommended the government pay Rs 1,000 crore.
- On January 3, families of the victims of the 1984 pogroms and the 1984 Sikh Massacre Affected Welfare Society organized a rally. Rejecting the Rs 2 lakh package, they said most of the youths of the affected families were unemployed and this amount would be insufficient for their rehabilitation.

THE WIDOW COLONY PREMIERES IN LOS ANGELES

Sach Productions

Human rights activists, community leaders and concerned citizens came together for the US premier of the film, "The Widow Colony – India's Unsettled Settlement" on February 22, 2006 in Los Angeles. The film, directed by Harpreet Kaur, explores the continued violations of the rights to truth, justice, and reparation suffered by the victims of the November 1984 pogroms of Sikhs in India. It records their battle for justice and struggle for survival.



A Widow from the Garhi Settlement in New Delhi shows a picture of her husband who was killed in November '84

A moving and explicit depiction of the trauma that still haunts innumerable widows of the Sikh massacres, the film unearths the sad and deplorable condition of most of these widows living in the vidhva (widow) colonies of Delhi. Produced by Sach Productions, the film records the testimonies of victims, Sikh widows and men, who survived the massacre of November 1984. The context to the pogroms is provided by the following subject experts: Justice Sachar, Harvinder Singh Phoolka, Kuldip Nayar, Patwant Singh, Madhu Kishwar, and Jaskaran Kaur. The film focuses on the incalculable loss of human life. Scores of widows were created in Delhi, most of whom lived in colonies of Trilokpuri, Kalyanpuri, Himatpuri, Sultanpuri and Mongolpuri. A conservative estimate puts the total number dead at around 4,000. Further, in addition to losing their family members, justice has been denied to these victims for over two decades. Rather, three accused

Continued on page 7

were awarded with cabinet positions in the Indian government in May 2004 and the recent apology by the Prime Minister fails to acknowledge the state's responsibility.

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The event hosted by SikhPoint.com also included the screening of 'Nineteen Eighty Four' and the Via Dolorosa Project directed by the Singh Twins. A panel discussion was organized by the Sikh Research Institute (SikhRI) that followed both screenings. The panelists included social activist and acclaimed director of the film "Amu," Shonali Bose; Co-founder and Executive Director of ENSAAF, Jaskaran Kaur; and author and Director of the Center for the Study of the Holocaust, Genocide, and Human Rights, Dr. John Roth. The panel provided insights on several critical topics: genocide, justice, documentation, rehabilitation, healing, memory, and activism, among others. The panel emphasized that this film will play a major educational role. Harinder Singh, Executive Director of SikhRI and panel moderator, concluded: "It is our personal and human responsibility to be directly concerned with oppression and injustice. We must resist it instead of remaining unconcerned, assuming others will intervene to destroy it. Let us not sit in the corner, or on the sidelines, telling ourselves that it is none of our concern or that it is the concern of God alone. Let's work towards justice, rehabilitation, or anything that matters and counts."

The Widow Colony is a Sach Productions presentation with support from the Sikh Research Institute. Its next screening is at the Indian Film Festival of Los Angeles (indianfilmfestival.org) in April.

For more information, including Canadian and British premieres, please visit the website at www.TheWidowColony.com.

THIRTIETH ANNIVERSARY OF ARGENTINA'S COUP

Vanessa Pon

March 24, 2006 marked the 30th anniversary of Argentina's military coup. In the seven years that followed the 1976 coup, Argentina's authoritarian government killed and disappeared more than 30,000 people and further perpetrated gross human rights violations, such as rape, torture, child abduction, and censorship. In the years during and after the dictatorship, the justice system colluded with the perpetrators, dismissing habeas corpus petitions filed by families of the disappeared and purposefully delaying cases. Although amnesty laws and pardons continued to protect the perpetrators after the fall of the dictatorship, families of the disappeared continued to demand justice.

The Grandmothers of the Plaza de Mayo is one group that continued to fight for justice. Founded in 1977, the Grandmothers stressed the rights to knowledge and justice, and demanded the return of their disappeared grandchildren, often abducted and given to military families. Because the courts were ineffective in addressing human rights abuses, they reached out internationally and fought the culture of impunity by eventually changing laws and establishing national institutions, such as the National Commission for the Right to Identity.

Argentina's National Commission on the Disappearance of Persons also worked to achieve justice. Formed in 1983, they collected evidence and published *Nunca Mas -- Never Again*, which focuses on 9,000 of the disappeared. The commission presided over hearings of thousands of cases of abduction, disappearance, torture, and executions.

The Argentine government recently announced that it would open all military archives to the public; these files could play a key role in trials against perpetrators. The Congress overturned amnesty laws protecting perpetrators in 2003, and President Kirchner has said that presidential pardons granted to officers tried in 1985 will be cancelled. The government's actions to bring perpetrators of human rights abuses to justice should serve as an example to the Indian government.