



**FOR PUBLIC RELEASE**

**COMMISSION ON THE PROCEDURES FOR THE  
NON-GOVERNMENTAL  
PUNJAB REFERENDUM 2020**

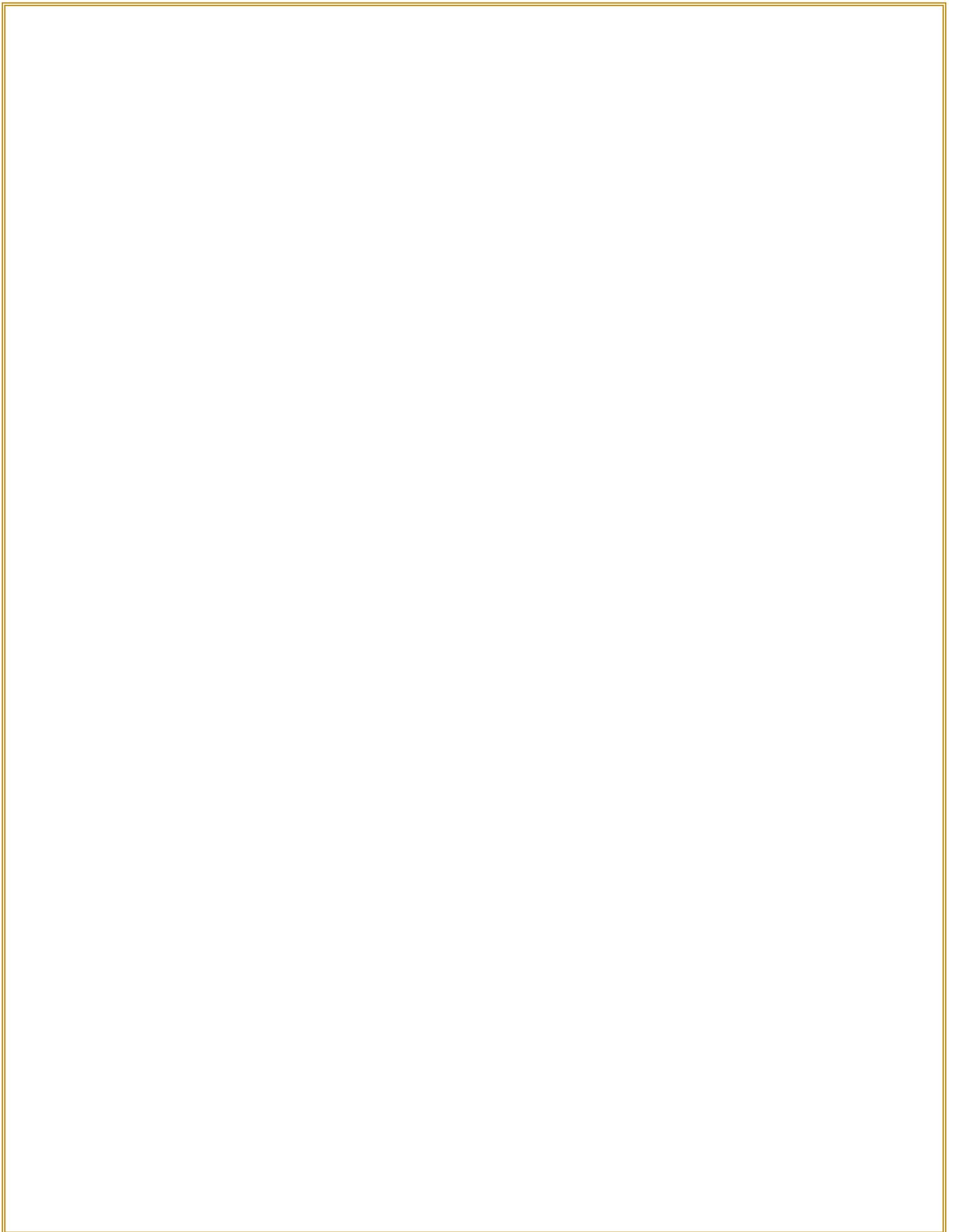
**FINDINGS and RECOMMENDATIONS**

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**Participation by the organizations and individuals in this Commission does not in any way constitute support for PUNJAB REFERENDUM 2020 nor does it take a position on Sikhs for Justice or any of their underlying claims or activities.**

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**September 25, 2020**



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## WHAT IS PUNJAB?

Punjab is a state in northern India. Forming part of the larger Punjab region of the Indian subcontinent, the state is bordered by the Indian union territories of Jammu and Kashmir to the north, Chandigarh to the east, the Indian states of Himachal Pradesh to the north and northeast, Haryana to the south and southeast, and Rajasthan to the southwest. It is bordered by Punjab, a province of Pakistan to the west. The state covers an area of 50,362 square kilometers (19,445 square miles), 1.53% of India's total geographical area. It is the 20th-largest Indian state by area. With 27,704,236 inhabitants at the 2011 census, Punjab is the 16th-largest state by population, comprising 22 districts. Punjabi, written in the Gurmukhi script, is the most widely spoken and official language of the state. The main ethnic group are the Punjabis, with Sikhs (57.7%) and Hindus (38.5%) as the dominant religious groups. The state capital is Chandigarh, a Union Territory, and the capital of the neighboring state of Haryana. The five tributary rivers of the Indus River from which the region took its name are the Sutlej, Ravi, Beas, Chenab, and Jhelum rivers: the Sutlej, Ravi, and Beas rivers flow through the Indian Punjab.<sup>1</sup>



<sup>1</sup> [https://en.wikipedia.org/wiki/Punjab,\\_India](https://en.wikipedia.org/wiki/Punjab,_India)



## WHAT IS PUNJAB REFERENDUM 2020?

The information in this section was provided to the Commission by the organization Sikhs for Justice - the proponents and primary organizers of **PUNJAB REFERENDUM 2020**.<sup>2</sup>

*“Should the region of Punjab currently governed by the Republic of India be an independent and sovereign country on the basis of the principle of right of self-determination?”<sup>3</sup>*

**“PUNJAB REFERENDUM 2020** is a campaign to liberate Punjab, currently occupied by India. The campaign aims to gauge the will of the Punjabi people with regards to reestablishing Punjab as a nation state. Once we establish consensus on the question of independence, we will then present the case to the United Nations for reestablishing the country of Punjab.”<sup>4</sup>

**WHAT IS A REFERENDUM?**  
Referendum is the process of direct voting to get the opinion of a community on a political question. Through referendum several nations have achieved independence. Most recently, South Sudan was created as an independent country through referendum. Scotland and Quebec both held referenda on the question of independence from UK and Canada, respectively.

**WHAT IS PUNJAB REFERENDUM 2020?**  
Referendum 2020, launched by Sikhs For Justice (SFJ), an international advocacy group, is a campaign to liberate Punjab - the historical homeland of Sikhs - currently occupied by India. The campaign aims to gauge the will of the Punjabi people with regards to ending Indian occupation and reestablishing Punjab as a sovereign state. A manifested will of the Punjabi people discerned through this non-binding referendum will then be presented to the United Nations as a case for holding a UN backed plebiscite for the reestablishment of the sovereign country of Punjab.  
The voting in this non-binding referendum will be conducted in the 20 countries around the world. The locations will include Punjab, USA, Canada, UK, Australia, New Zealand and other countries of Europe and Asia.

**WHAT IS THE OBJECTIVE OF THE REFERENDUM 2020 CAMPAIGN?**  
The objective of the Referendum 2020 campaign is to convince the UN and Western countries to ensure that people of Punjab are given, in an official UN backed referendum, the right to vote on the question "should the territory of Punjab, currently occupied by India, be an independent country?"

**WHAT IS THE DIFFERENCE BETWEEN SFJ'S REFERENDUM 2020 AND A UN BACKED REFERENDUM?**  
An official or UN backed referendum has an outcome that is legally binding on all parties involved. In Sudan, the United Nations administered a referendum in which majority of the South Sudanese people opted for independence. Resultantly, South Sudan has been recognized as an independent and sovereign country by all the major countries of the world and has been granted membership of the United Nations as a member state.  
However, SFJ's Referendum 2020 is a campaign under which a non-binding referendum will be conducted throughout the global Punjabi community whose outcome will quantify the Punjabi peoples will on the question of Sovereignty and will serve as irrefutable evidence for UN and global powers to support the Sikhs demand for holding a binding referendum in Indian occupied Punjab.

**HOW IS AN OFFICIAL REFERENDUM THAT CREATES AN INDEPENDENT COUNTRY CONDUCTED?**  
The official referendums that grant independence and create separate countries are conducted by:  
A) The country currently occupying a territory agrees to hold a vote on the question of independence. Canada and UK agreed and held the referenda giving the people of Quebec and Scotland the right to vote on the question of independence; or  
B) UN intervenes and negotiates an agreement between a nation demanding independence and the country occupying its territory, to let the people of the land vote on the question of independence.

**HOW WILL SFJ'S NON-BINDING REFERENDUM HELP IN HOLDING A BINDING REFERENDUM FOR THE INDEPENDENCE OF PUNJAB?**  
An over whelming YES vote by the Punjabi people in SFJ's unofficial referendum will justify starting the legal process and provide the foundation through which a UN backed, official and legally binding referendum will be conducted on the question of establishing Khalistan in the Indian occupied Punjab through peaceful

**WHAT IS THE INTERNATIONAL LAW REGARDING INDEPENDENCE REFERENDUM AND PEOPLES RIGHT TO SELF-DETERMINATION?**  
Article 1 common to the Charter of the United Nations, International Covenant on Civil and Political Rights and International Covenant on Economic and Cultural Rights guarantees that "all peoples have right to self-determination". Under UN Law, a community living a defined territory with a separate religion or language are considered "peoples", have the right to self-determination and can seek a referendum to create a sovereign state or to gain independence if their territory is being occupied by another country. India has signed and ratified all the UN laws that guarantee right to self-determination to all peoples.  
For a more detailed answer please go to [www.referendum2020.org](http://www.referendum2020.org).

**HOW CAN SIKHS CONVINCING THE UN TO FORCE INDIA TO HOLD A REFERENDUM IN PUNJAB?**  
As a primary body to protect and promote human rights of all people, the United Nations listens and acts when a community approaches it in a large number. The aim is to get 5 million votes in support of independence for Punjab through the Punjab Referendum 2020. The result of the Referendum 2020 will be presented to the United Nations with a request to intervene and impress upon India to hold a binding referendum in the Indian occupied Punjab on the question of sovereignty.

**DOES THE U.N. REQUIRE A MINIMUM NUMBER OF VOTES?**  
No. UN does not specify any number of votes to qualify for intervention. UN law only guarantees right to self-determination to all peoples on the basis of religion and language. Since five million constitute almost 20 percent of the global Sikh community, it will demonstrate to the UN that a will of the Sikh people for independence of Punjab and thus justifying UN intervention.

**WHAT IS THE VALUE OF REFERENDUM 2020 CAMPAIGN TO THE WESTERN WORLD?**  
India has consistently portrayed Sikh political activists who advocate for Khalistan as a "small fringe group of extremists, radicals and even terrorists", seeking to establish Khalistan is purely a political opinion and is a right guaranteed under the UN Charter and International Covenants under the principle of freedom of expression.  
An unofficial referendum will dispel the Indian propaganda that it is only a small number of Sikhs who want independence and those that do are violent extremists. Furthermore, it will expose India's commitment to democracy, or lack thereof.  
In addition, it will allow us to engage in dialogue with UN, Western nations and other countries that are interested in supporting the rights of the indigenous people of Punjab. This dialogue will be a starting point to reestablishing an independent Punjab.

**ਪੰਜਾਬ ਰਿਫਰੈਂਡਮ 2020 ਖਾਲਿਸਤਾਨ**

**www.referendum2020.org**  
SikhsForJusticePage • 1 817-868-8488

<sup>2</sup> All information contained on this page - descriptions, narratives, ballot question, and informational handout - were provided by Sikhs for Justice and have not been edited in any way by the Commission. Additionally, the Commission takes no position on the information – implied or otherwise – and is being included in this report for informational purposes only.

<sup>3</sup> Question to be submitted to the voters:

<sup>4</sup> <https://yes2khalistan.org/download-files/faq-eng.jpg>



## INTRODUCTION

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Referendums have been a long-established mechanism for resolving territorial conflict<sup>5</sup>. Since the French Revolution, disputed territories could vote on whether they wished to remain part of a nation, or if they wanted independence – as was the case with Avignon, and parts of present-day Belgium. The role of the referendum is a recognized and established part of international law.

But unfortunately, not all internationally recognized, and mandated referendums take place. For example, in the wake of partition, India was mandated by United Nations Security Council Resolution 47 to organize a referendum on the future status of Kashmir<sup>6</sup>. While this requirement – which follows from a treaty obligation – has never been held, the requirement still has the force of law.

Holding a referendum can take place under other circumstances than those mandated by the UN or other governmental body. It is generally recognized that a referendum is required to give legitimacy to the secession of one geographic, political, economic, or ethnic region from another. While no territory can hold a binding referendum on independence at will, there are circumstances when such a vote is permitted.

These circumstances include,

- When there is a mutual agreement (as in Scotland in 2014).
- When there are provisions for such a vote in a constitution (as there was in Yugoslavia before the secession of Montenegro in 2006), or:
- When the seceding part is not part of a democratic polity (as in the case of the Baltic states in the early 1990s).

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<sup>5</sup> On this see: M. Qvortrup (2014) *Referendums and Ethnic Conflict*. Pittsburgh PA: University of Pennsylvania Press

<sup>6</sup> *Resolution of 21 April 1948 [S/726]*

The non-governmental **PUNJAB REFERENDUM 2020** is relatively unique. No major referendum has been held among those living in the diaspora. In this sense the idea of holding a vote among the Sikhs living abroad is untested and we can only make educated guesses as to its effect. To be sure, a similar exercise was carried out by the Tamil diaspora in 2009-2010 but had little political impact and was not widely covered by the media, and this vote was not in line with best practice.

### **KHALISTAN BACKGROUND**

Since the petition of India – and arguably before – the Khalistan movement – has sought independence for the current Indian state of Punjab (also known as Khalistan). The conflict between those Sikhs seeking independence or autonomy reached a critical point when – in 1984 – the Delhi government killed the Sikh leader Jarnail Singh Bhindranwale in the Harmandir Sahib (Golden Temple) in Amritsar, where he had set up headquarters. Bhindranwale had demanded further autonomy in a list of demands known as *Anandpur Sahib Resolution*. The resolution stopped short of demanding independence.

The subsequent assassination of Indian Prime Minister Indira Gandhi by Sikh militants led to pogroms against Sikhs in late 1984. These were claimed to be spontaneous acts of violence. However, Justice G.T. Nanavati – an Indian judge chairing a commission on the subject – found evidence to suggest that leading members of the then ruling Congress Party were aware and, in some cases, actively instigated the riots<sup>7</sup>.

After the 1984 events, the positions hardened. Pursuant of Art. 356 of *Bhāratīya Saṃvidhāna* – the Indian Constitution – the state of Punjab came under direct rule from 1987 to 1991. In 1995 the Chief Minister Beant Singh – himself a Sikh - was assassinated by Sikh militants. After this, direct violence from insurgency groups somewhat subsided,

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<sup>7</sup> *Nanavati, G T (2005). "JUSTICE NANAVATI COMMISSION OF INQUIRY (1984 ANTI-SIKH RIOTS)REPORT Volume 1" Available at [https://web.archive.org/web/20141127130507/http://www.mha.nic.in/hindi/sites/upload\\_files/mhahindi/files/pdf/Nanavati-I\\_eng.pdf](https://web.archive.org/web/20141127130507/http://www.mha.nic.in/hindi/sites/upload_files/mhahindi/files/pdf/Nanavati-I_eng.pdf)*

but the actions of the Delhi and local and state governments did not follow suit. Reputable international human rights organizations, including *Human Rights Watch* and *Amnesty International* have documented that Indian government forces have resorted to human rights violations, including arbitrary arrest, torture, and even summary executions<sup>8</sup>.

It is in the light of these development that the Khalistan movement has sought to gauge opinions regarding the future of Punjab (Khalistan) through the non-governmental

### **PUNJAB REFERENDUM 2020**

Before the scheduled non-governmental referendum on the future of Punjab, *Sikhs for Justice* asked direct democracy expert *Dane Waters* to assemble an international team of experts on referendums to assess the proposed vote, its legality, and its compatibility with international norms.

### **COMMISSION FORMATION**

The COMMISSION ON THE PROCEDURES FOR PUNJAB REFERENDUM 2020 was established based on, as stated above, a request from representatives of Sikhs for Justice and proponents of **PUNJAB REFERENDUM 2020** and subsequent conversations with these organizations and individuals regarding the referendum. Based on the proponents strong commitment to the organizations and direct democracy advocates listed below to conduct the referendum within international norms and standards, it was agreed to by *Citizens in Charge Foundation*, *Initiative and Referendum Institute Europe*, and the *Initiative and Referendum Institute at the University of Southern California* to establish the commission. The organizations then assembled members of the commission that included direct democracy experts Mr. Waters (USA), Professor Matt Qvortrup (United Kingdom), Mr. Bruno Kaufmann (Switzerland and Sweden), Mr. Paul Jacob (USA) and Dr Yanina Welp (Argentina)<sup>9</sup>.

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<sup>8</sup> Human Rights Watch, *India*, <https://www.hrw.org/reports/1992/WR92/ASW-07.htm>

<sup>9</sup> Information on the organizations and biographies of the commission members can be found at the end of this report.

The commission members have collectively over 125 years of global experience with direct democracy and best practices – research and writing, ballot campaigns, drafting implementing direct democracy legislation, advising on the proper rules and procedures to ensure the legitimacy of an initiative or referendum, and election monitoring.

It is important to note that the participation by the organizations and individuals in this Commission does not in any way constitute support for **PUNJAB REFERENDUM 2020** nor does it take a position on Sikhs for Justice or any of their underlying claims or activities.

### **COMMISSION MANDATE**

The commission established the mandate of the commission to be:

“Review the established procedures for the non-governmental **PUNJAB REFERENDUM 2020** and make recommendations for it to meet the accepted protocols and best practices for public votes and referendums so as to be considered a legitimate instrument of public debate helping further the peaceful resolution of the conflict.”

### **COMMISSION AREAS OF REVIEW AND CONSIDERATION**

As with any referendum, the issues subject to review are substantial. However, given the time constraints the commission were faced with in relation to the timing of the referendum (as a result of COVID-19 complications), it was decided that the following areas were of most importance to review:

- Attempts by India, if any, to limit political and educational activities
- Drafting the ballot title (question to be put before the voters)
- Who is allowed to vote and a review of the voter registration procedures
- Voting thresholds
- Education requirements and deliberation
- Voting procedures

## SUMMARY OF COMMISSION FINDINGS

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Since 1948, the role of the referendum has been an established part of international law of secession, and it is seen as a mechanism for resolving ethnic and territorial conflict peacefully but it is important to the legitimacy of any referendum that it be executed within international standards and accepted practices.

This is the context in which the COMMISSION ON THE PROCEDURES FOR PUNJAB REFERENDUM 2020 reviewed the referendum.

The commission did not review the desirability or necessity of a referendum, let alone independence.

Following written and oral testimony from representatives of Sikhs for Justice<sup>10</sup>, as well as research on and surveys of international practice, this report concludes:

- That the efforts to execute the non-binding and non-governmental referendum have been hindered by the Indian government in a way that goes beyond what is acceptable in a democratic state under the rule of law. The efforts to block the vote have gone beyond what was seen in Catalonia in 2017, when the Spanish government took disproportionate measures to hinder an unofficial referendum. The actions of the Indian government can best be compared to those of the Chinese regime in Hong Kong. This is not consistent with India's claim to be the world's largest democracy.
- The proponents of the referendum, Sikhs for Justice, seem honest in the expression of their background and the limitations of the vote promoted.

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<sup>10</sup> Representatives of Sikhs for Justice provided written testimony to questions presented by the commission which was then followed by oral testimony from Jatinder Sing Grewal, International Policy Director of Sikhs for Justice.

- The ballot question to be presented to the voters was drafted primarily through internationally accepted best practices. There is no suggestion that the question is biased, and the question on the ballot is clear.
- Our review of who is allowed to vote and voter registration procedures found that these could be improved. However, all efforts seem to have been made to ensure that all voters are included on the register. The fact that the registration process is suboptimal is due to the harsh measures – and occasional human rights abuses – undertaken by the Delhi government as well logistical and organizational limitations caused by COVID-19.
- Our review of voting thresholds found that the success or failure of the vote will be judged in line with international norms and practices. There is no requirement to have super majorities or quorums. For example, there was no quorum in the Scottish referendum, nor did the referendums in Quebec in 1980 or 1995. Additionally, given that this is a non-binding and non-governmental referendum no quorums or super majorities are required.
- The voter information campaign is poorly designed because it is mainly focused on the demand for transitional justice and is mixed with the claim for a referendum.
- Non-Sikhs living in Punjab should be recognized and better included in the referendum discussion which is not only (and not necessarily) related to justice and memory but also to the political future of the community.
- The proponents of the referendum should create more forums of discussion going beyond transitional justice, to discuss how the future of Punjab should be.

- Given some contradictions in established voting procedures, the proponents need to standardize their educational efforts regarding the execution of the referendum so that they can be readily understandable and therefore help voters know the procedures in advance.
- A basic accountability can be created by producing a voter pamphlet of no more than a dozen pages in both Punjabi and English, in which the referendum process is briefly introduced and where all the key data of the process is included.
- The proponents set forth a genuine voting process – and invites as many as possible to participate in the registration process and the deliberation ahead of the vote. However, under the existing conditions and limitations outlined in the report, the actual voting process will not fail to meet international standards and best practices.
- Though there are improvements that can be made by the proponents as outlined in this report, **PUNJAB REFERENDUM 2020** does substantially meet the accepted protocols and best practices for public votes and referendums so as to be considered a legitimate instrument of public debate helping further the peaceful resolution of the conflict to re-establish Punjab as a nation state.



## COMMISSION SPECIFIC FINDINGS AND RECOMMENDATIONS

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The following specific findings and recommendations are based on written and oral testimony from representatives of Sikhs for Justice<sup>11</sup>, as well as research on and surveys of international practice, as well as research on and surveys of international practice.

### REVIEW OF ATTEMPTS BY INDIA TO LIMIT POLITICAL AND EDUCATIONAL ACTIVITIES

#### Overview<sup>12</sup>

Hoping to “realize the right of self-determination,” reads a December 2019 report on the *Persecution of Sikh Referendum 2020 Campaigners by India*, “[The] human rights advocacy group ‘Sikhs For Justice’ (SFJ) has launched the initiative ‘Referendum 2020’ which seeks to hold an unofficial vote among the global Sikh community to demonstrate the collective political will of the Sikh people on the issue of self-determination and secession of Punjab from India to create a sovereign state.”

On July 10, 2019, the Indian government “banned Sikhs for Justice (SFJ), a US-based group that supports the cause of Khalistan, for its other anti-national activities,” informed *The Tribune of India*. “A senior official in the Ministry of Home Affairs said the decision to ban the outfit under Section 3(1) of the Unlawful Activities (Prevention) Act 1967, was taken at a Cabinet meeting chaired by PM Narendra Modi.”

“Draconian sedition charges continued to be used for criminalizing dissent,” informs a 2019 Amnesty International review of human rights in India. Citing the Unlawful Activities (Prevention) Act (UAPA), the report notes that “India’s principal counter-terrorism law . . . gives an overbroad and ambiguous definition of a ‘terrorist act’ giving unbridled power

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<sup>11</sup> Representatives of Sikhs for Justice provided written testimony to questions presented by the commission which was then followed by oral testimony from Jatinder Sing Grewal, International Policy Director of Sikhs for Justice.

<sup>12</sup> Please note that the term ‘Referendum 2020’ is the same as PUNJAB REFERENDUM 2020 but is stated as such in this section so as to be consistent with the content of the reports referenced in this section.

to the government to brand any ordinary citizen or activist a terrorist. It stands to implicate individuals for being proactive members of the society, ban critical thinking and criminalise dissent by designating them terrorists.”

The most recent report on India by *Human Rights Watch* (HRW) begins:

In 2018, the government led by the Bhāratīya Janata Party (BJP) harassed and at times prosecuted activists, lawyers, human rights defenders, and journalists for criticizing authorities. Draconian sedition and counterterrorism laws were used to chill free expression. Foreign funding regulations were used to target nongovernmental organizations (NGOs) critical of government actions or policies.

The government failed to prevent or credibly investigate growing mob attacks on religious minorities, marginalized communities, and critics of the government — often carried out by groups claiming to support the government.

Under the heading “Freedom of Expression,” the HRW report continued:

Authorities continued to use laws on sedition, defamation, and counterterrorism to crack down on dissent.

In April, police in Tamil Nadu state arrested a folk singer for singing a song at a protest meeting that criticized Prime Minister Narendra Modi. In August, state authorities detained an activist for sedition, allegedly for describing police abuses against protesters opposing a copper factory at the UN Human Rights Council.

“The Punjab Police,” the *Business Standard* reported in 2018, “arrested two members of a Khalistani module who were allegedly engaged in propagating the 'Referendum 2020' campaign by affixing banners and posters in public places in Amritsar.”

When promoting the idea of voting and casting a ballot are crimes punishable by arrest and the prospect of a lengthy prison term, as is the case in India, holding a fair and free and open election — even an “unofficial” one — is not possible.

### **Positive Actions**

Khalistan Referendum 2020 produced a detailed report entitled, “India’s Criminalization of Sikh Political Opinion,” addressing the claimed “Persecution of Sikh Referendum 2020 Campaigners by India.” The 51-page report<sup>13</sup> argued:

“The Government of the Republic of India is arbitrarily depriving Sikh individuals from Punjab of their liberty in reprisal to their support, advocacy or association with a completely democratic non-violent campaign ‘Referendum 2020’ which seeks the right of self-determination for Sikh people of Indian governed Punjab.”

“‘Referendum 2020’ campaigners continue to be routinely subject to arbitrary detentions, cruel, inhuman, and degrading treatment by the authorities, and to date, continue to be deprived of their right to free speech. The continuation of such flagrant violations of their rights constitutes direct threats to ‘Referendum 2020’ supporters’ health, physical integrity, their psychological integrity, and ultimately their lives.”

### **Areas of Concern**

The Commission expresses its concern that anyone in the Punjab region of India who attempts to publicize the ‘Referendum 2020’ question — much less cast a vote on it or facilitate someone else’s vote — is under severe threat of arrest and imprisonment by the Indian government.

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<sup>13</sup> Included as an attachment to this report.

“Sikhs For Justice urges the Nations of the World to take notice of and raise voice against India for her flagrant violations of the freedoms guaranteed to all people,” the above-mentioned report concluded, “and her vengeance against the democratic ‘Referendum 2020’ campaign.”

### **Recommendations**

In in the Punjab region, the proponents of ‘Referendum 2020’ should acknowledge the impossibility of holding a viably free and fair — not to mention safe — election, due to the Indian government’s ban on such political activity as sedition, as terrorism.

While this unfortunately undermines the vote, just in Punjab, it reflects much more poorly on the Indian government’s respect for and adherence to basic internationally recognized human rights.

And while the Indian government has lobbied foreign governments in hopes of undermining ‘Referendum 2020’ activity by the Sikh diaspora, it does not appear to have been able to significantly diminish the voting effort outside of India.

## **REVIEW OF THE PROCESS OF DRAFTING THE BALLOT TITLE**

### **Overview**

The goal of a *ballot question*, when written in the form of a question (as it is here) — or a *ballot statement*, when written in the form of a statement — is to provide voters a clear, accurate and sufficiently complete summation of the issue that voters must decide. In addition, it is essential that a ballot question avoid prejudicial or argumentative language favoring either a yes or no vote.

Full text of ballot title: *Should the region of Punjab currently governed by the Republic of India be an independent and sovereign country on the basis of the principle of right of self-determination?*

The **PUNJAB REFERENDUM 2020** effort seeks to hold a non-binding, non-governmental vote on whether the Punjab region of India should become “an independent and sovereign country” separate from India. Eligible voters include the people living in the Punjab region as well as members of the worldwide diaspora of Sikhs. While there are a multitude of issues and questions concerning the creation of a new nation from what is now part of India — not to mention the Indian government’s fierce opposition (discussed separately) — certainly no ballot question can address every aspect of any issue.

Best practices on legal, official ballot questions would entail having a presumably unbiased government official set a title after hearing from the measure’s proponents and opponents. Once a ballot question had been officially set, the proponents, opponents or any citizen would have a legal right to challenge the ballot question in court on the grounds that it failed to adequately describe the measure to voters. Obviously, in this case, there was no public official to draft the original question, nor any court available to adjudicate any dispute.

Notwithstanding the unavoidable limitations in the process, however, this ballot question puts the issue to voters in a truly clear, concise, and complete manner — without any pejorative language that would subtly or not so subtly push voters toward a vote of either yes or no. The ballot question also notes that the decision itself is being made on “the basis” of the “right of self-determination,” but such a statement is arguably necessary and certainly does not advance either a ‘yes’ or a ‘no’ vote.

#### **Positive Actions**

“The ballot question has been the core of the spirit of the movement of Khalistan which for decades have stood for the creation and establishment of independent country comprising of the areas of Punjab currently governed by India,” explain **PUNJAB REFERENDUM 2020** organizers.

The open goal of the **PUNJAB REFERENDUM 2020** effort is to show support for independence for Punjab to move that conversation forward in India, but especially on the international stage, where support will no doubt be easier to find. Organizers have complete control over the text of the question on the ballot, but in this case, the question was openly discussed and ultimately pared down to the essentials of independence or not. There is no argumentation or bias in the question.

#### Areas of Concern

The ballot question was not developed in an independent process, as best practices would require. Nor is there any process to challenge the ballot question for accuracy or completeness or other factors in a court of law, as there should be. Still, as noted above, this is not an official governmental referendum. It is not binding. The election is designed to attract attention to the question, which as stated above, is accurate, clear, fair.

#### Recommendations

Ballots, whether paper in person or electronic online, should contain only the ballot question and a place to mark either “yes” or “no” — and not contain any other text or unnecessary graphics. This is the stated intent of **PUNJAB REFERENDUM 2020**.

