

WAILS OF INJUSTICE

The role of Central Bureau of Investigation in investigating cases of human rights violations in Punjab has been most shady to shield the guilty policemen. It has acted in an appalling manner, making a mockery of the entire criminal justice system. With the poor quality of investigation and serious lapses committed by it during preparation of challan, it has experienced embarrassing situation more than once, when the courts granted bail to the accused policemen or even acquit them for lack of evidence. In many cases, it simply filed untraceable reports, showing its incompetence thereby betraying the confidence reposed in it. Its prosecution is too favourably disposed towards the offender. Even the tale of police excesses in Punjab have failed to make the agency sensitive and diligent enough to investigate and prosecute fairly. Resultantly, the CBI has come out as merely a toothless, diseased paper tiger whose roar is more effective than its maul. How lackadaisical is the CBI conduct can be gauged from the fact that in all cases filed by CBI against the police officers in Punjab, bails have been granted to the accused policemen. Terribly enough, very lenient sections of Indian Penal Code are framed against the police personnel accused of most heinous crime of fake encounter, forced disappearance and summary execution enabling them to easily go out of the bounds of law. The Lawyers for Human Rights International feel that most of the challans presented by the CBI in the courts relating to fake encounter or disappearance of

innocent people by the Punjab police may not be able to stand the acid test of judicial scrutiny because of the faulty investigation done by the CBI bringing the agency under a cloud. Another tragedy is that in most complicated cases the CBI is being represented by counsels who are not effective enough to handle such serious, cumbersome and complicated cases. The victims have now lost faith in the agency. It has proved to be another organ of the government trying to hide the truth and fabricating evidence resulting in the failure of the investigation process. If the CBI has the interests of the victims at hearts, as it claims, it should come up with more effective, less cumbersome and sound proof investigation.

We are sure that the study of case history of following cases will bring home the above referred observations regarding the CBI.

CASE STUDY:

State Versus

1. Assistant Commandant, BSF Dilbagh Singh
2. Om Parkash

3. Jagdish
4. Mohan Lal
5. Mange Khan
6. Jaimal Singh
7. Kuldeep Singh
8. Mukhtar Singh
9. Joginder Singh
10. Sukhjinder Singh

The background of this case will make a normal human being feel like hearing a fairy tale. However, it is a factual story in which a very common family has made a mark of historic importance. The above referred police officers are being tried for murder of Sube Singh, a school teacher of Village Talwandi in District Gurdaspur in 1984. He was called to the Police Station on 2nd October, 1984 and eliminated the next day in a fake encounter, by Assistant Commandant, BSF, Dilbagh Singh and his party. His wife Surinder Kaur, who was a young lady of about 25/26 years at that time, took courage to file a private criminal complaint in a court at Gurdaspur soon thereafter. The accused police officers were summoned by the Court. Few of them appeared, but one of the accused Jaimal Singh, who was Inspector at that time, failed to appear before the Court, inspite of bailable and non-bailable warrants of arrest being issued. Ultimately he was declared a proclaimed offender and was arrested only after his retirement about 10 years later. He even rose to the position of Superintendent of Police and remained in service all these years, but could not be arrested on account of his clout over the police force. On the application of accused policemen, the Punjab & Haryana High Court transferred the case of their trial to Chandigarh on the ground that the fear of militants would not ensure fair trial. The trial of the case is pending at the stage of Complainant's evidence in a court of Additional Sessions Judge, Chandigarh. Ironically, while Surinder Kaur, the hapless victim inspite of finding too difficult to make both ends meet, is fighting the legal battle against the police officers at her own expense whereas unlimited funds from the State treasury are being placed at the disposal of the undertrial police officials for defending their case in the court.

