

# INDIA

## Harjit Singh: In continuing pursuit of justice

Amnesty International continues to be concerned for the safety of Harjit Singh, an employee of the Punjab State Electricity Board, who was arrested in 1992 and who subsequently “disappeared”. While it appears that Harjit Singh, who is married with two children, may still be alive, police officials have claimed that he was killed in an “encounter” on 12 May 1992.

Judicial proceedings have to date been unsuccessful in determining the fate of Harjit Singh. The findings of a three year enquiry into the case were disclosed to the High Court of Punjab and Haryana on 28 November 1995. In its conclusion, the enquiry report states:

*“it is evident that despite the efforts made by this Court no concrete evidence has been brought on record by the parties on the basis of which any firm conclusion can be derived... The doubts which have been raised can only be cleared after this aspect of the case is thoroughly investigated into by a Specialised Agency under the directions of the Hon’ble High Court”.*

Amnesty International is gravely concerned that the enquiry, which was carried out in the Sessions Court, Chandigarh, over a three year period, was unable to fully exercise its powers of investigation and was hampered by the limited cooperation of the authorities. It is further concerned at reports of intimidation of judicial officers and witnesses during the enquiry. Given these concerns, it is imperative that any future investigating authority be allowed to conduct its investigation free from outside pressure and influence and be given powers necessary to gather all the evidence.

In recent years, Amnesty International has urged the government to ensure that police in Punjab are not able to commit human rights violations with impunity. Frequent reports of “disappearances”, like that of Harjit Singh, have been reported, but few have been resolved through the legal process of judicial investigation. Those responsible have rarely been brought to justice. The Government of India has not responded to successive reports published by Amnesty International, which have expressed concern about these issues<sup>1</sup>.

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<sup>1</sup>*‘An Unnatural Fate’: ‘Disappearances’ and impunity in the Indian States of Jammu and Kashmir and Punjab*, December 1993 (AI Index: ASA 20/42/93), *Harjit Singh: A case study of ‘disappearance’ and impunity*, April 1995 (AI Index: ASA 20/12/95) and *Determining the fate of the ‘disappeared’ in Punjab*, October 1995 (AI Index: ASA 20/28/95).

According to his family, Harjit Singh was arrested on 29 April 1992. Police claim that he was arrested on 11 May 1992. However, immediately after the alleged arrest of Harjit Singh in April, his family sent urgent appeals to the authorities in Punjab as well as to human rights organizations, including to Amnesty International, expressing their distress about the arrest. The discrepancies are compounded by police claims that Harjit Singh died in an “encounter” with police on 12 May 1992; these claims have been contradicted in court proceedings by his father, Kashmir Singh, who asserts that he has seen his son, alive and in police custody, after that date<sup>2</sup>.

The arrest of Harjit Singh appears to be based on allegations of his involvement in political activities believed to be associated with the armed secessionist movement in Punjab. The Government of India, in a factsheet sent to Amnesty International on 23 March 1995, described Harjit Singh as a "suspected person" who was bearing arms when arrested with another person, both of whom, while under interrogation “revealed possession of more arms and ammunition”.

Amnesty International notes that the enquiry report does not support the position stated by the government and further notes that the state authorities have not produced substantive evidence in court to support their position, nor have they co-operated fully with the enquiry. Therefore, in this case, Amnesty International urges the High Court of Punjab and Haryana to ensure that the “disappearance” of Harjit Singh is promptly and thoroughly investigated in a comprehensive and impartial manner. To ensure this, Amnesty International urges that a non-executive judicial body is appointed to this task and that this second enquiry be given all the assistance and co-operation necessary for it to investigate, ascertain the facts and reach a prompt conclusion.

## Legal proceedings

There have been two strands to the legal proceedings since the arrest of Harjit Singh. The first case relates to a *habeas corpus* petition filed by Kashmir Singh, (criminal writ petition no.651 of 1992) in the High Court of Punjab and Haryana. The petitioner asked the court to search for his son at the Mal Mandi Interrogation Centre, Amritsar, where he believed that Harjit Singh was being held. In a hearing on 15 October 1992, Justice H.K. Sandhu

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<sup>2</sup>Amnesty International has documented the case of Harjit Singh in several previous reports. See ‘An Unnatural Fate’: ‘disappearances’ and impunity in Jammu and Kashmir and Punjab, AI Index: ASA 20/42/93, *Harjit Singh: A case study of ‘disappearance’ and impunity*, AI Index: ASA 20/12/95, as well as several Urgent Actions, see UA 330/92, 22 October 1992, AI Index: ASA 20/54/92, further information on UA 330/92, 27 November 1992, AI Index: ASA 20/56/92, and UA 44/94, 11 February 1994, AI Index: ASA 20/04/94.