### **REVIEW OF WHO IS ALLOWED TO VOTE AND VOTER REGISTRATION PROCEDURES**

#### Overview

Who is a member of the *demos*? Who is a voter? Are you still a part of the *demos* if you leave the country, or are you then merely a part of the *ethnos*? European case law suggests those living outside a jurisdiction have thereby forfeited their right to vote. However, precedents from areas with displaced populations show the opposite. We will look at the cases in turn.

While some litigation in Europe suggests that the diaspora is not entitled to vote, common practice does not. For example, in an *obiter dictum* in *Matthews v. United Kingdom*, the *European Court of Human Rights* found, “...persons who are unable to take part in

elections because they live outside the jurisdiction...have weakened the link between themselves and the jurisdiction”, and can consequently not claim a right to vote”.<sup>14</sup>

This ruling was recently reinforced by *Schindler v United Kingdom*. Though in the latter case, the European Court of Human Rights held that, “the matter may need to be kept under review in so far as attitudes in European democratic society evolve.” It continued that “the margin of appreciation enjoyed by the State in this area still remains a wide one” and as a consequence citizens of countries that are signatories to the *European Convention of Human Rights* do not have a right to vote in national elections and referendums. But the legal situation may change as “there is a clear trend in favour of allowing voting by non-residents, with forty-four [European Council] States granting the right to vote to citizens resident abroad otherwise than on State service”<sup>15</sup>. However, it is still permissible to deny non-residents the right to vote. This might justify the exclusion of Montenegrins living in Serbia in the 2006 referendum.

Notwithstanding these rulings, 18 out of the 27 current EU countries allow voters living abroad to take part in elections and referendums. These include citizens of Belgium, Bulgaria, the Czech Republic, Denmark, Estonia, France, Germany, Italy, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Romania, Slovakia, Slovenia, and Spain. The same is true for citizens of Canada, Australia and New Zealand living overseas<sup>16</sup>.

Moreover, these cases differ considerably from areas where that had been civil wars and hence a large number of displaced people and many living in the diaspora. Thus, voters in the diaspora from both East Timor (in 1999) and in Eritrea (in 1993) were allowed to vote. In both cases this inclusion of expats was, arguably, justified on account of the displacement that took place due to violent conflicts. The same was true – with some

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<sup>14</sup> *Matthews v. United Kingdom* (1999) 28 ECtHR 361, para. 64.

<sup>15</sup> *Schindler v. United Kingdom* [2013] ECHR 19840/09, 115

<sup>16</sup> This summary is based on information contained in: Massicotte, L. Blais, A, and Yoshinaka, A. (2004) *Establishing the Rules of the Game: Election Laws in Democracies*. Toronto: University of Toronto Press, pp.18-26

modifications (those born before 1956) in the case of South Sudan. A very strong case can be made for including those living abroad in referendums held in areas that have experienced conflict or political and ethnic persecution.

### **Positive Actions**

Given the international practice and precedents that those living in the Diaspora should be given a vote, the decision by the proponents of the referendum to allow the Diaspora to vote was a wise decision in line with international practice. To depart from this would have been inconsistent with precedents from countries that have experienced violence. The Diaspora was allowed to vote in East Timor, Eritrea, and South Sudan. It would be difficult not to follow this precedent if a vote were held in India and in Punjab. This is true for both a constitutional referendum and for a possible independence referendum. Further, the overwhelming majority of EU states as well as Australia, Canada and New Zealand allow citizens living abroad the right to vote.

### **Recommendations**

It is clear from international best practice is that everyone living in Punjab should be given a vote. It would be difficult to deny a vote to non-Sikhs living in the area. All previous referendums on independence have given a vote to all those residing in the region. While it is appreciated that the Indian government is engaged in creating a Hindu monoculture of the area (much like the one in Kashmir) it would be difficult to find precedents for denying the 'colonists' a vote. This is a tricky problem that needs to be addressed and to which a creative solution must be found.

## **REVIEW OF VOTING THRESHOLDS**

### **Overview**

Given the momentous importance of the vote it seems reasonable that "if the approval rate of a referendum is too low, it ought to be discredited. A nearly simple majority does

not provide sufficient legitimacy”<sup>17</sup>. Without passing judgement as to the fairness of such a requirement, it is worth outlining a few comparative examples of when such stipulations have been introduced. Turnout and quorum requirements are relatively common in referendums on independence and other referendums on ethnic and national issues.<sup>18</sup>

Of course, this is not just a result of a concern for fairness and democratic legitimacy. In politics opportunism and ulterior motives are often presented in the guises of, what we might call, democratic appropriateness. Special majority requirements are no exception. This was arguably the case in the late 1970 in the United Kingdom when James Callaghan’s Labour government’s proposal for Scottish and Welsh devolution was sought obstructed by the Labour MP George Cunningham who introduced an amendment to the effect that devolution had to be supported by a majority that represented at least 40 per cent of the eligible voters. This meant that devolution in Scotland was rejected although a majority of those voting voted yes in the referendum in 1979.

This type of obstructionism, albeit in a different setting, was also the motivation behind Soviet leader Mikhail Gorbachev’s insistence that a two-thirds majority should be required for secession in Latvia. (A request that was ignored by the Latvians!)

The Soviet leader was not the only one seeking to use obstructionist tactics. The Israeli Knesset passed a similar rule to the effect that a peace-deal with the Palestinians must be supported by a supermajority. (Tellingly parties opposed to returning the occupied territories to the Palestinians introduced the law).

In the light of these examples, it was unsurprising that one of the demands made by the Khartoum government before the independence referendum in South Sudan in 2011 was

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<sup>17</sup> Baogang He, ‘Referenda as a Solution to the National-Identity/Boundary Question: An Empirical Assessment of the Theoretical Literature’, *Alternatives*, Vol 27, No.1, (2002): 77.

<sup>18</sup> The terms ‘Super majority’ and ‘special majority’ will used interchangeably. These terms are identical to the term Qualified Majority.

that at least 60% turned out to vote. The South accepted this. They believed – rightly – that accepting this would give them more legitimacy.

It is common to cite the *Canadian Clarity Act* in connection with discussions about super majority rules. This Act was passed in response to a court ruling that a referendum in Quebec would have to be decisive for the result to stand is often (but inaccurately) cited a precedent for supermajority requirements. However, the Canadian Act does not provide a special percentage, but merely states Art 1-2,

[The Canadian House of Commons shall consider] whether, in the circumstances, there has been a clear expression of a will by a clear majority of the population of that province that the province ceases to be part of Canada. Factors for House of Commons to take into account include,

- (2)(a) The size of the majority of valid votes cast in favour of the secessionist option;
- (b) The percentage of eligible voters voting in the referendum; and;
- (c) Any other matters or circumstances it considers to be relevant<sup>19</sup>

A better example of a Supermajority requirement, albeit a small one, was used in 2006 in Montenegro. The law stipulated that independence would be approved if supported by 55% of those eligible to vote. The total turnout of the referendum was 86%. 55.5 % voted in favour and 44.5% were against breaking the state union with Serbia.

Another – perhaps more exotic - example is St Kitts and Nevis in the Caribbean. Under the constitution, Nevis has considerable autonomy and has an island assembly, a premier, and a deputy governor general. Under certain specified conditions, it may secede from the federation.

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<sup>19</sup> Clarity Act, 2000, c. 26 [Assented to June 29th, 2000] 2. (1).

In June 1996, the Nevis Island Administration under the *Concerned Citizens' Movement* led by Premier Vance Amory – a former all-round international cricketer with a modest batting average of 23.2! – announced its intention to become independent. Secession requires approval by two-thirds of the assembly's five elected members and by two-thirds of voters in a referendum in accordance with Art 38.1 (b) of the Constitution.

After the *Nevis Reformation Party* blocked the Bill of secession, Amory called for elections for February 24, 1997. Although the elections produced no change in the composition of the assembly, the Premier pledged to continue his efforts towards independence. A referendum – which could be regarded as *ultra vires* - was held in 1998, but only 61 per cent voted in favour of the proposition, and hence the referendum failed<sup>20</sup>.

In most other referendums (e.g. East Timor 1999, Malta 1964, and the referendums on independence for former Soviet States 1991), there were no supermajority requirements. While it is certainly possible to cite examples of special majority requirements, it cannot in fairness be said that the simple majority requirement in the forthcoming Scottish referendum is at odds with international norms. It should also be noted that there was no special majority requirement when Bougainville voted to secede from Papua New Guinea in December 2019.

### **Recommendations**

While special majority requirements are often introduced to those opposed to a particular policy, such requirements can be used to great effect in areas where there is support for independence. It is easy to reject or ignore the outcome of a narrow referendum. It is difficult to reject the verdict of a near unanimous electorate.

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<sup>20</sup> A similar mechanism exists in tiny Tokelau, where a self-determination referendum also failed to reach the required quorum. Yet, these examples are, given the small size of the countries, not likely to create precedence in the sense of an international norm with the force of international law.

Yet, given that this is a non-binding and advisory referendum which merely seeks to test the political waters, there is nothing to suggest that super-majority requirements or turnout quorums should be included. The commission is content that the referendum among the Sikhs does not require a special majority.

## **REVIEW OF VOTER EDUCATION AND DELIBERATION**

### **Overview**

Self-determination referendums are especially controversial, not only for the territory in which they are organized or are intended to be organized but also for the international community. Their organization and support often include several phases of discussion, exchange and bargaining in which different demands are mixed. The current voting experience in Punjab is a true reflection of these complexities.

Regarding the process itself, it does not meet, and could not meet in the current circumstances, the minimum standards to be considered a referendum: neither with regard to the legal framework and the political agreement with India, nor as regards the design of the voting procedure with neutral independent authorities in charge, as well as a clear and predefined procedure. While the first is clearly known by the promoters of the vote, here it is intended to point out that the conditions for the exercise of a free and informed vote are not in place (some are beyond the control of the organizers but others should or may be considered from now on).

More than a referendum, the procedure can be understood as a participatory and informative process aimed at attracting the attention of the international community, addressed to force a dialogue with India and / or encouraging a discussion on the future of the Sikh community in Punjab. The last is mixed with the claim for transitional justice mechanisms that include Sikhs regardless of their place of residence. Accordingly, the vote is expected to be conducted in 20 countries engaging people who may have never been in Punjab neither has intention of moving to a potential independent Khalistan.

Therein lies one of the main complexities of the process regarding voting education requirements and democratic deliberation, because there is an overlapping of three levels of demand that cannot or should not necessarily go together: 1) a claim for transitional justice, 2) a claim for a free and fair referendum, 3) and a claim for the self-determination of the Punjab / a free Khalistan.

### **Positive Actions**

The group promoting the referendum seems honest in the expression of their background. They are mainly Sikh people living abroad and pursuing both, justice for their community and better living conditions for them.

Besides the fair and legitimacy of these goals, they are honest about the limitations of the vote promoted. In the informative sheet provided to the commission, it is made clear that the goal is to make pressure in order to organize a future recognized referendum.

### **Areas of Concern**

The voter information campaign is poorly designed because is mainly focused on the demand for transitional justice and it is mixed with the claim for a referendum.

The organizers stressed that there is a call to the non-Sikh community living in Punjab, but some documents do not refer to them focusing solely on the Sikh: “SFJ which is currently spearheading the campaign for right to self-determination for the Sikh people of the Indian occupied Punjab through non-binding Referendum 2020, was incepted in 2007 with a view to work on the human rights issues concerning the Sikh community” (See ‘A Democratic Campaign for Realization of Sikhs Right of Self Determination’).

As a consequence,, there is no discussion on the political and economic consequences of a potential new country named Khalistan, its political characteristics, etc. There is no pro-

unity campaigning neither a debate on the consequences of secession or the continuation of the region in India.

The call to non-Sikh voters leaving in Punjab is based on the call for a vote independent on the religion of the people, who has the effect of stressing religious issues but neglecting political ones.

### **Recommendations**

In a future free and fair referendum, administrative authorities must observe their duty of neutrality. From now on should be relevant to differentiate between the process and the arguments to support a position. In other words, the information should differentiate the discussion related to the process and the conditions for a fair and free exercise of the voting rights and the reasons for a yes / no vote.

Increase voices. Non-Sikhs living in Punjab should be recognized and better included in a discussion which is not only (and not necessarily) related to justice and memory but also to the political future of the community. By saying that the referendum is not necessarily related to justice it is that justice can be pursued by other ways (as the Sikh are already doing through other judicial claims) while an argument for an independent country should be considered so many variables related to future institutions and the community living there.

Create forums of discussion going beyond transitional justice, to discuss how the future of Punjab should be. A discussion on the demos and to what extent people who have never been in Punjab neither intends to move there should be in charge of deciding the political future of a community should be part of a previous discussion.

Avoid contradictions. The information provided is contradictory regarding the number of votes expected. Voting procedures must be readily understandable by citizens and know in advance.

## **REVIEW OF VOTING PROCEDURES**

### **Overview**

The Punjab 2020 Referendum is not only a self-organized process (outside a formal jurisdiction) but also very much a self- and ad-hoc designed political project to increase the knowledge about the political situation in this part of the world and to invite concerned stakeholders to participate in a deliberation on it. The tool 'referendum' is used to give it some more formal relevance and the voting procedures proposed are an exercise in finding out, what a free and fair popular voting process according to international norms and best-practice could and should look like. However, as the ramifications for this process are highly politicized and policed on the ground in Punjab, it will be extremely hard to follow international norms when it comes to the voting procedures.

### **Positive Actions**

In witnessing to the International Commission, the representative of the "Punjab 2020 Referendum" offered a genuine, transparent and accommodation approach to the envisaged process. By striving for the most comprehensive possible registration of voters as well as provision of voting channels the organizers try to invite as many as possible to participate in the registration process, the deliberation ahead of the vote – and the voting process itself. This 'inclusive' approach is to be welcomed under these specific and highly constrained conditions, where basically not on site voting will be possible on the ground in Punjab.

### **Areas of Concern**

Based on an idea of free and fair, secret and honestly administrated elections and referendums, this voting process will be far from international standards and best practices independently of the named positive approach by organizers. This starts with the unclear timetable, the non-availability of on-site voting stations, the criteria for registrations to vote (“Sikh names yes, non-Sikh-names no”) and continues with the non-availability of how and where ballots (personally handed it, mailed, electronically transmitted) will be stored during a process, which is unclear on duration. There is a high concern that the referendum process is mainly used as a political tool much more than an open democratic process.

### **Recommendations**

In order to create a somewhat basic accountability for all involved and observers it is recommended that the organizers produce a voter pamphlet of no more than a dozens of pages in both Punjabi and English, in which the referendum process is briefly introduced and where all the key data of the process are included. Furthermore, it is recommended that the organizers clearly communicate about their ambitions and resources to train those people, who will receive and count the votes during the process.

## CONCLUSION

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Referendums are not easy. A referendum is not something that can take place with-out substantial preparation, dedication to the issue, and the willingness to subject the issue of the referendum to immense public scrutiny. Around the world, groups and individuals have strong interest in holding referendums to bring peaceful change but are thwarted by a variety of issues – government manipulation and intimidation, financial limitations, threats of violence and arrest, and the lack of unified leadership. You see these struggles in places like Hong Kong, Kashmir, Western Sahara, Tibet, and the Tamils in Sri Lanka.

Even when circumstances allow for a referendum to occur, unfortunately in many cases the actual execution of the referendum is flawed because of a lack of knowledge about how to conduct a referendum or simply by obstacles outside the proponents of the referendum's control. Additionally, specific to **PUNJAB REFERENDUM 2020** are the unprecedented challenges to conducting a referendum because of COVID-19 as well as documented attempts by the Indian government to limit the opportunity for the people to participate in the referendum.

Because of these realities, referendums that are conducted can easily be subject to questions of its legitimacy. The perceived lack of legitimacy ignores the underlying reasons for the referendum to have occurred in the first place – the process overshadows the reason for the referendum. In many cases this can be attributed to the opposition to the referendum using the inadequacies of the referendum process as the basis for dismissing the vote as inconsequential or without merit. In politics this is referred to as attacking the messenger and the not the message.

For these reasons, organizations and individuals who seek out help from recognized international experts to help them prepare for a referendum should be commended for their commitment to trying to ensure that the execution of the referendum doesn't overshadow or minimize the reasons for the referendum. Though there are no certainties

that the recommendations of these experts regarding the referendum will be implemented, it is important to note the outreach and request for help. As stated earlier in this report, the proponents of **PUNJAB REFERENDUM 2020** did take this step and for that they should be commended for their commitment to working to ensure that the execution of the referendum meets internationally accepted norms.

The Commission takes no position on the underlying issues subject to **PUNJAB REFERENDUM 2020** nor on Sikhs for Justice and their underlying claims or actions. However, we as a Commission do support the use of referendums to bring peaceful solutions to conflict. Even though it is clear that an affirmative vote for **PUNJAB REFERENDUM 2020** will not be binding, the Commission is hopeful that the referendum will help gauge the interest of those impacted by the underlying issue of the referendum and that it will increase the discussion of the issue and ultimately lead to a resolution. It is for this reason that the Commission accepted the invitation to offer guidance regarding the execution of **PUNJAB REFERENDUM 2020** for the Commission believes that fighting – both physically and verbally – is not a solution yet a hinderance to finding a solution. Voting is the internationally accepted solution – as long as that vote is conducted within internationally recognized and accepted norms and practices.

As pointed out in this report, **PUNJAB REFERENDUM 2020** has strengths and weaknesses – as most referendums do. There is no perfect referendum. However, this referendum can be made stronger if the proponents and supporters of **PUNJAB REFERENDUM 2020** view the observations and recommendations within this report with the weight that they are due.

We also hope that the international community, regardless of their views on the underlying claims of the referendum, will judge the referendum in its entirety and not lose sight of the ultimate goal of the vote, and that of most referendums, that a peaceful resolution is of greater moral value than continued violence.

We also hope that other groups and individuals wishing to pursue a referendum will reach out to experts in order to ensure that their efforts are as legitimate as possible within the eyes of the league of nations which will ultimately help address many of the underlying issues that are facing our world.

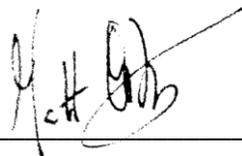
This report is hereby submitted on September 25, 2020 by the members of the  
COMMISSION ON THE PROCEDURES FOR THE  
NON-GOVERNMENTAL PUNJAB REFERENDUM 2020



Paul Jacob



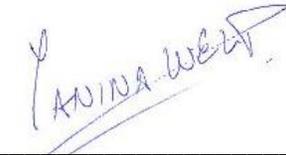
Bruno Kaufmann



Matt Qvortrup



Dane Waters



Yanina Welp



## SPONSORING ORGANIZATIONS

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### Citizens in Charge Foundation

Citizens in Charge Foundation (CICF) works to protect, defend, and expand the initiative and referendum rights, without regard to partisanship or politics. CICF is dedicated to the belief that citizens should be in charge of their government. One of the best tools that citizens have for enacting change is the initiative and referendum process. Our organization is made up of activists, legislators, financial supporters, opinion leaders, and most importantly — citizens — who come together to protect and defend this process where it exists and extend it to where it does not. But no matter our background, we all recognize that additional checks on state legislatures are to be encouraged.

Citizens in Charge Foundation works with activists, legislators, media, opinion leaders and voters to protect the tools of self-determination where they exist and to expand the tools of self-governance. We also work to educate the public on the benefits of citizen initiative, referendum and recall and litigate through the court system to protect and expand those rights.

We believe that citizen control of government is essential for peace, prosperity, and freedom, and that the citizen initiative process is a necessary check on the power of state legislatures.

The process of initiative and referendum is critical if we are to shift power back into the hands of ordinary citizens. Citizens in Charge Foundation is uniquely positioned to defend the ballot initiative process in states where it exists and expand it where citizens currently lack these critical tools to self-determination.

**Learn more:** [citizensinchargefoundation.org](http://citizensinchargefoundation.org)

## **Initiative and Referendum Institute Europe**

The Initiative and Referendum Institute Europe (IRI Europe), founded in 2001, is a European think-tank dedicated to research and educate on procedures and practices of modern Direct Democracy.

As a non-partisan, non-profit association, the Institute's main mission is to develop insights into the theory and practice of modern Direct Democracy among politicians, the media, NGOs, academics, and the public throughout Europe – and beyond. Since its establishment IRI Europe has assisted and advised the EU constitution drafters – first in the Convention, subsequently in the EU institutions and member states, the electorates across Europe and now in the Conference on the Future of Europe – in seizing the opportunity of developing democratic tools which are both issue-based and pan-European.

One key result of this work is the first transnational direct-democratic tool: the European Citizens' Initiative (ECI), first established in 2011. By 2020 the rules and procedures of the ECI have been updated in a citizen-friendly manner.

IRI Europe is today an acknowledged research and educational institute focusing on the initiative and referendum process across Europe. With a comprehensive network of experts and correspondents throughout the region, the Institute is uniquely equipped to provide the know-how and the tools Europe (and the wider world) needs.

IRI Europe's informational and educational materials include Guidebooks and Passports as well as publication series dedicated to the European Citizens' Initiative.

In all its projects IRI Europe cooperates closely with partners from civil society, governmental institutions, and international players. Beyond its European focus the Institute has developed a fully-fledged network of cooperation's across the globe.

The Institute is led by journalists, politicians, academics and civil society experts from different political parties, backgrounds, and countries. Our sister institute in the United States is working in the same way with a focus on America.

The Institute has an open approach to cooperation and has developed a far-reaching reputation as Europe's Direct Democracy Think Tank.

[Learn more: iri-europe.org](http://iri-europe.org)

### **Initiative and Referendum Institute at The University of Southern California**

The Initiative and Referendum Institute at the University of Southern California (IRIUSC) is a non-partisan educational organization dedicated to the study of the initiative and referendum, the two most important processes of direct democracy.

The Institute was founded in 1998 in Washington D.C. by M. Dane Waters. Waters, who had cut his teeth using the initiative process pushing term limits across the country, felt it was important for there to be an impartial clearing house for information on direct democracy. In 2004, the Institute joined the University of Southern California in Los Angeles, in order to advance the Institute's educational mission. Upon the move to USC, John Matsusaka became executive director of the Institute; Waters remained chairman of the advisory board.

Edwin Meese, III, former U.S. Attorney General under President Ronald Reagan, had this to say about the Institute, "[T]he Initiative & Referendum Institute performs a valuable service to the Nation by providing research and educational programs to protect and expand the democratic process of initiative and referendum by the people in the several states. Having this electoral ability is a critical 'safety valve' for effective citizenship."

The Initiative and Referendum Institute collects and distributes information on the initiative and referendum process. And sponsors studies of various aspects of direct

democracy, including its effect on public policy, citizen participation, and its reflection of trends in American thought and culture. The Institute produces a state-by-state guide to the initiative and referendum process and works to educate and update the public on how the process is being utilized across the country, particularly at the state level. The Initiative and Referendum Institute is a primary source for information about direct democracy, and has been cited by numerous media outlets including, ABC News, CNN, Fox News, CNN, CBS Radio, NPR, *The New York Times*, *The Wall Street Journal*, *USA Today*, *The Washington Post*, *The Economist*, *The Chicago Tribune*, *The Christian Science Monitor*, *The News Hour with Jim Lehrer*, *The National Journal*, *Governing Magazine*, Court TV's "Supreme Court Watch" and "Washington Watch", *Campaigns and Elections Magazine*, *U.S. News and World Report*, *Congressional Quarterly*, Voter News Service, Pacific Radio Network.

Learn more: [iandrinstitute.org](http://iandrinstitute.org)

## COMMISSION MEMBERS

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### **Paul Jacob**

Paul is a leading national figure in initiative and referendum and is president of Citizens in Charge and Citizens in Charge Foundation. Paul has worked on over 100 initiative and ballot access campaigns in nearly every state. An acclaimed multi-media commentator, Paul hosts an online, radio, and print opinion program, Common Sense, which reaches a growing list of over 15,000 e-mail subscribers and is aired daily by more than 150 stations in 48 states.

### **Bruno Kaufmann**

Bruno is the Global Democracy Correspondent at the Swiss Broadcasting Company and has covered elections and referendums around the world for more than 30 years. Trained as a political scientist Bruno has been assessing initiative and referendum legislation globally and published many books, guides, and recommendations on the issue. Back home in Sweden Bruno Kaufmann served as Chairman of the Election & Democracy Commission in the city of Falun and is currently member of a national commission to review the electoral system. Bruno is the President of the Initiative and Referendum Institute Europe and Director of International Cooperation at the Swiss Democracy Foundation. He co-chairs the Global Forum on Modern Direct Democracy and is the author of the „Global Passport to Modern Direct Democracy“.

### **Professor Matt Qvortrup, PhD.**

Educated at Brasenose College, University of Oxford Matt QVORTRUP DPhil (Oxon), is Professor of Political Science at *Coventry University*. A Qualified lawyer, he is adjunct professor of political theory at *The American University of Rome*. Matt has previously held professorial positions at *The London School of Economics* and *University College, London*, and has been a visiting professor at Sorbonne, Paris. Described by the *BBC* as ‘the world’s leading expert on referendums’, and by the *Financial Times* as “a world authority” on the subject, he has written several books, including *Government by Referendum* (2017),

*Referendums Around the World* (Palgrave 2016), and *Referendums and Ethnic Conflict* (2014), and *A Comparative Study of Referendums* (2002).

In addition to his distinguished academic career, Professor has served on several boards and commissions. He began his career as an advisor to the British Government in the late 1990s, and has served in other positions including as an envoy for the US State Department in Sudan (2009), as a chief advisor for the *House of Commons Constitutional Affairs Committee* (2015), as an expert member on a commission overseeing the 2019 referendum in Bougainville, Papua New Guinea, and as counsellor on the regulation of referendums for the *British Foreign and Commonwealth Office* 2019-2020. Matt Qvortrup gained prominence when he correctly predicted the outcome of the 2016 Brexit referendums three months before the vote.

### **M. Dane Waters**

Dane has worked on six continents providing strategic advice to campaigns, governments, activists, academic institutions, and NGO's. He has also consulted on projects with the United Nations, the U.S. Department of State, and the International Republican Institute. He was a political appointee in President George H. W. Bush's administration and has worked on five U.S. presidential campaigns as well as presidential and prime ministerial campaigns around the world. Dane is one of the few people who has worked on all aspects of direct democracy campaigns – from helping governments draft the laws that will govern the election, to helping win or defeat an issue on the ballot, to providing international observers to ensure that a referendum election meets internationally accepted norms.

Dane is the founder and Chair of the Initiative & Referendum Institute at the University of Southern California – a research and educational organization established to study direct democracy. He is the co-founder of the Initiative & Referendum Institute Europe and serves on the board of Democracy International, an organization that works to

strengthen direct democracy opportunities around the world and Citizens in Charge Foundation. Dane has authored and edited numerous articles and books on direct democracy and has provided commentary on governance issues to newspapers, radio talk shows, and television stations around the world.

### **Dr. Yanina Welp**

Yanina is Research Fellow at the Albert Hirschman Centre on Democracy. Between 2008 and 2018 she has been principal researcher at the Centre for Democracy Studies and co-director of the Zurich Latin American Centre (2016-2019), both at the University of Zurich. Her main areas of study are the introduction and practices of mechanisms of direct and participatory democracy, and digital media and politics, i.e. 'democratic innovations'. She has published extensively on these topics in academic journals and books. Her last edited book is *The Politics of Recall Elections* (with Laurence Whitehead, 2020, Palgrave).

In terms of knowledge transfer, she has worked with many public institutions in given advise and or observing processes of citizen's participation. Examples include electoral institutes from Mexico (Instituto Nacional Electoral and Tribunal Electoral del Poder Judicial de la Federación), Mexico City (Instituto Electoral del Distrito Federal) and Nueva León (Comisión Electoral del Estado de Nueva León); the ombudsman of Montevideo (Defensoría del Vecino); the Institute of Democracy in Ecuador (Instituto de la Democracy); and the National Jury of Elections (Jurado Nacional de Elecciones, JNE) and the National Office of Electoral Procesess (ONPE) in Peru. She has experience in working with international organizations. For instance, at the invitation of International IDEA, she has been a consultant for the Chilean Government (October 2015 and January 2016) in relation to proposed constitutional changes towards democratic participation; and has participated in the Electoral Observation Mission of the Organization of American States (OAS) to observe the referendums in Bolivia (February 21, 2016) and Ecuador (February 4, 2018), among others.

## COMMISSION CONTACT INFORMATION

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All questions regarding the Commission should be directed to:

**M. Dane Waters:** dane@mdanewaters.com

**Paul Jacob:** paul@citizensinchargefoundation.org

**Bruno Kaufmann:** kaufmann@iri-europe.org

**Matt Qvortrup:** matt.qvortrup@coventry.ac.uk

**Dr. Yanina Welp:** yanina.welp@graduateinstitute.ch

### **Additional information**

[citizensinchargefoundation.org/punjab-referendum-2020](https://citizensinchargefoundation.org/punjab-referendum-2020)

**Participation by the organizations and individuals in this Commission does not in any way constitute support for PUNJAB REFERENDUM 2020 nor does it take a position on Sikhs for Justice or any of their underlying claims or activities.**

## **SUPPORTING DOCUMENTATION**

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ONE CANADA SQUARE  
37TH FLOOR SUITE 14A  
CANARY WHARF, LONDON  
E14 5AA  
T: +44 (207) 718 - 0090  
F: +44 (207) 718 - 0092  
E: SUPPORT@SIKHSFORJUSTICE.ORG

## OPEN LETTER

February 16, 2019.

Captain Amarinder Singh  
Chief Minister of the State of Punjab  
Punjab Civil Secretariat,  
Chandigarh, UT, India  
cmo@punjab.gov.in

**Sub: Open Challenge to Hold Polling in Punjab On The Popularity of Referendum 2020 – Let People Be The Judge.**

Capt. Amarinder, on February 15, you claimed that the “Referendum 2020 which was clearly working at ISI's behest, was also a sign of their continued attempts to disturb peace in Punjab,” and asserted that it “will not succeed”. Earlier in June 2018 you had also stated that "Referendum is the imagination of people abroad. Everybody knows there is no referendum in Punjab".

Contrary to your claims SFJ's Referendum2020 campaign is a thoroughly indigenous, homegrown, community financed, non-violent, democratic and lawful initiative and it is our well-founded claim that majority of Sikh people, from Indian held Punjab and around the globe, support Referendum2020.