C B I Versus

1. DSP Surjit Singh Grewal (then Inspector)

- 2.ASI Amarjit Singh(Retd.)
- 3.SI Birbal Dass (Retd.)
- 4.ASI Gurcharan Singh
- 5.HC Nikka Ram
- 6.ASI Chanan Singh
- 7.Constable Dayal Singh

Kulwinder Singh alias “Kid”, the only son of a well placed Principal of Khalsa Higher Secondary School, Kharar, Tarlochan Singh was picked up by a police party of Punjab police headed by Inspector Surjit Singh Grewal, the then Incharge of CIA Staff, Patiala alongwith another boy on 22nd July, 1989. Both of them were later shown killed in a fake encounter. All the efforts of the father and other respectables having failed, a writ petition was filed in the Punjab & Haryana High Court and a judicial inquiry was marked into the incident. The Sessions Judge, Chandigarh who conducted the enquiry, held that “Surjit Singh Grewal and his party had forcibly taken the victim.” After a clear finding to that effect, the High Court referred the case to CBI for further investigation. The CBI registered a case under Sections 120-B, read with Sections 302/364/218 IPC and nominated above referred accused in addition to placing the names of six more police officers in column no.2 so as to summon them through the court concerned. Interestingly, even though the CBI also held that Kulwinder Singh “Kid” was killed by enacting a fake encounter, still it did not arrest any accused. On filing the challan in the court, the accused were summoned by the court and they were given bail by the High Court without any reluctance, irrespective of the heinous crime with which the accused had been charged.

C B I Versus

1. DSP Jaspal Singh
2. SI Arvinderbir Singh
3. Inspector Amarjit Singh
4. ASI Darshan Singh

This case relates to the killing of Kulwant Singh, Advocate of Ropar, his wife and 2 years old son. When Kulwant Singh and his family members did not return home on 25th January, 1993 from the

Police Station at Ropar, his father Jagir Singh lodged a report at Police Station, Ropar. At the same time, lawyers all over Punjab, Haryana and Chandigarh showed concern at the disappearance of the lawyer and his family. They even represented to the State government to get an inquiry into the disappearance. In spite of long drawn strike by lawyer community and public outcry, the State government did not order any inquiry. On the other hand, the Ropar police falsely implicated one Harpreet Singh alias Lucky for allegedly murdering the lawyer and his family and launched prosecution against him under Section 302 IPC. A writ petition was also filed in the Punjab & Haryana High Court, which was dismissed by a five judge bench in a most unfortunate manner. The matter went over to the Supreme Court, and the apex court made certain hard observations about the judgment of the High Court, like holding that “ the high court was wholly unjustified in closing its eyes and ears to the controversy which had shocked the lawyer fraternity in the region. For the reasons best known to it, the High Court became wholly oblivious to the patent facts on the record and failed to perform the duty entrusted to it under the Constitution. After giving our thoughtful consideration to the facts and circumstances of this case, we are of the view that the least the High Court could have done in this case was to have directed an independent investigation/inquiry into the mysterious and most tragic abduction and alleged murder of Kulwant Singh Advocate and his family.”

The Supreme Court directed the CBI to hold inquiry into the disappearance of the lawyer and his family members. In that inquiry, it was found that Harpreet Singh was falsely implicated and being prosecuted, but actually Kulwant Singh was not killed by him. The CBI was directed by the Supreme Court to prosecute the accused police officers. For no valid reasons, the CBI charged the accused under only Sections 193/194/211 and 218 IPC and not under Section 302 IPC. One of the accused police officers, went to the Supreme Court challenging their prosecution. The Supreme Court apart from ordering the prosecution of the accused on the basis of a complaint under the above referred sections, also ordered the CBI to file a separate challan against them for murder of the lawyer and his family. Thereafter, a complaint was filed against these policemen in the Court at Ropar and a separate challan under Section 302 IPC has been filed by the CBI in a court of Additional Sessions Judge at Chandigarh. The proceedings in both these cases being sub-judice, need not be commented, but the most shocking and shameful thing for the CBI is that it investigated the case in a totally faulty manner. It tried to help the police personnel by filing a challan under Sections 193/194/211/218 IPC so that there may not be any charge against them with regard to the murder of the lawyer and his family. It was only after the supreme court made a clarification that the challan for murder of the lawyer was filed against the police officers. Another shocking matter is that in spite of committing such a most un-civilised and heinous crime by the very protectors of law, the CBI did not arrest any accused. The accused were allowed bail by the High Court without taking note of the gravity of the offence.

