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## **Disappearances in Punjab and the Impunity of the Indian State**

### **A Report on Current Human Rights Efforts**

**by Ram Narayan Kumar and Cynthia Mahmood**

**October 1, 1998**



This report is based on information provided by Ram Narayan Kumar and was written primarily by Cynthia Mahmood. The primary audience for this report is intended to be persons, agencies and media outside of India.

Many individuals contribute actively to the human rights efforts described here who could not be mentioned by name. Omission of any such person or group here should not be taken as suggesting delegitimation of their work.

For further information and updates contact the Committee for Coordination on Disappearances in Punjab at the address cited in [Appendix B](#).

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### Prologue: Atrocities in Punjab

The state of Punjab in the northwestern corner of India has been the site of massive human rights violations over the past twenty years. Punjab is the

historic home of India's Sikh population, a religious minority forming approximately 2% of the nation's population. From the late 1970's to the mid 1990's, Punjab faced a violent insurgency launched by separatists as well as a brutal government crackdown that left tens of thousands dead.

Although major international human rights organizations have protested the abuses experienced by the people of Punjab, much of the world remains oblivious to the scale of atrocities committed there. The threat of militant secessionists provided the excuse for draconian security efforts that targeted the entire Sikh minority. People were abducted from their homes in the dead of night, to be taken into custody, charged with crimes they did not commit, often tortured or raped, and sometimes killed outright. "Disappearances" - that infamous terror tactic used extensively in Latin America - became common as the counterinsurgency progressed. Although the separatist militants alienated many people through their own acts of violence, the alienation from the Indian government was also strong. People could not forget that it had launched a full military attack on the Sikhs' holiest shrine at Amritsar in 1984, nor that it had encouraged anti-Sikh pogroms in the fall of that year in which thousands were slaughtered on the streets.

The stereotype of Sikhs as terrorists and the myth of India as a pacifist nation have combined to make the international community as a whole blind to the atrocities suffered by the people of Punjab. Today, an effort toward full exposure of these atrocities is underway, and we write this report in support of those who are bringing to light what has happened in the interests of truth and justice and in the spirit of healing.

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## 1. What This Document Is

This is not an investigation into the root causes of repression and insurgency in Punjab nor is it an exhaustive summary of human rights abuses in that region

We are writing this brief report because a fresh effort at documenting one specific form of abuse - extrajudicial execution - is being launched in India today that has the potential to reveal deeply shocking facts about rights violations against the Sikh minority community that have occurred over the past two decades. Although there have been courageous human rights organizations producing reports about Punjab for many years, this is the first time that all the groups have come together to seriously attempt a credible and irrefutable documentation of the Punjab's thousands of disappearance cases and to track the record of India's legislative and judicial response to these cases in an effort to demand accountability.

The violent conflict that has wracked Punjab since the late 1970's, centering on the agitation for a separate Sikh state of Khalistan, seems to have quieted. We believe that this is a threshold moment for the people of that region and particularly for the Sikhs who have borne the brunt of the human rights infringements that took place in the name of counterinsurgency. A serious record of past abuses and steps taken toward government accountability is prerequisite to lasting peace, in our opinion. We therefore deeply regret that the efforts to this end underway have been seriously thwarted by Indian government intervention despite its public claim that it is now attending to human rights.

Here, we explain how and why the movement for compiling a consultable record of disappearance cases began, we describe how its investigations are conducted, and we report on recent attempts by the government of India to thwart efforts toward accountability for abuses. We ask the international human rights community, concerned journalists, and governments committed to the principles of democracy, to help us highlight the tragedy of the extrajudicial execution of Sikhs in Punjab and the failure of the Indian state to come to terms with its role therein. We demand, with many Indians, that the right to life be respected in a nation that proudly claims to have been founded on the principle of nonviolence.

Published human rights reports and other selected publications on Punjab are listed in our References section (Appendix D). In this document we choose to focus on recent findings rather than repeat or summarize what has gone before, and though we are both scholars we choose here to avoid academic analysis in favor of simple reporting of events. We believe these events speak for themselves.

A basic chronology of events can be found in Appendix A.

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## 2. Who We Are

Ram Narayan Kumar is Convenor of the Committee for Coordination on Disappearances, Punjab. He is the author of two books on the Punjab conflict and producer of the documentary film, "Disappearances in Punjab." A long time human rights activist, Kumar worked with victims of the Bhopal Union Carbide disaster and with Indian coal miners before he turned his efforts to Punjab. He has been serving formally and informally in coordinating efforts of the human rights groups operating at grass-roots level in Punjab for the past fifteen years. Kumar is an Indian citizen with a secondary residence in Austria.

Cynthia Mahmood is Associate Professor of Anthropology at the University of Maine, U.S.A. A specialist on India, she is the author of a book on the Sikh separatist movement and many articles on religious and ethnic conflict.

Mahmood is editor of a series of books on political violence and regularly works on asylum issues in the

United States, Canada, the United Kingdom, and other Western countries. She holds a Ph.D. in Anthropology from Tulane University. Mahmood is an American citizen and resident.

Neither of us has any personal stake in the Punjab conflict. Neither of us is Sikh, though we are both regarded as experts on Sikh affairs.

Our interest here is humanitarian only. We believe we have a moral obligation to

speak out on an issue that has not received the international attention it warrants.

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### 3. Extrajudicial Execution in Punjab

In October of 1987 the "war without quarter" against the Sikh separatist threat began in Punjab. At that time the elected state government of Punjab was dismissed, ostensibly for its failure to safeguard Hindus from Sikh militant attacks, and Punjab was brought under President's Rule. The dismissal of the government was preceded by a significant public exchange between Finance Minister Balwant Singh and Mr. Julio Ribeiro, the Director General of Police of Punjab, during which the latter was accused of upholding an extrajudicial approach to tackling the separatist militancy. Ribeiro responded by alleging that the elected ministers and legislators were offering tacit support to separatist militants. The dismissal of the elected Punjab government and the adoption of an iron-fisted strategy against separatism marked the beginning of the erosion of democracy in Punjab in favor of a counterinsurgency that would infringe upon the human rights of all the Sikhs even though only a small proportion of them were involved in any way in the independence movement. Julio Ribeiro's tenure as DGP Punjab was followed by those of K.P.S. Gill and P.C. Dogra, who both chose to continue the "war without quarter" against militancy, whatever the repercussions in terms of civilian lives lost.

Ram Narayan Kumar had been personal witness to the atrocities committed against Sikhs in New Delhi during the orchestrated pogroms following the assassination of Prime Minister Indira Gandhi in November 1984. His outrage in the face of these pogroms, during which at least several thousand Sikhs were brutally massacred, led to his involvement in the organization of relief camps for survivors. As an eyewitness, he was also able to observe the radical disjunction between Indian government reports about the "riots" and the realities of the

horrors that had been purposefully perpetrated against the Delhi Sikhs. Noting the increasing prejudice against the Sikhs, who form a 2% minority in India, he despaired of justice being done in the matter of the anti-Sikh pogroms, and he determined to find out for himself what was happening in the state of Punjab and why some of the Sikhs had turned to militancy.