In this age of information technology, your claim about unpopularity of Referendum 2020 is worthless in the absence of any empirical evidence. If you truly believe in what you said about the unpopularity of Referendum 2020, SFJ dares you to hold voting in Punjab on a 90 days notice, to decisively determine the popularity of Referendum 2020 and let the people of Punjab be the judge.

It is our claim that, despite your government's use of fascist techniques, majority of the people of Punjab will vote in support of holding Referendum2020.

Already, brutal and continuing crackdown on peaceful Referendum 2020 campaigners through illegal detentions, torture and filing of false cases by your regime is belying your statements about unpopularity of Referendum2020. No regime in the world with claim to democracy, violently crushes - like Punjab government is doing - a peaceful and non-violent political movement especially when such movement is supposedly unpopular too. Perhaps the reality that is gnawing at you is that Referendum 2020 is much more popular than you admit or want the world to know.

Lastly, about allegation of SFJ-ISI link, you are very well aware of the SFJ's defamation lawsuit pending before a Canadian Court. Capt. Amarinder, if you are a “man and on top a soldier, worth your salt”, you should submit the evidence of SFJ-ISI links to the Canadian court and have the SFJ's defamation lawsuit dismissed.

Capt. Amarinder, mind it that “Sikhs For Justice” (SFJ) is an international advocacy group spearheading the Punjab Independence Referendum 2020 campaign to realize Sikhs' right to self determination as guaranteed under Article 1 common to the UN Charter; International Covenant on Civil and Political Rights and International Covenant on Economic and Cultural Rights.

Gurpatwant Singh Pannun  
Attorney at Law (New York),  
Legal Adviser - Sikhs For Justice  
Mobile: +1-718-938-7801 E: gurpatwant. pannun@sikhsforjustice.org

UNITED STATES

BULOVA CORPORATE CENTER  
75-20 ASTORIA BLVD., SUITE 170  
EAST ELMHURST, NY  
11370  
T: +1 (833) 735 - 2020

CANADA

250 UNIVERSITY AVE  
SUITE 200,  
TORONTO, ON  
M5H 3E5  
T: +1 (416) 825 - 5756





#### USA

Bulova Corporate Center,  
75-20 Astoria Blvd.,  
Suite 170, East Elmhurst,  
New York 11370  
T: +1 (833) 735 - 2020  
F: +1 (718) 672 - 4728  
E: support@sikhsforjustice.org

#### CANADA

250 University Ave,  
Suite 200, Toronto, ON M5H 3E5  
T: +1 (416) 825 - 5756  
www.sikhsforjustice.org  
www.referendum2020.org  
www.facebook.com/sikhsforjusticepage

Issued on November 20, 2019 from New York, USA.

## SIKH REFERENDUM 2020

### A Democratic Campaign of SFJ for Realization of Sikhs Right of Self Determination

#### Introduction, Activities and Background

“Sikhs For Justice” (SFJ) [www.sikhsforjustice.org](http://www.sikhsforjustice.org) is a New York based international human rights advocacy group which is spearheading Referendum 2020 campaign to realize the right of self-determination for Sikh people on the basis of the principle enshrined in UN Charter and International Covenant on Civil and Political Rights (ICCPR). (See Report<sup>1</sup> at **Annex-A**)

Referendum 2020 [www.referendum2020.org](http://www.referendum2020.org) is a political campaign launched by “SFJ” aiming to hold the first ever non-binding Referendum among the 25 million global Sikh community on the question of establishing Indian governed Punjab as an independent country – “Khalistan”.

#### Background of Sikhs v. India

Sikhs are a religious minority in India who have been persecuted ever since India obtained independence from Britain in 1947. Most noted persecution of Sikhs under India’s rule since 1947 consists of:

- a. Suppression of separate religious identity by labelling Sikhs as “Hindus” in Explanation II to Article 25 of the Constitution of India;
- b. Military attack, invasion, desecration and massacre at the holiest Sikh shrine The Golden Temple in June 1984 killing more than 10,000 pilgrims including women and children.
- c. November 1984 anti-Sikh genocidal violence across India killing more than 30,000 Sikhs;
- d. Decade long extra judicial killing of Sikhs in 1980s and 1990s by the security forces in the name of counter insurgency to crush the movement for Khalistan;
- e. Plundering of River waters of Punjab and giving it to other States of India, without compensation to Punjab, and thus forcing economic suicide upon 80,000 Sikh farmers.

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<sup>1</sup> "Self-Determination for the Sikh Peoples: An Overview of the International Law" report by Global Diligence LLP, an international law and human rights compliance firm.



#### USA

Bulova Corporate Center,  
75-20 Astoria Blvd.,  
Suite 170, East Elmhurst,  
New York 11370  
T: +1 (833) 735 - 2020  
F: +1 (718) 672 - 4728  
E: support@sikhsforjustice.org

#### CANADA

250 University Ave,  
Suite 200, Toronto, ON M5H 3E5  
T: +1 (416) 825 - 5756  
www.sikhsforjustice.org  
www.referendum2020.org  
www.facebook.com/sikhsforjusticepage

- f. Spreading drug epidemic in Punjab through the active connivance of government and administration.

### **Background and Campaigns of the International Advocacy Group “SFJ”**

SFJ which is currently spearheading the campaign for right to self-determination for the Sikh people of the Indian occupied Punjab through non-binding Referendum 2020, was inceptioned in 2007 with a view to work on the human rights issues concerning the Sikh community.

Prior to launching the Referendum 2020 campaign, for years SFJ worked on the issue of seeking justice for November 1984 anti-Sikh genocidal violence in which more than 30,000 Sikhs were killed throughout India in a span of a few days.

SFJ's efforts were focused on holding the perpetrators of 1984 genocide responsible under international law and by urging the world governments to recognize the November 1984 anti-Sikh violence as Genocide as defined in UN Convention on Genocide.

To challenge and expose India's culture of impunity, SFJ have also undertaken efforts and steps to move the legal machinery of the western countries against Indian police officers, politicians and other officials who have been involved in torture or other human rights violations whenever those violators would travel to western countries.

The most important cases/legal actions/lawsuits filed by SFJ to hold the human rights violators responsible include:

#### **SFJ's Lawsuits/Legal Actions/Cases**

1. April 2015 - SFJ's criminal complaint (Private Prosecution) in Toronto, Canada against Indian Prime Minister Narendra Modi for his role in 2002 massacre of Muslims in the state of Gujarat, India while Modi was head of government in Gujarat.

<https://www.thehindu.com/news/gujarat-riots-canadian-court-issues-summons-for-modi/article7109746.ece>

<https://www.thestar.com/news/canada/2015/04/09/sikh-human-rights-group-pushes-for-charges-against-indian-pm.html>

2. April 2016 – SFJ's criminal complaint (Private Prosecution) in Toronto against Captain Amarinder Singh the current Chief Minister of the State of Punjab, India on the charges of Torture.

<https://www.tribuneindia.com/news/punjab/courts/canada-court-to-hear-torture-charges-case-against-capt-today/226503.html>



#### USA

Bulova Corporate Center,  
75-20 Astoria Blvd.,  
Suite 170, East Elmhurst,  
New York 11370  
T: +1 (833) 735 - 2020  
F: +1 (718) 672 - 4728  
E: support@sikhsforjustice.org

#### CANADA

250 University Ave,  
Suite 200, Toronto, ON M5H 3E5  
T: +1 (416) 825 - 5756  
www.sikhsforjustice.org  
www.referendum2020.org  
www.facebook.com/sikhsforjusticepage

<https://www.hindustantimes.com/india/captain-amarinder-singh-cancels-visit-to-canada/story-mzZRuNyuEhyl0Pa7VVZY6K.html>

3. April 2016 - Complaint to Government of Canada against Captain Amarinder Singh the current Chief Minister of the State of Punjab, India about his upcoming visit in which he was going to violate Canada's election laws by conducting fundraising in Canada for elections in India.
4. April 2016 - Civil complaint of defamation against Captain Amarinder Singh, Chief Minister of the state Punjab for calling SFJ and its legal advisor Gurpatwant Singh Pannun as "ISI agent", the spy agency of Pakistan.

<https://www.tribuneindia.com/news/community/sfj-files-defamation-suit-against-amarinder-in-canadian-court/393262.html>

5. September 2014 - Civil complaint against Indian Prime Minister Narendra Modi in the US Federal Court for the Southern District of New York under Torture Victim Protection Act for his role in 2002 massacre of Muslims in the state of Gujarat.

<https://www.nytimes.com/2014/09/27/world/asia/us-court-issues-summons-to-modi-in-lawsuit-over-2002-riots.html>

<https://www.firstpost.com/world/us-court-summons-pm-modi-for-alleged-role-in-2002-gujarat-riots-1730963.html>

6. Civil complaint in US Federal District Court to declare India's Hindu supremacist group Rashtriya Swayamsevak Sangh (RSS) as terrorist organization for carrying out terrorist acts against non-Hindu religious minorities in India, including forcible conversion of Muslims, Sikhs and Christian to Hindus and attack of places of worship. RSS is the parent and mentor organization of PM Modi's political party Bhartiya Janata Party (BJP).
7. Civil complaint in the Federal District Court Washington DC against then Prime Minister of India Manmohan Singh under Torture Victim Protection Act (TVPA) for participating in extra judicial killing of Sikhs in Punjab during 1990s by giving cash rewards to cops who killed Sikh political activists.

<https://www.indiatoday.in/world/americas/story/us-court-sikh-group-summon-manmohan-singh-june-18-190354-2014-04-25>

<https://www.thehindubusinessline.com/news/world/us-court-issues-summons-against-manmohan-singh/article20665162.ece1>

8. April 2010 - Civil Complaint in the US Federal Court for Southern District of New York pursuant to Alien Tort Claims Act (ATS) and TVPA against Indian politician and then Member Parliament and Congress party leader Kamal Nath for his role in 1984 anti-Sikh violence. Later, Indian National Congress party was also added as defendant.



#### USA

Bulova Corporate Center,  
75-20 Astoria Blvd.,  
Suite 170, East Elmhurst,  
New York 11370  
T: +1 (833) 735 - 2020  
F: +1 (718) 672 - 4728  
E: support@sikhsforjustice.org

#### CANADA

250 University Ave,  
Suite 200, Toronto, ON M5H 3E5  
T: +1 (416) 825 - 5756  
www.sikhsforjustice.org  
www.referendum2020.org  
www.facebook.com/sikhsforjusticepage

<https://www.deccanherald.com/content/132412/sikh-group-challenge-diplomatic-immunity.html>

9. August 2012 - Civil complaint under ATS and TVPA in US Federal District Court of Wisconsin against Parkash Singh Badal, the then Chief Minister of Punjab on the charges of commanding and controlling a police force that committed wide spread torture on Sikh political activists in Punjab.

<https://timesofindia.indiatimes.com/india/Wisconsin-court-issues-summons-to-Badal-over-rights-violations/articleshow/15428612.cms>

<http://www.rediff.com/news/report/human-rights-violation-punjab-cm-served-us-court-summons/20120810.htm>

#### **SFJ's Advocacy/Awareness Campaigns – Highlights:**

SFJ's advocacy initiatives to spread awareness about human rights and to get November 1984 anti-Sikh violence recognized as "Genocide" includes:

1. November 2013 - Filing Petition with more than a million signatures before UNHRC to intervene and investigate November 1984 anti-Sikh violence.
2. November 2010 - Advocating for a motion for the Parliament of Canada to recognize November 1984 Sikh Genocide

<https://timesofindia.indiatimes.com/india/Recognize-1984-riots-as-genocide-Canadian-MP/articleshow/7245096.cms>

3. Filing a petition to the US President (White House Online Petition) securing more than 25,000 signatures required to qualify for the official response from the US Government.

<https://www.hindustantimes.com/india/white-house-petition-on-1984-riots-gains-support/story-OOPz1rE6ljBa7jaksvOuyH.html>

4. Petition tabled in the Australian Parliament to recognize November 1984 anti-Sikh violence as Genocide.

<https://www.bbc.com/news/world-asia-india-20178792>

5. Launching the community initiative of having the November 1984 Sikh Genocide recognized from local governments/city governments.  
So far more than 15 cities and states of California and Pennsylvania in the United States and Province of Ontario, Canada has passed resolutions recognizing November 1984 Sikh Genocide.



#### USA

Bulova Corporate Center,  
75-20 Astoria Blvd.,  
Suite 170, East Elmhurst,  
New York 11370  
T: +1 (833) 735 - 2020  
F: +1 (718) 672 - 4728  
E: support@sikhsforjustice.org

#### CANADA

250 University Ave,  
Suite 200, Toronto, ON M5H 3E5  
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6. Following are the links for the news report about Sikh Genocide Resolutions:

#### **Parliaments and Assemblies:**

1. Parliament of Canada:  
<https://timesofindia.indiatimes.com/india/Recognize-1984-riots-as-genocide-Canadian-MP/articleshow/7245096.cms>
2. Assembly of Ontario, Canada  
[https://www.huffingtonpost.ca/amneet-singh-bali/1984-sikh-genocide\\_b\\_16099600.html](https://www.huffingtonpost.ca/amneet-singh-bali/1984-sikh-genocide_b_16099600.html)
3. Parliament of Australia  
<https://www.bbc.com/news/world-asia-india-20178792>
4. Connecticut State Assembly  
<https://timesofindia.indiatimes.com/city/ludhiana/connecticut-assembly-passes-sikh-genocide-resolution/articleshow/65016239.cms>
5. California State Assembly  
[https://www.indiawest.com/news/global\\_indian/california-state-assembly-resolution-calls-riots-sikh-pogrom/article\\_e8cc7628-e913-11e4-9747-db62847ebda1.html](https://www.indiawest.com/news/global_indian/california-state-assembly-resolution-calls-riots-sikh-pogrom/article_e8cc7628-e913-11e4-9747-db62847ebda1.html)

#### **U.S. Cities:**

6. Fresno  
<https://www.worldreligionnews.com/religion-news/fresno-city-council-passes-resolution-to-recognize-sikh-massacre-as-genocide>
7. Bakersfield  
<https://sikhnews.net/301/bakersfield-california-passes-resolution-declaring-the-1984-systematic-killing-of-sikhs-in-india-as-genocide>
8. Kerman  
<https://www.fresnobee.com/news/local/article43072923.html>
9. Stockton  
<https://sikhnews.net/310/city-of-stockton-california-passes-resolution-recognizing-1984-anti-sikh-violence-as-genocide>
10. Harvey  
<http://panthic.org/articles/5558>



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75-20 Astoria Blvd.,  
Suite 170, East Elmhurst,  
New York 11370  
T: +1 (833) 735 - 2020  
F: +1 (718) 672 - 4728  
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250 University Ave,  
Suite 200, Toronto, ON M5H 3E5  
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11, 12. Fowler and Madera

<https://sikhsiyasat.net/2016/10/21/city-fowler-madera-recognise-sikh-genocide-1984/>

13, 14, 15. Selma, Union City, and Lathrop

<https://sikhsiyasat.net/2016/12/01/california-cities-union-city-lathrop-selma-pass-recognize-the-fact-of-sikh-genocide-1984/>

16 & 17. Turlock and Sanger

<http://www.ofmi.org/california-city-turlock-proclaims-sikh-genocide-day-commemorate-1984-killings/>

### **SFJ's Campaign Referendum2020-Khalistan in the News:**

SFJ's Referendum 2020 is a well-publicized campaign and whole world, except government of India, its officials and government influenced/controlled media, recognizes and acknowledges the legitimacy, peaceful standing and democratic credentials of the Referendum 2020 movement.

<https://www.nationalia.info/new/11162/sikh-diaspora-group-plans-unofficial-vote-in-2020-as-first-step-towards-punjab-independenc>

<https://www.thequint.com/explainers/referendum-2020-khalistan-separatist-campaign-punjab>

<https://globalnews.ca/news/4439381/khalistan-referendum-2020-sikhs-for-justice-canada/>

<https://www.thenational.scot/news/16338891.global-sikh-community-called-to-unite-for-independence-referendum/>

<https://www.nationalheraldindia.com/india/the-sikhs-and-referendum-2020>

<https://www.france24.com/en/20180812-hundreds-sikh-separatists-rally-london-referendum>

<https://www.firstpost.com/india/sfj-group-will-hold-pro-khalistan-protests-in-uk-on-12-august-british-govt-refuses-indias-request-to-halt-rally-4943181.html>

<https://www.theweek.in/news/india/2018/08/13/Referendum-2020-Will-pro-Khalistan-movement-garner-support-in-Punjab.html>

<https://theprint.in/security/as-justin-trudeau-visits-india-sikh-groups-in-canada-are-demanding-a-separate-nation/33857/>



#### USA

Bulova Corporate Center,  
75-20 Astoria Blvd.,  
Suite 170, East Elmhurst,  
New York 11370  
T: +1 (833) 735 - 2020  
F: +1 (718) 672 - 4728  
E: support@sikhsforjustice.org

#### CANADA

250 University Ave,  
Suite 200, Toronto, ON M5H 3E5  
T: +1 (416) 825 - 5756  
www.sikhsforjustice.org  
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<https://www.firstpost.com/india/sikh-rights-group-wants-sonia-gandhi-to-depose-before-us-federal-court-1359265.html>

<https://www.thehindu.com/news/international/uks-green-party-comes-out-in-support-of-august-12-pro-khalistan-rally-in-london/article24616379.ece>

## India's Response to Democratic Campaign Referendum 2020

In July 2017, Indian government charged<sup>2</sup> the SFJ's legal advisor attorney Gurpatwant Singh Pannun and SFJ's campaigners Jagdeep Singh and Jagjeet Singh with "sedition"<sup>3</sup> for peacefully running the pro Khalistan secessionist campaign Referendum 2020. (See News Reports <https://www.tribuneindia.com/news/punjab/sedition-case-against-5-for-referendum-boards-in-punjab/432655.html> & <https://www.indiatoday.in/india/story/pro-khalistan-sikhs-for-punjab-amarinder-singh-government-2020-referendum-1023168-2017-07-08>

In December 2018, Indian government has reportedly<sup>4</sup> issued a RCN request to INTERPOL against SFJ's legal advisor attorney Gurpatwant Singh Pannun and SFJ's campaigners Jagdeep Singh and Jagjeet Singh. According to reports the RCN has been requested on the basis of a case registered in 2017 against Pannun and four others, including US-based Sikh activists Jagdeep Singh and Jagjeet Singh, at the Sohana police station in Mohali "for carrying out seditious activities to disturb public tranquility in Punjab"<sup>5</sup> i.e. Referendum 2020 campaign by putting up posters and banners.

Even since Sikhs have been demanding the right of self-determination i.e. Khalistan, India has criminalized the political opinion of Sikh nationalists and separatists and labels the peaceful propagation of their political opinion as crime, militancy, insurgency and terrorism.

An irrefutable proof of India's persecution of Sikhs exists in the fact that since 1984, more than a million Sikhs have fled from their homeland – Indian held Punjab - and have been granted refugee/political asylum by the governments of USA, Canada, UK, Australia and other European countries under the UN Refugee Convention.

Persecution of Sikhs associated with Referendum 2020 campaign is also evident from the fact that recently government of Canada has reported a surge in the Sikhs fleeing India and seeking asylum in Canada. The report cited rising tensions between the Indian government and the country's Sikh population over renewed support for separatism in Punjab for the increase in claims. According to the Canadian government report:

<sup>2</sup> <https://www.indiatoday.in/india/story/pro-khalistan-sikhs-for-punjab-amarinder-singh-government-2020-referendum-1023168-2017-07-08>

<sup>3</sup> <https://indianexpress.com/article/india/three-us-based-persons-among-five-booked-for-sedition-over-referendum-posters-in-punjab-4739399/>

<sup>4</sup> <https://www.pressreader.com/india/hindustan-times-bathinda/20181219/281505047322548>

<sup>5</sup> ibid



#### USA

Bulova Corporate Center,  
75-20 Astoria Blvd.,  
Suite 170, East Elmhurst,  
New York 11370  
T: +1 (833) 735 - 2020  
F: +1 (718) 672 - 4728  
E: support@sikhsforjustice.org

#### CANADA

250 University Ave,  
Suite 200, Toronto, ON M5H 3E5  
T: +1 (416) 825 - 5756  
www.sikhsforjustice.org  
www.referendum2020.org  
www.facebook.com/sikhsforjusticepage

“Contemporary support has re-emerged around proposals for an unofficial referendum of the global Sikh diaspora in 2020 on the question of independence.... As government pushback against the Sikh community continues, fear of arbitrary arrest and abuse by authorities will likely prompt more Indian Sikhs to leave the country.”

See November 13, 2018 news report  
Published in *National Post* by John Ivison

“How a trickle of Sikhs fleeing India for Canada became a torrent.  
A refugee claims report for the first six months of this year obtained by the National Post”.  
Available at: <https://nationalpost.com/news/politics/jeff-danzigers-editorial-cartoon-11>

It is important to note here that, firmly rooted in the international law of the right of self-determination of all peoples, SFJ’s Referendum 2020 Campaign is a purely political and legal movement employing a democratic *modus operandi* and does not involve, incite or call for violence.

It is indisputable that holding secessionist views and peacefully campaigning for independence is not a crime. A ‘peoples’ right to self-determination is a fundamental principle of international law, guaranteed under the UN Charter and Covenants<sup>6</sup>. Self-determination may be sought and exercised internally (within a parent state) or, in certain circumstances, externally, through secession and independence. According to the International Court of Justice, a sub-group (in this case Sikhs) may lawfully conduct a referendum on independence and declare independence without the agreement of the parent state (in this case India).<sup>7</sup>

Despite the peaceful and democratic nature of Referendum 2020, Indian authorities appear determined to crush the movement by unleashing a reign of terror through filing false charges labelling<sup>8</sup> the campaign as “terrorism” and its supporters as “terrorists” and abusing INTERPOL’s RCN provisions to seek extradition of foreign based Sikh political activists.

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<sup>6</sup> See, Article 1 of the UN Charter; Article 1 of the International Covenant on Civil and Political Rights; and Article 1 of the International Covenant on Economic, Social and Cultural Rights. Peoples who have been denied self-determination within their parent state may, in exceptional circumstances, lawfully pursue external self-determination (via secession).

<sup>7</sup> See, *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, 22 July 2010, ICJ Reports 2010, p 403

<sup>8</sup> <https://www.thestatesman.com/cities/punjab-police-bust-isi-backed-terror-module-sfj-link-1502703614.html>



#### USA

Bulova Corporate Center,  
75-20 Astoria Blvd.,  
Suite 170, East Elmhurst,  
New York 11370  
T: +1 (833) 735 - 2020  
F: +1 (718) 672 - 4728  
E: support@sikhsforjustice.org

#### CANADA

250 University Ave,  
Suite 200, Toronto, ON M5H 3E5  
T: +1 (416) 825 - 5756  
www.sikhsforjustice.org  
www.referendum2020.org  
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India's intentions towards Referendum 2020 campaign also become clear from the fact that besides abusing RCN provisions of the INTERPOL, India is also using other means and tactics to undermine and smear the campaign in foreign countries. When SFJ organised a Referendum 2020 event in London on 12 August 2018, India issued a *demarche*<sup>9</sup>, urging the UK to ban the event. India falsely claimed and shamelessly lied in its stance against the SFJ's London event claiming that the purpose of the event was to spread hatred and communal disharmony.<sup>10</sup> The UK did not act on the *demarche* and the SFJ's event "London Declaration on Punjab Independence Referendum" took place in Trafalgar Square, attended by thousands, in peace and without incident.

Issued by  
Sikhs For Justice  
On November 20, 2019 at New York, USA.

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<sup>9</sup> <https://www.hindustantimes.com/india-news/india-issues-demarche-to-britain-over-proposed-pro-khalistan-event/story-QcfHYEfQGTH1CSsM3za9JL.html>

<sup>10</sup> See, letter from Richard J Rogers to Jeremy Hunt MP, UK Secretary of State for Foreign and Commonwealth Affairs, dated 14 July 2018. See **Annex C**



# ਪੰਜਾਬ ਵਿਛੋੜੇ ਝਗ

# ਸ਼ਾਹਿ ਸ਼ਾਹਿ



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+1 917-968-4488

## HOW WILL SFI'S NON-BINDING REFERENDUM HELP IN HOLDING A BINDING REFERENDUM FOR THE INDEPENDENCE OF PUNJAB?

An over whelming YES vote by the Punjabi people in SFI's unofficial referendum will justify starting the legal process and provide the foundation through which a UN backed, official and legally binding referendum will be conducted on the question of establishing Khalistan in the Indian occupied Punjab through peaceful

## WHAT IS THE INTERNATIONAL LAW REGARDING INDEPENDENCE REFERENDUM AND PEOPLES RIGHT TO SELF-DETERMINATION?

Article 1 common to the Charter of the United Nations, International Covenant on Civil and Political Rights and International Covenant on Economic and Cultural Rights guarantees that "all peoples have right to self determination". Under UN laws, a community living a defined territory with a separate religion or language are considered "peoples"; have the right to self-determination and can seek a referendum to create a sovereign state or to gain independence if their territory is being occupied by another country. India has signed and ratified all the UN laws that guarantee right to self-determination to all peoples.

For a more detailed answer please go to [www.referendum2020.org](http://www.referendum2020.org)

## HOW CAN SIKHS CONVINCING THE UN TO FORCE INDIA TO HOLD A REFERENDUM IN PUNJAB?

As a primary body to protect and promote human rights of all people, the United Nations listens and acts when a community approaches it in a large number. The aim is to get 5 million votes in support of independence for Punjab through the Punjab Referendum 2020. The result of the Referendum 2020 will be presented to the United Nations with a request to intervene and impress upon India to hold a binding referendum in the Indian occupied Punjab on the question of sovereignty.

## DOES THE U.N. REQUIRE A MINIMUM NUMBER OF VOTES?

No. UN does not specify any number of votes to qualify for intervention. UN law only guarantees right to self-determination to all peoples on the basis of religion and language. Since five million constitute almost 20 percent of the global Sikh community, it will demonstrate to the UN that a will of the Sikh people for independence of Punjab and thus justifying UN intervention.

## WHAT IS THE VALUE OF REFERENDUM 2020 CAMPAIGN TO THE WESTERN WORLD?

India has consistently portrayed Sikh political activists who advocate for Khalistan as a "small fringe group of extremists, radicals and even terrorists". Seeking to establish Khalistan is purely a political opinion and is a right guaranteed under the UN Charter and International Covenants under the principle of freedom of expression.

An unofficial referendum will dispel the Indian propaganda that it is only a small number of Sikhs who want independence and those that do are violent extremists. Furthermore, it will expose India's commitment to democracy, or lack thereof.

In addition, it will allow us to engage in dialogue with UN, Western nations and other countries that are interested in supporting the rights of the indigenous people of Punjab. This dialogue will be a starting point to reestablishing an independent Punjab.

## WHAT IS A REFERENDUM?

Referendum is the process of direct voting to get the opinion of a community on a political question. Through referendum several nations have achieved independence. Most recently, South Sudan was created as an independent country through referendum. Scotland and Quebec both held referenda on the question of independence from UK and Canada, respectively.

## WHAT IS PUNJAB REFERENDUM 2020?

Referendum 2020, launched by Sikhs For Justice (SFJ), an international advocacy group, is a campaign to liberate Punjab - the historical homeland of Sikhs - currently occupied by India. The campaign aims to gauge the will of the Punjabi people with regards to ending Indian occupation and reestablishing Punjab as a sovereign state. A quantified will of the Punjabi people discerned through this non-binding referendum will then be presented to the United Nations as a case for holding a UN backed plebiscite for the reestablishment of the sovereign country of Punjab.

The voting in this non-binding referendum will be conducted in the 20 countries around the world. The locations will include Punjab, USA, Canada, UK, Australia, New Zealand and other countries of Europe and Asia.

## WHAT IS THE OBJECTIVE OF THE REFERENDUM 2020 CAMPAIGN?

The objective of the Referendum 2020 campaign is to convince the UN and Western countries to ensure that people of Punjab are given, in an official UN backed referendum, the right to vote on the question "Should the territory of Punjab, currently occupied by India, be an independent country?"

## WHAT IS THE DIFFERENCE BETWEEN SFI'S REFERENDUM 2020 AND A UN BACKED REFERENDUM?

An official or UN backed referendum has an outcome that is legally binding on all parties involved. In Sudan, the United Nations administered a referendum in which majority of the South Sudanese people opted for independence. Resultantly, South Sudan has been recognized as an independent and sovereign country by all the major countries of the world and has been granted membership of the United Nations as a member state.

However, SFI's Referendum 2020 is a campaign under which a non-binding referendum will be conducted throughout the global Punjabi community whose outcome will quantify the Punjabi peoples will on the question of Sovereignty and will serve as irrefutable evidence for UN and global powers to support the Sikhs demand for holding a binding referendum in Indian occupied Punjab.

## HOW IS AN OFFICIAL REFERENDUM THAT CREATES AN INDEPENDENT COUNTRY CONDUCTED?

The official referendums that grant independence and create separate countries are conducted by:

- A) The country currently occupying a territory agrees to hold a vote on the question of independence. Canada and UK agreed and held the referenda giving the people of Quebec and Scotland the right to vote on the question of independence; or
- B) UN intervenes and negotiates an agreement between a nation demanding independence and the country occupying its territory, to let the people of the land vote on the question of independence.





**SWITZERLAND**  
Geneva Nations Business Center  
6th Floor Rue du  
Pré-da-la-Bichette 1,1202  
Geneva, Switzerland.  
T: +41 22592 1520

**WASHINGTON D.C**  
529 14th St NW, Suite # 1111,  
Washington, DC 20045.  
T: +1 (833) 735 - 2020 | F: +1 (718) 672 - 8000  
E: info@sikhsforjustice.info  
W: www.sikhsforjustice.info

[www.sikhsforjustice.org](http://www.sikhsforjustice.org) [www.referendum2020.org](http://www.referendum2020.org) [www.facebook.com/sikhsforjusticepage](https://www.facebook.com/sikhsforjusticepage)

## **PUNJAB INDEPENDENCE REFERENDUM 2020**

### **A Democratic Campaign for Realization of Sikhs Right of Self Determination**

#### **Introduction, Activities and Background**

“Sikhs For Justice” (SFJ) [www.sikhsforjustice.org](http://www.sikhsforjustice.org) is a New York based international human rights advocacy group which is spearheading Referendum 2020 campaign to realize the right of self-determination for Sikh people on the basis of the principle enshrined in UN Charter and International Covenant on Civil and Political Rights (ICCPR).