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stated that there was *prima facie* case that Harjit Singh was in illegal custody, and appointed a warrant officer to search for him.

On the orders of the High Court, Kashmir Singh, a relative Anoop Singh and a friend Shingara Singh, visited the Mal Mandi Interrogation Centre together with warrant officer, R.L. Bhatia. They were refused entry by a police officer, Roop Singh. However, Kashmir Singh reportedly caught sight of Harjit Singh behind the bars of a window on the first floor of the interrogation centre. When they were finally granted access and went to the room, they found that Harjit Singh was not there. As a result of this visit, the High Court, in an order on 16 December 1992, directed the sessions judge, Amritsar to conduct an enquiry. It was to investigate whether Harjit Singh was present in Mal Mandi Interrogation Centre, Amritsar or whether he was killed in cross-fire on 12 May 1992, as claimed by the police. The enquiry was "to conclude within three months". On 4 February 1993, the enquiry was transferred from the sessions judge, Amritsar to the sessions judge, Chandigarh. On 2 August 1994, a new judge took his seat on the enquiry, and he was subsequently replaced by a further judge who retired on 12 May 1995. Justice Amar Dutt submitted the final enquiry report on 11 September 1996.

The second case relates to contempt of court proceedings instituted in the Punjab and Haryana High Court against police officer Roop Singh, the officer who was said to have denied access to Mal Mandi Interrogation Centre, Amritsar. It was during a hearing of this contempt petition, on 28 November 1995, that Justice H.S. Bedi and Justice S.C. Malte disclosed the findings of the enquiry report into Harjit Singh's "disappearance". In his recommendations, the enquiry officer, Chandigarh District and Sessions Judge, Justice Amar Dutt, suggested that a second enquiry be carried out, as conclusive proof of the whereabouts of Harjit Singh had not been found. It appears that in its order of 28 November, the High Court sentenced Roop Singh to one month imprisonment for failing to grant access of a court officer to a detention centre.

### **Amnesty International's concerns about the judicial enquiry**

Amnesty International has several concerns about the judicial enquiry which are set out below. Amnesty International is concerned at the lack of promptness and thoroughness with which the issue of the "disappearance" of Harjit Singh has been dealt with by the courts. Although the onus is on the officer of a court to ensure speedy justice, it is clear that during the enquiry, the powers of the court to require evidence and to ensure that the case was investigated in a thorough, impartial and unhindered manner, were not fully exercised. It also fails to express concern about serious allegations of intimidation of witnesses by police during the proceedings of the enquiry.

While the enquiry report fails to censure police officials for delaying the proceedings by not appearing before the enquiry, it notes that the state authorities failed to

fully support their version of the arrest and subsequent death of Harjit Singh with evidence. Furthermore, while the report fails to express concern about the fact that legal procedures were not followed by police officials, the enquiry clearly reveals the failure of the police to follow arrest and detention procedures fundamental to ensuring the protection of the human rights of prisoners and detainees as well as investigation procedures which would ensure independence and impartiality.

### **1. “Justice delayed is justice denied”**

On several occasions in the last three years, Amnesty International has expressed concern about the protracted nature of all stages of the legal proceedings relating to Harjit Singh’s “disappearance”. Although the enquiry was ordered to be completed within three months, it has taken almost three years for a report to be published. A major cause of the delay in the legal proceedings has been the failure of senior police personnel to appear before the court. Several of the hearings were postponed -- on at least 12 occasions the judge failed to attend and on many more occasions police officers failed to attend.

When the enquiry was finally completed, after evidence was given on 29 July 1995, the release of the report itself was delayed. While the report was signed by the sessions judge, Justice Amar Dutt, on 11 September 1995, it was sent to the High Court for judgment and was only disclosed on 28 November 1995 after appeals from the lawyer acting for Harjit Singh’s father.