When reports of police atrocities amidst the escalation of Sikh separatist violence became a regular part of the news from Punjab by about 1988, Kumar began to travel around the state to investigate. During those travels, he came into close contact with many who had suffered illegal detention, interrogation under torture, custodial rape, and other atrocities. He also met the relatives of individuals who had been eliminated in police custody and the relatives of others who were simply whisked away from their homes and workplaces, never to reappear. Because the right to life is the basic human right from which all others derive, Kumar felt that the increasing number of extrajudicial executions and enforced disappearances in Punjab was a key indicator of the status of democracy there. Everyone knew that these executions and disappearances were becoming a common part of life by the late 1980's, but documented evidence of them was hard to come by. In the absence of this evidence, it was very difficult to bring charges against the Indian state or to highlight the problem internationally. The Committee for Information and Initiative on Punjab, as well as other human rights groups, tried to publicize what was going on in Punjab, but it suffered a crisis of legitimacy because many of the allegations were difficult to substantiate and because India as a whole appeared to be committed to the notion of "war without quarter", in the interests of national security - however contrary to the founding principles of the Indian nation. Cries of foul play in Punjab fell on deaf ears.

Meanwhile Cynthia Mahmood was in the process of interviewing survivors of torture, custodial rape and other abuses who had fled as refugees to the West. Many were granted political asylum as governments of the United States, Canada, the United Kingdom, and other countries recognized the pattern of

abuse that in India itself was heavily muted.

When estimates of extrajudicially executed or disappeared Sikhs started reaching into the thousands or even tens of thousands, and as reputable international human rights organizations reported the prevalence of torture and illegal detention in Punjab, an attempt was made to suggest that these atrocities were primarily due to local police who remained outside of the effective control of the government. Allegations of police corruption and ill-treatment of citizens have always been a part of life in India and the chaotic quality of the criminal justice system certainly played a key role in the development of the pattern of extensive abuse that formed in Punjab. As Kumar and other human rights workers tried to collect what evidence they could about atrocities, however, the response of the Indian state itself gave lie to the suggestion that all would be well in India if only the police forces could be brought under control. The law in India in fact accommodated to, buttressed, and furthered the pattern of atrocities against Sikh citizens that had evolved in Punjab. Minimal human rights were being abrogated in "the world's largest democracy."

We now briefly consider legal developments in India that, rather than constraining abuses, exacerbated them.

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#### 4. The Legislative Apparatus of Counterinsurgency

In March 1988, the Indian Parliament passed the 59th Amendment of the Constitution. This enabled the central government to extend President's Rule in the State beyond one year; to impose emergency on the ground of "internal disturbance," and to suspend Article 21 of the Constitution which guaranteed that no person shall be deprived of life and liberty except according to procedures established by law. The Union Government amended the



Constitution in this way in spite of the fact that there was already in force special legislation which not only conflicted with the elemental principles of due process, but also eliminated the existing legal safeguards of free and fair trials.

Some of the legislation already in force included the Terrorist and Disruptive Activities (Prevention) Act of 1987, which allowed for the detention of a person on mere suspicion in a "disturbed area" and was applied in twenty-two of India's twenty-five states despite the fact that many could not be said to face a terrorist threat by any stretch of the imagination. TADA cases were heard in special courts by executive magistrates who were appointed centrally. The hearings were held in camera, and could be held in locations far removed from the disturbed area itself. In fact, the expedited system set up for TADA completely swamped the normal judicial system in many areas, Punjab foremost among them. In addition, the National Security Act of 1980 was amended in 1984 with specific reference to "the extremist and terrorist elements in the disturbed areas of Punjab and Chandigarh" and allowed for detention without charge or trial for one year in all parts of India and two years in Punjab. The Armed Forces (Punjab and Chandigarh) Special Powers Act also allowed the security forces to enter and search any premises and to arrest any person without warrant in Punjab and Chandigarh. Further, it allowed security forces to destroy any place on suspicion of being a terrorist hideout and to shoot to kill a suspected terrorist with immunity from prosecution.

Despite this already extant legislation, the 59th Amendment was passed in 1988 to constitutionally mandate suspension of the right to life where internal disturbances exist. Punjab then came under the Disturbed Areas Act in 1991. As reports of torture, rape, and killings of civilians rose, the Indian government matched this escalation with augmented legal capabilities to pursue the "war without quarter" with even greater impunity. It clearly placed eradication of the Sikh militancy as a higher priority than protection of the rights of the vast majority of politically uninvolved Sikhs. At the same time, it did not seriously attempt to negotiate with or talk to the separatist insurgents, nor even to understand them as

anything other than psychopathic criminals. The citizens of Punjab were caught in the vicious cat-and-mouse game played by the police and security forces, whose "catch and kill" strategies eventually did severely weaken the guerilla organizations, but not without a heavy civilian toll - the extent of which is only now being fully brought to light.

By 1992 a large part of the Sikh population had lost faith in the democratic institutions of India. On the call of the Khalistani activists, the elections in that year were boycotted in almost all rural areas of Punjab. On the strength of the urban Hindu vote, a government came to power in Punjab which saw as its mandate the eradication of the Sikh independence movement at whatever cost.

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#### 5. The Cremation Grounds Investigation

During the administration of Chief Minister Beant Singh (1992-95), the Sikh guerilla groups were finally decimated by the "war without quarter," or, to use the term made infamous in Latin America, the dirty war. According to police figures reporting on the first year of the Beant Singh government, security forces in Punjab killed 2119 militants in "encounters," an ambiguous term used in India to quash investigation into whether the death occurred in an exchange of fire, during an escape from custody, under torture in jails or police stations, or simply as a murder in cold blood. A large number of people in the border districts, where police suspected that civilians might be sheltering militants who crossed back and forth from neighboring Pakistan, simply "disappeared" during this all-out effort to end the separatist threat. Evidence that later surfaced showed that these "disappeared" from the border area were killed and their bodies quietly disposed of. Punjab's irrigation canals had become the dumping grounds for bodies of disappeared citizens as well as of executed militants, and the state government of Rajasthan to the south formally complained of dead bodies

floating down from Punjab. News reports said that the dead bodies of Sikhs, many with hands and feet tied together, were being fished out when water in-flow channels were dredged for repairs. These reports stood in contradiction to the government claim that the missing Sikhs were all militants who had fled to Pakistan or abroad to continue the separatist insurgency. For a tiny minority this was a possible scenario, but the allegations of executions and disappearances were by that time numbering in the thousands. Interviewing their relatives, human rights workers found it impossible to believe that all were militants escaping into hiding overseas. Most of the relatives affirmed strongly that the victims had no connections with politics or insurgency.