Referendum 2020 [www.referendum2020.org](http://www.referendum2020.org) is a political campaign launched by “SFJ” aiming to hold the first ever non-binding Referendum among the 25 million global Sikh community on the question of establishing Indian governed Punjab as an independent country – “Khalistan”.

#### **Background and Campaigns of the International Advocacy Group “SFJ”**

SFJ which is currently spearheading the campaign for right to self-determination for the Sikh people of the Indian occupied Punjab through non-binding Referendum 2020, was inceptioned in 2007 with a view to work on the human rights issues concerning the Sikh community.

Prior to launching the Referendum 2020 campaign, for years SFJ worked on the issue of seeking justice for November 1984 anti-Sikh genocidal violence in which more than 30,000 Sikhs were killed throughout India in a span of few days.

SFJ’s efforts were focused on holding the perpetrators of 1984 genocide responsible under international law and by urging the world governments to recognize the November 1984 anti-Sikh violence as Genocide as defined in UN Convention on Genocide.

To challenge and expose India’s culture of impunity, SFJ have also undertaken efforts and steps to move the legal machinery of the western countries against Indian police officers, politicians and other officials who have been involved in torture or other human rights violations whenever those violators would travel to western countries.

The most important cases/legal actions/lawsuits filed by SFJ to hold the human rights violators responsible include:

#### **SFJ’s Lawsuits/Legal Actions/Cases**

1. April 2015 - SFJ's criminal complaint (Private Prosecution) in Toronto, Canada against Indian Prime Minister Narendra Modi for his role in 2002 massacre of Muslims in the state of Gujarat, India while Modi was head of government in Gujarat.  
<https://www.thehindu.com/news/gujarat-riots-canadian-court-issues-summons-for-modi/article7109746.ece>  
<https://www.thestar.com/news/canada/2015/04/09/sikh-human-rights-group-pushes-for-charges-against-indian-pm.html>
2. April 2016 – SFJ’s criminal complaint (Private Prosecution) in Toronto against Captain Amarinder Singh the current Chief Minister of the State of Punjab, India on the charges of Torture.  
<https://www.tribuneindia.com/news/punjab/courts/canada-court-to-hear-torture-charges-case-against-capt-today/226503.html>  
<https://www.hindustantimes.com/india/captain-amarinder-singh-cancels-visit-to-canada/story-mzZRuNyuEhy10Pa7VVZY6K.html>
3. April 2016 - Complaint to Government of Canada against Captain Amarinder Singh the current Chief Minister of the State of Punjab, India about his upcoming visit in which he was going to violate Canada's election laws by conducting fundraising in Canada for elections in India.



**SWITZERLAND**  
Geneva Nations Business Center  
6th Floor Rue du  
Pré-da-la-Bichette 1,1202  
Geneva, Switzerland.  
T: +41 22592 1520

**WASHINGTON D.C**  
529 14th St NW, Suite # 1111,  
Washington, DC 20045.  
T: +1 (833) 735 - 2020 | F: +1 (718) 672 - 8000  
E: info@sikhsforjustice.info  
W: www.sikhsforjustice.info

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4. April 2016 - Civil complaint of defamation against Captain Amarinder Singh, Chief Minister of the state Punjab for calling SFJ and its legal advisor Gurpatwant Singh Pannun as “ISI agent”, the spy agency of Pakistan.  
<https://www.tribuneindia.com/news/community/sfj-files-defamation-suit-against-amarinder-in-canadian-court/393262.html>
5. September 2014 - Civil complaint against Indian Prime Minister Narendra Modi in the US Federal Court for the Southern District of New York under Torture Victim Protection Act for his role in 2002 massacre of Muslims in the state of Gujarat.  
<https://www.nytimes.com/2014/09/27/world/asia/us-court-issues-summons-to-modi-in-lawsuit-over-2002-riots.html>  
<https://www.firstpost.com/world/us-court-summons-pm-modi-for-alleged-role-in-2002-gujarat-riots-1730963.html>
6. Civil complaint in US Federal District Court to declare India’s Hindu supremacist group Rashtriya Swayamsevak Sangh (RSS) as terrorist organization for carrying out terrorist acts against non-Hindu religious minorities in India, including forcible conversion of Muslims, Sikhs and Christian to Hindus and attack of places of worship. RSS is the parent and mentor organization of PM Modi’s political party Bhartiya Janata Party (BJP).
7. Civil complaint in the Federal District Court Washington DC against then Prime Minister of India Manmohan Singh under Torture Victim Protection Act (TVPA) for participating in extra judicial killing of Sikhs in Punjab during 1990s by giving cash rewards to cops who killed Sikh political activists.  
<https://www.indiatoday.in/world/americas/story/us-court-sikh-group-summon-manmohan-singh-june-18-190354-2014-04-25>  
<https://www.thehindubusinessline.com/news/world/us-court-issues-summons-against-manmohan-singh/article20665162.ece1>
8. April 2010 - Civil Complaint in the US Federal Court for Southern District of New York pursuant to Alien Tort Claims Act (ATS) and TVPA against Indian politician and then Member Parliament and Congress party leader Kamal Nath for his role in 1984 anti-Sikh violence. Later, Indian National Congress party was also added as defendant.  
<https://www.deccanherald.com/content/132412/sikh-group-challenge-diplomatic-immunity.html>
9. August 2012 - Civil complaint under ATS and TVPA in US Federal District Court of Wisconsin against Parkash Singh Badal, the then Chief Minister of Punjab on the charges of commanding and controlling a police force that committed wide spread torture on Sikh political activists in Punjab.  
<https://timesofindia.indiatimes.com/india/Wisconsin-court-issues-summons-to-Badal-over-rights-violations/articleshow/15428612.cms>  
<http://www.rediff.com/news/report/human-rights-violation-punjab-cm-served-us-court-summons/20120810.htm>

### **Highlights of SFJ’s Advocacy/Awareness Campaigns**

SFJ’s advocacy initiatives to spread awareness about human rights and to get November 1984 anti-Sikh violence recognized as “Genocide” includes:

1. November 2013 - Filing Petition with more than a million signatures before UNHRC to intervene and investigate November 1984 anti-Sikh violence.
2. November 2010 - Advocating for a motion for the Parliament of Canada to recognize November 1984 Sikh Genocide



**SWITZERLAND**  
Geneva Nations Business Center  
6th Floor Rue du  
Pré-da-la-Bichette 1,1202  
Geneva, Switzerland.  
T: +41 22592 1520

**WASHINGTON D.C**  
529 14th St NW, Suite # 1111,  
Washington, DC 20045.  
T: +1 (833) 735 - 2020 | F: +1 (718) 672 - 8000  
E: info@sikhsforjustice.info  
W: www.sikhsforjustice.info

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<https://timesofindia.indiatimes.com/india/Recognize-1984-riots-as-genocide-Canadian-MP/articleshow/7245096.cms>

3. Filing a petition to the US President (White House Online Petition) securing more than 25,000 signatures required to qualify for the official response from the US Government.  
<https://www.hindustantimes.com/india/white-house-petition-on-1984-riots-gains-support/story-OOPz1rE6ljBa7jaksvOuyH.html>
4. Petition tabled in the Australian Parliament to recognize November 1984 anti-Sikh violence as Genocide.  
<https://www.bbc.com/news/world-asia-india-20178792>
5. Launching the community initiative of having the November 1984 Sikh Genocide recognized from local governments/city governments.  
So far more than 15 cities and states of California and Pennsylvania in the United States and Province of Ontario, Canada has passed resolutions recognizing November 1984 Sikh Genocide.

#### **Parliaments and Assemblies:**

1. Parliament of Canada:  
<https://timesofindia.indiatimes.com/india/Recognize-1984-riots-as-genocide-Canadian-MP/articleshow/7245096.cms>
2. Assembly of Ontario, Canada  
[https://www.huffingtonpost.ca/amneet-singh-bali/1984-sikh-genocide\\_b\\_16099600.html](https://www.huffingtonpost.ca/amneet-singh-bali/1984-sikh-genocide_b_16099600.html)
3. Parliament of Australia  
<https://www.bbc.com/news/world-asia-india-20178792>
4. Connecticut State Assembly  
<https://timesofindia.indiatimes.com/city/ludhiana/connecticut-assembly-passes-sikh-genocide-resolution/articleshow/65016239.cms>
5. California State Assembly  
[https://www.indiawest.com/news/global\\_indian/california-state-assembly-resolution-calls-riots-sikh-pogrom/article\\_e8cc7628-e913-11e4-9747-db62847ebda1.html](https://www.indiawest.com/news/global_indian/california-state-assembly-resolution-calls-riots-sikh-pogrom/article_e8cc7628-e913-11e4-9747-db62847ebda1.html)

#### **U.S. Cities:**

6. Fresno  
<https://www.worldreligionnews.com/religion-news/fresno-city-council-passes-resolution-to-recognize-sikh-massacre-as-genocide>
7. Bakersfield  
<https://sikhnews.net/301/bakersfield-california-passes-resolution-declaring-the-1984-systematic-killing-of-sikhs-in-india-as-genocide>
8. Kerman  
<https://www.fresnobee.com/news/local/article43072923.html>
9. Stockton  
<https://sikhnews.net/310/city-of-stockton-california-passes-resolution-recognizing-1984-anti-sikh-violence-as-genocide>
10. Harvey



**SWITZERLAND**  
Geneva Nations Business Center  
6th Floor Rue du  
Pré-da-la-Bichette 1,1202  
Geneva, Switzerland.  
T: +41 22592 1520

**WASHINGTON D.C**  
529 14th St NW, Suite # 1111,  
Washington, DC 20045.  
T: +1 (833) 735 - 2020 | F: +1 (718) 672 - 8000  
E: info@sikhsforjustice.info  
W: www.sikhsforjustice.info

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<http://panthic.org/articles/5558>

11, 12. Fowler and Madera

<https://sikhsiyasat.net/2016/10/21/city-fowler-madera-recognise-sikh-genocide-1984/>

13, 14, 15. Selma, Union City, and Lathrop

<https://sikhsiyasat.net/2016/12/01/california-cities-union-city-lathrop-selma-pass-recognize-the-fact-of-sikh-genocide-1984/>

16 & 17. Turlock and Sanger

<http://www.ofmi.org/california-city-turlock-proclaims-sikh-genocide-day-commemorate-1984-killings/>

### Referendum2020 in the News

Referendum 2020 is a well-publicized campaign and whole world, except government of India, its officials and government influenced/controlled media, recognizes and acknowledges the legitimacy, peaceful standing and democratic credentials of the Referendum 2020 campaign.

<https://www.nationalia.info/new/11162/sikh-diaspora-group-plans-unofficial-vote-in-2020-as-first-step-towards-punjab-independenc>

<https://www.thequint.com/explainers/referendum-2020-khalistan-separatist-campaign-punjab>

<https://globalnews.ca/news/4439381/khalistan-referendum-2020-sikhs-for-justice-canada/>

<https://www.thenational.scot/news/16338891.global-sikh-community-called-to-unite-for-independence-referendum/>

<https://www.nationalheraldindia.com/india/the-sikhs-and-referendum-2020>

<https://www.france24.com/en/20180812-hundreds-sikh-separatists-rally-london-referendum>

<https://www.firstpost.com/india/sfj-group-will-hold-pro-khalistan-protests-in-uk-on-12-august-british-govt-refuses-indias-request-to-halt-rally-4943181.html>

<https://www.theweek.in/news/india/2018/08/13/Referendum-2020-Will-pro-Khalistan-movement-garner-support-in-Punjab.html>

<https://theprint.in/security/as-justin-trudeau-visits-india-sikh-groups-in-canada-are-demanding-a-separate-nation/33857/>

<https://www.firstpost.com/india/sikh-rights-group-wants-sonia-gandhi-to-depose-before-us-federal-court-1359265.html>

<https://www.thehindu.com/news/international/uks-green-party-comes-out-in-support-of-august-12-pro-khalistan-rally-in-london/article24616379.ece>

# **INDIA’S CRIMINALIZATION OF SIKH POLITICAL OPINION**

**A REPORT ON**

**- Persecution of Sikh Referendum 2020  
Campaigners by India -**

**Prepared By**

**“Khalistan Referendum 2020” –**

**A Democratic Initiative For  
Realization of Sikhs Right of Self Determination  
By  
“Sikhs For Justice” (SFJ) – an Advocacy Group**

Gurpatwant S. Pannun  
Attorney at law  
Legal Advisor to SFJ  
529 14th St NW, Suite 1111,  
Washington, DC 20045  
(Tel) +1 (833) 735 2020  
[gurpatwant.pannun@sikhsforjustice.org](mailto:gurpatwant.pannun@sikhsforjustice.org)  
[gurpatwant.pannun@referendum2020.org](mailto:gurpatwant.pannun@referendum2020.org)  
[gurpatwant.pannun@gmail.com](mailto:gurpatwant.pannun@gmail.com)  
[www.sikhsforjustice.org](http://www.sikhsforjustice.org)  
[www.referendum2020.org](http://www.referendum2020.org)  
[www.yes2khalistan.org](http://www.yes2khalistan.org)

December 02, 2019

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## **Background on Sikh Persecution in India**

The Sikh religion was founded in the 16th century by the first Guru Nanak Dev Ji. Sikhs are an ethnoreligious group and indigenous people of the Punjab region currently governed by India. The Sikhs have faced persecution under Indian rule since the British granted independence to India in August 1947. The religious status of Sikhism and identity of its followers – the Sikhs – has been usurped by the Constitution of India which superimposes and labels Sikhs as "Hindu" in Article Explanation II to Article 25(b) of the Constitution.

As a national ethnoreligious minority of India, many fundamental human rights have not been granted to the Sikhs under Indian rule. The Sikh community and the Indian Government began their clash long ago with the Explanation II to Article 25 of the constitution of India which classifies Sikhs as Hindus. Relying on the Article 25 of the Indian Constitution, several other laws were consequently ratified to subjugate the Sikh community and to forcibly label them as Hindus. Some of the laws that classify Sikhs as "Hindus" are: Hindu Marriage Act of 1955; Hindu Succession Act of 1956; Hindu Minority and; Guardianship Act of 1956; Hindu Adoption and Maintenance Act of 1956.

This imposition of the classification of "Hindu" to Sikhs essentially ignored the cultural heritage of the community, as they had their own independent Sikh state in Punjab of the Sarkar-i-Khalsa which was taken over by the British Raj. Since then Sikhs have been the target of brutal repression, violence, and blatant discrimination. These anti-Sikh sentiments culminated in the modern day with the 1984 Genocide of Sikhs by the Indian Armed Forces, and the criminalization of all organized Sikh political activity.

The Sikhs are ironically officially recognized as a distinct ethnoreligious group by the United Kingdom, the previous colonizer of the subcontinent, but not by India, it's now independent successor state.

Since the 1920's the Rashtriya Swayamsevak Sangh (RSS) spread and consolidated its Hindu Nationalist ideology across India. It is a volunteer militia out of which the Bharata Janata Party (BJP) spawned. The BJP cemented its power over the Republic of India with the election of Prime Minister Narendra Modi, who belongs to the BJP and its affiliates, but also secured it by winning the most elected positions in the Indian government as a whole as well. The intolerant ideology of the BJP has resulted in a litany of ethnically and religiously motivated mass killings in various parts of the country<sup>1</sup>.

The latest instance of the Indian governments transgressions against human rights is the current annexation of Indian Kashmir. Almost one million soldiers have been deployed to the contested region in which they enforced martial law, and cut off all forms of communication for the

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<sup>1</sup> Griswold, Eliza. "The Violent Toll of Hindu Nationalism in India." *The New Yorker*, The New Yorker, 6 Mar. 2019, <https://www.newyorker.com/news/on-religion/the-violent-toll-of-hindu-nationalism-in-india>.

Kashmiris to facilitate their annexation with an information blackout<sup>2</sup>. The illegal dissolution of the democratically elected Kashmiri government and the state's subsequent military occupation serves as a clear example as to why the Sikh community like many others in India, are desperate to act on their internationally recognized right to self-determination. If India is not held accountable to these violations, the international community will be guaranteed further violence and violations

The reason for this is that these actions are part of a consistent pattern of abuse by the Indian government which ascribes to and propagates a Hindu nationalist agenda which is heavily against minorities<sup>3</sup>. The Sikh community suffered at the hands of the Indian government in 1984 where they were the victims of a genocidal assault on one of their holiest temples known as the Darbar Sahib, the golden temple of Amritsar<sup>4</sup>. Once they had completed the destruction of the golden temple, the Indian army unleashed a wave of pogroms in which Sikhs were being hunted down by the police of Punjab, as well as extremist citizens. Many of these officers received cash rewards from the then finance minister in exchange for murdering Sikhs in faked "encounters" which essentially allowed the police to conduct assassinations with not only impunity, but cash reward<sup>5</sup>.

The treatment of minorities in India has been the major fault line for the Republic since its independence, and as to date, the fault line has only grown larger owing to the abysmal human rights record of the successive Indian governments which are prone to dismissing domestic and international law at its convenience.

Following these developments, the Sikhs' desire and case for self-determination has only strengthened. Though the violence of the decades passed has transformed<sup>6</sup> in shape and mode but not largely subsided, the Sikh community vivid with its memory, is now presenting to the government of India and ultimately, the world, a democratic and lawful solution to realize the right of self-determination.

To this end, human rights advocacy group "Sikhs For Justice" (SFJ) has launched the initiative "Referendum 2020" which seeks to hold an unofficial vote among the global Sikh community to demonstrate the collective political will of the Sikh people on the issue of self-determination and secession of Punjab from India to create a sovereign state.

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<sup>2</sup> Wilpert, Greg. "De-Facto Annexation of Kashmir Means India as a Secular State Is Ending." *The Real News Network*, 16 Aug. 2019, <https://therealnews.com/stories/de-facto-annexation-of-kashmir-means-india-as-a-secular-state-is-ending>.

<sup>3</sup> Kain, Rupam, and Tom Lasseter. "By Rewriting History, Hindu Nationalists Lay Claim to India." *Reuters*, Thomson Reuters, 6 Mar. 2018, <https://www.reuters.com/investigates/special-report/india-modi-culture/>.

<sup>4</sup> Tully, Sir Mark. "Operation Blue Star: How an Indian Army Raid on the Golden Temple Ended in Disaster." *The Telegraph*, Telegraph Media Group, 6 June 2014, <https://www.telegraph.co.uk/news/worldnews/asia/india/10881115/Operation-Blue-Star-How-an-Indian-army-raid-on-the-Golden-Temple-ended-in-disaster.html>.

<sup>5</sup> Madan, Karuna. "Anti-Sikh Riots: What Happened in 1984 and after?" *India – Gulf News*, Gulf News, 21 Nov. 2018, <https://gulfnnews.com/world/asia/india/anti-sikh-riots-what-happened-in-1984-and-after-1.60501721>.

<sup>6</sup> There are reports that over 60,000 farmers of Punjab have been forced to commit suicide due to increasing debt caused by lack of production due to diversion of Punjab's river by the Central Govt of India. See: <https://www.kalw.org/post/pattern-farmer-suicides-punjab-unearting-green-revolution#stream/0> and <http://www.newindianexpress.com/nation/2019/mar/21/majority-of-farmers-in-punjab-under-debt-919-farmer-suicides-in-last-two-years-1954107.html>

The historical anti-Sikh sentiment in India, combined with the peaceful political mobilization of the Sikh community to secure their fundamental rights, unleashed hysteria in the Indian government. The Indian government does not differentiate the violent Sikh militants of the decade of 90 and the today's purely nonviolent and democratic movement for referendum.

Sikhs For Justice (SFJ) is one of the most prominent and active Sikh movements working to realize the Sikh peoples will to achieve self-determination under international law by creating their own independent state of Khalistan. SFJ was founded in 2007 and started to highlight the injustices with the Sikh community of India. Due to the actions of SFJ in holding the Republic of India to account for its human rights violations, it has gained large support from Sikhs and non-Sikhs alike around the globe which led to Indian government censoring transmission of SFJ's public content to Indian citizens and the criminal prosecution of those individuals who are not part of, but only agree to the political opinion i.e. SFJ's referendum initiative.

On July 10<sup>th</sup> the Indian government officially banned SFJ in India and classified it as an illegal organization under the Unlawful Activities (Prevention) Act. As a result, peaceful supporters of the "Referendum 2020" who have either been wearing t-shirts with referendum logos printed on them, or carrying simple posters advertising the referendum, have been arbitrarily detained, tortured, and denied any due process for the charges they face.

It is indisputable that peacefully campaigning for independence is not a crime. A "peoples" right to self-determination is a fundamental principle of international law, guaranteed under the UN Charter and Bill of Rights<sup>7</sup>. Self-determination may be sought and exercised internally (within a parent state) or, in certain circumstances, externally, through secession and independence. According to the International Court of Justice, a sub-group (in this case Sikhs) may lawfully conduct a referendum on independence and declare independence without agreement of the parent state, in this case, the Republic of India.<sup>8</sup>

After their initial arrests, "Referendum 2020" campaigners were taken into the custody of the Punjab Police for interrogation and investigation. To facilitate these arrests, the authorities levied a litany of baseless charges with some from the Colonial Era of the British Raj, and other newer ones bolstered with new ordinances contradicting their signatory status on various international laws as well as their own existing laws such as the Unlawful Activities Prevention Act. These charges against "Referendum 2020" campaigners, included:

- Seditious. —Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in [India], shall be punished with [imprisonment for life], to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine. Explanation 1. The expression "disaffection" includes disloyalty and all feelings of enmity. Explanation 2. Comments expressing disapprobation of

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<sup>7</sup> See, Article 1 of the UN Charter; Article 1 of the International Covenant on Civil and Political Rights; and Article 1 of the International Covenant on Economic, Social and Cultural Rights. Peoples who have been denied self-determination within their parent state may, in exceptional circumstances, lawfully pursue external self-determination (via secession).

<sup>8</sup> See, *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, 22 July 2010, ICJ Reports 2010, p 403

the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section. Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.(Section 124A of the Penal Code)<sup>9</sup>

- Unlawful Activities Prevention Act: Punishment for terrorist act--(1) Whoever commits a terrorist act shall, --
  - (a) if such act has resulted in the death of any person, be punishable with death or imprisonment for life, and shall also be liable to fine;
  - (b) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.
  
- Terrorist act. -- 3[(1)] Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security 4[, economic security,] or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country, --
  - (a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause--
    - (i) death of, or injuries to, any person or persons; or
    - (ii) loss of, or damage to, or destruction of, property; or
    - (iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or
    - 4[(iiia) damage to, the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material; or]
    - (iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or
  - (b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or
  - (c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or 5[an international or inter-governmental organisation or any other person to do or abstain from doing any act; or]commits a terrorist act..<sup>10</sup>

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<sup>9</sup> Section 124A in *The Indian Penal Code*, <https://indiankanoon.org/doc/1641007/>.

<sup>10</sup> Section 15 in Unlawful Activities Prevention Act 1967 of the India Code <https://indiacode.nic.in>

Furthermore, “Referendum 2020” campaigners have been subject to torture in detention. While “Referendum 2020” campaigners were being held by the Indian Police, campaigners were given the dreaded standard treatment of the Indian authorities. This includes practices akin to hundreds of forced squats until complete muscle failure, beatings with blunt objects resulting in death, as well as rape, and extortion.<sup>11</sup> Numerous governmental and non-governmental bodies inside and outside India have produced reams and reams of reports on these abuses which persist to this day.

“Referendum 2020” campaigners have been arbitrarily detained on false charges and continue to be subject to torture, cruel, inhuman, and degrading treatment. The dire condition of Indian prisons and their well-documented institutional malpractice place the health and lives of “Referendum 2020” directly at risk. Accordingly, we request that the Working Group consider this Petition pursuant to its Urgent Action Procedure. Additionally, it is requested that the attached Petition be considered a formal request for an opinion of the Working Group pursuant to Resolution 1997/50 of the Commission on Human Rights, as reiterated by Resolutions 2000/36, 2003/31, and Human Rights Council Resolutions 6/4, 15/18, 20/16, and 24/7.

In addition to the suppression of SFJ and the supporters of its initiatives, US based human rights lawyer Gurpatwant Singh Pannun who co-founded SFJ in 2007 is facing special persecution by the Indian government as the face of the “Referendum 2020” campaign. Attorney Pannun has taken legal and advocacy actions against numerous Indian officials who have been complicit in human rights violations in India. The human rights activities of Attorney Pannun through SFJ also include the hosting of several rallies and events every year to protest the actions of Indian government and human rights hold solidarity gatherings. Attorney Pannun regularly creates media content to update the Sikh community on the status of the "Referendum 2020" campaign.

Attorney Pannun also directs SFJ staff in creating informational reports about little known injustices in India to apprise the relevant international bodies. These reports have resulted in actions by various governments of the world including Canada, the United States, the United Nations, and the United Kingdom. In 2013 attorney Pannun and SFJ filed a lawsuit in the U.S Federal court against visiting Congress Party President Sonia Gandhi for shielding the leaders of Congress party who were complicit in the November 1984 anti-Sikh genocidal violence<sup>12</sup>.

The following year in 2014 Pannun and SFJ filed lawsuit in the US Federal Court against Manmohan Singh the then Prime Minister of India for paying cash reward to killer cops during his tenure as Finance Minister. In the same year, SFJ through Pannun filed a lawsuit in the U.S Federal Court against newly elected Prime Minister Narendra Modi for his role in 2002 massacre of Muslims in Gujarat when he was Chief Minister of that state<sup>13</sup>.

In 2015 SFJ and attorney Pannun filed a criminal complaint in Canada against Modi, the visiting Indian PM on the charges of complicity in 2002 massacre of Muslims in Gujarat. In 2016 SFJ and attorney Pannun blocked the visit to Canada of Amarinder Singh the current Chief Minister of

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<sup>11</sup> “India 2017/2018.” *Amnesty International*, <https://www.amnesty.org/en/countries/asia-and-the-pacific/india/report-india/>.

<sup>12</sup> Ghoshal, Devjyot. “Meet the Man Trying to Take Narendra Modi to US Court.” *Quartz*, Quartz, 26 Sept. 2014, <https://qz.com/271834/the-man-trying-to-take-indias-prime-minister-to-us-court/>.

<sup>13</sup> See reference 9

Punjab by complaining to the Canadian authorities about his planned electioneering and fund raising against Canadian law<sup>14</sup>.

This urgent appeal stands to request the United Nations to take action against the gross violations of the International Covenant on Civil and Political Rights and Universal Declaration of Human Rights by the Indian government against SFJ, the supporters of the “Khalistan Referendum 2020” campaign, and the attorney Gurpatwant Pannun, legal advisor and co-founder of SFJ. These atrocities include the arbitrary detention and torture of private citizens who support the “Referendum 2020”, the silencing of all of SFJ’s media platforms, banning of the organization as a terrorist organization, and a subsequent smear campaign of Attorney at Law Pannun with false narratives and slander meant to frame attorney Pannun as a terrorist mastermind to the Indian public, and the world at large<sup>15</sup>.

The urgent nature of this appeal cannot be understated because as the date of the referendum approaches, the Indian government has begun to mobilize several states in India to enact security measures under the dreaded Unlawful Activities Prevention Act and the Armed Forces (Special Powers) Act under the Indian Penal Code upon request by the Chief Minister of Punjab. It cannot be doubted that the Indian government will resort to violence to crush the referendum in 2020 as it has already annexed the whole region of Indian Kashmir in violation of all international and domestic laws<sup>16</sup>.

As it stands SFJ has been banned as a terrorist organization in India along with the censoring of all its media platforms. The government has arbitrarily detained and tortured citizens who support the actions of SFJ by campaigning for the “Referendum 2020” initiative. It has pursued the legal persecution along with the blatantly slanderous character assassination of Attorney Pannun through “false news” which is easily verifiable. With these facts SFJ urges the United Nations to act with utmost expediency in halting the Indian government from violently crushing the upcoming democratic “Referendum 2020” in 2020 by using their draconian and criminally vague anti-terrorist laws originally created for the purpose of the suppression of minorities in India<sup>17</sup>.

### **The Persecution of Sikhs For Justice:**

The most prominent of the Sikh movements for independence is spearheaded by Sikhs For Justice known as “Referendum 2020” ([www.referendum2020.org](http://www.referendum2020.org)). SFJ ([www.sikhsforjustice.org](http://www.sikhsforjustice.org)) is an international human rights advocacy group founded in 2007 working on the issues concerning the Sikh community. SFJ believes in and is committed to advancing the Universal Declaration of Human Rights (“UDHR”) and creating an environment in which minorities – regardless of race, religion, language, gender, or ethnicity – can freely exercise their rights guaranteed in the

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<sup>14</sup> See reference 10

<sup>15</sup> Korybko, Andrew. “Gurpatwant Singh Pannun: ‘Pakistani-Backed Terrorist’ Or Peaceful Activist For Khalistan?” *Geopolitica.RU*, 31 July 2019, <https://www.geopolitica.ru/en/article/gurpatwant-singh-pannun-pakistani-backed-terrorist-or-peaceful-activist-khalistan>.

<sup>16</sup> Korybko, Andrew. “Eight Indian States Are Getting Ready To Crack Down On the Sikh Community.” *Eurasia Future*, 27 July 2019, <https://eurasiafuture.com/2019/07/27/eight-indian-states-are-getting-ready-to-crack-down-on-the-sikh-community/>.

<sup>17</sup> Shaheen, Fawaz. “Power to Misuse: UAPA Bill 2019 Is Left Vague For A Reason .” *The Quint*, 28 July 2019, <https://www.thequint.com/voices/opinion/uapa-bill-amendment-terrorist-individuals-lack-of-clarity-amit-shah>.

Universal Declaration of Human Rights including their right to self-determination as enshrined in the UN Charter and the International Covenant on Civil and Political Rights. Guaranteed under the UN Charter and the International Covenant on Civil and Political Rights, the right to self-determination would allow Sikhs to determine their own political, economic and cultural destiny in the Punjab region of India. – the historical homeland of Sikhism.