### **2. Failure of the state to co-operate**

The enquiry report makes little reference to the fact that several of the respondents failed to appear before the judges during the hearings of the enquiry. For example, while referring to Assistant Superintendent of Police (ASI) Dharam Singh whose testimony was recorded on 29 July 1995, the report does not record that despite repeated calls to testify, Dharam Singh failed to appear at successive hearings. It was only after the intervention of Justice M.S. Sethi on behalf of the National Human Rights Commission, who expressed concern about the slow proceedings of the enquiry and ordered the ASI’s immediate appearance, that Dharam Singh appeared in court.

### **3. Lack of state evidence**

The lack of state evidence to support the claim that Harjit Singh was arrested and subsequently killed in an “encounter” can be identified in two key areas. The first is the paucity of records of arrest and detention and the second concerns the identification of the victim.

### **Records of arrest and detention**

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Legal requirements to record arrest, detention, death and inquest were not followed. During the enquiry, the police produced First Information Reports recording the arrest of Harjit Singh on 11 May and his subsequent death in an “encounter” on 12 May 1992. However, when ASI Dharam Singh finally gave his testimony, he failed to produce any documentary evidence to support his testimony concerning the arrest and identification of Harjit Singh and in fact intimated that another police officer was responsible for the physical arrest and identification. Moreover, the state authorities failed to produce records of the detention.

Amnesty International has called for many years for the government to ensure that police are given strict instructions to keep up-to-date, centrally maintained registers of arrests and to promptly inform relatives of an arrest. Principle 12 of the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states that information concerning the reasons for arrest; the time of the arrest and detention; the identity of the law enforcement officials concerned and precise information concerning the place of custody should be recorded. The enquiry report fails to express concern about the absence of such records and the failure of the authorities to inform Harjit Singh’s relatives of his arrest. Moreover, Harjit Singh was not brought before a magistrate within 24 hours of his arrest, as stipulated in Indian law under section 167 of the Code of Criminal Procedure. Amnesty International is concerned that such provisions, enacted for the safety of detainees, are not routinely implemented.

### **Identification of the victim**

Fundamental to the failure of the state authorities to prove their case in the course of the enquiry was the failure to provide any evidence as to the identification of the detainee seen by Kashmir Singh and others in Mal Mandi Interrogation Centre, Amritsar on 17 October or of the individual who was cremated following an “encounter” with police on 12 May 1992.

During the enquiry, an affidavit was filed by the warrant officer, R.L. Bhatia, concerning his visit to the Mal Mandi Interrogation Centre where he and Kashmir Singh witnessed a man, alleged to have been Harjit Singh, standing at a window of one of the buildings attempting to signal to Kashmir Singh. The enquiry report noted that:

*“the respondents have not made any attempt to clear the doubt that has been raised by the statements of these witnesses [Kashmir Singh, Shingara Singh and R.L. Bhatia] that Harjit Singh may possibly be present in the premises of the Interrogation Centre when the same was raided by the Warrant Officer”.*

Furthermore, the enquiry report notes the failure of the authorities to produce convincing evidence that Harjit Singh was killed in an “encounter” on 12 May 1992, stating that:

*“neither the Government nor the respondents had cared to bring on record any evidence in support of these suggestions [that Harjit Singh had been killed in an encounter]”*

The enquiry report acknowledges that although ASI Gurdev Singh and ASI Hardeep Singh identified the dead body of Harjit Singh “neither of these witnesses had any personal knowledge about whether the deceased was actually Harjit Singh or not”:

*“neither the post mortem report of Harjit Singh alias Har Singh son of Kashmir Singh, who was alleged to have been killed in the police encounter on 12.5.1992, has been produced nor have any of the witnesses who identified the dead body of Harjit Singh alias Har Singh at the time of the post mortem examination was examined.”*

Of great concern is the absence of censure in the enquiry report of the police who, as the report points out, failed to verify the identity of the body before cremating it, thereby removing any further possibility of identification. As the judge points out in his report,

*“It is true that strictly speaking no legally admissible evidence is available on the record to fix the identity of the person who according to the police, was killed on 12.5.1992....”*

### **3. Alleged intimidation of witnesses**

Amnesty International is disappointed to note that the report fails explicitly to address allegations that witnesses have been intimidated and harassed by the authorities during the proceedings of the enquiry. Throughout the period of the enquiry, Amnesty International has expressed concern about the harassment of witnesses and relatives of Harjit Singh. Several allegations of intimidation have been made, for example:

- On 6 November 1992 police reportedly attempted to kidnap Anoop Singh, one of the villagers who had seen and identified Harjit Singh in Mal Mandi Interrogation Centre, from outside the Punjab and Haryana High Court. Anoop Singh was allegedly beaten with rifle butts by the police and his clothing ripped, after which he ran into the court room where he told the judge what had happened to him.
- Police had reportedly attempted to abduct Harjit Singh’s four-year-old son in May 1994.