Jaswant Singh Khalra, at that time head of the Human Rights Wing of the Akali Dal, launched a further investigation into another possible end point of the bodies of the disappeared. He collected official records from the public cremation grounds of Amritsar, Patti and Tarn Taran for the year 1992. These records showed that police had burned more than 1400 bodies in these three cremation grounds alone, stating that they were unclaimed or unidentified. Khalra alleged that the cremated were those who had earlier been picked up for interrogation. To corroborate this disturbing claim, Kumar consulted the cremation records from the office of the Registrar of Births and Deaths in Amritsar and found that 300 bodies had been listed as cremated during 1992 at a single cremation ground, Durgiana Mandir, although only 112 had been identified with names. Bullet injuries were the listed cause of death in 41 cases. Pursuing the records further, Kumar found that a firewood purchase register at Patti municipal cremation ground showed that 538 bodies were cremated as unclaimed/unidentified between 1991 and 1994.

After examining these records, Kumar sought out attendants at the cremation grounds, doctors who had conducted post-mortems and also relatives of the disappeared who might be able to provide links between the missing individuals and the pattern of cremations. Two attendants at the cremation ground at Patti told Kumar that the police would often buy firewood for the cremation of one or

two persons but in fact would cremate several bodies together on a single pyre. The Chief Medical Officer of the Civil Hospital at Patti confessed that a post-mortem there was typically completed in less than five minutes; it amounted to no more than filling out a paper announcing the cause, time and place of death, with police providing all the information. Kumar also interviewed many serving police officers who, under condition of anonymity, provided detailed narratives of abductions, custodial torture and rape, summary execution and illegal cremation as aspects of an explicit strategy to root out the Sikh separatist militancy. Based on this and other information, a Cremation Grounds Report was prepared with the aim of urging an independent inquiry into the revelation of mass cremations of identified and unidentified bodies. Judging from the numbers in the official records brought to light for 1992 in Amritsar, Patti, and Tarn Taran, the numbers of cremated for the whole of Punjab over the decade-long course of the counterinsurgency would be at least in the thousands - even independent of bodies found floating in canals or possibly decaying, unclaimed, in fields. Estimates of total casualties in Punjab over the past twenty years have ranged from twenty thousand to over a hundred thousand.

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#### 6. The Disappearance of Jaswant Singh Khalra

In 1995 the Human Rights Wing of the Akali Dal, headed by Jaswant Singh Khalra, filed Writ Petition No. 900 in Punjab and Haryana High Court to request an inquiry into the possibility of mass cremations in Punjab. However, the High Court dismissed the petition with the remark that it was "too vague", and that the petitioner had "no standing" in the matter. Following the dismissal, the Committee for Information and Initiative on Punjab moved the Supreme Court under Article 32 of the Constitution of India to demand a Central Bureau of Investigation (CBI) inquiry into the matter. It alleged that persons had been cremated as unidentified against the prescribed procedure in such cases, not

because their identities were not known or knowable, and not because there were none to claim them, but by virtue of a systematic policy of extrajudicial execution and secret disposal of corpses.

While the petition before the Supreme Court was still at the preliminary stage of hearing, uniformed commandos of the Punjab police abducted Jaswant Singh Khalra from outside his house on 6 September 1995. This was the individual who had been primarily responsible for the cremation grounds investigation, a respected human rights worker who had spoken both in India and overseas about the human rights issues at stake in Punjab. According to affidavits sworn by Khalra's colleagues and acquaintances including Sikh Gurudwara Prabhandhak Committee's Chief Gurcharan Singh Tohra, former judge of the Punjab and Haryana High Court Ajit Singh Bains, and close associate Jaspal Singh Dhillon (who later took over his work in leading the Akali Dal's Human Rights Wing - now Human Rights and Democracy Forum), Khalra had been receiving threats from Ajit Singh Sandhu, Senior Superintendent of Police, Tarn Taran. They testified that Khalra had been told to stop the investigation into the matter of illegal cremations and that he had been warned explicitly that "we can make one more body disappear, too." Jaswant Singh Khalra's wife petitioned the Supreme Court for a writ of habeas corpus. A bench of the court presided over by Justice Kuldip Singh ordered the CBI to investigate not only Khalra's disappearance, but also the larger issue of illegal cremations, for which he had apparently sacrificed his life.

The CBI eventually held police officials under Ajit Singh Sandhu, SSP of Tarn Taran, responsible for Khalra's abduction. The investigation into the question of illegal cremations was completed in December of 1996, but the court opted to keep the report secret. It did release figures on illegal cremations at Durgiana Mandir, Patti and Tarn Taran cremation grounds, however. Out of the total numbers of bodies cremated by Punjab police at these sites, the CBI had completed the identification of 585 bodies, only partially identifying 274, but failing in the identification of over 1238. In its order dated 11 December 1996

the Supreme Court observed: "Needless to say that the report discloses flagrant violation of human rights on a mass scale." The Court went on to pass an order requiring the National Human Rights Commission to examine all issues arising from the CBI's report. The court further clarified that as the NHRC was to examine the matter at the request of the court, any compensation awarded by the NHRC would be binding and payable.

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#### 7. The National Human Rights Commission

A National Human Rights Commission had been created in 1993, in response to international and domestic allegations of human rights infractions. While the NHRC acquired an immediate high profile and was indeed celebrated by many governments in the West experiencing floods of asylum claims from refugees fleeing Punjab and other regions, it in fact was a body with serious limitations. Its mandate did not include investigation into wrongdoings by security forces, it was unable to investigate cases more than one year old, and it could only make recommendations not policy. Furthermore, its members were appointed by the very government it was supposed to monitor.

At the first hearing of the NHRC regarding the cremation grounds investigations, it

asked all parties including the standing counsels for the Union Government of India, the State of Punjab, and the advocates for the Punjab police officers, to clarify their assumptions on the capacity in which the NHRC functioned.

Specifically, was the NHRC bound by the Protection of Human Rights Act of 1993, which created it, with the difference that Section 36(2) - the one year limit on investigation - did not apply? Or, had the Supreme Court of India designated the NHRC as a body sui generis to complete the tasks and to adjudicate on the issues that had been referred to it?

The State of Punjab and its agencies argued that the powers of the Supreme

Court are not transferable, that the Commission can adjudicate only if allowed under the Protection of Human Rights Act of 1993, that the mandate of the Supreme Court did not nullify Section 36(2) of the Act, and finally that the Supreme Court had only referred to the NHRC on the issue of compensation. The standing counsel for the Union Government argued that the NHRC was only a fact finding body that could not adjudicate. He argued that the NHRC was bound by the limitation under Section 36(2) of the 1993 Act and, in addition, could not entertain complaints that are sub-judice.

The Committee for Information and Initiative on Punjab took the position that the Supreme Court, acting under Article 32 of the Indian Constitution, had asked the NHRC to examine all the issues arising from the CBI report and to determine them under the law. Article 32 lays down a constitutional obligation on the Supreme Court and confers all incidental and ancillary powers including the power to forge new remedies, to protect the fundamental rights of the people. Thus the capacity in which the NHRC acts in this case is that of a sui generis designate of the Supreme Court, and the bar under section 36(2) of the 1993 Act would not apply.