CBI Versus

1.DIG Sanjeev Gupta(then SSP)

- 2.SP Mohinder Singh Chahal
- 3.DSP Ramesh Chander (then Inspector)
4. DSP Jagtar Singh(then Inspector)

Kamaljit Kaur, wife of Sukhdev Singh alias Sukha had filed a Writ Petition in the High Court in 1996, seeking a CBI probe into the disappearance of her husband in 1993. The High Court considered the gravity of the allegations made in the petition and ordered a CBI inquiry in 1998. The CBI had registered a First Information Report on September 29, 1998, under Sections 364,365,344 and 34 of the Indian Penal Code against DIG Sanjeev Gupta, the then SSP Ropar, DSP Ramesh Chander and DSP Jagtar Singh, the then SHO of P.S.Sohana and S.P. Mohinder Singh Chahal, Ropar and started a thorough probe into the allegations levelled in the Petition.

The CBI inquiry revealed that Sukhdev Singh alias Sukha was called to Police Station Sohana by the then SHO Ramesh Chander to meet the then SSP Sanjeev Gupta on 18th March, 1993. Sukha alongwith his friend Jaspal Singh, the Sarpanch of Village Raipur, Distt. Ropar, had gone to the Police Station Sohana, but only Jaspal Singh returned back, while Sukhdev Singh was detained in the Police Station Sohana till March 29, 1993. Thereafter he was shifted to CIA Staff, Ropar but brought back to Sohana on April 29, 1993 and was kept there till July 4, 1993. Surjit Singh, younger brother of Sukhdev Singh used to visit him daily to provide food, clothes etc. However, Sukhdev Singh was again taken to CIA staff, Ropar after July 4, 1993 by the then SHO Ropar, Jagtar Singh and thereafter his whereabouts are not known. The CBI after conducting detailed investigation filed a chargesheet in the Court of Special CBI Judge, Patiala on February 1, 2001.

The DIG Sanjeev Gupta who is an accused in the case applied for anticipatory bail in the case Additional Sessions Judge, Patiala stayed the arrest of the police officer till February 19, 2001 and the Judge while staying the arrest of the officer till March 4, ordered him to surrender before the Special CBI Judge and apply for regular bail on February 28. Thereafter the accused moved a regular bail application before Sessions Judge, Patiala and was granted regular bail on March 2. Similarly SP Mohinder Singh Chahal, DSPs Jagtar Singh and Ramesh Chander also applied for interim bail before Additional Sessions Judge, Patiala. The Judge while staying their arrest on March 15, till March 21 directed them to surrender before the Special CBI Court and apply for regular bail. They did so, but the Special CBI Judge dismissed their applications on March 16. They moved the Sessions Court, Patiala but were declined bail by even that court on March 21. Aggrieved by that order, the trio had moved an anticipatory bail application before the Punjab & Haryana High Court which was allowed vide order dated 3rd April, 2001.

In his order, the Judge recorded that "since the incident is eight years old and the wife of Sukhdev Singh kept silent for four long years, therefore, there is no possibility of accused misusing the concession of bail. The evidence is circumstantial in nature and the police officers have not absconded and there is no likelihood of their absconding from the process of law. They are allowed

the concession of bail on the condition of furnishing bail bonds in the sum of Rs. 1 lac each with one surety of the like amount and they should deposit their passports with the trial court forthwith”.

According to Lawyers For Human Rights International, few extra-ordinary things were witnessed in this particular case. It's the only first case where the anticipatory bail applications of the accused were repeatedly rejected, but the magistrate or even the Sessions Judge failed to order their arrest after their so-called surrender. Even the arrests were stayed to enable them to approach the High Court. At the top of it, the High Court overlooked the fact that in the event of dismissal of their anticipatory or regular bail applications, the accused should have been in judicial custody in consonance with the provisions of Section 439 of the Code of Criminal Procedure. But none of the accused undergone even a day's custody, inspite of their prayer for bail being declined more than once. If the time gap between the incident and the launching of prosecution is material for considering the concession of bail, then thousands of poor undertrials under NDPS Act or TADA Act deserves to be given similar concession. And if delay in approaching the court seeking justice is also considered an important factor in the eyes of law, then almost all the police officers facing trial in the cases of fake encounters, summary executions and forced disappearances also deserves to be released forthwith, because the CBI had taken many years before launching prosecution against them.