The 1973 Anandpur Sahib Resolution<sup>18</sup> after the 1972 Punjab elections triggered hysteria in the government of India which has been determined to halt any organized Sikh political activity from the date of its issuance. The provisions of the resolution contain a series of constitutional reforms which would allow the people of Punjab the right to decide their own destiny in the face of a corrupt and intolerant government. The resolution serves to provide a democratic and legal avenue for the Indian government to conclude Sikh grievances. In spite of this, the Indian government chose instead to crush any Sikh political aspirations with military force culminating in the 1984 Assault on the Golden Temple of Amritsar, and the successive pogroms initiated by the state which saw tens of thousands of Sikhs murdered and extra-judicially executed by members of the Punjab police, paramilitaries, and civilians.

Since the creation of SFJ, the Indian government has responded yet again with hysterical alarm to the modern peaceful political mobilization of Sikhs. India is well aware that the clearly stated demands of the Sikhs from the Anandpur Sahib Resolution carry a historical obligation for the government of India to resolve. In spite of this the BJP led government opted to violently crush SFJ, and any Indians who support it or its activities. The Indian government chose the path of killing rather than take up the issues of the parties concerned judicially, or even to entertain the demands of the wronged parties in dialogue. During these events the Indian government simultaneously engaged in a misinformation campaign to lull the public into their manufactured intellectual narrative which allows them to oppress the various minorities of India. With the various social media platforms available today with the internet, the misinformation campaign has reached unprecedented proportions<sup>19</sup>. Domestic means to address these grievances are thus unavailable due to India's domestic laws preventing prosecution of government officials without government permission. The tactics of the political party in power using these laws, allows it to enjoy de facto impunity from prosecution and so must be deferred to international law.

To achieve a modicum of justice, SFJ has filed numerous court actions over the years against those in the Indian government who were responsible for mass atrocities against Sikhs, and other minorities in the country as well. SFJ also organizes peaceful demonstrations against the violations of international law by India, but also commemoration gatherings on the sacred tragedies of the Sikh people. The years of constant violence and suppression against Sikhs has resulted in a new strategy of peaceful and democratic political organization spearheaded by Sikhs For Justice.

SFJ held a demonstration in Washington D.C. on June 6, 2019, in commemoration of the 1984 Operation Bluestar which drew large scale support from Sikhs and Non-Sikhs alike<sup>20</sup>. Popular

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<sup>18</sup> Singh, Harban. "Anandpur Sahib Resolution PDF."

<sup>19</sup> Bansal, Snigdha Poonam and Samarth. "Misinformation Is Endangering India's Election." The Atlantic, Atlantic Media Company, 1 Apr. 2019, <https://www.theatlantic.com/international/archive/2019/04/india-misinformation-election-fake-news/586123/>.

<sup>20</sup> "Sikhs for Justice, Which Demands Self-Determination for Sikhs, to Host Rally in Washington to Commemorate 35th Year of

British entertainers such as Taran Kaur (Hard Kaur) and former American Congressman Patrick Meehan spoke in support of the "Referendum 2020" and subsequently generated immense hysteria within the now Hindu Ultra-Nationalist BJP government of India. Had a demonstration of this caliber taken place in India, the demonstrators could be assured beyond a doubt that they would be dispersed through the use of force, as is customary in the Republic of India.

Due to SFJ giving a voice to silenced Sikhs whose political and sociocultural aspirations are brutally repressed in their own supposed nation, it has been the target of the Indian authorities for censorship, indefinite arbitrary detainment and torture of its supporters, and the charging of SFJ's executive team with "terrorist acts".

SFJ as of July 10, 2019 has been designated as an illegal "anti-national" organization in India under Section 3 of the Unlawful Activities Prevention Act of India<sup>21</sup>. The banning action directly violates Articles 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR) of which India is a signatory state with ratification, which explicitly guarantees all people the right of peaceful assembly, and the right to freedom of association<sup>22</sup>. SFJ has been banned in India despite being in accordance with all domestic and international law, in every location in which it has conducted its activities. This fact is well recorded by the media of the world.

The banning of SFJ in India has the most grievous consequences for private citizens who are not members of the organization but simply support its initiatives. It effectively extends the label of "terrorist" to individuals who simply agree in their political opinion with SFJ. This then further allows the Indian security apparatus legal basis for arbitrary detention and torture of the said individuals over the aforementioned Sedition laws, and Unlawful Activities Prevention Act of the Indian Penal Code. The case of those charged with the anti-terror laws will be covered in this petition following that of SFJ as a Human Rights Advocacy group illegally persecuted against international law.

The narrative created by the government of India against SFJ framed the human rights advocacy group as a Pakistani backed intelligence operation. Due to the impunity with which the Indian government regularly slanders and suppresses minorities, they did not bother to even craft a logical argument for SFJ. The Indian government maintains that the online servers of SFJ are based in Pakistan and thus SFJ is a Pakistani intelligence operation. Political Analyst Andrew Korybko- a member of the expert council for the Institute of Strategic Studies and Predictions at the People's Friendship University of Russia described the unrealistic nature of these conclusions <sup>23</sup>;

Much has been written in the Indian media over the past two weeks since New Delhi banned the Sikhs For Justice (SFJ) about the group's supposed ties to Pakistan, with the narrative being heavily

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'Operation Blue Star.'" INDIA New England News, 5 June 2019, <https://indianewengland.com/2019/06/sikhs-for-justice-which-demands-self-determination-for-sikhs-to-host-rally-in-washington-to-commemorate-35th-year-of-operation-blue-star/>.

<sup>21</sup> Tnn. "Centre Bans pro-Khalistan SFJ under Anti-Terror Law: India News - Times of India." *The Times of India*, <https://timesofindia.indiatimes.com/india/centre-bans-pro-khalistan-sfj-under-anti-terror-law/articleshow/70166187.cms>.

<sup>22</sup> See ICCPR Articles 21 and 22

<sup>23</sup> Korybko, Andrew. "Khalistan Is A Pro-Sikh, Not 'Pro-Pakistan', Movement." *Eurasia Future*, 24 July 2019, <https://eurasiafuture.com/2019/07/24/khalistan-is-a-pro-sikh-not-pro-pakistan-movement/>.

pushed that they're secretly backed by Islamabad in their Referendum 2020 campaign for an independent Khalistan. Pro-government pundits claimed that there's a vast international conspiracy at play by India's traditional rival to support this secessionist movement, hence why they smeared it as a "pro-Pakistan" one, but that couldn't be further from the truth since the organization even criticized Islamabad for curtailing its activities earlier this year. The SFJ's legal advisor Gurpatwant Singh Pannun said back in April that the Pakistani government stopped their scheduled plan to register volunteers for next year's plebiscite, yet India still accused its neighbor of backing the Khalistani cause earlier this month...

The only so-called "evidence" that anyone has been able to dig up about the SFJ's ties to the Pakistani state is the unconfirmed report that its website was supposedly hosted by a Karachi-based server in the past, which even if true wouldn't imply any connection to the government at all but would rather suggest a clever way to ensure that India wouldn't have succeeded in pressuring the unnamed company to close down the site. It's not uncommon for opposition (and especially secessionist) movements to host their online operations outside of the "home" country whose government they're against, and a digital presence in whatever country it might be doesn't automatically mean a physical one, let alone any relationship between the movement's leaders and that said state's. If that speculative "standard" was evenly applied, then one could conspiratorially claim that every US-based site and their users (e.g. FB and everyone on that platform) are partnered with the American government, which is too absurd of an idea to even countenance.

Due to the demand of upholding the provisions of the ICCPR and UDHR in India by SFJ, the Indian government launched a misinformation campaign on SFJ through India's massive national press services. It created a factually baseless narrative pegging SFJ as a part of a Pakistani ISI (Intelligence Service) conspiracy to destroy India. These slanderous reports have been disseminated in India and the world while the Indian government had electronically censored all of SFJ's servers in India, in violation of Articles 17, 19, and 20 of the ICCPR.

The government of India is engaged in a paradoxical propaganda war (specifically prohibited by the ICCPR article 20) against SFJ in which it claims SFJ has no mass or grass roots support, but then fully mobilizes its military against the entire populace of Indian Punjab using a casus belli which claims that the integrity of all of India is threatened by SFJ's activities.

A summary from political analyst Andrew Korybko accurately describes this dichotomy in the characterization of SFJ as of the date of this petitions creation<sup>24</sup>.

Former Indian diplomat Ashok Sajjanhar said earlier this week that he doesn't think that there's any "mass support" behind the movement, instead repeating the conspiracy theory that the idea to hold a plebiscite on this issue next year is part of an insidious plot by Pakistan's ISI intelligence agency. If that was really the case, then Chief Minister Amarinder Singh wouldn't have written to Union Home Minister Amit Shah seeking the deployment of five companies of central security forces in his state. Evidently, the Khalistani cause actually does enjoy much more popular support than the Indian government cares to publicly admit, hence why the Chief Minister of Indian Punjab wants a more visible security presence in the region.

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<sup>24</sup> <https://eurasiafuture.com/2019/07/26/is-india-preparing-to-impose-the-armed-forces-special-powers-act-in-punjab/>

Following the constant acts of suppression and diversion by India, SFJ filed a formal court action against elected officials of the State of Punjab in Canada in a \$2.5 million defamation lawsuit for the factually baseless slander of SFJ in the national press of India<sup>25</sup>. To date, India has simply ignored or stalled any genuine action to address the obvious violations of law against SFJ. In addition to ignoring domestic and international law, it has escalated its persecution of SFJ by banning it on grounds of being an “anti-national” organization, and actively punished individuals agreeing with its initiatives with torture and indefinite arbitrary detention without trial. SFJ’s ban has been framed to be legitimized under Section 3 of the Unlawful Activities Prevention Act which states;

Section 3 of the Unlawful Activities Prevention Act<sup>26</sup>:

Declaration of an association as unlawful. —

(1) If the Central Government is of opinion that any association is, or has become, an unlawful association, it may, by notification in the Official Gazette, declare such association to be unlawful.

(2) Every such notification shall specify the grounds on which it is issued and such other particulars as the Central Government may consider necessary: Provided that nothing in this sub-section shall require the Central Government to disclose any fact which it considers to be against the public interest to disclose.

(3) No such notification shall have effect until the Tribunal has, by an order made under section 4, confirmed the declaration made therein and the order is published in the Official Gazette: Provided that if the Central Government is of opinion that circumstances exist which render it necessary for that Government to declare an association to be unlawful with immediate effect, it may, for reasons to be stated in writing, direct that the notification shall, subject to any order that may be made under section 4, have effect from the date of its publication in the Official Gazette.

(4) Every such notification shall, in addition to its publication in the Official Gazette, be published in not less than one daily newspaper having circulation in the State in which the principal office, if any, of the association affected is situated, and shall be served on such association in such manner as the Central Government may think fit and all or any of the following modes may be followed in effecting such service, namely: —

(a) by affixing a copy of the notification to some conspicuous part of the office, if any of the association; or

(b) by serving a copy of the notification, where possible, on the principal office-bearers, if any of the association; or

(c) by proclaiming by beat of drum or by means of loudspeakers, the contents of the notification in the area in which the activities of the association are ordinarily carried on; or

(d) in such other manner as may be prescribed.

Sikhs For Justice cannot be banned as an illegal organization under Section 3 of the Unlawful Activities Prevention Act due to the following facts:

- A. SFJ and its Referendum 2020 campaign is a nonviolent and democratic initiative and is a legitimate political opinion.

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<sup>25</sup> Rabson, Mia. “Canadian Sikh Organization Files \$2.5M Defamation Lawsuit against India.” *CTVNews*, CTV News, 11 July 2019, <https://www.ctvnews.ca/canada/canadian-sikh-organization-files-2-5m-defamation-lawsuit-against-india-1.4502024>.

<sup>26</sup> *Section 3 in The Unlawful Activities (Prevention) Act, 1967*, <https://indiankanoon.org/doc/1633290/>.

- B. Freedom of opinion and expression are guaranteed under international law by Article 19(1)-(2) of the ICCPR<sup>27</sup> and Article 19 of the UDHR.<sup>28</sup> The UN Human Rights Committee has determined that this right **includes the right to express a dissenting political opinion.**<sup>29</sup>
- C. The constitution of India claims to allow freedom of association as India is bound by Article 19 of the Central Government Act of its own Constitution to respect the right of its citizens to freedom of expression, peaceful assembly, and association<sup>30</sup>:  
 Protection of certain rights regarding freedom of speech etc  
 (1) All citizens shall have the right  
 (a) to freedom of speech and expression;  
 (b) to assemble peaceably and without arms;  
 (c) to form associations or unions;  
 (d) to move freely throughout the territory of India;  
 (e) to reside and settle in any part of the territory of India; and  
 (f) omitted  
 (g) to practice any profession, or to carry on any occupation, trade or business
- D. The Chief Minister of the Government of Punjab “Captain” Amrinder Singh stated that though the government would have preferred to ban SFJ under the classification of a terrorist organization<sup>31</sup>, SFJ’s activities did not meet the criteria for being a terrorist organization despite years of Indian claims of terrorism by SFJ. Thus the government opted instead to ban it anyways under the impermissibly vague UAPA laws which allows the government to not disclose the reasons for the banning. In this case due to the failed prior attempts by India at terrorist classification for SFJ, the charges are an arbitrary violation of International Law<sup>32</sup>.
- E. Expressing a widely held dissenting opinion publicly is a basic fundamental human right. Further, all actions taken by SFJ have been in accordance with all the provisions of international law, and the domestic law of the nations in which it is located. The democratic modus operandi pursued by SFJ stand in direct opposition to the violent militant movements in Indian Punjab of the past, and represent the political will of the citizens in India and hence, cannot be classified as an “anti-national” or “terrorist” organization, as it quite literally represents the opinions of millions of Indians, and sees to it that they are heard. Of all the armed groups in Punjab fitting these descriptions, the supporters of the “Referendum 2020” have put their own personal safety at direct risk by standing at odds with violent separatist groups which actively serve to undermine the unity and integrity of

<sup>27</sup> ICCPR, *supra* note 71, Art 19

<sup>28</sup> *Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. Doc. A/810, Art. 19 (1948) [hereinafter *Universal Declaration*].

<sup>29</sup> *General Comment No. 34 (2011) on Article 19: Freedom of Expression*, UN HUMAN RIGHTS COMMITTEE, CCPR/C/GC/34, Sep. 12, 2011, ¶ 11.

<sup>30</sup> *Article 19 in The Constitution Of India 1949*, <https://indiankanoon.org/doc/1218090/>.

<sup>31</sup> Tribune News Service. “Centre Bans Sikhs for Justice over Separatist Agenda; Capt Welcomes Move.” *Tribuneindia News Service*, 11 July 2019, <https://www.tribuneindia.com/news/punjab/centre-bans-sikhs-for-justice-over-separatist-agenda-capt-welcomes-move/800060.html>.

<sup>32</sup> Shaheen, Fawaz. “Power to Misuse: UAPA Bill 2019 Is Left Vague For A Reason .” *The Quint*, 28 July 2019, <https://www.thequint.com/voices/opinion/uapa-bill-amendment-terrorist-individuals-lack-of-clarity-amit-shah>.

the Republic of India. The supporters of “Referendum 2020” stand to offer the people of Punjab and the Republic of India non-violent, democratic and lawful modus operandi to achieve a popular aim, in a state rife with abuse at all official levels. To brand such a stance as “terrorist” is assuredly playing into the hands of Punjabi extremists who claim lawful means are untenable, by the current institutions of the Republic of India and the United Nations.

Because of these occurrences SFJ hereby requests the all nations of the world to take notice of India’s action against SFJ and:

1. Declare the banning of Sikhs For Justice (SFJ) by India to be in violation of India’s obligations under international law enshrined by the United Nations International Covenant on Civil and Political Rights to which it is a signatory state with ratification, particularly Article 19 of the ICCPR which guarantees freedom of expression.
2. Issue a statement regarding the vast propaganda war waged by India for the purposes of rousing nationalist sentiment against minorities, to be in violation of Article 20 of the ICCPR which disallows the use of war propaganda and incitement of sectarian hatred.
3. Urge the government of India lift the ban on SFJ due to its status as a Human Rights Advocacy organization, and remove the censorship of its media outreach in India, as it is in violation of Article 19 of the ICCPR.
4. Urge that the government of India cease pressuring large social media companies such as Facebook, Twitter, Instagram to block the social media accounts of members of SFJ who reside outside of their legal jurisdiction as it is in violation of Article 19(2) of the ICCPR.

### **Persecution of the Referendum 2020 campaigners:**

The Government of the Republic of India is arbitrarily depriving Sikh individuals from Punjab of their liberty in reprisal to their support, advocacy or association with a completely democratic non-violent campaign “Referendum 2020” which seeks the right of self-determination for Sikh people of Indian governed Punjab. “Referendum 2020” campaigners continue to be routinely subject to arbitrary detentions, cruel, inhuman, and degrading treatment by the authorities, and to date, continue to be deprived of their right to free speech. The continuation of such flagrant violations of their rights constitutes direct threats to “Referendum 2020” supporters’ health, physical integrity, their psychological integrity, and ultimately their lives. Accordingly, we request that the Working Group transmit an urgent appeal to the Government of India by the most rapid means possible on behalf of the “Referendum 2020” campaigners to secure their release.

“Referendum 2020” is a prominent populist independence movement of the Sikh community living in Punjab and outside. “Referendum 2020” campaigners are individuals who subscribe to and support the SFJ’s initiative of organizing an unofficial referendum on the issue of Khalistan in the 2020 to realize Sikh peoples long standing demand for the right of self-determination.

It is indisputable that peacefully campaigning for independence or secession is not a crime. A “peoples” right to self-determination is a jus cogens fundamental principle of international law,

guaranteed under the ICCPR Article 1, UN Charter and Bill of Rights<sup>33</sup>. Self-determination may be sought and exercised internally (within a parent state) or, in certain circumstances, externally, through secession and independence. According to the International Court of Justice, a sub-group (in this case Sikhs) may lawfully conduct a referendum on independence and declare independence without agreement of the parent state, in this case, the Republic of India.<sup>34</sup>

In light of the increasing popularity of the “Khalistan Referendum 2020”, the Republic of India has been determined to crush the peaceful movement by filing a litany of false charges, labelling supporters of the “Referendum 2020” as “terrorists”, followed by their arbitrary detention and torture. Below are some of the most recent and egregious actions taken by the government of the Republic of India:

- On February 18, 2019, eight Referendum 2020 campaigners were re-arrested<sup>35</sup>.
- On November 03 and 04, 2018, General Rawat<sup>36</sup>, Chief of Indian Army<sup>37</sup> publicly alleged that SFJ's Referendum 2020 is revival of insurgency in Punjab.
- On November 02, 2018 four Sikh Referendum2020 campaigners Jaswinder Singh, Manjit Singh, Gurwinder Singh and Harpreet Singh were taken into custody for being in possession of Referendum2020 posters and charged with sedition and are being tortured.
- On November 01, 2018, Shabnamdeep Singh\*, a Patiala based Sikh youth who was actively engaged in advertising Referendum 2020 on Facebook was arrested and charged with the possession of grenade, pistol, links with Pakistan's ISI, terrorism, and sedition (promoting referendum 2020). *\*As per the information received by SFJ from the family members of Shabnamdeep Singh, the detainee is being continuously tortured.*
- On October 19, 2018, Sukhraj Singh, Malkit Singh, Bikram Singh were arrested from the Amritsar, Punjab and have been charged with “propagating the 'Referendum 2020' campaign by affixing banners and posters in public places in Amritsar.”<sup>38</sup>

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<sup>33</sup> See, Article 1 of the UN Charter; Article 1 of the International Covenant on Civil and Political Rights; and Article 1 of the International Covenant on Economic, Social and Cultural Rights. Peoples who have been denied self-determination within their parent state may, in exceptional circumstances, lawfully pursue external self-determination (via secession).

<sup>34</sup> See, *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, 22 July 2010, ICJ Reports 2010, p 403

<sup>35</sup> Tribune News Service. "Due to Release, SFJ Activists Rearrested." Tribune india News Service. February 04, 2019. Accessed July 18, 2019. <https://www.tribuneindia.com/news/punjab/due-to-release-sfj-activists-rearrested/723330.html>

<sup>36</sup> "Indian Army Chief Reiterates Warning on Revival of Insurgency in Punjab," The Pioneer, November 05, 2018, , accessed July 18, 2019, <https://www.dailypioneer.com/2018/state-editions/indian-army-chief-reiterates-warning-on-revival-of-insurgency-in-punjab.html>.

<sup>37</sup> TNN & Agencies, "Stop Bid to Revive Punjab Terror Now or It'll Be Too Late: Army Chief Bipin Rawat," The Economic Times, November 04, 2018, , accessed July 18, 2019, <https://economictimes.indiatimes.com/news/defence/stop-bid-to-revive-punjab-terror-now-or-itll-be-too-late-general-rawat/articleshow/66494478.cms>.

<sup>38</sup> Press Trust of India. "Two Members of Khalistani Module Arrested in Amritsar." Business Standard. October 19, 2018. Accessed July 18, 2019. [https://www.business-standard.com/article/pti-stories/two-members-of-khalistani-module-arrested-in-amritsar-118101900929\\_1.html](https://www.business-standard.com/article/pti-stories/two-members-of-khalistani-module-arrested-in-amritsar-118101900929_1.html).

- On October 10, 2018, three Kashmiri<sup>39</sup> Muslim students of Engineering College in Jalandhar, Punjab were arrested with Referendum 2020 material and falsely charged with possession of AK47s.
- In June 2018<sup>40</sup>, Dharminder Singh, Kirpal Singh, who were campaigning for Referendum 2020 by printing and posting banners, were arrested, implicated in false, baseless and fabricated terror charges and tortured in police custody.
- In April 2018<sup>41</sup>, four Sikh youths, Randhir, Sukhwinder Singh, Manveer Singh and Jaspreet Singh, who were planning to post Referendum 2020 banners during IPL Cricket Match in Mohali were arrested and charged with arson and terrorism.
- In July 2017, Gurpreet Singh and Harpunit Singh who printed and affixed Referendum 2020 banners throughout Punjab were arrested and charged with sedition and terrorism<sup>42</sup>.
- In July 2019, Indian government charged the SFJ's legal advisor attorney Gurpatwant Singh Pannun and SFJ's campaigners Jagdeep Singh and Jagjeet Singh with "sedition" for peacefully running the pro-Khalistan independence campaign of "Referendum 2020".
- In August 2016, Jaspreet Singh, Kuldeep Singh, Hardeep Singh and Bikramjeet Singh, the four "Referendum 2020" campaigners were arrested while gathering signatures for an SFJ sponsored 'White House Petition' relating to Sikh independence.<sup>43</sup> Seemingly arrested for 'distributing referendum related material and T-Shirts', they were later charged with planning to carry out terror activities, a charge which observers claim to be false.<sup>44</sup> The India-based *Lawyers for Human Rights International* visited the four detainees in prison and found that they were not only illegally detained, but also had been "brutally tortured."<sup>45</sup>

After their initial arrests, "Referendum 2020" campaigners were taken into the custody of the Punjab Police for interrogation and investigation. To facilitate these arrests, the authorities levied a litany of baseless charges with some from the Colonial Era of the British Raj, and other newer legislation bolstered with new ordinances contradicting their signatory status on various international laws as well as India's own existing laws such as the Unlawful Activities Prevention Act.

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<sup>39</sup> "Zakir Musa Visited Punjab to Fuel '2020 Referendum', Says Arrested Kashmiri Students." Asianet News Network Pvt Ltd, <https://www.mynation.com/news/zakir-musa-punjab-2020-referendum-arrested-kashmiri-students-terrorist-pgogwb>.

<sup>40</sup> League Internal Affairs Desk. "Punjab Police Arrest Two Khalistani Radicals, One Arms Supplier." *League of India*, 6 June 2018, <https://leagueofindia.com/internal-challenges/punjab-police-arrest-two-khalistani-radicals-one-arms-supplier/>.

<sup>41</sup> Sehgal, Manjeet. "Punjab Police Arrests 4 ISI-trained Khalistani Terrorists." *India Today*. April 05, 2018. <https://www.indiatoday.in/india/story/punjab-police-arrests-4-isi-trained-khalistani-terrorists-1205283-2018-04-05>.

<sup>42</sup> Sehgal, Manjeet. "Punjab: 5 Booked, 1 Arrested for Sedition over 2020 pro-Khalistan Referendum Banners." *India Today*, 8 July 2017, <https://www.indiatoday.in/india/story/pro-khalistan-sikhs-for-punjab-amarinder-singh-government-2020-referendum-1023168-2017-07-08>.

<sup>43</sup> National Archives and Records Administration, National Archives and Records Administration, <https://petitions.obamawhitehouse.archives.gov/petition/august-15th-not-independence-day-sikhs-support-liberation-indian-occupied-punjab-create-khalistan/>.

<sup>44</sup> See *Urgent Appeal to UN Special Rapporteur on Torture* filed by SFJ on 30 August 2016. Annex 9

<sup>45</sup> See *Lawyers for Human Rights International* 29 August 2016. Annex 10

These charges against “Referendum 2020” campaigners, included violating the Sedition Law and violations under the Unlawful Activities (Prevention) Act of India.

Sedition in Indian law is defined in section 124A of the Indian Penal Code which states: “whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in [India], shall be punished with [imprisonment for life], to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Up until now, “Referendum 2020” campaigners have had their requests for bail and/or conditional release not given proper due process in violation of Article 9 of the ICCPR. The treatment of “Referendum 2020” campaigners by the Indian authority’s underscores how the right to free speech continues to be violated by Indian authorities as a punitive measure to silence popular, independent voices from exercising their fundamental rights; and to deal a decisive blow to the access of other human rights defenders to the legal counsel the campaigners so urgently need.

The detainees maintain that the police of the Republic of India planted arms on them to trump up criminal charges. Simple observation of the charge sheet of some of the detainees reveals that on the occasion where more than ten people were arrested at once, the authorities found only posters and banners on their person. The police then decided to attribute the possession of three small caliber revolvers with only “thirteen live rounds” of undisclosed calibers between the entire group, many of which were recovered from their personal residence.

To assume that more than ten people with aims of violent rebellion would arrive at a cricket stadium armed with nothing but posters and three revolvers with thirteen rounds between them all of undisclosed calibers, is nothing short of ludicrous. What cements this fact is that the small-arms were recovered from the residences of the detainees, and not on their person. Further, the fact that the forced confessions were extracted through torture, demonstrates the weakness of the Indian government’s case against the campaigners and attorney Pannun. It was the “confessions” obtained through the use of torture that were the grounds on which the police issued a warrant and an official INTERPOL red notice request for attorney Pannun in the same charge sheet. While the INTERPOL has already denied one request for Red Corner Notice against attorney Pannun by India, several other requests are still pending which are similarly based on the same factual predicates, false charges and concocted confessions obtained through the torture of Referendum 2020 campaigners and other unassociated accused.

Other detainees were charged with possession of a laptop, printer, and banners. Others were charged with the possession of a small .22 caliber pistol with four rounds. Such accusations were further trumped up by the incompetent authorities by including outlandish “confessions” extracted through torture from the detainees about world-wide conspiracies perpetrated by foreign “masterminds” (Attorney Pannun) promising money and arms to the detainees. These confessions were not only extracted during duress, but stand completely at odds with the details of the charge sheet and are a shoddy attempt by the corrupt Punjab police to find an easy quasi-judicial method

to arbitrarily detain the said individuals, and to implicate innocent persons like the detained campaigners in a fabricated global conspiracy.

Furthermore, “Referendum 2020” campaigners have been subject to torture in detention. While “Referendum 2020” campaigners were being held by the Indian Police, campaigners were given the dreaded standard treatment of the Indian authorities. This includes practices akin to hundreds of forced squats until complete muscle failure, beatings with blunt objects resulting in death, as well as rape, and extortion.<sup>46</sup> Numerous governmental and non-governmental bodies inside and outside India have produced reams and reams of reports on these abuses which persist to this day.

“Referendum 2020” campaigners have been arbitrarily detained on false charges and continue to be subjected to torture, cruel, inhuman, and degrading treatment. The dire condition of Indian prisons and their well-documented institutional malpractice place the health and lives of “Referendum 2020” campaigners, directly at risk. Accordingly, we request that the Working Group consider this Petition pursuant to its Urgent Action Procedure. Additionally, it is requested that the attached Petition be considered a formal request for an opinion of the Human Rights Council pursuant to Resolution 1997/50 of the Commission on Human Rights, as reiterated by Resolutions 2000/36, 2003/31, and Human Rights Council Resolutions 6/4, 15/18, 20/16, and 24/7.

### **India’s Repression of Sikh Political Opinion Through Draconian Laws.**

For decades after the massacre at the Golden Temple of Amritsar in 1984 by Indian forces, Indian authorities have taken a number of political and legal measures to severely constrain the freedoms and liberties of all Indian citizens and civil society, furthered under the pretense of maintaining security and stability. The charges against the supporters of the “Referendum 2020” campaign stand in light of these developments and following the unrest in Indian Punjab, over the issue of the status of Sikhs’ religious classification and their will for self-determination.

The first of these draconian laws were ratified in 1985 as the Terrorist and Disruptive Activities (Prevention) Act (TADA)<sup>47</sup>. These laws continued to serve as the pretext under which the government of India blatantly violated, and continues to violate, the universal human rights of its citizens for ten years until 1995, when it was repealed and replaced with new ordinances. The overwhelming majority of cases brought to trial under the TADA laws resulted in acquittal with a tiny fraction resulting in conviction.<sup>48</sup> For the 75000 (or more) detentions made since its ratification in 1984, 73000 of those cases had to be *withdrawn due to a lack of evidence*<sup>49</sup>. Unsurprisingly with its 93% failure rate, the existence of the laws, have incurred bitter resentment from Indians of all backgrounds for years. In fact in 2007 the Supreme Court of India itself ruled in agreement to previous U.S Supreme court decisions, in

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<sup>46</sup> “India 2017/2018.” *Amnesty International*, <https://www.amnesty.org/en/countries/asia-and-the-pacific/india/report-india/>.

<sup>47</sup> “(THE) TERRORIST AND DISRUPTIVE ACTIVITIES (PREVENTION) ACT, 1987.” *(THE) Terrorist and Disruptive Activities (PREVENTION) ACT, 1987*, <https://www.satp.org/satporgtp/countries/india/document/actandordinances/Tada.htm>.