The Committee for Information and Initiative on Punjab also argued that the NHRC's inquiry had to cover not only illegal cremations at the three sites in the district of Amritsar as revealed in the CBI's report, but also those which occurred at hundreds of cremation sites in all seventeen districts of Punjab, where it believed the same pattern of execution and secret cremation had been followed by the security forces. It provided evidence of ten cases of disappearance, summary execution, and cremation from the district of Sangrur, at the other end of Punjab, to suggest that the pattern was probably not unique to Amritsar. On 4 August 1997 the NHRC gave a detailed order on these preliminary contentions.

It held that it was designated as a body sui generis to carry out the mandate of the Supreme Court. Therefore, Section 36(2) of the 1993 Act or any other limiting provision thereof could not restrain its powers to carry out the Supreme

Court's mandate. The NHRC then went on to invite from all parties suggestions on further procedure and on the creation of an Incident Report Form to invite complaints by public notice.

When the NHRC met for a further hearing on 4 September 1997, the standing counsel

for the Union Government moved an application that the proceedings of the NHRC be stayed in order that the Union Government and the Ministry of Home Affairs could move the Supreme Court for a clarification. As it was becoming clear that the NHRC would not be allowed to carry out the investigation and documentation charged to it, independent human rights groups began to take up the challenge.

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## 8. Accountability and International Commitments

The human rights community in India protested the stonewalling of the Supreme Court's order of a thorough probe even after the facts regarding illegal police abductions, executions and cremations have been so unambiguously established. This situation not only contradicts India's claims of adherence to human rights standards, but also leads to the surmise that the Union Government itself sanctioned mass killings of civilians as a counter to the Sikh separatist threat.

The right to life of citizens, which the State must protect in all circumstances against all arbitrary violations, is the heart of India's Constitution. The Supreme Court of India has, in a large number of cases, expounded on the permissible limits within which the Legislature may abridge, but not abrogate, the fundamental rights of citizens without damaging the basic structure of the Constitution. The entire constitutional edifice would however become a dead letter if the State is permitted to abdicate its obligation to safeguard the basic right to life against arbitrary violation, derogation from which is impermissible



under Article 21 and Amendment 44 of the Indian Constitution. It is a guarantee which may not be suspended even in a state of emergency. The independent human rights community therefore rejects the legality of attempts to circumvent the right to life and to inhibit investigation into abuses thereof.

The 1997 Annual Report of the UN Working Group on Disappearances refers to the writ petition before the Indian Supreme Court on secret cremations, and recommends that "all persons alleged to have perpetrated an act of enforced disappearance should be brought to justice, in accordance with Article 14" (of the UN Declaration on the Protection of All Persons From Enforced Disappearance, adopted by the General

Assembly on 18 December 1992), and that "pursuant to Article 7 of the Declaration, no

circumstances whatsoever may be invoked to justify enforced disappearances."

Further, the Annual Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions for 1997 concluded the following for India: "The perpetrators of

extrajudicial, summary or arbitrary executions reportedly continue to enjoy virtual impunity." (The UN Working Group on Disappearances had previously insisted that impunity is the single most important factor that explains the unrelenting persistence of

disappearances in 41 countries around the world.) The Special Rapporteur also referred to the letter from the Government of India dated 22 November 1995 - about ten weeks after the Khalra disappearance - professing its commitment to openness, transparency, and full cooperation.

The Government of India also received a communication from the UN Committee on the Elimination of Racial Discrimination in 1996, which points out that Clause 19 of the Protection of Human Rights Act which prevents the NHRC from directly investigating allegations of abuse involving the armed forces, and also Clause 36(2) which bars the Commission from investigating cases more than a year old, contribute to a climate of impunity.

These are some of the legal issues that underlie the demand of Indian human rights groups that the independent and thorough investigation into complaints of disappearances in Punjab be allowed to proceed unhampered. Insofar as the Union Government did not allow this investigation to take place under the terms ordered by the Supreme Court of India, human rights organizations in Punjab came together to pursue this matter independently.

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#### 9. The Committee for Coordination on Disappearances in Punjab

In response to the above developments, a coordinating committee was formed to a) develop a voluntary mechanism to collect and collate information on disappeared people from all over the state of Punjab and to ensure that the matter of police abductions leading to extrajudicial executions and illegal cremations proceeds meaningfully and culminates in a just and satisfactory final order, b) evolve a workable system of state accountability, and to build up the pressure of public opinion to counter the government's bid for immunity, c) lobby for India to change its domestic laws in conformity with the UN instruments on torture, enforced disappearance, accountability, compensation to victims of abuse of power, and other related matters, and d) initiate a debate on vital issues of state power and its distribution and to work for a shared consensus on these matters with communities and organizations all over India.

The Committee for Coordination on Disappearances in Punjab came formally into existence on 9 November 1997 when, in a meeting held in Chandigarh, the following human rights organizations and political groups decided to join hands:

Committee for Information and Initiative on Punjab

Punjab Human Rights Organization

Movement Against State Repression

World Human Rights Protection Council

Human Rights and Democracy Forum

Lawyers for Human Rights  
Khalra Action Committee  
Bhartiya Kisan Union  
Akali Dal (Wadala)  
Akali Dal (Mann)  
Akali Dal (Panthik)  
Punjab Janata Morcha  
Bahujan Samaj Party  
Internationalist Democratic Party  
Sikh Students Federation (Mehta/Chawla)  
Babbar Akali Dal  
Akal Federation  
World Sikh Council (joined subsequently)

Those who joined the Committee in their individual capacity were: Dr. Sukhjit Kaur Gill, Baba Sarabjot Singh Bedi, Sukhjinder Singh, Mokham Singh, Gurtej Singh, Gurdarshan Singh Dhillon, Dalbir Singh, Col. (rtd) Bhagat Singh, Jaspal Singh Siddhu, Maj. Gen. (rtd) Narinder Singh, Gurdip Singh (editor Az Di Awaz), Gurbachan Singh (editor Des Punjab) and Joginder Singh (editor Spokesman).

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#### 10. The Peoples' Commission

The first convention of the Committee, dedicated to the memory of Jaswant Singh Khalra, was held on 10 December 1997. The convention, presided over by former judge of the Supreme Court Kuldip Singh, called on the Punjab government led by the Akali Dal to constitute a Truth Commission to investigate all reports of human rights violations in the State, as it had pledged in its election manifesto. The convention also decided to form a Peoples' Commission to undertake these inquiries if the Punjab government declined to do so. When the Akali Dal government declared that in its view the past was better left buried the

Committee announced the formation of a panel of judges to constitute a Peoples' Commission on 26 April 1998. K.J. Reddy, retired judge of the Supreme Court of India and former Chairman of the Law Commission, was to head this Peoples' Commission and two other judges were to form the panel: D.S. Tewatia, former Chief Justice of the Calcutta High Court and H. Suresh, a retired judge of the Bombay High Court.