CBI Versus SSP Ajit Singh Sandhu (deceased) and others

Jaswant Singh Khalra, a well known human rights activist and the General Secretary of human rights wing of Shromani Akali Dal was kidnapped from outside his house in Amritsar on the morning of September 6, 1995, by the armed commandos of Punjab police. A bench of the Supreme Court chaired by Justice Kuldip Singh treated a telegram from Gurcharan Singh Tohra, President of Shromani Gurdwara Prabandhak Committee, about the abduction, as a Writ Petition of habeas corpus and issued notice to the Punjab authorities. The then SP Sukhdev Singh Chhina of Amritsar city filed affidavit to claim that Khalra was neither wanted in connection with any case nor had been arrested by the police. Other officials also filed affidavits to maintain that the Punjab authorities were making all efforts to trace Khalra, contending at the same time that he might have become a victim of inter gang rivalries. SSP Ajit Singh Sandhu of Tarn Taran also filed a statement to deny that he had ever threatened Khalra. On 15th November 1995, Punjab's Advocate-General M. L. Sareen suggested that the court should hand over the investigation of Khalra's abduction and disappearance to the Central Bureau of Investigation. Accordingly, the court directed the CBI inquiry. On 30 July 1996, the CBI submitted its report on Khalra's abduction and disappearance, holding nine officers of the Punjab police under SSP Ajit Singh Sandhu responsible. At the CBI's request the Supreme Court directed their prosecution on charges of conspiracy and “kidnapping with intent to secretly and wrongfully confine a person”. The court also directed the Chief Secretary of Punjab to sanction their prosecution within three weeks of the order. The Sanction Order dated 19 August 1996 elucidated the CBI's findings that established the criminal conspiracy to abduct

Jaswant Singh Khalra. The Sanction Order pointed out that on 24 October 1995, eighteen days after his abduction, Khalra was found illegally detained at Kang Police Station, by one Kikkar Singh, who was also detained there illegally. The Sanction order mentioned that Kikkar Singh witnessed the injuries on Khalra's body, the evidence of his custodial torture. It went on to say that Kikkar Singh helped Khalra to eat before he was taken away from the Kang police station, never to be seen again. Kikkar Singh's illegal detention from 14 October to 11 November 1995, as elucidated in the Governor's Sanction Order, was independently corroborated by an inquiry conducted by the Chief Judicial Magistrate of Chandigarh, which the High Court of Punjab and Haryana relied on to grant him monetary compensation. The evidence on record in the Governor's order of sanction confirmed serious offences under sections 302, 364, 346, 330, 331 and 120 of IPC. However, the offenders were arrested only under section 365 of IPC which is "kidnapping with intent to secretly and wrongfully confine a person", a woefully insufficient charge in the face of evidence which proved kidnapping with the intent to murder, illegal confinement, custodial torture and custodial murder. Subsequently, former Special Police Officer Kuldip Singh, who was attached to the Kang police station, came forward and told that Khalra was tortured and then shot dead in the night of 24 October 1995. His dead body was quartered and thrown in river Sutlej near Hari Ke Pattan. The court, which presumed Khalra to be still alive, when it ordered the prosecution of the officials on 30 July, 1996 was not aware of these facts. On 7 August 1996, the court also directed the Punjab government to pay ten lac rupees as interim compensation to Mrs. Khalra. The court's order said: "The fact remains that the abductors are keeping Khalra away from his family since 6 September 1995. Kidnapping of a person whose family is totally in dark about his whereabouts – even about the fact whether he is alive or dead – is the worst crime against humanity. In the facts and circumstances of this, we direct the Punjab government through the Chief Secretary, Punjab to pay a sum of Rs. 10 lacs as interim compensation to Mrs. Paramjit Kaur, wife of Mr. Jaswant Singh Khalra. In case, the police officers are convicted the State of Punjab can recover the amount from the police officers..."

CBI Versus

1. Inspector Dharam Singh
2. Inspector Tarsem Lal

This case speaks volume of extra-judicial methods adopted by Punjab police in eliminating innocent youth. Kashmir Singh's son Daljit Singh of Khalyala Khurd in District Amritsar was picked up alongwith his two brothers Rajwant Singh and Baljeet Singh on 13th December, 1992 by Inspector Dharam Singh, the then Station House Officer of Police Station, Lopoke, District Amritsar. The two brothers were let-off after a day, but Daljeet Singh was tortured and later on shown killed alongwith one Jagir Singh alias Jagira in a police encounter on 29th December, 1992. Kashmir Singh approached the High Court and a CBI case was registered against Inspector