<sup>48</sup> “TADA: Hard Law for Soft State.” *Economic and Political Weekly* 35, no. 13 (2000): 1066-071. [https://www.jstor.org/stable/4409076?seq=1#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/4409076?seq=1#page_scan_tab_contents).

<sup>49</sup> *It Is Goodbye to POTA*, <https://www.rediff.com/news/2004/sep/18spec1.htm>.

the case of Arup Bhuyan vs the State of Assam that “Mere membership of a banned organization will not incriminate a person unless he resorts to violence or incites people to violence or does an act intended to create disorder or disturbance of public peace by resort to violence”<sup>50</sup>.

This Supreme Court decision clearly frames the charges filed against “Referendum 2020” campaigners as null and void since none of the activities of the campaigners fulfilled the criteria set forth by the Supreme Court of India itself in regards to membership of an organization even if it is banned. The aforementioned “Referendum 2020” supporters in this petition were charged and arbitrarily arrested by the Indian authorities even though they were **not members** of any specific organization, they **were arbitrarily punished simply for holding a political opinion and expressing it publicly**. Even if the campaigners were members of the now banned SFJ, their activities would still not classify as offences chargeable by the laws which they have been charged with violating.

After worldwide criticism and domestic unrest, the TADA laws were allowed to lapse without renewal in 1995, but were replaced with new ordinances known as the Prevention of Terrorism Act (POTA) in 2002, in the wake of the 9-11 heightened security era<sup>51</sup>. Since the ratification of the POTA laws and immense domestic backlash, the POTA laws were repealed in 2004. This however would not be the end of the dreaded “anti-terrorism” laws as the ordinances included in POTA would be added into the pre-existing Unlawful Activities (Prevention) Act (UAP) of 1967, and then fortified again after the 2008 Mumbai Attacks<sup>52</sup>.

Particularly relevant to “Referendum 2020” campaigner’s arrests have been the Unlawful Activities Prevention which have been fortified with the provisions of the aforementioned repealed anti-terrorist laws, Section 153a and 153b of the Indian Penal Code, and the colonial era Sedition Laws Section 124a applied by Indian authorities to severely crackdown on any and all forms of critique and peaceful political demonstrations. in response to the growing movement amongst Sikhs worldwide vying for their own separate state where their ethnoreligious status is protected and respected.

The notoriety of the Indian anti-terrorism laws has led the authorities to fall back on colonial era draconian laws pre-dating the ratification of the new ordinances.

Even under these colonial era laws, the actions of the supporters of the “Referendum 2020” campaign in concern, do not qualify as crimes under explanation 1 and explanation 2 of Section 124A of the Indian Penal Code which provide:

*Explanation 1.* —The expression “disaffection” includes disloyalty and all feelings of enmity.

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<sup>50</sup> Arup Bhuyan vs State Of Assam on 3 February, 2011, <https://indiankanoon.org/doc/792920/>.

<sup>51</sup> Chopra, Surabhi. (2016). “National Security Laws in India: The Unraveling of Constitutional Constraints”. Oregon Review of International Law. 16. Forthcoming,

[https://www.researchgate.net/publication/278157994\\_National\\_Security\\_Laws\\_in\\_India\\_The\\_Unraveling\\_of\\_Constitutional\\_Constraints](https://www.researchgate.net/publication/278157994_National_Security_Laws_in_India_The_Unraveling_of_Constitutional_Constraints)

<sup>52</sup> “The Unlawful Activities (Prevention) Amendment Bill, 2011.” PRS India, 11 Apr. 2018, <http://www.prsindia.org/billtrack/the-unlawful-activities-prevention-amendment-bill-2011-2159/>.

*Explanation 2.* —Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

*Explanation 3.* —Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

(See Section 124A of the Indian Penal Code)

The arbitrarily detained campaigners were expressing their support for a democratic referendum which is employing completely lawful means through democratic modus operandi. No hate speech or calls for violence have been made by the Referendum 2020 Campaign or its supporters. In fact, Referendum 2020 declares and promotes that it believes in “ballot not bullet”.

The second charge being thrown at referendum supporters in Punjab, is “terrorism”. The legislation in the Indian Penal Code defining terrorism and terrorist acts, applies even less than the colonial era’s sedition act to the supporters of this referendum. As far as this legislation goes, the original anti-terrorism laws passed by the government of India, given their draconian and torturous execution, have been repealed amidst public outcry and their ordinances added to the Unlawful Activities Prevention Act (UAPA) as amendments. The **amendments in the UAPA** state the following<sup>53</sup>:

- **section 15(1)** reads: Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security, economic security or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,
  - (a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause –
- death of, or injuries to, any person or persons; or ii. loss of, or damage to, or destruction of, property;
- or iii. disruption of any supplies or services essential to the life of the community in India or in any foreign country; or
- iiiia. damage to the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin, or of any other material;
- or iv. damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or
  - overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or

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<sup>53</sup>Sen, Srijoni, Rukmini Das, Raadhika Gupta and Vrinda Bhandari (2015). *Anti-Terror Law in India: A Study of Statutes and Judgments, 2001-2014*. Vidhi Centre for legal policy.

- detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or an international or inter-governmental organisation or any other person to do or abstain from doing any act; commits a terrorist act

None of these ordinances apply to the aforementioned supporters of “Referendum 2020” for the following reasons:

- The detainees used neither arms or explosives to further any terrorist agenda against the Republic of India. They were charged with the possession of posters, partly commemorating a sacred tragedy in Sikh history. The means they are in support of, are democratic in nature and legally recognized by the United Nations<sup>54</sup> and are **legally non-binding** so that it may serve as an actionable result by the United Nations guidelines, and the laws of the Republic of India.
- Many of the detainees maintain that the police planted small caliber pistols with a sparse amount of rounds and charged them with their possession. As per the details of one instance, no logical sense can be made of the claims in the charge sheet. Authorities claim foreign masterminds sent more than ten men to a cricket stadium with remembrance banners, with three .22 caliber revolver with not enough rounds for a full magazine between the three of them, for the purposes of an armed<sup>55</sup> insurrection.
- The detainees were not part of any criminal organization in India, nor did they attempt at a show of criminal force, or threaten any public functionary with death.
- The detainees did not detain, kidnap, or abduct any person including threats to kill or injure any person to compel the Government of India to take any action or any other foreign entity to facilitate a violent terrorist attack.

Unlike the movement for Khalistan from the decade of 1990s, today's Referendum 2020 campaign and its supporters stand to offer the people of Punjab and the Republic of India non-violent, democratic and lawful modus operandi.

The charges against Referendum 2020 campaigners hold additional gravity considering the lack of due process of which they were afforded and damning pretrial detention laws of India. The conditions of India's legal system are well known to everyone. It is public knowledge that by the time Indian authorities are required to substantiate their allegations with evidence, the accused could be rotting in detention for years due to the legal system and the inefficacy of its pretrial detention laws.

Therefore, besides the fact that the charges not only violate international law (Specifically Article 9 (3)(4)), they also violate the constitution and Supreme Court decisions of India itself, and carry egregious effects on the lives of who are charged with them.

The provisions of the Indian Criminal Procedure Code on pretrial detention are extremely sparse

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<sup>54</sup> See, Article 1 of the UN Charter; Article 1 of the International Covenant on Civil and Political Rights; and Article 1 of the International Covenant on Economic, Social and Cultural Rights. Peoples who have been denied self-determination within their parent state may, in exceptional circumstances, lawfully pursue external self-determination (via secession).

<sup>55</sup> See attached “Charge Sheet” produced by Punjab Police.

and subject to excessive discretion. It facilitates detention for an egregiously lengthy period of up to **half of the maximum sentence of the charge *without trial***, and leave little to no actionable recourse for detainees wishing to challenge their continued detention because Indian law requires government permission to prosecute government officials accused of wrongdoing— all of which violate India’s international and domestic human rights obligations. The categories allow overly broad discretion and subjective determinations to the prosecution and judges—both of whom are aligned with the government and are unlikely to make determinations in favor of human rights defenders and prisoners of conscience.

Further, pretrial detainees facing possible charges for crimes that carry death or life imprisonment sentences can be kept in detention for **the entire sentence of the charges without trial**. This is egregiously lengthy and greatly exceeds what international law conceives legal detention to be a period of a few days. Finally, the fact that proper due process consideration has not been granted for requests for bail as implored by the Supreme Court of India, the Ministry of Home Affairs, the Law Ministry, and the Law Commission of India to provide to undertrials specifically, further exacerbates the situation. These facts in the case of “Referendum 2020” campaigners, attorney Pannun and SFJ ensure that they are left without effective recourse, constituting yet another violation of domestic Indian, and international law.

According to the United States Department of State’s “2018 Country Reports on Human Rights Practices: India”, reports of general prison conditions in Indian prisons. The report affirms beyond any doubt that the prison conditions were “frequently life threatening”. Physical conditions of the prisons in India are chronically severely overcrowded, with food, medical care, sanitation, and environmental conditions are frequently inadequate. Potable water is not universally available. Prisons and detention centers remain underfunded, understaffed, and lack sufficient infrastructure. Prisoners were consistently physically mistreated, frequently to the point of death.<sup>56</sup>

Scant oversight for India's prisons is endemic throughout the nation. Various human rights organizations, and governments, including the government of India itself, have reported **an increase** in custodial deaths of prisoners from an average of 4 per day from 2001 to 2010, to an average of 5 deaths per day in custody of Indian authorities from 2017 to 2018<sup>57</sup>. Finally, compensation for detainees who have been abused or mistreated is seldom issued by the state but often falls to Human Rights Advocacy groups such as Sikhs For Justice. Investigations by authorities into the deaths of detainees in custody or reports of inadequate medical care and abuse have to date, never been resolved by the government.

In consideration of the following findings, it is clear that the entire procedure from arrest to processing of the detainees, was not only against the ordinances of international law, but the domestic law of the Republic of India itself.

**Under the Indian Criminal Procedure Code,<sup>58</sup>— CrPC 436A: Section 436A of the Criminal Procedure Code**

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<sup>56</sup> “India - United States Department of State.” *U.S. Department of State*, U.S. Department of State, <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/india/>.

<sup>57</sup> *Id.*

<sup>58</sup> *CrPC 436A: Section 436A of the Criminal Procedure Code*, <https://www.kaanoon.com/indian-law/crpc-436a/>.

Maximum period for which an under trial prisoner can be detained

Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

- **Provided** that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:
- **Provided further** that no such person shall in any case be detained during the period of investigation inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.
- **Explanation** – In computing the period of detention under this section for granting bail the period of detention passed due to delay in proceeding caused by the accused shall be excluded.

Amongst the plethora of organizations worldwide reporting on this very phenomenon, a report produced by Amnesty International titled ‘Justice Under Trial: A Study Of Pre-Trial Detention In India’ finds: “India has one of the highest undertrial populations in the world. As of December 2015, 67% of prisoners in India’s prisons were ‘undertrials’ – people who were awaiting trial or whose trials were still ongoing, and who have not been convicted<sup>59</sup>. In other words, there are twice as many undertrials in India’s prisons as there are convicts.”<sup>60</sup>

Although the Indian Criminal Procedure Code sets forth a maximum of two years in pretrial detention for persons who have not been sentenced but face potential death or life imprisonment sentences, the Indian government consistently violates its own laws and continues to keep many pretrial detainees in detention even after the expiration of the two-year maximum. At least 1,464 detainees remain in pretrial detention beyond the maximum.

The government of India blatantly violated, and continues to violate, the universal human rights of its citizens for ten years until 1995, when it was repealed and replaced with new ordinances. The violations would not stop at that. The overwhelming majority of cases brought to trial under the TADA laws resulted in acquittal with a tiny fraction resulting in conviction.<sup>61</sup> For the 75000 (or more) detentions made since its ratification in 1984, 73000 of those cases had to be *withdrawn due to a lack of evidence*<sup>62</sup>. Unsurprisingly with its 93% failure rate, the existence of the laws, have incurred bitter resentment from Indians of all backgrounds for years. In fact in 2007 the Supreme Court of India itself ruled in agreement to previous U.S Supreme court decisions, in the case of *Arup Bhuyan vs the State of Assam* that “Mere membership of a banned organisation will not

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<sup>59</sup> Ministry of Home Affairs, National Crime Records Bureau 2015, 2016, Available at <http://ncrb.gov.in/StatPublications/PSI/Prison2015/PrisonStat2015.htm> (hereinafter: PSI 2015)

<sup>60</sup> “Justice Under Trial: A Study of Pre-Trial Detention in India.” *Amnesty International India*, <https://amnesty.org.in/justice-trial-study-pre-trial-detention-india/>.

<sup>61</sup> “TADA: Hard Law for Soft State.” *Economic and Political Weekly* 35, no. 13 (2000): 1066-071. [https://www.jstor.org/stable/4409076?seq=1#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/4409076?seq=1#page_scan_tab_contents).

<sup>62</sup> *It Is Goodbye to POTA*, <https://www.rediff.com/news/2004/sep/18spec1.htm>.

incriminate a person unless he resorts to violence or incites people to violence or does an act intended to create disorder or disturbance of public peace by resort to violence”<sup>63</sup>.

The aforementioned individuals in this petition arbitrarily arrested by the Indian authorities were **not members** of any specific organization, but **were arbitrarily punished simply for holding a political opinion and expressing it**.

Prior to their arrest, “Referendum 2020” campaigners expressed their opposition to the Indian governments treatment of the people and state of Punjab via social media posts and via their participation in peaceful public assemblies, demonstrations and the dissemination of relevant media.

After doing so, the Punjab police took every opportunity to not only arrest peaceful supporters and demonstrators of the “2020 Referendum” but proceeded to apply trumped up and outright false charges on top of severely dated anti-terrorism and sedition laws. The level of corruption exhibited by the Police of Punjab in India has few parallels<sup>64</sup>. In fact, in the aforementioned Amnesty International report on the conditions of Indian prisons, the government of the State of Punjab, refused Right to Information petitions made by the famous NGO due to the flagrant abuse of detention laws in the area.

The charges applied to the detainees included the regular use of the colonial era Sedition Act and UAPA Laws quoted above. “Referendum 2020” campaigners faced torture methods in detention which have existed in India as a whole from the time of the British Raj, but are particularly abhorrent in Punjab, and areas like Jammu and Kashmir where the civilian population has faced exceptional oppression for decades. A Harvard report titled “Police Torture in Punjab” detailed the specific actions, frequency, and reasons for the endemic abuse perpetrated by the Police.

“Torture methods used in Punjab, similar to those in many other regions of the world, inflict excruciating physical and emotional pain but, by intention, infrequently leave lasting physical scars. This makes it difficult for victims to substantiate their claims of torture and possible for states to deny that it is being carried out. Thus, many who apply for asylum in the United States are denied because they lack specific physical evidence of having been tortured.

Documentation by physicians of physical findings that are consistent with asylum applicants' allegations of torture is therefore important. To date, however, detailed information on torture practices in Punjab that may corroborate individual claims of torture has been unavailable.”<sup>65</sup>

“Reasons for Arrest and Torture Reasons cited for arrest and torture were mostly because police wanted information about militants, or to punish persons who had allegedly supported militants. Specifically, 72 (40%) reported that police tortured them to find out identities or locations of militants; 39 (22%) were tortured for allegedly providing food and shelter to militants; 23 (13%) were either suspected or acknowledged militants. Nineteen (10%) were arrested and tortured

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<sup>63</sup> *Arup Bhuyan vs State Of Assam on 3 February, 2011*, <https://indiankanoon.org/doc/792920/>.

<sup>64</sup> “COLUMN ONE : Punjab's Lawless Police : Officers Were given Enormous Leeway to Quell the Sikh Separatist Uprising in Northwest India. But Even after the Government Gained the Upper Hand, Citizens Still Face Official Acts of Terror.” *Los Angeles Times*, Los Angeles Times, 9 July 1994, <https://www.latimes.com/archives/la-xpm-1994-07-09-mn-13444-story.html>.

<sup>65</sup> Laws, Ami, and Vincent Iacopino. “Police Torture in Punjab, India: An Extended Survey.” *Health and Human Rights*, vol. 6, no. 1, 2002, pp. 195–210. *JSTOR*, [https://www.jstor.org/stable/4065321?seq=1#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/4065321?seq=1#page_scan_tab_contents).

because of alleged possession of illegal weapons. Others were arrested and tortured for presumed political activities with either the Akali Dal party (11 or 6%) or the All-India Sikh Student Federation (3 or 2%). Five persons (3%) said they were tortured to discourage them from pursuing a wrongful death claim for a relative who died in police custody. One person was tortured after witnessing police committing murder, a so-called encounter killing, and one person believed he was tortured for his work as a human rights lawyer. Notably, only four persons reported receiving detention and torture for reasons unrelated to militant or political activities, namely, for police extortion or as a result of interpersonal conflict.”

i. Category I: No Basis for Detention

The detention of “Referendum 2020” campaigners is arbitrary under Category I.

1. The Continued Detention of “Referendum 2020” campaigners Violates Domestic Regulations on Pretrial Detention

“Referendum 2020” campaigners who are detained were forced to disrobe, and then proceed to be beaten with a wooden stick or leather straps. This would be the very beginning of their torture which would escalate into various stress positions to dislocate limbs, being hanged with a rope by the wrists while bound to dislocate the shoulder joints, electric shocks with live wires to the genitals, and rape only to name the most common. Detainees in Punjab experiencing this torture, will frequently have relatives brought by the police, to witness their torture.

Under the Indian Criminal Procedure Code itself: Once a person suspected of a criminal offence is arrested, they are supposed to be brought before a Magistrate within 24 hours by the police.<sup>66</sup> This safeguard is intended to protect the accused from the well documented custodial torture and mistreatment of the authorities. Courts have held that a failure to produce an accused person before a magistrate during this stipulated time period makes the detention wrongful.

The detainees listed in this petition have not only been held for more than a year without trial on the charges they face, but were blatantly denied the ordinances stated by the Indian Criminal Procedure Code. They were regularly tortured on *false* charges, and like the majority of India’s imprisoned, kept in limbo while detained and awaiting trial.

The Supreme Court of India has ruled that an inordinate delay in bringing an accused person to trial violates the right to personal liberty guaranteed by Article 21 of the Constitution of India<sup>67</sup>. Article 14(3)(c) of the International Covenant on Civil and Political Rights (ICCPR), to which India is a state signatory with ratification, says that an accused person has the right to be tried without undue delay and that criminal proceedings should be started and completed within a reasonable time. Undertrials need to be brought before court regularly for their trials to progress and a decision to be made in their cases.<sup>68</sup> These conditions have not been met by a country mile.

General Comment No. 8 (1982)<sup>69</sup> of the United Nations Human Rights Committee explains the

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<sup>66</sup> Section 57 in *The Code Of Criminal Procedure, 1973*, <https://indiankanoon.org/doc/571025/>.

<sup>67</sup> Article 21 in *The Constitution Of India 1949*, <https://indiankanoon.org/doc/1199182/>.

<sup>68</sup> “Justice Under Trial: A Study of Pre-Trial Detention in India.” Amnesty International India, <https://amnesty.org.in/justice-trial-study-pre-trial-detention-india/>.

<sup>69</sup> General Comment No. 8: Article 9 (Right to Liberty and Security of Persons), UN HUMAN RIGHTS COMMITTEE, Jun. 30, 1982, ¶2

notion of “promptly” by referring to a period of a few days, implying that a detainee must be informed of the charges against him within a period as short as possible.<sup>70</sup> Further, the General Comment states that pretrial detention must not be arbitrary, it must be based on grounds and procedures established by law, it must be backed by information of the reasons for such detention, court control of the detention must be available, and compensation in the case of a breach must be provided. The 2011 Report of the UN Working Group on Arbitrary Detention concludes that “any detention must be exceptional and of short duration.”<sup>71</sup>

The few domestic laws of India dealing with the correct procedure for the processing of detainees without trials have not been applied to the individuals in this petition. The changes issued by the recommendations of The Ministry of Home Affairs in 2012 to ensure undertrials are not arbitrarily detained, are up to the individual states of India<sup>72</sup>. Regardless of the reforms made in respect to the number of undertrials and the conditions they faced in detention, scant changes have been made by the prisons of India who reportedly claimed to be either unaware, or unwilling to enact such changes to their daily operation. Of all of Amnesty International Right to Information requests, only 20% of the countries prisons responded. Of those, 20%, most were fulfilling only half of the Ministry of Home Affairs recommendations.

As it stands, detention is arbitrary under Category I when it is “clearly impossible to invoke any legal basis justifying the deprivation of liberty. These men have not been afforded the legal protections of their own nations laws, and as such are being held in arbitrary detention with no legal basis justifying their detention, outside of outlandish terrorism charges applied to them for the expression of a legitimate political opinion.

## 2. The Practice of Pretrial Detention in India Violates Domestic and International Human Rights Obligations

The provisions of India’s Criminal Procedure Code on pretrial detention being used to uphold the continued detention of “Referendum 2020” campaigners violate human rights protections enshrined in both their domestic and international law and cannot serve as a basis by which Indian authorities can continue to keep the defendants in detention.

The Supreme Court of India has ruled that an inordinate delay in bringing an accused person to trial violates the right to personal liberty guaranteed by Article 21 of the Constitution of India<sup>73</sup>. Article 14(3)(c) of the International Covenant on Civil and Political Rights (ICCPR), to which India is a state signatory with ratification, says that an accused person has the right to be tried without undue delay and that criminal proceedings should be started and completed within a reasonable time. Undertrials need to be brought before court regularly for their trials to progress and a decision to be made in their cases.<sup>74</sup> These conditions have not been met by a country mile

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<sup>70</sup> The Human Rights Committee has previously found that a period of 7 or 9 days is not acceptable under Article 9(2) of the ICCPR. See *Grant v. Jamaica*, Communication No. 597/1994, para. 8.1; see also *Morrison v. Jamaica*, Communication No. 663/1995, para. 8.2; see also *Kurbanov v. Tajikistan*, Communication No. 1096/2002, para. 7.2; see also *A. Berry v. Jamaica*, Communication No. 330/1988, para. 5.6.

<sup>71</sup> Report of the Working Group on Arbitrary Detention, UNITED NATIONS HUMAN RIGHTS COUNCIL, A/HRC/16/47, Jan. 19, 2011.

<sup>72</sup> *Use of Section 436-A of the Cr. P.C to reduce overcrowding of prisons – To constitute Review Committees thereof* <https://hphighcourt.nic.in/pdf/Section-436-A-06122013.pdf>

<sup>73</sup> *Article 21 in The Constitution Of India 1949*, <https://indiankanoon.org/doc/1199182/>.

<sup>74</sup> “Justice Under Trial: A Study of Pre-Trial Detention in India.” Amnesty International India, <https://amnesty.org.in/justice-trial->

and are a violation of India's international human rights obligations.

### 3. The Charges against "Referendum 2020" campaigners are Without Merit and Cannot Be Used as a Basis by Which to Justify their Continued Detention

The charges of sedition and terrorism brought against "Referendum 2020" campaigners are without merit and should not be a basis by which to keep them in pretrial detention.

In exercising their fundamental rights to freedom of expression and peaceful assembly, "Referendum 2020" campaigners printed remembrance posters of the June 6<sup>th</sup> Massacre of the Pilgrims of Amritsar with expressions of support for the self-determination initiative of "Khalistan Referendum 2020". "Referendum 2020" campaigners have called for and joined peaceful assemblies and demonstrations worldwide to express this public concern of the Sikh people.

The state has unequivocally failed to produce a single piece of evidence thus far indicating that "Referendum 2020" campaigner's actions could implicate any of the charges brought against them, including but not limited to the "overthrow of the government" and "the spreading of false news." In fact, these charges include impermissibly oppressive provisions (UAPA laws sections 11,12,13,17,18,19) and have been repeatedly used by the Indian government against peaceful dissidents to unduly restrict the fundamental rights to freedom of expression and peaceful assembly. The UAPA provisions contain special anti-terrorist laws added through amendments from previously repealed draconian legislation in order to create a public impression of legal progress. These charges have been merely a pretense for decades to allow Indian authorities to crackdown on the constitutionally-protected and internationally recognized rights and activities of "Referendum 2020" campaigners, and Indian citizens whose opinions rankle the Republic of India's accepted political narratives.

The application of section 11 of UAPA<sup>75</sup> which is titled: "Penalty for dealing with funds of an unlawful association"; is completely without merit. This is because the campaigners were not handling any funds, let alone funds of an unlawful association since SFJ was banned in July 10<sup>th</sup> 2019, several years after the campaigners' detention. This means that even in the hypothetical scenario in which the campaigners were handling funds, they would **still not qualify being charged with provision 11 of UAPA.**

The application of section 12 of UAPA<sup>76</sup> which is titled: "Penalty for contravention of an order made in respect of a notified place"; is completely without merit. This is due to the fact that the government of India never issued a "prohibitory order" on any location where the campaigners were congregating. Under section 8 of UAPA the government is legally required to make these prohibitory orders cognized in the "official gazette" of India in regards to the locations in question. Hence, the campaigners would not qualify to be in violation of section 12 of UAPA in the slightest degree.

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[study-pre-trial-detention-india/](https://indiankanoon.org/doc/1935953/).

<sup>75</sup> Section 11 in *The Unlawful Activities (Prevention) Act, 1967*, <https://indiankanoon.org/doc/1935953/>.

<sup>76</sup> Section 12 in *The Unlawful Activities (Prevention) Act, 1967*, <https://indiankanoon.org/doc/67828/>.

The application of section 13 of UAPA<sup>77</sup> which is titled: “Punishment of unlawful activities”; is completely without merit. The campaigners met none of the standards of this section which stands to punish those who “takes part in or commits, or (b) advocates, abets, advises or incites the commission of, any unlawful activity”. Holding posters advertising a legitimate political opinion, and a democratic initiative protected by international law does not qualify as facilitating any unlawful activity, as it is free expression.

The application of section 17 of UAPA<sup>78</sup> which is titled: “Punishment for raising funds for terrorist act”; is completely without merit. The campaigners were not raising, asking, or giving any funds to anyone, even for the “Khalistan referendum 2020” at the date of their arrest, let alone for a terrorist act. An unofficial, democratic referendum free of charge seeking to ascertain the political zeitgeist of a nation does not qualify as a “terrorist act” or the arbitrary application of a charge such as section 17.

The application of section 18 of UAPA<sup>79</sup> which is titled: “Punishment for conspiracy, etc”; is completely without merit. Section 18 states “Whoever conspires or attempts to commit, or advocates, abets, advises or incites or knowingly facilitates the commission of, a terrorist act or any act preparatory to the commission of a terrorist act, shall be punishable with imprisonment...”. Much like section 17, the application of section 18 is arbitrary due to the fact that the actions of the campaigners did not qualify as a conspiracy to commit a terrorist act by any standard of domestic or international law. Section 18 specifically deals with those organizing “terrorist camps” or “recruiting individuals for terrorism”, neither of which the campaigners ever engaged in, or interacted with. Advertising a democratic and legal referendum does not qualify as a conspiracy to commit a terrorist act, the organization of a terrorist camp, or the recruitment of individuals for the purposes of committing terrorism as per the requirements of section 18 or international law.

The application of section 19 of UAPA<sup>80</sup> which is titled: “Punishment for harbouring, etc”; is completely without merit. Section 19 deals with punishing “Whoever voluntarily harbours or conceals, or attempts to harbour or conceal any person knowing that such person is a terrorist shall be punishable with imprisonment...”. The campaigners were found in public spaces carrying posters advertising a referendum. No sense can be made from the arbitrary application of section 19 since the campaigners would have no realistic way to harbor or conceal terrorists, while walking in broad daylight to a public place with banners and posters, and as such does not qualify by any standard of logic to be able to be applied to the campaigners.

The fabrication of events, the prolonged and arbitrary detention, the extraction of confessions through the use of torture, the denial of legal remedy and lack of any due process for the campaigners renders the charges levied against them as completely without merit.

i. Category II: Substantive Fundamental Rights

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<sup>77</sup> Section 13 in *The Unlawful Activities (Prevention) Act, 1967*, <https://indiankanoon.org/doc/1214158/>.

<sup>78</sup> Section 17 in *The Unlawful Activities (Prevention) Act, 1967*

<sup>79</sup> Section 18 in *The Unlawful Activities (Prevention) Act, 1967*, <https://indiankanoon.org/doc/354849/>.

<sup>80</sup> Section 19 in *The Unlawful Activities (Prevention) Act, 1967*, <https://indiankanoon.org/doc/1994126/>.

The detention of “Referendum 2020” campaigners is arbitrary under Category II.

A detention is arbitrary under Category II when the detention results from the exercise of fundamental rights protected by international law. More specifically, the arbitrary detention results “[w]hen the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20, and 21 of the Universal Declaration of Human Rights, and insofar as states parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26, and 27 of the International Covenant on Civil and Political Rights.”<sup>81</sup> In light of this, the detention of “Referendum 2020” campaigners is arbitrary because the detention resulted from the exercise of their fundamental rights to freedom of opinion and expression and of peaceful assembly<sup>82</sup>.

a. The Indian Government Detained “Referendum 2020” campaigners Because They Exercised Their Right to Freedom of Opinion and Expression

Freedom of opinion and expression are guaranteed under international law by Article 19(1)-(2) of the ICCPR<sup>83</sup> and Article 19 of the UDHR.<sup>84</sup> The UN Human Rights Committee has determined that this right **includes the right to express a dissenting political opinion**.<sup>85</sup> In addition to these obligations under international law, India is bound by Article 19 of its own Constitution to respect the right of its citizens to freedom of opinion.<sup>86</sup> The United Nations Declaration on Human Rights Defender defines human rights defenders as “individuals, groups and associations ... contributing to ... the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals” and establishes protections for such individuals.<sup>87</sup>

The classification of “Human Rights Defender” as defined by the United Nations extends to “Referendum 2020” campaigners who were arrested, tortured, charged, and continue to be held in pretrial detention today because they publicly expressed their political opinion which stood in support of holding the “Referendum 2020” via participation in peaceful assemblies, and via the dissemination of posters and remarks on social media calling to address the continued violations of human rights and fundamental freedoms of peoples. “Referendum 2020” campaigners are being further targeted in light of their status as Sikhs who have long been the source of independent voices and peaceful dissidents in Punjab despite decades of brutal repression by the Republic of India.