The Peoples' Commission was thus set up as an independent tribunal to examine complaints of illegal abductions, custodial torture, enforced disappearance, summary execution and illegal cremation, and to give its findings on the following: a) whether from 1979 to 1997 the agencies of the State carried out and tolerated, directly or indirectly, any of the above atrocities and thereby committed violation of human rights as guaranteed under the constitution of India and international covenants; b) whether agencies or individual agents of the State have prima facie committed any offense under the law of the land or international law; and c) to further suggest the remedies available to the victims of the aforementioned atrocities including their entitlement to compensation from the State and its agencies.

The Peoples' Commission on Human Rights Violations in Punjab decided to hold its first sitting on the 8th, 9th and 10th of August, 1998. Meanwhile the Committee for Coordination on Disappearances in Punjab had created an Incident Report Form (see Appendix B), through which to collect information on disappearance cases in an organized and verifiable manner. The Incident Report Form was designed after consulting formats used by several international human rights organizations to receive complaints of violations.

The basic plan was to post public notices in the English and vernacular press to elicit complaints from the victims of atrocities and their relatives. A Secretariat of the Peoples' Commission, specially constituted for this purpose, would scrutinize the complaints received and would undertake further examination before placing them before the Commission. The Commission would examine these cases and, if satisfied that prima facie the complaints are justified, would issue notice to the

respondents and would call for official information. Concerned officials would be asked to explain their stand on the persons involved and to substantiate the claims by testimonial and documentary evidence. The Commission would also call for the following records: the cremation ground records of each police district insofar as they relate to cremations carried out by the police; the municipal records pertaining to dead bodies disposed of by the police; the records of each police district pertaining to custodial deaths and encounters; and press releases including photographs issued by the police or the state government relating to deaths in custody, escape and deaths in armed encounters. The Commission would then go on to cross examine material witnesses from both sides before giving its finding within the mandate of its terms of reference. (The Rules of the Peoples' Commission, adopted during the initial August 1998 meeting, can be found in Appendix C.)

Volunteers from the Committee for Coordination on Disappearances in Punjab began distributing and collecting the Incident Report Forms as the Peoples' Commission prepared its overall framework for investigation. It is clear that collecting the kind of documentation required to prove extrajudicial killings is time-consuming, dangerous, and fraught with methodological pitfalls. Volunteers engaged in this work have to be specially trained to ensure reliability of claims, and have to move from village to village to personally verify and cross-check all complaints. They interview the complainants and any witnesses to the killing or disappearance that can be located, and they search out documentary evidence for each element of the Incident Report Form. Cases that cannot be fully supported by evidence external to the individual narrative itself must be set aside. Although the Committee is certain to end up seriously underestimating the scope of the executions in Punjab through adherence to rigorous standards of proof, it nevertheless committed itself to the collection of only those cases that could withstand challenge. As of this writing there are nearly one thousand such cases.

The nature of the inquiries into the antecedents and circumstances of severe rights violations and the identities and motives of the individuals responsible for them means that all care must be taken to protect the individuals who come forward with complaints. Committee volunteers and members have themselves already faced substantial harassment as this work has begun, and a smear campaign in the press was directed at key individuals. The level of intimidation has now reached the point that the entire project appears to be in jeopardy, and this is the reason for the current report - which may also function as a call to action.

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**[TOP]**

#### 11. Silencing of Human Rights Groups

On 24 May 1997, newspapers reported that Ajit Singh Sandhu, former Superintendent of Tarn Taran police district, committed suicide by throwing himself in front of a train. Sandhu had been imprisoned for a few months on charges including those centering on the disappearance of Jaswant Singh Khalra. It was reported that he had consumed alcohol, had driven to the railway track in his own car, and had left a suicide note which said "it is better to die than to live in this shame." Sandhu had been a trusted ally of K.P.S. Gill, former Director General of Police for Punjab, who had led the counterinsurgency against Sikh militants in the state and stood personally accused by Human Rights Watch and other groups of shepherding the massive human rights violations that occurred under his watch. In the face of rising claims of extrajudicial executions and hasty cremations, the suicide of Sandhu, a figure who would have been implicated in many of them, should clearly have been investigated further. But K.P.S. Gill, now retired, seized the opportunity to rail against what he called "an utterly compromised human rights lobby." Newspapers across the country carried the full text of his statement that inveighed the nation for ingratitude toward its "heroes" like Ajit Singh Sandhu.

who had saved India from the brink of disintegration. It further castigated people for permitting human rights activists "who will work with any cause that serves their personal ends, whether criminal, political or secessionist" to thrive (sic) on Indian soil. The statement chided the State for not "educating itself on how to tackle individuals and groups trying to destroy it," and went on to tell the parliament how to bring about the necessary legal amendments which would protect

courageous police officers of Punjab from the kind of humiliation that apparently drove

Sandhu to suicide. It concluded that the bud of Khalistan had been nipped through the achievements of officers like Sandhu, which prevented the possible balkanization of India.

The charge of Sandhu's involvement in the abduction and death of Jaswant Singh Khalra - who was not a secessionist but a human rights investigator - disappeared in the sweep of celebratory coverage of the "war without quarter." K.P.S. Gill subsequently requested the Prime Minister for legislation that would define "appropriate criteria to judge the actions of those who fought this war on behalf of the Indian State," identifying human rights groups with separatists by adding that "for those who were comprehensively defeated in the battle for Khalistan, public interest litigation has become the most convenient strategy for vendetta." But in 1998, a police officer under Sandhu's command who came forward as an eyewitness to Khalra's seizure, torture, and murder gave lie to the picture of Sandhu and the police of Tarn Taran district as valiant defenders of the Indian nation. Indeed, this eyewitness alleged that the conspiracy to eliminate Khalra was sanctioned at the highest levels.

Heightening awareness of the push for accountability has led to a rise in calls for the necessity of impunity for rights abusers. In addition, there have been deliberate attempts to thwart the efforts of human rights workers. Since India has never allowed Amnesty International, Human Rights Watch or other internationally respected organizations to visit Punjab, grassroots workers have

provided the bulk of the information that has come out. But these workers are then particularly vulnerable to harassments and threats in India. Many of the activists now working with the Committee for Coordination on Disappearances in Punjab have been themselves arrested, tortured, and jailed (Kumar among them). Since the work of documenting disappearances has begun in earnest, an elaborate hoax was orchestrated to frame several activists in a purported plot to break Sikh militants out of Burail jail. This has the effect not only of tying up the time and resources of the remaining activists - who now have to mobilize to get their colleagues released - but of identifying human rights activism with sympathy for militancy in the public mind.

On July 18, 1998, three members of the Committee for Coordination on Disappearances in Punjab came out of India to speak about the efforts of the Committee at Columbia University in New York. These were Ram Narayan Kumar (current author), Amar Singh Chahal (Lawyers for Human Rights) and Inderjit Singh Jaijee (Movement Against State Repression). Also speaking at the human rights symposium were Cynthia Mahmood (current author), Mary Pike (Center for Constitutional Law), and Ami Laws (Physicians for Human Rights) from the United States. Just days after the seminar, word was received that Jaspal Singh Dhillon, another member of the Committee for Coordination, head of the Human Rights and Democracy Forum, and close associate of Jaswant Singh Khalra's, had been arrested in India once again in connection with the jailbreak conspiracy. A string of volunteers for the Committee for Coordination were picked up for questioning at the same time.

