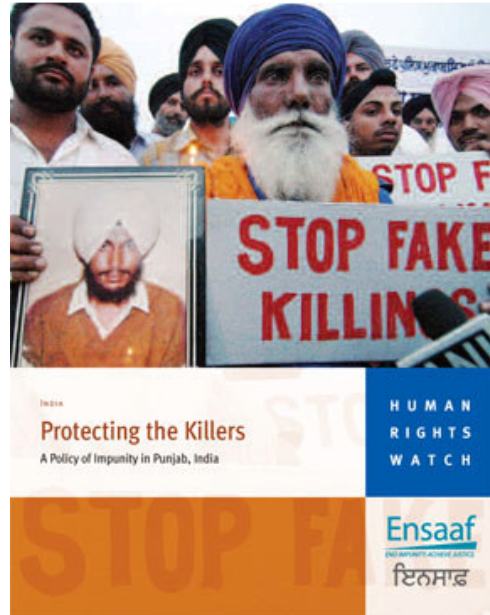


Protecting the Killers A Policy of Impunity in Punjab, India

Summary

I did everything in the pursuit of truth and justice. I even begged. But all this failed me. What else could I have done?...There is a Punjabi saying that after 12 years, even a pile of manure gets to be heard. But for me, after 12 years, nobody is listening—this must mean that I am worth even less than manure.

-Mohinder Singh, father of extrajudicial execution victim Jugraj Singh



Despite a strong democracy and a vibrant civil society, impunity for human rights abuses is thriving in India. Particularly in counterinsurgency operations, Indian security forces commit human rights abuses with the knowledge that there is little chance of being held accountable. Human Rights Watch documented this most recently in its September 2006 report, *“Everyone Lives in Fear”: Patterns of Impunity in Jammu and Kashmir*, which showed a vicious cycle of abuse and impunity that has fueled the conflict.

The impunity gap in India is nowhere more evident than in Punjab. Over a decade has passed since the government defeated a separatist Sikh rebellion. Tens of thousands of people died during this period, which stretched from early 1980s through the mid-1990s. Sikh militants were responsible for serious human rights abuses including the massacre of civilians, attacks upon Hindu minorities in the state, indiscriminate bomb attacks in crowded places, and the assassination of a number of political leaders. Prime Minister Indira Gandhi’s Sikh bodyguards

Protecting the Killers examines the impunity enjoyed by Indian security and other officials and the near total failure of India’s judicial and state institutions to provide accountability to the victims’ families.

assassinated her in 1984. The Sikh insurgency paralyzed the economy and led to widespread extortion and land grabs.

At the same time, from 1984 to 1995 the Indian government ordered counterinsurgency operations that led to the arbitrary detention, torture, extrajudicial execution, and enforced disappearance of thousands of Sikhs. Police abducted young Sikh men on suspicion that they were involved in the militancy, often in the presence of witnesses, yet later denied having them in custody. Most of the victims of such enforced disappearances are believed to have been killed. To hide the evidence of their crimes, security forces secretly disposed of the bodies, usually by cremating them. When the government was questioned about “disappeared” youth in Punjab, it often claimed that they had gone abroad to Western countries.

Special counterinsurgency laws, and a system of rewards and incentives for police to capture and kill militants, led to an increase in “disappearances” and extrajudicial executions of civilians and militants alike. In 1994, Human Rights Watch and Physicians for Human Rights described the government’s operations as “the most extreme example of a policy in which the end appeared to justify any and all means, including torture and murder.”

The Punjab mass cremations case – a primary subject of this report—has its roots in investigations by human rights activists Jaswant Singh Khalra and Jaspal Singh Dhillon conducted in 1994 and early 1995, when they used government crematoria records to expose over 6,000 secret cremations by the police in just one of then 13 districts in Punjab. Based on the information gathered by them, the Committee for Information and Initiative on Punjab (CIIP) moved the Supreme Court in April 1995 to demand a comprehensive inquiry into extrajudicial executions ending in secret cremations.

Meanwhile, after repeatedly threatening him, several officials of the Punjab police arbitrarily arrested, detained, tortured, and

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killed Jaswant Singh Khalra in October 1995. Khalra's murder, and the eventual conviction of his killers 10 years later, made the reality of thousands of "disappearances" and extrajudicial executions impossible to deny. The Indian government even admitted that it illegally cremated 2,097 individuals in Amritsar. Alarming, officials are yet to be held accountable for these thousands of custodial deaths.



Six members of the Punjab police were convicted for the abduction and murder of human rights activist Jaswant Singh Khalra in October 1995. He was threatened and eventually killed after he unearthed government records demonstrating that the Punjab police had secretly cremated thousands of victims of extrajudicial executions. Here Khalra gives a speech in Canada on his findings of mass secret cremations. © Paramjit Kaur Khalra

After hearing the CIIP petition, the Supreme Court, in 1996, ordered India's National Human Rights Commission (NHRC) to address all issues that arose from the mass cremations and granted the Commission extraordinary powers to complete this task. In over 10 years of proceedings, however, the NHRC has failed to properly address civil liability and accountability issues by refusing to independently investigate a single abuse or allow a single victim family to testify. Instead, the Commission has based its findings on information provided by the Punjab police, the perpetrators of the cremations. Furthermore, the Commission has limited its inquiry to 2,097 cremations in three crematoria in

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one district of Punjab and has refused to consider mass cremations, extrajudicial executions, and “disappearances” throughout the rest of the state, despite evidence that these crimes were perpetrated.