“Referendum 2020” campaigners’ exercise of their rights to freedom of opinion and expression do not fall under any of the permissible limitations set forth by Article 19(3) of the ICCPR. Article 19(3) allows for certain restrictions provided by law and necessary “for respect of the

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<sup>81</sup> *Revised Methods of Work*, *supra* note 64

<sup>82</sup> *ICCPR*, *supra* note 71, Art 22.

<sup>83</sup> *ICCPR*, *supra* note 71, Art 19

<sup>84</sup> *Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. Doc. A/810, Art. 19 (1948) [hereinafter *Universal Declaration*].

<sup>85</sup> *General Comment No. 34 (2011) on Article 19: Freedom of Expression*, UN HUMAN RIGHTS COMMITTEE, CCPR/C/GC/34, Sep. 12, 2011, ¶ 11.

<sup>86</sup> *Article 19 in The Constitution Of India 1949*, <https://indiankanoon.org/doc/1218090/>.

<sup>87</sup> Who is a defender?, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER,

rights or reputations of others” or “for the protection of national security or of public order...or of public health or morals.”<sup>88</sup> The Human Rights Committee has also found that because there is no legitimate restriction under Article 19(3) which would justify the arbitrary arrest, torture, and threats to life of a **human rights defender**, “the question of deciding which measures might meet the ‘necessity’ test in such situations does not arise.”<sup>89</sup> And is thus a clear violation by India of the ICCPR in every aspect of the Article 19.

b. The Indian Government Detained “Referendum 2020”  
campaigners Because They Exercised Their Right to Freedom of  
Peaceful Assembly

Freedom of peaceful assembly is guaranteed by Article 20(1) of the UDHR<sup>90</sup> and Article 21 of the ICCPR<sup>91</sup>. Under Article 19 of India’s Constitution, the government is mandated to “to assemble peaceably and without arms”, and “to form associations or unions”.<sup>92</sup>The United Nations Declaration on Human Rights Defenders further affirms these rights for “individuals contributing to ... the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals<sup>93</sup>.”

The “Referendum 2020” campaigners’ exercise of their right to freedom of peaceful assembly as human rights defenders does not fall under the permissible limitations set forth by the ICCPR. Under the ICCPR, the right to freedom of peaceful assembly can only be restricted as prescribed by the law and as necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others.<sup>94</sup>

The campaigners neither made nor presented a threat to national security, public order, health or morals. The campaigners were carrying posters advertising a legitimate political opinion without making any threats of any kind, affecting public health in any way, or even challenging public morals. As the campaigners were acting for the protects of the rights and freedoms of others, they were in full compliance of the permissible limitations set forth by the ICCPR.

In the 126<sup>th</sup> session of the UNHRC, the Draft General Comment on Article 21<sup>95</sup> found that;

“States parties should not rely on some vague notion of “public order” as a ground to justify overbroad restrictions on the right of peaceful assembly.<sup>96</sup> The aim cannot be to prevent all disruptions of daily routines; peaceful assemblies in some cases have such inherent consequences. “Public order” and “law and order” are not synonyms, and the crime of “public disorder” should not be used to prohibit legitimate assemblies. “Public order” refers to the sum of the rules that ensure the functioning of society, or the set of fundamental principles on which society is founded,

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88 ICCPR, supra note 71, Art 19.

89 Njiru v. Cameroon, UNHRC, Views of 3 April 2007, UN Doc. CCPR/C/89/D/1353/2005, para. 6.4.

90 Universal Declaration, supra note 82, Art. 20.

91 ICCPR, supra note 71, Art 21.

92 Article 19 in The Constitution Of India 1949, <https://indiankanoon.org/doc/1218090/>.

93 <https://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx>. Who is a defender?, supra note 85.

94 ICCPR, supra note 71, Art 21.

95 *General Comment No. 37 on Article 21: Right of Peaceful Assembly*, UN Human Rights Committee July 2019

96 CCPR/C/KAZ/CO/1, para. 26; CCPR/C/DZA/CO/4, para. 45.

which includes respect for human rights.<sup>97</sup>”

Despite India’s signatory status to the ICCPR it acted in direct violation of the very general comment of the 126<sup>th</sup> session. The authorities literally justified the arbitrary detention and torture of the campaigners on vague grounds of “public order” and “national security” and egregiously violated all of their fundamental rights.

The posters the campaigners were carrying were directly calling for the protection of the fundamental rights and freedoms of Sikhs and non-Sikhs alike. The police fabricated the charges of the possession of arms by the campaigners in order to circumvent the safeguards enshrined in international law for peaceful assembly. The Human Rights Committee has found that there would be no “necessary” reason to arrest, torture, or threaten the life of a human rights defender.<sup>98</sup> **In calling for and participating in peaceful assembly**, “Referendum 2020” campaigners were exercising their fundamental rights. Placing impermissibly excessive constraints on the activities of Human Rights Defenders violates both Indian law and the country’s international legal obligations under the ICCPR, as the campaigners were subject to constant torture and denial of legal remedy by the authorities during their detention on the pretext of upholding national security, for exercising their fundamental human right to freedom of assembly as human rights defenders.

c. The Indian Government Detained “Referendum 2020”  
campaigners Because They Exercised Their Right to Freedom of  
Association

Freedom of association is guaranteed by Article 20(1) of the UDHR<sup>99</sup> and Article 22(1) of the ICCPR.<sup>100</sup> Under Article 19 of the Constitution, India is mandated to respect the rights of its citizens to form associations and unions.<sup>101</sup> The United Nations Declaration on Human Rights Defenders further affirms this right for “individuals contributing to ... the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals<sup>102</sup>.”

Non-governmental organizations and human rights defenders on the ground in Punjab have years of reports which corroborate the fact that “Referendum 2020” campaigners were particularly targeted for arrest and charged due to their support for a wide-spread political opinion in support of self-determination held by Sikhs. In addition to this, they were targeted for their support for the elimination of all human rights violations against Sikhs in India as human rights defenders<sup>103</sup>.

Additionally, Attorney Gurpatwant Pannun the so called “mastermind” charged with facilitating terrorism and discord due to popularizing the opinion for Sikh self-determination was specifically targeted and framed as such in order to be able to pin the arrested campaigners as part of a global conspiracy headed by him. The Indian police’s charge sheet produced for the

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<sup>97</sup> Siracusa Principles, para. 22.

<sup>98</sup> Njaru v. Cameroon, supra note 87.

<sup>99</sup> Universal Declaration, supra note 82, Art. 20.

<sup>100</sup> ICCPR, supra note 71, Art 22.

<sup>101</sup> Article 19 in The Constitution Of India 1949, <https://indiankanoon.org/doc/1218090/>.

<sup>102</sup> Who is a defender?, supra note 85.

<sup>103</sup> “Dead End in Punjab.” *Human Rights Watch*, 17 Dec. 2004, <https://www.hrw.org/news/2004/12/17/dead-end-punjab>

“Referendum 2020” campaigners explicitly states them to be in connection to Pannun in a global conspiracy, a connection which has no basis in reality with his documented actions as a human rights defender.

Attorney Pannun is well known as a human rights lawyer, and co-founder of Sikhs For Justice (SFJ). The “Referendum 2020” campaigners can only be described as being associated with SFJ, through popular political opinion, as SFJ represents the political interests of the Sikh community which the government of India never has. For these reasons, the association of the “Referendum 2020” campaigners with the human rights advocacy group “Sikhs For Justice” via agreement in their political opinion (specifically the right to self-determination of Sikhs), have incurred the ire of the Indian authorities. Based on these associations the Punjab police spun a volley of charges based on concocted fantasies of an international conspiracy allegedly mobilizing the campaigners under the orders of attorney Gurpatwant Pannun as the head of a terrorist organization, which in turn is a proxy in a Pakistani ISI operation to destabilize India, according to India.

“Referendum 2020” Campaigners and attorney Pannun’s exercise of their right does not fall under the permissible limitations set forth by the ICCPR. Under the ICCPR, the right to freedom of association can only be restricted as prescribed by the law and as necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others.<sup>104</sup>

It is important to note however, that the UN Human Rights Committee has found that there would be no “necessary” reason to arrest, torture, or threaten the life of a human rights defender.<sup>105</sup> In working in line with the humanitarian aims of an organization like SFJ, the classification of a human rights defender extends to the “Referendum 2020” campaigners who were exercising their right to freedom of association. SFJ is one of the most prominent civil society groups in the world working to promote and protect human rights of Sikhs. Rather than representing harm to national security or public safety or order, these entities directly uphold the democratic standards of the modern world and safeguard the rights and freedoms of others who have been denied them. The indefinite, arbitrary detention and torture of the campaigners thus constitutes a blatant violation of the “Referendum 2020” campaigners right to Freedom of Association guaranteed by the various treaties of International Law despite the campaigners being within the laws permissible limitations.

## ii. Category III: Due Process Rights

The detention of “Referendum 2020” campaigners is arbitrary under Category III.

A detention is considered arbitrary under Category III “[w]hen the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character.”<sup>106</sup>

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<sup>104</sup> ICCPR, *supra* note 71, Art 22.

<sup>105</sup> *Njuru v. Cameroon*, UNHRC, Views of 3 April 2007, UN Doc. CCPR/C/89/D/1353/2005, para. 6.4.

<sup>106</sup> *Revised Methods of Work*, *supra* note 64, ¶8(c).

Additionally, the Working Group looks to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles).<sup>107</sup>

1. Indian Authorities Violated “Referendum 2020” campaigner’s Rights by Failing to Promptly Bring Them Before a Judge and Failing to Try Them Without Undue Delay

Indian authorities have violated “Referendum 2020” campaigners’ right to be promptly brought before a judge and tried without undue delay by an impermissible amount. Article 9(3) of the ICCPR, which affirms this right, also adds: “It shall not be the general rule that persons awaiting trial shall be detained in custody.”<sup>108</sup> Principle 11(1) of the Body of Principles<sup>109</sup> and Article 14(3)(c) of the ICCPR<sup>110</sup> additionally reiterate the right of the accused to be tried without undue delay. In India today, pre-trial detainees make up the largest portion of detainees and remain under this status for years without trial, in violation of the ICCPR.

Indian authorities have increasingly used pretrial detention as a punitive measure by which to constrain the fundamental freedoms of independent voices and human rights defenders. One of these offences is the Indian governments refusal to bring pre-trial detainees to just, speedy trials in violation of their guaranteed due process rights; the cases of “Referendum 2020” campaigners are, thus far, no exception to this rule.

“Referendum 2020” campaigners have been kept in pretrial detention for years despite the inability of Indian authorities to produce a single piece of real evidence or documentation to back up the alleged charges that have been brought against them.

By keeping the campaigners in pretrial detention, subjecting them to torture, and applying unjust, unsubstantiated charges to them while they were exercising their rights, Indian authorities are violating “Referendum 2020” campaigners’ right to be brought promptly before a judge on the alleged merits of the case and their right to be tried without undue delay. There is no evidence or correspondence to suggest that authorities are actively investigating the alleged cases against “Referendum 2020” campaigners. The inability of the prosecution to produce evidence in the cases suggests that the Indian police despite knowing the culture of imposing prolonged pretrial detention in India, decided to engage in the said behavior regardless. The authorities continue to hold “Referendum 2020” campaigners on false charges in pretrial detention to punish them for exercising their fundamental rights and for their defense of human rights. The use of these tactics in India has been well documented for years by the media and civil society of the world to be the result free expression brings to citizens of India.

2. Indian Authorities Violated “Referendum 2020” campaigner’s Rights by Failing to Grant Them an Opportunity to Appeal the Lawfulness of Their Detention

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<sup>107</sup> *Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment*, GA Res. 47/173, 43 U.N. GAOR Supp. (No. 49) 298, A/43/49, Dec. 9, 1998 [hereinafter *Body of Principles*].

<sup>108</sup> ICCPR, *supra* note 71, Art 9.

<sup>109</sup> Body of Principles, *supra* note 102, Principle 11.

<sup>110</sup> ICCPR, *supra* note 71, Art 14.

Indian authorities have violated “Referendum 2020” campaigner’s right to be granted an opportunity to appeal the lawfulness of their ongoing detention. Under Article 9(4) of the ICCPR,<sup>111</sup> India is mandated to bring “Referendum 2020” campaigners before a court in order for the court to determine the lawfulness of detention without delay. The campaigner’s trials have been delayed for several years to date.

By subjecting “Referendum 2020” campaigners to impermissibly long pretrial detention times of several years, denying them any possible counsel from having a full opportunity to present a case for conditional release and/or bail, and failing to provide any evidence regarding the charges against “Referendum 2020” campaigners, Indian authorities are denying “Referendum 2020” campaigners an opportunity to fully become aware of the reasons for their detention and ultimately, to appeal their detention in violation of the ICCPR.

In addition, In the Human Rights Watch Committee Review of India in 2019, the organization found that

“Public officials in India continue to enjoy effective immunity for serious human rights violations. Government officials, including members of police and armed forces, enjoy protection from legal proceedings as the Criminal Code and other legislation require government permission to initiate prosecutions against them. This has prevented proper accountability for human rights violations such as torture, enforced disappearances, and extrajudicial killings by the police, paramilitaries, and the army.”<sup>112</sup>

This law leaves the detainees no option for domestic legal remedy to their impermissibly long arbitrary detention without any trial. As the government in power in India today is a Hindu nationalist far-right party (BJP), no government permission to initiate prosecution against the violators has any hope of being granted to the detainees as the party in power encourages the suppression of minority voices. This is particularly prevalent in the Punjab region which has been the source of independent voices speaking critically against the failures of the Indian government for decades.

Due to these facts, “Referendum 2020” campaigners find themselves subjected to a system which not only ignores proper legislative procedure, but outright violates basic human rights enshrined in the constitution of the land, as well as international courts. This raises serious doubt on whether “Referendum 2020” campaigners will ever have a genuine and full opportunity to get to trial, let alone appeal their detention.

### 3. Indian Authorities Violated “Referendum 2020” campaigner’s Right to Have Adequate Time and Facilities for the Preparation of their Defense

Indian authorities have violated “Referendum 2020” campaigner’s right to prepare an adequate defense in every category required by the ICCPR.

Article 14(3)(b) of the ICCPR guarantees the right to have adequate time and facilities for the

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<sup>111</sup> ICCPR, supra note 71, Art 9

<sup>112</sup> “Submission to the UN Human Rights Committee Review of India.” *Human Rights Watch*, 15 May 2019, <https://www.hrw.org/news/2019/05/15/submission-un-human-rights-committee-review-india>.

preparation of a detainee’s defense.<sup>113</sup> The United Nations Human Rights Committee has noted that facilities must include access to documents and other evidence that the accused requires to prepare their case<sup>114</sup>. No such facilities or access to documents and other evidence were ever provided to the detainees.

Visits with “Referendum 2020” campaigners have been heavily-monitored and limited, raising serious doubt on whether they have had an adequate opportunity and time to discuss the legal strategy of their cases, or any privileged or confidential information with their counsel and family members. Further, the prosecution has greatly delayed in providing “Referendum 2020” campaigner’s counsel with the official charge sheets and any documentation from the case to substantiate the charges being brought against “Referendum 2020” campaigners. Authorities are thus severely constraining “Referendum 2020” campaigner’s due process rights, particularly their right to have both adequate time and facilities to prepare their defense, considering their prolonged detention without trial in violation of Article 14(3)(b).

#### 4. Indian Authorities Violated “Referendum 2020” campaigner’s Right to be Presumed Innocent Until Proven Guilty

Indian authorities have violated “Referendum 2020” campaigner’s right to be presumed innocent until proven guilty. Under Article 14(2) of the ICCPR,<sup>115</sup> Article 11(1) of the UDHR,<sup>116</sup> and Principle 36 of the Body of Principles<sup>117</sup>, every citizen has the right to be presumed innocent. The Human Rights Committee has stated that:

“...the burden of proof of the charge is on the prosecution and the accused has the benefit of the doubt. No guilt can be presumed until the charge has been proved beyond reasonable doubt. Further, the presumption of innocence implies a right to be treated in accordance with this principle. It is, therefore, a duty for all public authorities to refrain from prejudging the outcome of a trial.”<sup>118</sup>

The detainees have not even made it to trial before they had undergone severe torture and kept in detention without trial **for years** alongside other convicted criminals as well as other undertrials who shared their same fate. The prosecution has unequivocally failed to even begin to satisfy their burden of proof beyond a reasonable doubt as to the guilt of the detainees.

Article 10(2)(a) of the ICCPR states that “accused persons shall, save for exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons<sup>116</sup>.” Principle 8 of the Body of Principles reiterates that unconvicted persons should be kept separately from convicted persons and should be treated accordingly<sup>119</sup>. The detainees were neither held separately from convicted prisoners nor subject to separate treatment from them.

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<sup>113</sup> ICCPR, supra note 71, Art 14

<sup>114</sup> General Comment No. 13: Equality Before the Courts and the Right to a Fair and Public Hearing by an Independent Court Established by Law (Art. 14), UN HUMAN RIGHTS COMMITTEE, HRI/GEN/1/Rev.1, Apr. 13, 1984, ¶11

<sup>115</sup> ICCPR, supra note 71, Art 14.

<sup>116</sup> Universal Declaration, supra note 82, Art. 11.

<sup>117</sup> Body of Principles, supra note 102, Principle 36.

<sup>118</sup> General Comment No. 13, supra note 110.

<sup>119</sup> Body of Principles, supra note 102, Principle 8.

Since 2013, Indian authorities have increasingly used pretrial detention as a punitive measure to silence peaceful dissidents and retaliate against individuals for their human rights work. The number of pretrial detainees in India has not changed significantly, with the number still standing at around 70% of total detainees, and the periods of pretrial detention routinely fail to live up to international standards and in the majority of cases exceed even domestic maximums. **Pretrial detainees are kept in the same cells as convicted prisoners**, a clear violation of the campaigners' right to be presumed innocent until proven guilty under the various provisions of several international treaties.

By placing "Referendum 2020" campaigners in pretrial detention with convicted criminals, and not giving proper due process consideration to the conditional release and/or granting of bail, Indian authorities are acting under the assumption that "Referendum 2020" campaigners are guilty of all charges and are treating them as such in flagrant violation of all their guaranteed rights.

Indian authorities continue to take unlawful punitive action against "Referendum 2020" campaigners. They have been repeatedly subjected to physical abuse, torture, and cruel, inhuman, and degrading treatment. By placing "Referendum 2020" campaigners into the same detention centers where convicted criminals serve their sentences, Indian authorities are clearly violating the campaigners right to be presumed innocent until proven guilty as guaranteed by international law.

#### 5. Indian Authorities Violated "Referendum 2020" campaigner's Right to be Equal Before the Courts

Indian authorities have violated "Referendum 2020" campaigner's right to be equal before the courts and tribunals under Article 14(1) of the ICCPR.<sup>120</sup> According to the United Nations Human Rights Committee, this "ensures that the parties to the proceedings in question are treated without any discrimination" and the principle of the "equality of arms"<sup>121</sup> which calls for "a fair balance between the opportunities afforded the parties involved in litigation" is followed.

The campaigners never even made it to trial let alone being afforded the principle of the "equality of arms" which would only be able to be applied had they made it to trial. The detainees are particularly being punished for publicly engaging in political expression while being of the Sikh ethno-religious background<sup>122</sup> in violation of Article 14(1) of the ICCPR, as they have been for decades in India. As organized Sikh political activity in India is met with suppression through brute force of arms and the harshest provisions of Indian law, the detainees have been dealt with in a manner which renders them anything but equal before the courts.

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<sup>120</sup> ICCPR, supra note 71, Art 14.

<sup>121</sup> General Comment No. 32 (2007) on Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial, UN HUMAN RIGHTS COMMITTEE, CCPR/C/GC/32, Aug. 23, 2011, ¶ 8.

<sup>122</sup> "India: Don't Torture Sikh Activist Extradited by U.S." *Human Rights Watch*, 20 June 2006, <https://www.hrw.org/news/2006/06/20/india-dont-torture-sikh-activist-extradited-us>.

By depriving “Referendum 2020” campaigners of full due process rights, Indian authorities have taken punitive measures against “Referendum 2020” campaigners and established their pretrial detention as an opportunity to take unlawful punitive action against “Referendum 2020” campaigners for their exercise of their rights to freedom of opinion and expression, peaceful assembly, and association. Indian authorities treat human rights defenders and prisoners of conscience as common criminals. Authorities have especially treated the Sikh “Referendum 2020” campaigners, in abnormally egregious manners and deprive such detainees of their full due process rights creating an inequity in the legal system which has persisted for decades.

#### 6. Indian Authorities Violated “Referendum 2020” campaigner’s Right to be Free from Cruel, Inhuman, or Degrading Treatment

Indian authorities have violated “Referendum 2020” campaigner’s right to be free from cruel, inhuman or degrading treatment or punishment. Article 7 of the ICCPR,<sup>123</sup> Article 5 of the UDHR,<sup>124</sup> and Principle 6 of the Body of Principles<sup>125</sup> collectively establish this prohibition. The Body of Principles states that this prohibition “should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time.” Further, Articles 1-2 and 4-7 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>126</sup>, also collectively prohibit the infliction of physical or mental pain or suffering by a public official with the intention to intimidate or coerce.

India is a signatory to these provisions, but one of the few countries in the world who never ratified it domestically. This fact is a perfect demonstration as to the governing culture of the Republic of India which has many laws which it attempts to appear to uphold, but never wants to enforce, unless it is for the sake of its own ruling powers’ political expediency.

More broadly, Article 10(1) of the ICCPR<sup>127</sup> and Principle 1 of the Body of Principles of the OHCHR<sup>128</sup> state that persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

Whether during their initial arrest or throughout their time in prison while awaiting trial, “Referendum 2020” campaigners have been subjected to physical and mental abuse that has severely violated their dignity and normal function of their bodies. In an attempt to weaken their resolve prior to interrogation, to punish them for exercising their fundamental rights, and to dissuade them from continuing their human rights activities upon their release, Indian authorities have subjected “Referendum 2020” campaigners to torture and cruel, inhuman and degrading treatment for several years.

#### iii. Category V: Discrimination Based on a Protected Class

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<sup>123</sup> ICCPR, *supra* note 71, Art 7.

<sup>124</sup> *Universal Declaration*, *supra* note 82, Art. 5

<sup>125</sup> *Body of Principles*, *supra* note 102, Principle 6.

<sup>126</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, June 26, 1987, 1465 U.N.T.S 85, Arts. 1-2, 4-7.

<sup>127</sup> ICCPR, *supra* note 71, Art 10.

<sup>128</sup> *Body of Principles*, *supra* note 102, Principle 1.

The detention of “Referendum 2020” campaigners due to their political opinions, political participation, and activities as human rights defenders is arbitrary under Category V.

A detention is arbitrary under Category V when, in violation of international law, the detention is discriminatory “based on . . . political or other opinion . . . and aims towards or can result in ignoring the equality of human rights.”<sup>129</sup> Article 7 of the UDHR<sup>130</sup> and Article 26 of the ICCPR<sup>131</sup> further prohibit discrimination before the law on a number of grounds, including “political or other opinion”.

“Referendum 2020” campaigner’s arrest and detention is the physical manifestation of the culture of discrimination currently being perpetrated against the Sikh campaigners by Indian authorities in light of their protected status as human rights defenders.

“Referendum 2020” campaigners were arrested due to their legitimate political opinions, political participation, and status as human rights defenders. “Referendum 2020” campaigners are being charged based on their participation in mild public demonstrations expressing the desire for self-determination for Sikhs, an end to anti-Sikh discrimination, and the Indian government’s removal of their imposed status as “Hindus”. According to civil society organizations mentioned previously and independent media in India, “Referendum 2020” campaigners are being particularly targeted in reprisal to their work as human rights defenders for Sikhs, their participation in human rights campaigns and initiatives, and particularly their willingness to publicly and peacefully express the historical political aspirations of the Sikh community for self-determination.

Since being detained, “Referendum 2020” campaigners have been singled out by authorities and treated in a manner different than that which any Indian citizen facing possible charges would be subjected to. As reported above, one of the family members of the detainees (Shabnamdeep Singh) reported to SFJ that the detainee was constantly being tortured. Another detainee lost adequate function of their penis, as recorded in Hoshiarpur hospital medical reports in their extraordinarily late physical assessments of the detainees. This treatment exists due to a national culture cultivated by the history of the persecution of Sikhs in Punjab, and the subsequent political atmosphere manifesting in the Sikh community in regards to the persecution. “Referendum 2020” campaigners have been subjected to torture, absurd pre-trial detention, egregious prison conditions, and severe violations of due process.

The arrest and continued detention of “Referendum 2020” campaigners is an egregious violation of their fundamental human rights. The Government of the Republic of India has violated the following human rights under various provisions of the Indian Constitution, Indian laws, and international law by unlawfully extending the pretrial detention of “Referendum 2020” campaigners and subjecting them to mistreatment:

- The right to be free from arbitrary detention;
- The right to freedom of association;

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<sup>129</sup> *Revised Methods of Work*, *supra* note 64, ¶8(3).

<sup>130</sup> *Universal Declaration*, *supra* note 82, Art. 7.

<sup>131</sup> *ICCPR*, *supra* note 71, Art 26.

- The right to freedom of expression
- The right to due process, including the right to be promptly brought before a judge, the right to appeal the lawfulness of detention, the right to prepare an adequate defense, the right to be presumed innocent before guilty, and the right to be equal before the courts; and
- The right to dignity and the right to be free from torture and cruel, inhuman or degrading treatment or punishment.

We hereby request that the all the Nations of the world to take notice of India’s flagrant human rights violations against Referendum 2020 Campaigners and:

1. Issue a statement on “Referendum 2020” campaigner’s arrest and ongoing pretrial detention to be in violation of India's obligations under Article 1, 18, 19, 22 of the ICCPR;
2. Call for “Referendum 2020” campaigner’s immediate release as per the provisions 3 and 4 of Article 9 of the ICCPR;
3. Urge that the Government of India investigate and hold accountable all persons responsible for the unlawful arrest, continued detention, and mistreatment of “Referendum 2020” campaigners; and
4. Urge the Government of India to award “Referendum 2020” campaigners compensation for the egregious violations, physical, and psychological torture they have endured as a result of their unlawful arrest, arbitrary detention, and mistreatment while in state custody as enshrined by provision 5 of Article 9 of the ICCPR.

### **Human Rights Defenders At Risk –**

#### **Case of Gurpatwant Singh Pannun, An Intl. Human Rights Lawyer:**

New York based attorney Gurpatwant Singh Pannun, is a human rights lawyer and legal adviser to human rights advocacy group “Sikhs For Justice” (SFJ) since its inception in 2007. Since co-founding the human rights advocacy group, attorney Pannun has been the target of egregious violations of human rights directly in reprisal to his work as a human rights defender and legal adviser to SFJ.

The 31<sup>st</sup> resolution adopted by the United Nations General Assembly Human Rights Council was established in regards to “Protecting human rights defenders, whether individuals, groups or organs of society, addressing economic, social and cultural rights”. This resolution includes India as a signatory state voting *in favor* of the resolution<sup>132</sup>. In typical fashion the government of India did not uphold a single provision of the resolution in regards to attorney Pannun’s status as a human rights defender, but violated all its protections instead.

The resolution clearly states that it “...Calls upon all States to take all measures necessary to ensure the rights and safety of human rights defenders, including those working towards the realization

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<sup>132</sup> See UN Human Rights Council resolution 31/32 *Protecting human rights defenders, whether individuals, groups or organs of society, addressing economic, social and cultural rights* A/HRC/RES/31/32 24 March 2016

of economic, social and cultural rights and who, in so doing, exercise other human rights, such as the rights to freedom of opinion, expression, peaceful assembly and association, to participate in public affairs, and to seek an effective remedy;”

The purpose of all the work in the defense of human rights by attorney Pannun through SFJ is to fully realize the economic, social and cultural rights of the Sikh nation that they were never afforded since the independence of India from the British Raj, through the right to self-determination for Sikhs.

This cannot be done without attorney Pannun, SFJ, and its supporters being able to exercise their rights to freedom of opinion, expression, peaceful assembly, association and ability to seek an effective legal remedy as guaranteed for all people under international law. On one hand the Republic of India positively affirms the incorporation of the various provisions of international law it signs in favor of domestically, but on the other, it challenges all its citizens to attempt to utilize those rights in the face of extrajudicial execution, arbitrary and indefinite detention, as well as a near guarantee of torture in detention.

Attorney Pannun as a man of the Sikh ethnoreligious background working as a human rights defender, met this challenge in light of the unabated violations of India and thus filed numerous legal actions against high ranking officials of the government of India, held demonstrations, and solidarity gatherings with Sikhs and non-Sikhs alike who are engaged in a decades long struggle for the realization of their fundamental right to self-determination and internationally guaranteed rights suppressed by India.

While undertaking legal actions to advance the fundamental human rights of Sikhs, SFJ and attorney Pannun have subsequently been the subject of a sustained smear campaign by the Indian regime, consisting of blatant fabrications in violation of Article 17 of the ICCPR<sup>133</sup>. Since Prime Minister Narendra Modi’s Hindu ultra-nationalist Bharatiya Janata Party (BJP) came into power in 2014, the smear campaign has heightened and has reached the level of outright persecution, characterized by the muzzling of dissenting or minority voices by filing baseless and frivolous criminal charges against all who express them<sup>134</sup>.

On July 8, SFJ filed a defamation lawsuit in Canadian court against government of India for falsely claiming that (a) attorney Pannun is a convicted terrorist; (b) SFJ and attorney Pannun are working with Pakistan’s spy agency ISI (c) SFJ is a terrorist organization.

At the time of the accusations until now, attorney Pannun has never committed or been found guilty of any criminal charges applied to him. Attorney Pannun was requested to be placed under an INTERPOL red notice status by India. This was promptly denied to India due to the weak legal basis for the request, and attorney Pannun’s counter submission to INTERPOL. Neither SFJ nor Pannun have been found to engage in activities which could be classified as “terrorist” even under India’s own laws. Though several attempts were made by the Indian government to classify attorney Pannun, SFJ, and its supporters as terrorists in their national media, the attempts failed

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<sup>133</sup> *ICCPR Art 17*

<sup>134</sup> Singh, Gurpreet. “Indian Media Censors Itself under Narendra Modi.” *Georgia Straight Vancouver's News & Entertainment Weekly*, 19 Mar. 2018, <https://www.straight.com/news/1042551/gurpreet-singh-indian-media-censors-itself-under-narendra-modi>.

due to the lack of supporting evidence. The only officially filed charge for “terrorism” against attorney Pannun has been made by the police of Punjab who extracted the statement through torturing an arbitrarily detained “Referendum 2020” supporter mentioned above.