We fear for the well-being and indeed for the lives of our colleagues who continue to work to document the egregious abuse of state power exemplified in the phenomenon of "disappearance."

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**[TOP]**

12. Further Developments of the Peoples' Commission and NHRC



The Peoples' Commission met in early August, 1998, with Justice Jaspal Singh taking the place of Justice Reddy, who had become ill. Despite a change of venue due to governmental interference, attendance was high, people coming from all over Punjab to sit for three days to hear proceedings in a language many could not speak (English). This fact alone speaks to the deep desire of the people that justice should be done. Many came forward to report cases of disappearance and other atrocities while the meeting was in session.

Within weeks of this initial meeting, however, the Director General of Punjab Police indicated his intention to move the High Court for a ban on the Peoples' Commission. This took the form of a Public Interest Litigation Petition, seeking to restrain the Peoples' Commission from conducting its proposed second meeting on October 23, 24, and 25 in Ludhiana. The petition argued that the Peoples' Commission poses a serious threat to India's national security interests and aims to subvert India's judiciary by setting up a parallel system. Both the Union government and the Punjab government were made parties to this petition. Chief Minister Prakash Singh Badal of Punjab, though elected on the promise that his administration would seek full accountability for abuses, condemned the current efforts as "opening old wounds." The Akal Takht, highest seat of religious authority for the Sikhs, continued to support the independent effort at accountability represented by the Peoples' Commission.

On September 10 the Supreme Court of India intervened, upholding at this late date the original August 1997 order that had asked the NHRC to itself investigate the issues. Representatives of the Peoples' Commission and the Committee for Coordination welcomed this development, and suggested they would find ways for their personnel to work with the NHRC to carry the documentation project to completion if the NHRC does find itself able to proceed. The Justices comprising the Peoples' Commission, however, decided to await the decision of the High Court on the status of the Commission before proceeding with its proposed second sitting in October. At this point the Committee for Coordination continues to carry out its primary documentation

work, while the further involvement of the NHRC and Peoples' Commission is pending.

Not only have truth commissions in other parts of the world been accepted as essential to the healing process following a period of social breakdown and abrogation of law, but India itself has a long history of such efforts. In the spirit of grassroots democracy, peoples' commissions or tribunals had been set up to investigate violence against minority communities in Delhi, Meerut, Aligarh, Karnataka, Ayodhya, and Maharashtra. Justice Suresh of the current Peoples' Commission had also served on a Peoples' Tribunal that investigated the Bombay riots of 1992-93, which operated in tandem with the official Shri Krishna Commission. (We may note that in this case the official commission took six years to come out with the very same findings that the peoples' tribunal made public in six months.) The florescence of such commissions speaks to the democratic impulse in the Indian people, who have come out on their own to find out truths that the Indian government has been unwilling to reveal. The current attempt to ban the Peoples' Commission in Punjab through the use of Article 226 of the Constitution is clearly an attempt to cover up the fact of atrocities in Punjab, which if widely known could spark serious skepticism about the Indian state itself and its own commitments to democracy and human rights.

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**[TOP]**

Epilogue: India at the Millenium: A Comment and Warning

We believe that the evidence of mass disappearances and state impunity in Punjab as described in this report warrants international attention. Despite public proclamations as to the democratic nature of the Indian state and its commitments to protect human rights, the Indian government's treatment not only of the Sikh population of Punjab but of human rights workers attempting to investigate abuses undermines its credibility. A human tragedy on the probable scale of many of the great tragedies of history has occurred in Punjab and we

do a severe disservice to those who have suffered and to those who yet may suffer when we ignore evidence to the effect that all is not well in India.

The Sikhs, though they have served India with nobility in the past, are today a scorned community there. A spate of politically orchestrated propaganda against Sikhs has resulted in the stereotype of all Sikhs as traitors and terrorists, though only a tiny fraction of them actually participated in the recent separatist insurgency. Hatred of Sikhs has become acceptable in the realm of public discourse across nearly all circles of life in India. Both of us have experienced the censure of our colleagues for our involvement in documenting human rights abuses perpetrated against Sikhs; we recall that "nigger lover" was a common accusation hurled at early civil rights workers in the United States and find the social isolation of those expressing solidarity with Sikh victims in India hauntingly reminiscent. More frighteningly, we note that the virulent anti-semitism that led to the Nazi holocaust was in the 1930's itself a widely accepted discourse from which few academics, clerics or activists dissented. We deeply fear an eliminationist undercurrent of feeling in India, directed at all the non-Hindu minorities, which provides the ground against which illegal executions not only take place but are purposefully ignored by the bulk of the population which in fact acquiesces in the idea that the Sikhs need to be taught a lesson.

Noting the disdain for world opinion expressed in the Indian government's recent nuclear tests, and noting a continuing pattern of abuse in Kashmir and the northeastern states, we call on concerned people everywhere to attend to developments in India that are not consonant with human welfare and human life. We ask that India be urged to live up to its founding ideals by allowing and indeed supporting a full-scale accounting of atrocities in Punjab as a first step toward accountability, healing, and the restoration of democracy. We believe that respect for human rights and accountability for abuses thereof will be the only long-term guarantee of stability and peace in this important and volatile - and now nuclear - region of the world.

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**TOP**

Appendix A - Chronology of Events

early 1980's - heightening tensions between Sikhs and Union Government;  
beginnings of Sikh militancy

1984 - Indian Army Action against the Golden Temple Complex; anti-Sikh  
pogroms following the assassination of Indira Gandhi; National Security  
Act amended to allow sweeping powers to curtail agitation in Punjab

1986 - formal launching of guerilla insurgency for independent Sikh state of  
Khalistan

1987 - "war without quarter" begun as President's Rule imposed in Punjab;  
Terrorism and Disruptive Activities (Prevention) Act passed

1988 - 59th Amendment to the Indian Constitution enables extension of  
President's Rule

late 1980's, early 1990's - increasing human rights violations in Punjab;  
escalation of conflict; rising death toll

1992 - boycott of elections by rural Sikhs; Beant Singh administration elected  
with

declared intention of eradicating Sikh militancy

1993-95 - cremation grounds investigation led by Jaswant Singh Khalra reveals  
mass illegal cremations

1995 - Writ Petition to Punjab and Haryana High Court to inquire into cremations  
is

dismissed; Chief Minister Beant Singh assassinated by militants; Jaswant  
Singh Khalra "disappeared;" Supreme Court orders investigation

1996 - National Human Rights Commission considers issues surrounding its  
inquiry

into disappearances and cremations

1997 - National Human Rights Commission stalled in its efforts; Committee  
for Coordination on Disappearances in Punjab established to conduct

independent inquiry; Peoples' Commission founded to evaluate findings  
1997-98 - attempts to interfere with work of Committee for Coordination on  
Disappearances; calls for impunity for human rights offenders  
1998 - first meeting of Peoples' Commission challenged at High Court;  
National Human Rights Commission again instructed to pursue  
investigation; mobilization to support effort toward accountability internationally.