In an October 9, 2006 order, which effectively closed all of the major issues in the Punjab mass cremations case, the NHRC appointed a commissioner of inquiry in Amritsar, retired High Court judge K.S. Bhalla, to identify the remaining cremation victims from those acknowledged by the government, if possible, within eight months. Though the Bhalla Commission received a limited mandate, it could have devised an independent methodology for identifying victims, conducted its own investigations, and allowed for more evidence from victim families. Instead, it continued the NHRC practice of relying on the Punjab police for identifications or confirmations of victims of illegal cremations.

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 Central Bureau of Investigation (CBI) to look into the culpability of police officials. Over 10 years later, the petitioners have no information on whether there have been any prosecutions. In a submission before the NHRC in 1999, the CBI stated that it had registered 30 regular cases for investigation “out of which 12 cases have been finalised and...18 cases are pending investigation.” The number of cases registered for investigation by the CBI demonstrates the limits of the CBI inquiry, since it apparently found it necessary to register only 30 cases corresponding to 2,097 admitted illegal cremations. It also ignored the remaining vast majority of “disappearances” and extrajudicial executions that occurred throughout Punjab.

Even the pursuit for justice for the abduction, torture, and murder of human rights defender Jaswant Singh Khalra illustrates many of the challenges facing family members of victims in Punjab who wish to pursue legal remedies. The police threatened and

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illegally detained witnesses and filed false cases against some of them. It took 10 years before a judge finally convicted six Punjab police officers for their roles in the abduction and murder of Khalra. Further, despite eyewitness testimony implicating then Director General of Police (DGP) KPS Gill in Khalra's illegal detention and murder, the CBI has yet to bring charges against him.

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Worryingly, the Indian government cites the counterinsurgency operations in Punjab as a model for handling security crises and has replicated it to tackle law and order problems and armed conflicts in other parts of India. Security forces, provided *de facto* impunity by the state and protected by immunity laws, have continued to commit serious human rights abuses. Indian police often torture security detainees. Human rights groups have demanded proper investigations because of persistent and credible allegations that security forces also continue to construct faked encounters to kill suspects and ordinary persons, in the hope of receiving rewards and promotions.

Even when investigations identify those responsible for such grave human rights abuses, the government seldom publicly prosecutes or punishes the perpetrators. Although many government officials privately agree that the scale of human rights violations has increased, they resist any accountability efforts because they claim it would affect the morale of security forces operating in difficult circumstances. The Indian government has refused to acknowledge the systemic nature of the problem of impunity, and has done little to address the underlying problems that have led to abuse.

India must act to put an end to the institutional defects that foster impunity if it is serious about effective conflict resolution and lasting peace. In this report we focus on select cases in Punjab to illustrate these institutional defects. The past decade of proceedings concerning state crimes in Punjab have represented a series of refusals to acknowledge the widespread and systematic human rights violations, and the failure to apply international and Indian standards to provide reparations for

these abuses. The cases we investigated demonstrate the failure of various government agencies including the police, the courts, the CBI, and the NHRC, to provide justice.

For instance, the Indian government points to its National Human Rights Commission as proof of its commitment to the protection of human rights. As the Punjab mass cremations case shows, the National Human Rights Commission chose to limit the mandate it received from the Supreme Court and refused to provide redress according to Indian and international law. Yet, this case represents the best opportunity to challenge institutionalized impunity in India. Since this matter is still under the jurisdiction of the Supreme Court, which has extraordinary powers to remedy human rights violations, there is an opportunity to provide justice in this case and set a positive precedent for the redress of state abuses.

Victims and their families still demand redress from the Indian state, but they face severe challenges. These include prolonged trials, biased prosecutors, an unresponsive judiciary, police intimidation and harassment of witnesses—many of whom eventually turn hostile—and the failure to charge senior police officers despite evidence of their role in the abuses. None of the government officials who bear substantial responsibility for these atrocities have been brought to justice. Instead, the Indian government’s strategy appears to be to deny its crimes and wait out the demands for accountability.

Impunity for these atrocities exists despite the fact that a series of elections have been held in Punjab since 1992, and almost all of the primary political parties have taken turns in power. Political leaders have consistently portrayed abuses as aberrations and perpetrators as lone, rogue actors, despite evidence that senior police and civilian leaders knew about and may even have authorized the abuses. Further, each government has promoted officers accused of gross human rights violations during the counterinsurgency.

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The Indian government consistently denies in its submissions to the United Nations special procedures that its security forces committed human rights abuses during the Punjab counterinsurgency. Officials have instead sometimes equated human rights groups with terrorists. The leader of Punjab's counterinsurgency efforts, KPS Gill, has led the attack against the pursuit of justice, describing legal petitions as a weapon of terrorism—a "litigation gun" that has served as an "instrument of primary attack."