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- Kashmir Singh, Harjit Singh's father, has claimed that a lawyer acting for the police threatened that he would never again see his son, if he continued to pursue the case.
  - On 5 September 1995, police officers went to Kashmir Singh's house asking for Harjit Singh in connection with the assassination of the Chief Minister of Punjab on 30 August. When Kashmir Singh expressed outrage that they should ask for his son when they had claimed that he was dead, they asked for Harjit Singh's younger brother, and when he could not be found, they questioned 52-year-old Kashmir Singh himself about his whereabouts on the day of the assassination.

Accordingly, Amnesty International is concerned that the second enquiry will be compromised if the security and safety of the witnesses is not ensured.

#### **4. Interpretation of evidence**

The enquiry report has made several statements which appear to be based on an arbitrary and sometimes contradictory interpretation of evidence. For example, although it is acknowledged that the enquiry was inconclusive, the final report questions the credibility of Kashmir Singh's allegations about the arrest and detention of his son, whilst assuming the credibility of documents provided by police officials. When referring to the fact that the corpse described as the body of Harjit Singh had not been identified by anyone known to him, the report states:

*"In spite of all the things that may be said in relation to the documents not being prepared on the basis of statement made by the persons who were competent to identify the deceased, yet, these documents can not by any stretch of imagination be stated to have been subsequently created by the respondents for the purposes of this enquiry."*

However, the report notes that Kashmir Singh's delay in filing a petition after his son's arrest:

*"may well warrant an inference that he had on 13.5.1992 got an inkling of fact that in all probability his son had been killed in a cross-firing which fact was resented by him but he chose not to move in the matter until time became more congenial for moving Human Rights activists and initiate enquiries regarding unaccounted disappearance that are alleged to have been made on account of alleged excesses."*

This contradicts an earlier statement in the report, where it is acknowledged that evidence<sup>3</sup> put forward by the petitioner demonstrates that he “had been running from pillar to post to secure the safe and sound release of his son”. Kashmir Singh had approached several police and government officials, amongst others, in the months before he filed a *habeas corpus* petition in the belief that such approaches to officials in positions of power would be more effective than legal proceedings in ensuring the safety of his son.

## **Conclusion and Recommendations**

The facts of the case as brought out by the enquiry raise several very serious questions about legal safeguards for the protection of detainees as well as the legal procedures in place for enquiring into human rights violations. Meanwhile, the fate of Harjit Singh remains unknown.

The state authorities have failed to produce evidence to show that they arrested and detained Harjit Singh, son of Kashmir Singh, on 11 May 1992 and that he was killed in an encounter the next day. Article 13 of the United Nations Declaration on the Protection of All Persons from Enforced Disappearance calls on states to “ensure that the competent authority shall have the necessary powers and resources to conduct the investigation effectively, including powers to compel attendance of witnesses and production of relevant documents and to make immediate on-site visits”. It also calls on states to ensure that all involved in “the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal”.

**Amnesty International urges the authorities in India, including the Chief Justice of the High Court of Punjab and Haryana, to ensure that a carefully considered independent and impartial investigation is carried out and that the police authorities co-operate fully with any future investigation. It also calls on the National Human Rights Commission to exercise its jurisdiction in this matter. The authorities should take all measures necessary to ensure the safety and security of witnesses and to ensure that the investigating authority is allowed to conduct its investigation free from outside pressure and influence and is given powers necessary to gather all the evidence.**

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<sup>3</sup> Telegrams of 7 May 1992 sent by Darbar Singh, Uncle of Harjit Singh to the Governor of Punjab and to the Director General of Police, Punjab. Amnesty International itself wrote to the court informing it that it received a letter concerning the arrest of Harjit Singh on 7 May 1992.