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**[TOP]**

Appendix B - Incident Report Form

THE COMMITTEE FOR COORDINATION ON DISAPPEARANCES IN PUNJAB

Chandigarh Secretariat:

742, Sector 8, Chandigarh. Tel. 544920

New Delhi Secretariat:

56 Todarmal road, (Bengali Market) N Delhi. Tel. 3714531

Name of the disappeared/ dead person:

Alias, if any:

Caste:

Father's name:

Mother's name:

Address:

Alias if any:

Age (Give date of birth if possible):

Educational qualification:

Profession/ occupation:

Monthly earning:

Other sources of income:

Marital status:

Name of the spouse and the address:

Age:

Employed/ unemployed/ details:

Spouse's parents:

Father's name and age:

Mother's name and age:

Profession/occupation:

Residence:

Children:

Names/age/sex:

Names of other dependents within the joint family:

General background of the disappeared/ dead person:

(Specially relevant would be details of hostile interaction with the security forces since 1984.)

Date and time of disappearance:

Location of disappearance:

(Include as much detail as possible)

Circumstances of disappearance:

(Short narrative statement with names of people responsible)

Are there witnesses? Yes/No.

Details of witnesses: Names/ addresses:

(Note: Specify if you do not wish to divulge the names of witnesses for the present. In which case do not fill this column.)

Perpetrator/s:

Name/s:

Age/ Physical description:

The security agency to which the perpetrator/s belong:

Rank

Uniformed or in plainclothes?

Description of uniform/dress:

Attached to which police station when the incident happened?

The present posting:

Any other details which you might want to add:

When was the person last seen?

By whom?

Where?

Steps taken to trace the "disappeared" and the results:

First Information Report filed? Yes/No

If yes, the number and the date:

The name of the police station:

Name of the officer who recorded the report:

Outcome, if any:

Habeas Corpus Petition filed? Yes/No

If yes, the number, date, and the court:

Name of the lawyer:

Address:

Telephone No.

Outcome:

Appeals made to local and national authorities. Give details. Photocopies if possible:

Outcome:

Is it possible that the disappeared person may be alive? Yes/ No

Give reasons why you believe this:

If believed to be alive, name the location where the person might be found:

Is it assumed that the person has been killed and cremated? Yes/ No

If yes, why you believe this:

Is it assumed that the dead-body was disposed of in any other manner? Yes/ No

If yes, explain why you believe this:

Was the incident reported in newspapers? Yes/No

If yes, name the newspaper/s:

Date/s on which the report appeared:

Was there ever any report in the press about the disappeared/ dead prior to this incident? Yes/ No

Give details:

Enclose copies if possible.

Have you had any official or unofficial communications with police officials concerning the fate of the person at any time? Yes/No

If yes, give details:

Has any other person known to you has also "disappeared"/ abducted/ reported killed in armed encounter in connection with the reported incident? Yes/No

If yes, give details:

Do you know of the "disappearance" of any other person?

Has any other member/s of your family "disappeared"? Yes/No

If yes, give details:

Did you receive the dead body for performing the last rites? Yes/ No.

If yes, from whom?

Was any property (structures, possessions, live stock or other chattel) damaged/ destroyed/ stolen/ expropriated in the course of the incident or subsequently?

Yes/ No

If yes, give details:

Who owned the property which was damaged/ destroyed/ stolen/ expropriated?

Who damaged/ destroyed/ stole/ expropriated?

Names:

Agency to which they belong:

Rank-designation:

Description for identification:

Age:

Physical description:

Describe the property:

1. Damaged: Value:



2. Destroyed: Value:

3. Stolen: Value:

4. Expropriated: Value:

Has the event of "disappearance" had any psychological/medical consequences in the family? Yes/No:

If yes, give details:

Hospitalization/ Expenses:

Has there been any death in the family connected/ subsequent to the event of "disappearance"? Yes/No:

If yes, give details:

Other comments:

Signature of the person giving details of the incident:

Name in full:

Father's name:

Mother's name:

Relationship to the missing/ killed/ cremated person:

Present Address:

Date/Place:

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**[TOP]**

Appendix C - Rules of the Peoples' Commission

RULES OF THE PEOPLES' COMMISSION ON  
HUMAN RIGHTS VIOLATIONS IN PUNJAB\*

Having been established by the Committee for Coordination on Disappearances in Punjab, the Peoples' Commission on Human Rights Violations in Punjab (hereinafter referred to as "the Commission") shall function in accordance with

the following provisions:

#### Article 1

The terms of reference

The Commission will conduct its inquiries within the parameters of the following terms of references:

1. The Commission will examine the complaints of illegal abductions, custodial torture, enforced disappearances, summary executions and en masse illegal cremations, and to give its findings on (a) whether from 1979 to 1997 the agencies of the State carried out and tolerated - directly or indirectly - any of the above mentioned atrocities and thereby committed violation of human rights as guaranteed under the constitution of India and various international covenants and declarations, (b) whether the State agencies/individuals have prima facie committed any offense under the law of the land or international law, and (c) the remedies available to the victims of the aforementioned atrocities including their entitlement to compensation from the State and its agencies.

2. The security forces in Punjab were equipped with extraordinary powers to meet the law and order situation, in particular arising out of the alleged militant activities. Draconian powers were given to the investigating agencies to prosecute the individuals and the groups suspected to be engaged in violence. The Commission will go into the causes and reasons for the utter failure of the State and its agencies in the performance of their duties as required under the rule of law.

#### Article 2

Purview of the inquiry

The Peoples' Commission shall make inquiries into commission or instigation and abetment to commission of grave breaches of the fundamental rights guaranteed by Chapter III of the Indian Constitution and other international instruments such as the Universal Declaration of Human Rights, the Geneva Convention of 12 August 1949, the International Covenant of Civil and Political Rights and other international human rights covenants to which India is a

signatory. The following acts against persons or property protected under the provisions of the relevant statutes would fall within the purview of its inquiries:

- (a) willful killing of prisoners in custody, whether legally arrested or not;
- (b) their torture or inhuman treatment;
- (c) willfully causing great suffering or serious injury to body or health;
- (d) destruction and appropriation of property, not justified by necessities of police functions, and carried out unlawfully and wantonly;
- (e) compelling a prisoner, detained legally or otherwise, to assist the clandestine operations of the security forces;
- (f) willfully depriving a prisoner of the rights of fair and regular trial;
- (g) taking of civilians as hostages to compel their relatives and friends, who may be absconding from the law, to surrender to the authorities;

\*slighted edited by Mahmood in accordance with grammatical conventions of Anglo-American English

(h) seizure of, destruction or willful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science;

(i) plunder of public or private property;

(j) Acts of Genocide as defined in the Convention on the Prevention and Punishment of the Crime of Genocide:

(1) killing, conspiring, inciting or conniving in the killing of members of a group;

(2) causing serious bodily or mental harm to members of the group;

(3) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(4) imposing measures intended to humiliate and abuse the identity of the group

Article 3

Territorial and temporal jurisdiction

The Commission's purview of inquiry will cover all persons affected by

mentioned acts of crime either as victims or perpetrators committed in

Punjab during the relevant period between 1979 and 1997. The inquiries will extend to all such persons from Punjab domiciled in the territory of India, as well as those who may have migrated to foreign countries to escape persecution or prosecution, or for any other reason.