These tactics are nothing new to the Republic of India who has been using them for decades against the Sikh community, and the other ethnic minorities of India. By framing the narrative to make a peaceful, democratic movement seem to be a terrorist organization, the Republic of India sets the ground to pursue charges of vague anti-terrorist laws subject to impermissibly excessive discretion which assign the broadest powers in violation of the ICCPR, to the government, on those they would like to crush. The populace of India at large having been intellectually conditioned by constant propaganda, is left misinformed and in fact, supporting the armed actions against peaceful supporters of a referendum. These tactics have been reported on to be thus since 1998, but for decades passed as well<sup>135</sup>. The number of sectarian incidents in India since then, have only increased under the BJP government.

Due to these developments, attorney Pannun through SFJ is committed to organizing the first ever unofficial referendum among the global Sikh community in the year 2020 on the question of secession of Punjab from India and establishing a sovereign state of “Khalistan” in the region of Punjab currently governed by India.

Attorney Pannun’s activities as a human rights defender thus began to give a voice to the silenced Sikhs of Punjab. Attorney Pannun used the platform created by SFJ to communicate the collective political will of Sikhs to the world at large due to the mass censorship and suppression of any organized Sikh political activity in India. More than the world at large, SFJ has been a key platform for Sikhs to rally around globally, for the realization of their fundamental human rights. Attorney Pannun used his legal knowledge and life experiences as a Sikh to expose the injustices committed against the Sikhs in India, and to advocate the fundamental right of self-determination for the Sikh nation.

Attorney Pannun through SFJ hosts several rallies and events every year to protest the Indian government, and to hold community solidarity gatherings with Sikhs and non-Sikhs fighting Indian oppression. Attorney Pannun also creates media content to update the Sikh community on the status of the "Referendum 2020" campaign and the initiatives of SFJ. Attorney Pannun also directs SFJ staff in creating informational reports about little known injustices in India to the relevant authorities of the world. These reports have resulted in legal actions by various governments of the world including Canada, the United States, the United Nations, and the United Kingdom.

- In 2013 attorney Pannun through SFJ filed a lawsuit in the U.S Federal court against visiting Congress Party President Sonia Gandhi for shielding the leaders of Congress party who were complicit in the November 1984 anti-Sikh genocidal violence<sup>136</sup>.
- The following year in 2014 Pannun through SFJ filed lawsuit in the US Federal Court against Manmohan Singh the then Prime Minister of India for paying cash reward to killer

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<sup>135</sup> Marshall, Paul. “Hinduism and Terror.” *By Paul Marshall*, <https://www.hudson.org/research/4575-hinduism-and-terror>.

<sup>136</sup> “US Court Dismisses 1984 Case against Sonia Gandhi.” *The News Minute*, 13 Oct. 2015,

<https://www.thenewsminute.com/article/us-court-dismisses-1984-case-against-sonia-gandhi-22666>.

cops during his tenure as Finance Minister<sup>137</sup>. In 2015, SFJ through Pannun filed a lawsuit in the U.S Federal Court against newly elected Prime Minister Narendra Modi for his role in 2002 massacre of Muslims in Gujarat when he was Chief Minister of that state<sup>138</sup>.

- In 2016 SFJ and attorney Pannun blocked the visit to Canada of Amarinder Singh the current Chief Minister of Punjab by complaining to the Canadian authorities about his planned electioneering and fund raising against Canadian law which prohibits foreign nationals from campaigning in Canada<sup>139</sup>.
- SFJ held a demonstration on June 6, 2019, in commemoration of the 1984 Genocide of Sikhs which drew large scale support from Sikhs and Non-Sikhs alike. Popular British entertainers such as Taran Kaur (Hard Kaur) and former American Congressman Patrick Meehan spoke in support of the "Referendum 2020" and subsequently generated immense hysteria within the now Hindu Ultra-Nationalist government of India and led to the banning of SFJ in India on July 10, 2019.

The ultra-nationalist BJP has framed these actions as a grave threat to their national security. However, more than the developments posed a threat to the national security of India, they presented a challenge to the power and ideological basis of the BJP and its supporters. Hence, the repression of attorney Pannun, SFJ, Sikhs, and its supporters is entirely politically motivated by an extreme right-wing Hindu movement. This movement has been widely reported on for its myriads of human rights violations by organizations such as Human Rights Watch<sup>140</sup>. The latest violation being the annexation of the autonomous area of Indian Kashmir, the imposition of martial law within its borders, and the dissolving of its democratically elected government by the use of military force accompanied with a full blackout of all communication systems to the outside world inside Kashmir.

The Indian government under Modi of the BJP, has no moral, let alone legal ground to ban SFJ considering that it has allowed Hindu hate groups like the RSS to work freely and spew venom against non-Hindus for the purposes of inciting sectarian violence blatantly in violation of Article 20 of the ICCPR. Attacks on religious minorities have continued to increase unabated by Hindu nationalist groups ever since Modi became the prime minister in 2014<sup>141</sup>. A fact which is well recorded, and also addressed in court by attorney Pannun who issued a summons for Modi in the

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<sup>137</sup> Pti. "US Court Issues Summons against Manmohan Singh." @Businessline, The Hindu BusinessLine, 12 Mar. 2018, <https://www.thehindubusinessline.com/news/world/us-court-issues-summons-against-manmohan-singh/article20665162.ece1>.

<sup>138</sup> Pti. "Sikh Group Seeks Prosecution of PM Narendra Modi in Canada for 2002 Riots." *The Economic Times*, Economic Times, 9 Apr. 2015, <https://m.economictimes.com/news/politics-and-nation/sikh-group-seeks-prosecution-of-pm-narendra-modi-in-canada-for-2002-riots/articleshow/46861631.cms>.

<sup>139</sup> Singh, P. "SFJ Files \$ 1 Million Defamation Suit against Captain Amarinder Singh in Canada: Chandigarh News - Times of India." *The Times of India*, <https://timesofindia.indiatimes.com/city/chandigarh/SFJ-files-1-million-defamation-suit-against-Captain-Amarinder-Singh-in-Canada/articleshow/53299959.cms>.

<sup>140</sup> "World Report 2019: Rights Trends in India." *Human Rights Watch*, 18 Jan. 2019, <https://www.hrw.org/world-report/2019/country-chapters/india>.

<sup>141</sup> Malhotra, Ashish. "Religious Violence Is Rising in Narendra Modi's India. It Might Not Hurt His Reelection Hopes." *Los Angeles Times*, Los Angeles Times, 15 Apr. 2019, <https://www.latimes.com/world/la-fg-india-election-religion-20190415-story.html>.

same year in U.S Federal Court, for his instigation of anti-Muslim fervor which led to mass killings and rape during the 2002 Gujarat Riots for the purposes of increasing his political power.

The Indian government has consistently failed to punish those who indulge in majoritarian extremism, while minority groups face oppression for voicing their grievances. The Indian state should either revoke the ban on SFJ, and its charges on attorney Pannun, or admit that it is an intolerant Hindu state that does not allow minorities to even entertain expressing their political opinion in public, let alone their right to self-determination. By banning a group that functions within the legal and democratic framework of international law and choosing to turn a blind eye to the violent activities of the Hindu right, Indian democracy has lost its credibility.

Although attorney Pannun through SFJ has been working to expose the human rights violations and denial of justice to minorities, particularly Sikh people in India, it is attorney Pannun's work in upholding the right to self-determination of the Sikh community, guaranteed by the UN Charter, Universal Declaration of Human Rights and International Covenants which has placed him as a high priority target to be silenced and punished by India for his work as a Human Rights Defender.

Attorney Pannun was subsequently charged with a series of false charges including the **Section 124A. Sedition Law** which states:<sup>142</sup>

Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

- *Explanation 1.* —The expression “disaffection” includes disloyalty and all feelings of enmity.
- *Explanation 2.* —**Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.**
- *Explanation 3.* —Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

The Sedition Law does not apply to attorney Pannun by the standard of International Law or of domestic Indian law itself;

- A. Attorney Pannun has never been arrested for, nor proven to be found engaging in a single crime or terrorist action in any location in the world whether in connection to SFJ or privately.
- B. All of the legal actions undertaken by attorney Pannun have been through lawful means, without exciting or attempting to excite hatred or contempt. All of the actions undertaken by attorney Pannun have been reported on by the various press of the world, and can be easily seen to be within legal parameters of the domestic and international law.

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<sup>142</sup> *Section 124A in The Indian Penal Code*, [indiankanoon.org/doc/1641007/](http://indiankanoon.org/doc/1641007/).

- C. All of the comments made by attorney Pannun on his social media accounts or websites are publicly available and can easily be seen to confirm that the nature of the messages has never attempted to excite hatred inside or outside India.
- D. Every charge falsely applied to attorney Pannun would be remarkably appropriate charges for the now PM of India, Narendra Modi as Modi himself has violated Explanation 1, 2, and 3 of the Sedition law due to his outspoken role in successfully inciting sectarian violence against the Muslims of Gujarat, leading to scores of killings in public by his ideological supporters. Modi's action thus also stands in direct violation of Article 20 of the ICCPR. To place these charges on attorney Pannun with him never having violated any of their provisions while the PM of India himself is guilty of them, is a truly a gross violation of International Law<sup>143</sup> and its *raison d'être*.
- E. This pattern of abuse of human rights defenders and civil societies by the Hindu Nationalist government of India has been known to the international community through the various country reports by organizations such as Human Rights Watch and Amnesty International for decades. Thus, the violations of International Law against attorney Pannun should be viewed in light of these developments.

In the Human Rights Watch's country reports 2019 for India, it clearly describes the treatment of civil societies and human rights defenders in India;<sup>144</sup>

“Authorities increasingly used the Unlawful Activities Prevention Act to target civil rights activists and human rights defenders. Police in Maharashtra state arrested and detained 10 civil rights activists, lawyers, and writers, accusing them of being members of a banned Maoist organization and responsible for funding and instigating caste-based violence that took place on January 1, 2018. At time of writing, eight of them were in jail, and one was under house arrest. A fact-finding committee, headed by Pune city's deputy mayor, found that the January 1 violence was premeditated by Hindu extremist groups, but police were targeting the activists because of pressure from the government to protect the perpetrators.”

The same report elaborates the treatment of those who express their fundamental human right to freedom of expression;

Authorities continued to use laws on sedition, defamation, and counterterrorism to crack down on dissent.

In April, police in Tamil Nadu state arrested a folk singer for singing a song at a protest meeting that criticized Prime Minister Narendra Modi. In August, state authorities detained an activist for sedition, allegedly for describing police abuses against protesters opposing a copper factory at the UN Human Rights Council. When a magistrate refused to place him in police custody, police arrested him in an older case and added sedition to the charges against him. Police have also added charges under the Unlawful Activities Prevention Act (UAPA), the key counterterrorism law.

These very actions were undertaken against attorney Pannun as a part of the Indian BJ nationalist party's efforts to silence all its legitimate domestic opposition and are a blatant violation of the ICCPR, and India's signatory status on its provisions which it is required to uphold such as Articles 19, (Right to Freedom of expression), 20 (prohibition of incitement to discrimination, hostility or violence) and 22 (Right to Freedom of association).

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<sup>143</sup> Singh, Gurpreet. “Indian State Shows Double Standards By Charging Sikhs For Justice Activists For Sedition.” *Countercurrents*, Countercurrents.org, 7 July 2017, <https://countercurrents.org/2017/07/indian-state-shows-double-standards-by-charging-sikhs-for-justice-activists-for-sedition>.

<sup>144</sup> “World Report 2019: Rights Trends in India.” *Human Rights Watch*, 18 Jan. 2019, <https://www.hrw.org/world-report/2019/country-chapters/india>.

The Bharata Janata Party (BJP) which rules India today is a staunchly Hindu ultra-nationalist outfit which holds the most elected positions in the Indian government across all chambers. The party enforces its ideology and draws its supporters through its parent organization which is the civilian nationalist militia known as the Rashtriya Swayamsevak Sangh. The grim reality of the situation at hand is that the BJP is condemning Sikhs like attorney Pannun and their community organizations working in defense of human rights on grounds of terrorism. This preposterous charge manages to exist simultaneously with the constant incitement to sectarian violence by the BJP's political umbrella, followed by the violent actions of its nationalist supporters as well as the flagrant abuse of official powers by the members of BJP and RSS against the minorities of India. The most recent demonstration of this abuse of powers on a massive scale can be seen as such in the recent military annexation and occupation of Kashmir against all domestic and international laws<sup>145</sup>.

The BJP led Indian government with its levers in the massive national press organs of India, continuously publishes slanderous articles against attorney Pannun, SFJ, and all Sikhs who support the initiatives of both. The articles frame attorney Pannun as a "foreign mastermind terrorist handler", an ISI (Pakistani Intelligence) stooge, among a host of other slanderous accusations. They then go on to classify private individuals of the Sikh community who are unaffiliated with attorney Pannun, but whose political opinions align with attorney Pannun, as terrorists.

These articles are following a false narrative created by the Indian government as apparent in their charge sheet provided to SFJ through a Freedom of Information request by the State of Punjab. The charge sheet labels attorney Pannun as a terrorist mastermind after the Punjab Police arbitrarily detained and tortured a "Referendum 2020" supporter mentioned above, in order to secure a false confession for the given statement. This directly violates the ICCPR Article 7 which prohibits torture, Article 9 which prohibits arbitrary arrest and detention, Article 9.3 and 9.4 as the detainees aside from attorney Pannun were and are still kept in pre-trial detention for around two years, but also Article 10 which requires anyone deprived of liberty to be treated with dignity and humanity. None of which were afforded to the detained "Referendum 2020" supporters, attorney Pannun, or SFJ.

Since the persecution is backed by the Indian state, legal system, and the ideology of the majority, there is no relief available in India, which is in violation of Article 2(a) of the ICCPR. The Indian government has concocted a false narrative to achieve the character assassination of attorney Pannun and SFJ in order to disrupt and dismantle his activities as a Human Rights Defender.

The government of Punjab in India, upon request to the central government banned Sikhs For Justice in July 2019, following the denial of the Indian governments requests for INTERPOL's red notice on attorney Pannun. Most of the legal justifications for the ban are the impermissibly vague provisions of the dreaded Sedition Law and Section 3 of the Unlawful Activities Prevention Act of the Indian Penal Code<sup>146</sup>.

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<sup>145</sup> TRTWorld. *The World Reacts to India's "Illegal Annexation" of Kashmir*, TRT World, 5 Aug. 2019, <https://www.trtworld.com/asia/the-world-reacts-to-india-s-illegal-annexation-of-kashmir-28774>.

<sup>146</sup> Tribune News Service. "Centre Bans US-Based SFJ." *Tribuneindia News Service*, 11 July 2019, <https://www.tribuneindia.com/news/punjab/centre-bans-us-based-sfj/800115.html>.

The websites of Sikhs For Justice and the associated campaign "Referendum 2020" have been censored in India in addition to all the personal social media accounts of attorney Pannun and the members of SFJ's marketing team, being closed per request by the Government of India. Domestic remedy is unviable for attorney Pannun as Indian law requires government permission to prosecute officials accused of wrongdoing. In addition, as the government is facilitating these arrests, the notoriously corrupt judicial system of India, overseen by the Hindu ultra-nationalist BJP, would surely dismiss correct due process and try attorney Pannun as a terrorist. The special anti-terror laws used against him would guarantee him indefinite detention and torture, as it did the "Referendum 2020" campaigners.

Countless examples of "fast track" courts designed to imprison Sikhs at government discretion have been reported on by human rights agencies worldwide<sup>147</sup>. As almost seventy percent of Indian detainees remain in detention without trial, a high priority target like attorney Pannun would certainly be detained, tortured, and tried under atrocious anti-terror laws originally created to suppress Sikhs.

In regards to these issues, On July 10, Government of India declared SFJ an illegal organization under Unlawful Activities Prevention Act and started a crackdown on SFJ and its legal adviser attorney Pannun;

- July 2019 – Declaring SFJ and illegal organization for running the Khalistan Referendum 2020 campaign.
- 2017 to date. Filing of scores of false and frivolous criminal charges against Pannun in India for running Referendum 2020 campaign.
- 2018 to date. Attempting to obtain Red Notice from Interpol on the basis of frivolous cases. Upon counter submission by attorney Pannun, Interpol declined to issue the Red Notice against attorney Pannun in the first such request made by India in 2018. The rest of the cases are based on similar factual predicates.
- 2018 to date. Forcing detained Referendum campaigners through torture and intimidation to extract false confession implicating attorney Pannun.
- 2018 to date. Forcing through torture other individuals in custody for various crimes to give statements that they committed the alleged crimes acts on the directions of attorney Pannun for the purpose of manufacturing a case.
- 2016 to date. Banning access to SFJ websites and Facebook pages in India, forcing the Facebook, Twitter and WhatsApp to block accounts of Pannun and other referendum campaigners despite them being within the terms and services of the platforms.

The urgency of action against these issuances cannot be understated as hundreds of Indian citizens who merely support the political stance via their opinion of SFJ and attorney Pannun have been arbitrarily detained, and tortured, in Indian Punjab without any due process. The indifference of the international community fostered by India's censorship and creation of false narratives has facilitated the commission of these human rights violations by India against attorney Pannun and those who share his political views.

In light of the nature of the charges and the ignoring of proper due process in applying them,

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<sup>147</sup> Stigall, Dan E. "Home." *Harvard National Security Journal*, 14 Sept. 2017, <https://harvardnsj.org/2017/09/indias-distressed-justice-sector-a-matter-of-u-s-national-security-concern/>.

the state has unequivocally failed to produce a single piece of evidence thus far indicating that attorney Pannun's actions could implicate him in any of the charges brought against him, including but not limited to the "overthrow of the government", "encouraging terrorism", "recruiting terrorists", "the spreading of false news" and "incitement of hatred". These charges include impermissibly oppressive provisions which have been repeatedly used by the Indian government against peaceful dissidents to unduly restrict the fundamental rights to freedom of expression and peaceful assembly.

For decades these charges have been merely a pretense to allow authorities to crackdown on the constitutionally-protected and internationally recognized rights and activities of human rights defenders such as attorney Pannun, and Indian citizens whose opinions rankle the BJP led Republic of India's accepted political narratives. These narratives have been created and enforced through the violence conducted by the RSS, its subsequently spawned BJP political party and its ideological affiliates, in violation of Article 20 of the ICCPR.

These human rights violations regarding attorney Pannun and all in connection to his work have been pursued simultaneously with the Indian government disseminating their manufactured narrative against attorney Pannun, which is politically motivated to crush the legitimate grievances of India's minorities through misinformation campaigns. These campaigns are created to give an heir of moral and intellectual justifiability for the governments blatant abuses relating to the suppression of minority opinions<sup>148</sup>. These actions are in direct violation of Article 20 of the ICCPR.

It is indisputable that peacefully campaigning for independence is not a crime. A "peoples" right to self-determination is a fundamental principle of international law, guaranteed under the ICCPR, UN Charter and Bill of Rights<sup>149</sup>. Self-determination may be sought and exercised internally (within a parent state) or, in certain circumstances, externally, through secession and independence. According to the International Court of Justice, a sub-group (in this case Sikhs) may lawfully conduct a referendum on independence and declare independence without agreement of the parent state, in this case, the Republic of India.<sup>150</sup>

Peaceful assemblies of Sikhs demonstrating their political aspirations are explicitly banned and repressed by force in India, unless they are in support of Hindu nationalism. In addition to physical assembly, all internet communications made on social media by any individual criticizing the Indian government are met with outright suppression on all fronts in violation of Articles 19 and 22 of the ICCPR.

Directly in connection to his activities as a Human Rights Defender, attorney Pannun's social media accounts have been constantly attacked by the Indian government across all platforms such as Facebook, Twitter, and Instagram. Despite not violating the terms of services of the various

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<sup>148</sup> Madan, Aman. "India's Not-So-Free Media." *The Diplomat*, The Diplomat, 23 Jan. 2019, <https://thediplomat.com/2019/01/indias-not-so-free-media/>.

<sup>149</sup> See, Article 1 of the UN Charter; Article 1 of the International Covenant on Civil and Political Rights; and Article 1 of the International Covenant on Economic, Social and Cultural Rights. Peoples who have been denied self-determination within their parent state may, in exceptional circumstances, lawfully pursue external self-determination (via secession).

<sup>150</sup> See, *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, 22 July 2010, ICJ Reports 2010, p 403

platforms, as well as creating the posts outside the borders of India and their jurisdiction, the government of India has pressured these platforms to repeatedly close Mr. Pannun's social media accounts.

In addition to attorney Pannun's personal social media accounts, the websites [www.sikhsforjustice.org](http://www.sikhsforjustice.org) and [www.2020referendum.org](http://www.2020referendum.org) have been banned in India along with the social media accounts of SFJ's marketing team. All domain servers connected to attorney Pannun and SFJ have been constantly facing cyber-attacks attempting to gain access to the organizations servers or disrupting its message delivery system and databases for the purpose of subverting the human rights activities of Mr. Pannun and his organization.

The government of India authorized the banning of the accounts of the SFJ's media staff on social media platforms such as Facebook, Instagram, and Twitter, following vague reports of "complaints" by anonymous individuals. These "complaints" cannot be given any credence since they are used as a pretext for politically motivated censorship of minorities views. Freedom of opinion and expression relating to the referendum is explicitly banned and suppressed with excessive force. SFJ's media platforms are censored in India and the servers of SFJ remain under continuous hacking attacks and other cyber disruption of its campaign.

An example which demonstrates the whimsical prevalence of Indian censorship through anonymous "complaints", is of British entertainer Taran Kaur who created social media posts criticizing elected officials of the Hindu ultra-nationalist BJP<sup>151</sup>. Taran Kaur demonstrates the commonality of the persecution of minority held political opinions because she is a well-known media figure in India and the UK. The response that Kaur was met with because of her statements provides an inkling into the level of repression faced by Indian women and minorities. Kaur, even as a British citizen with widespread media popularity, has been unable to escape the arbitrary issuance of force by the BJP led government. Her social media posts speaking in favor of "Referendum 2020" have unleashed thousands upon thousands of death threats, and gang-rape threats, made to Kaur on various mediums of communication including her personal cell-phone, by supporters of the BJP and RSS who indulge in the hyper-masculine rape culture promoted by its nationalist ideology<sup>152</sup>.

This case serves to be juxtaposed with the cases of the tens of thousands of unreported cases of either gang rape and murder, or threats of both to Indian men and women who stand against the BJP regimes narrative and actions. A day after Kaur expressed her opinion on social media, an Indian lawyer from Varanasi filed a complaint against Kaur stating that his feelings were "deeply hurt" by her statements. The result was a hysterical Indian anti-minority political party slamming Kaur with charges of Sedition, and incitement to hate, among others. The penalty for Sedition includes life imprisonment, which Kaur would be eligible for due to her expressing her personal opinion on her personal social media account, outside the borders of India.

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<sup>151</sup> "Rapper Hard Kaur Charged With Sedition for Posts Against Adityanath, Bhagwat." *The Wire*, <https://thewire.in/rights/rapper-hard-kaur-charged-with-sedition-for-posts-against-adityanath-bhagwat>. "Rapper Hard Kaur Charged With Sedition for Posts Against Adityanath, Bhagwat." *The Wire*, <https://thewire.in/rights/rapper-hard-kaur-charged-with-sedition-for-posts-against-adityanath-bhagwat>.

<sup>152</sup> "A New Wave of Attacks on Freedom of Opinion And Criminalizing Dissent in India." *Club Suisse De La Presse - Geneva Press Club*, 7 Aug. 2019, <http://pressclub.ch/a-new-wave-of-attacks-on-freedom-of-opinion-and-criminalizing-dissent-in-india/?lang=en>.

It is this misuse of a "complaint" made by an individual who as a registered nationalist had their feelings offended in a post which they did not need to read or comment about further, which is being used as a pretext to attack the legitimate political opinions of Indian minorities such as Sikhs. This renders the "complaints" referred to by the Indian state as grounds for legal action as baseless and completely inappropriate for legal action, given its politically motivated background, and unreasonably egregious legal penalties.

These very "complaints" were what resulted in the social media accounts of SFJ's executive (including attorney Pannun) and marketing team being banned, even though the banned individuals were in full compliance of the terms and services of the various social media platforms. In a clear overstep of its jurisdiction, the Indian government used the pressure of "complaints" for alleged "offensive content" to ban the accounts of human rights defenders who are not citizens of India, residing in India, working in India, or using Indian platforms.

Unlike the Republic of India, it is under the framework established by international law that attorney Pannun operates his human rights advocacy work. The deference to the International Law by attorney Pannun is due to the lack of any possible legal remedy in India. The long list of crimes against humanity perpetrated by the Indian government on its Sikh population over decades which have never been offered just and proper redress or compensation domestically to date.

This fact coupled with the anti-minority Hindu nationalist party in power, leaves attorney Pannun and the Sikh community no choice but to pursue justice outside of the Indian system. The Indian state apparatus offers no effective legal remedy for the said violations as according to Indian law, government permission must be granted in order to prosecute a government official for crimes. As it is the government of India itself facilitating these crimes, no permission to prosecute any government official for suppression of minorities can be acquired.

The UNHRC Resolution adopted in Session 31/32 "Protecting human rights defenders, whether individuals, groups or organs of society, addressing economic, social and cultural rights"<sup>153</sup> explicitly states that in;

Provision 4: Urges all States to acknowledge in public statements at the national and local levels, and through laws, policies or programmes, the important and legitimate role of human rights defenders, including women human rights defenders, in the promotion of human rights, democracy and the rule of law in all areas of society, in urban and rural areas, as essential components of ensuring their recognition and protection, including those promoting and defending economic, social and cultural rights; 1 General Assembly resolution 53/144, annex 2 A/HRC/4/37, A/HRC/19/55, A/68/262, A/70/217. A/HRC/RES/31/32 4

Provision 5: Strongly condemns the reprisals and violence against and the targeting, criminalization, intimidation, arbitrary detention, torture, disappearance and killing of any individual, including human rights defenders, for their advocacy of human rights, for reporting and seeking information on human rights violations and abuses or for cooperating with national,

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<sup>153</sup> See UN Human Rights Council resolution 31/32 *Protecting human rights defenders, whether individuals, groups or organs of society, addressing economic, social and cultural rights* A/HRC/RES/31/32 24 March 2016

regional and international mechanisms, including in relation to economic, social and cultural rights;

Provision 6: Calls upon all States to combat impunity by investigating and pursuing accountability for all attacks and threats by State and non-State actors against any individual, group or organ of society that is defending human rights, including against family members, associates and legal representatives, and by condemning publically all cases of violence, discrimination, intimidation and reprisals against them;

Since India voted *in favor* of the UNHRC Resolution 31/32, Sikhs For Justice hereby formally requests all the nations of the world to take immediate notice and action to hold India responsible before United Nations (General Assembly or UNHRC) for violating the human rights obligations it has taken upon itself to fulfill.

1. SFJ demands that the government of India be made to publicly state at the national and state level in Punjab, to announce its renewed commitment by policy to the provisions of the UNHRC UDHR and ICCPR in recognizing the protected and legitimate role of human rights defenders such as attorney Pannun in the promotion of human rights, democracy and the rule of law.
2. SFJ demands that the government of India be made to prosecute state actors targeting, intimidating, arbitrarily detaining, torturing, and extra judicially assassinating any individual in Punjab and India as a whole for supporting the “Referendum 2020” campaign to realize the right to self-determination for Sikhs due to its violation of Articles 1, 6, 9, 19, 22, and 26 of the ICCPR.
3. SFJ demands the government of India to be made to open an investigation to ascertain accountability of the individuals in the Indian government who abused their official capacities to slander and falsely charge attorney Pannun with “anti-national” activities, for his work as a human rights defender as the legal advisor to SFJ and award compensation for damages incurred as a result, due to its violation of Article 17 of the ICCPR.
4. SFJ demands the government of India be made to revoke the bans on the social media accounts of attorney Pannun as well as the websites for SFJ and the “Referendum 2020” due to being in violation of Article 19(2) of the ICCPR.
5. SFJ demands that the government of India be made to revoke all charges placed on attorney Pannun under the Unlawful Activities Prevention Act and Sedition Law of India due to the confessions used for the charges being drawn from the use of torture which is in violation of Article 7 and 17 of the ICCPR.

## CONCLUSION

These cases clearly demonstrate the pattern of abuses and violations of international law committed by the government of India for decades. The seriousness of the facts of this petition lies in the recent developments seen in Kashmir. Kashmir despite having a legally protected status in India and internationally, was annexed by military force using the strategic the blueprint laid out to the Indian government by its military occupation of Punjab. In the Indian assault and occupation of Punjab in the 1980’s and 90’s a series of pogroms against Sikhs were encouraged and initiated, leading to the killing of tens of thousands of Sikhs.

Today the actions of the Republic of India under the BJP party have further escalated the previous levels of violence India undertakes internally, as is clearly seen by the annexation of Kashmir and the expansion of India's previous policies on the use of force. It is with this understanding of the Indian governments penchant for throwing away domestic and international law in favor of violent action that SFJ urges the United Nations to take action to curtail Indian state violence and impose the standards of international law that the Indian government has dismissed. Without the international courts taking action against India for these violations, the international community can be guaranteed of the continuance of such violations by India for years to come.

Since private individuals and human rights defenders such as attorney Pannun and the members of SFJ have found themselves alone in holding to account the perpetrators of violent mass discrimination in India, the international community must now take decisive action which it has avoided for decades, much as it did in the genocide of Sikhs in 1984 and Rwanda after it. The consistent and blatant violation of the core provisions of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Bill of Rights by the Republic of India against Sikhs despite years of reports demonstrating this were completely ignored. This inaction has made and would continue to make the international community complicit in allowing these crimes to occur, with full knowledge of their existence and full ability to stop them. It is on these grounds that Sikhs For Justice urges the Nations of the World to take notice of and raise voice against India for her flagrant violations of the freedoms guaranteed to all people, and her vengeance against the the democratic "Referendum 2020" campaign.

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