Unless Indian officials find the political will to demand investigations, prosecutions, punishment, and reparations, human rights violations will continue.

Such an aggressive position from the government bodes ill for future progress on impunity, not just in Punjab, but in other parts of India, where human rights defenders are coming under similar criticism, often accused of being the "enemy" if they speak against state forces.

Unless Indian officials find the political will to demand investigations, prosecutions, punishment, and reparations, human rights violations will continue. There is ample opportunity to take action in Punjab. Security has been restored. Further, strong documentation of violations has emerged and families continue to pursue accountability efforts. Although the Indian government claims that it took action against dozens of security officers for abuses in Punjab, many of these actions were limited to transfers or demotions. Criminal convictions, especially of senior officers implicated in abuse, have been rare. Further, the government has not addressed the thousands of abuses perpetrated.

Protecting the Killers provides a remedial framework to ensure an effective remedy for all persons whose rights were violated in Punjab during the counterinsurgency.

India must begin to develop effective mechanisms to redress mass state crimes and the specific institutional defects that promote impunity. As the mass cremations case and other cases come before the Supreme Court, the court has the opportunity and responsibility to create new remedies to redress these violations. An effective remedy requires the state to take the necessary investigative, judicial, and reparatory steps to redress the violations. Reparations should include restitution, rehabilitation, compensation, and satisfaction and guarantees of

non-recurrence. To redress the mass state crimes in Punjab, India will need to conduct comprehensive investigations, prosecute the most responsible officials in a timely manner, and provide and implement reparations for victims and their families.



During their counterinsurgency operations, the Punjab Police abducted thousands of young Sikh men on suspicion that they were involved in the militancy. Most of the victims of such enforced disappearances are believed to have been killed. To hide the evidence of their crimes, security forces secretly cremated bodies, dumped them into canals, or dismembered and dispersed their victims. In the Punjab mass cremations case, India's National Human Rights Commission has refused to investigate fundamental rights violations and shielded perpetrators from accountability, destroying the hopes of thousands of victim families. © Ensaaf/2007

We provide a remedial framework in this report to ensure an effective remedy for all persons whose rights were violated in Punjab during the counterinsurgency. We recommend a commission of inquiry that will investigate the entire scale and scope of the crimes, outline institutional responsibility, and identify those who planned and ordered the abuses; a special prosecutor's office with fast track courts that will speedily and impartially investigate and prosecute systems crimes, including command structures and disciplinary practices; and a comprehensive reparations program, based on the full spectrum of rights violations. When the Punjab mass cremations case returns to the Supreme Court, the Court could implement such mechanisms in forging its remedy.

The Indian government should not believe that these crimes will fade into history. The reputation of the Indian state as a gross human rights violator will persist until it fulfills its obligations.

The Indian government should not believe that these crimes will fade into history. International law recognizes enforced disappearance as a crime for which any statute of limitations must take into account the continuous nature of the offense. Moreover, the state is under a continuing legal obligation to provide victims of rights violations and their families an effective remedy and reparations. The reputation of the Indian state as a gross human rights violator will persist until it fulfills these obligations.

Recommendations

- The Indian government must **publicly announce its opposition to human rights violations** by making clear that torture, custodial killings, faked armed-encounter killings, and “disappearances” will not be tolerated under any circumstances.
- The government must **demonstrate its opposition to such violations by holding criminally responsible officials who order, tolerate, or commit such practices**. A good beginning will be to prosecute those found responsible for such abuses in Punjab, in particular the key architects of the crimes.
- The government should **appoint a national commission to allow an impartial and independent investigation** into allegations of torture and mistreatment and investigate the fate of all those who were “disappeared” or killed by state security forces in Punjab. All victims and their families should be able to register allegations of human rights abuses. Unlike numerous commissions already established to inquire into allegations of state-sponsored crimes, this one should be strictly time bound and able to access information from government records and victim families.
- **All legal provisions providing effective immunity to members of the police and paramilitary forces should be repealed** so that perpetrators of human rights violations

- can be brought to justice.
- The Indian government should **create a Special Prosecutor's Office and fast track courts** to impartially investigate "system crimes" and prosecute the most responsible perpetrators.
 - The Indian government should **provide victims and their beneficiaries with reparations** through a prompt and effective procedure that redresses the entire scope of violations.
 - India is a member of the United Nations Human Rights Council and thus bound to cooperate with its mechanisms. The Indian government should **issue standing invitations to relevant United Nations thematic human rights rapporteurs or working groups** to investigate the allegations of human rights abuses in Punjab.
 - The international community **must condemn violations of human rights by Indian security forces** and make future military aid and sales and all programs of military cooperation with India conditional to India taking significant steps to end impunity for its security forces.

Protecting the Killers is available free for download at
<http://hrw.org/reports/2007/india1007/>.

For a complete overview of the work of the Asia Division of Human Rights Watch, please
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