#### Article 4

##### Individual criminal responsibility

1. A person who planned, instigated, ordered, committed, conspired or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in Article 2 of the present Provisions, shall be individually responsible for the crime.
2. The official position of any accused person, high or low, shall not relieve such person of civil or criminal responsibility/liability.
3. The fact that any of the acts referred to in Article 2 of the present Provisions was committed by a subordinate does not relieve his superior of civil and/or criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.
4. The fact that an accused person acted pursuant to an order of a Government or a superior shall not relieve him of civil and/or criminal responsibility, but may be considered in mitigation of personal responsibility if the Peoples' Commission determines that justice so requires.

#### Article 5

##### Non-bis-in-idem

1. Inquiries by the Peoples' Commission into cases that are sub-judice shall be categorized separately.
2. The Peoples' Commission may conduct inquiries into the conduct of persons who have already been tried by a court of law only if it can be established that the court proceedings were not impartial or independent, and were designed to shield the accused from criminal responsibility or the case was not diligently

prosecuted.

## Article 6

### Organization of the Peoples' Commission

The Peoples' Commission shall consist of the following organs:

- (a) The Chamber of Judges, comprising three retired judges of the Supreme Court or any High Court,
- (b) The Investigator, and
- (c) A Secretariat, servicing both the Chamber of Judges and the Investigator.

## Article 7

### Rules of procedure and evidence

The judges of the Commission shall adopt rules of procedure and evidence for the conduct of the preliminary hearings, taking cognizance of complaints, issue of notice, the admission of evidence, the protection of victims and witnesses and other appropriate matters in accordance with the rules of procedure under the Commissions of Inquiry Act. They shall also take into account the rules of natural justice.

## Article 8

### The Investigator

1. The Investigator shall be responsible for verifying complaints and initiating proceedings against persons suspected of serious human rights violations, as defined in Articles 2 and 4, and within the territorial and temporal jurisdiction as defined under Article 3 of this statute.
2. Although the Investigator and other qualified staff under that office will be appointed by the Committee for Coordination on Disappearances in Punjab, they shall act independently as an organ of the Commission, and shall not seek or receive instructions from any human rights organization affiliated to, or any member of, the Committee.

## Article 9

### Investigation and initiation of proceedings

- 1 The Investigator shall initiate investigations on the basis of information

obtained from any source, particularly from the Committee for Coordination on Disappearances in Punjab, other organizations unconnected with the Committee, and private citizens. The Investigator shall assess the information received or obtained and decide whether there is sufficient evidence to proceed.

2. The Investigator will attempt to interview suspects, victims and witnesses, to collect evidence and to conduct on-site investigations. In carrying out these tasks, the Investigator may, as he may deem appropriate, seek the assistance of any human rights organization, other bodies and individuals.

3. When interviewed by the Investigator, persons suspected of human rights violations shall be entitled to be assisted by counsel of their choice.

4. Upon a determination that a prima facie case exists, the Investigator shall prepare an indictment containing a concise statement of the facts and the crime or crimes with which the accused is charged under the Rules.

5. The indictment transmitted to the Commission shall be supported by affidavits by way of evidence. Other documents filed in support of the case shall also be supported by affidavits.

#### Article 10

##### Scrutiny of the indictment

1. The judges of the Commission to whom the indictment has been transmitted shall examine it. If satisfied that a prima facie case has been established, they shall confirm the indictment. If not so satisfied, they may either require the Investigator to carry out further investigation, or dismiss the indictment.

2. Upon confirmation of the indictment, the Commission may issue notices and any other orders as may be required for the conduct of the proceedings, and may have them served on the respondents by registered post, through the head of the government department to which the accused person is or was attached and by publication in the press.

#### Article 11

##### Cooperation and judicial assistance

1. As appropriate, the Commission will also send separate notices to the State

authorities to seek their cooperation in the investigation of complaints of grave human rights offenses.

#### Article 12

Commencement and conduct of the Commission's investigative proceedings

1. The Commission shall ensure that the proceedings are fair and expeditious and that they are conducted in accordance with the rules of procedure and evidence, as to be adopted under Article 7 of this statute, with full respect for the rights of the accused and due regard for the protection of victims and witnesses.
2. A person against whom an indictment has been confirmed shall be immediately informed of the charges against him, and will be requested to present himself for the hearing of the matter. The Commission shall read the indictment, satisfy itself that the rights of the accused are respected, confirm that the accused understands the indictment, and instruct the accused to enter a plea. The Commission shall then set the date for examination and cross-examination of evidence against him.
3. The examination and cross-examination of evidence shall be public unless the Commission decides to hold the proceedings in chamber, for reasons to be recorded in writing.

#### Article 13

Rights of the accused

1. All persons shall be equal before the Commission.
2. In the determination of charges against him, the accused shall be entitled to a fair and public hearing, subject to Article 12 of this statute.
3. The accused shall be presumed innocent until proved guilty according to the provisions of the present statute.
4. In the determination of any charge against the accused pursuant to the present statute, the accused shall be entitled to the following minimum guarantees, in full equality:
  - (a) to be informed promptly and in detail in a language which they understand of the nature and cause of the

charges against them;

(b) to have adequate time and facilities for the preparation of their defense;

(c) to have the proceedings of the Commission conducted in their presence, and to defend themselves in

person or through legal assistance of their choice;

(d) to examine, or have examined, the witnesses against them and to obtain the attendance and examination

of witnesses on their behalf under the same conditions as witnesses against them.

#### Article 14

##### Findings

1. The Commission shall give its findings/report/recommendations, if any, with regard to the evidence and other material placed before it. The Commission shall also recommend compensation to victims of atrocities, or their relatives, as deemed appropriate.

2. The findings shall be rendered by a majority of the judges of the Commission, and shall be delivered in public. It shall be accompanied by a reasoned opinion in writing, to which separate or dissenting opinions may be appended.

#### Article 15

##### Expenses of the Commission

The expenses of the Commission shall be borne by the budgetary allocations made by the Committee for Coordination on Disappearances in Punjab, to be administered independently by the Secretary to the Commission.

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**[TOP]**

#### Appendix D - References

This list does not purport to be exhaustive in any way. Our intent is that it serve merely as an initial guide for further material relevant to the topic at hand.

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