Dharam Singh for staging a fake encounter and killing Daljeet Singh and then cremating him as unidentified, even though he had disclosed his identity before his death. CBI registered the case on 5.3.1997 on the orders of the Supreme Court dated 26.12.1995. The CBI inquiry clearly held the Inspector Dharam Singh and SI Tarsem Lal and SI Swaran Singh responsible for killing Daljeet Singh and then cremating him as unidentified even though they were aware of his identity. In order to seek bail, Inspector Dharam Singh and Tarsem Lal moved the Sessions Judge, Patiala in October, 2000. The trial court while rejecting their bail application categorically held that "in case the accused police officers were enlarged on bail, a fair trial cannot be expected and there is every chance that they may either threaten or try to win over the prosecution witnesses". But surprisingly, two weeks time was granted to them to obtain fresh bail orders from the higher court. In spite of the categorical finding by the High Court that "by dismissing the bail application, the Sessions Judge had become 'functus officio' and ought not to have stayed its own order' and that "the petitioners being police officials, the possibility of their attempting to influence the complainant cannot be ruled out", still the accused were granted bail by Justice S.S.Nijjar on 1st February, 2001.

The question arises, if the accused had committed such a heinous crime and the Sessions Judge, Patiala had passed the extra-ordinary order of not arresting them (after dismissal of their bail application), can it be justifiably held that the High Court also committed grave error in giving undue favour to the accused police officers ?

Mohinder Singh Versus CBI

This is a case of CBI's failure to deliver goods and betraying the trust reposed in it by Mohinder Singh, the victim of police excesses. Jagraj Singh, the only son of Mohinder Singh was picked up along with his Maruti van from Mohali on 14th January, 1995 by Punjab police personnel. Later on the same police party picked up another youth Sukhdev Singh of Mohali. Few days later, two terrorists were shown killed in an encounter in Beas Police Station in which the maruti van of Jagraj Singh was shown involved. Mohinder Singh got suspicious that his son might have been killed in that encounter. He approached the High Court and a CBI inquiry was marked in 1996. But the CBI in a biased manner filed the report holding that Jagraj Singh was not picked up by Punjab Police but was killed in an encounter in Police Station Beas on 15.1.1995. In spite of Mohinder Singh's repeated pleas before the High Court for re-investigation into the abduction of his son Jagraj Singh and raising a question on the conduct of DSP S. Prasad of CBI, the High Court accepted the faulty CBI report and dismissed his plea by observing that "the petitioner, therefore, has failed to substantiate the allegations made in the petition against the Investigating Officer or the CBI. The report is exhaustive, investigation is sincere and meaningful. No fault can be found with the enquiry report".

It would not be wrong to say that the CBI by shielding the Punjab police, caused even more grievous hurt to the distressed victim, that has eroded his faith in the entire criminal justice system.

Would any body sitting on a seat of authority be able to heal the wound of people like Mohinder Singh is only a hope in the wilderness.

The conclusions on the basis of above referred cases are :

1. The guilty police personnel have been granted bail in most heinous crimes by the courts whereas in ordinary murder cases, the accused are languishing in jail for the last over 5 to 6 years during trial and even after conviction, having not been given the bail in majority of the cases. There are only few cases where bail has been granted. But in cases where police personnel are involved, all have been granted bail.

2. The CBI did not investigate the cases honestly and even did not arrest the accused inspite of seriousness of the crime. It has been seen that in cases having lesser punishment like in corruption cases, where the punishment has not been awarded for more than three years R.I. the accused were arrested and they remained in jail for more than 2 years. Whereas the latest law is that a complainant can assist the prosecution but in these cases, the prosecution hardly takes any assistance from complainants.

3. It is even a known fact that all the police personnel facing such like trials are being provided unlimited funds by the State to defend themselves in cases involving human rights violations. No such example or instance is available to the civilised system that the state is to fund the defence of any accused. It is a total negation of the system as a whole. On the other hand, the accused police personnel are mis-using their high positions in victimising and harassing the witnesses and tampering with the evidence. They are enjoying the facilities of their ranks, vehicles, security etc. Where can be the fair trial under such circumstances?

It would be great folly to deny that there was no law and order during those days in Punjab and the State was being ruled by the jungle law. There was no question for the state to come forward to get the protectors of law to be punished for glaring human rights violations. Policemen felt proud of killing the innocent people in the name of "combating terrorism" or "protecting national security". The judiciary was sent on a long holiday by the very protectors of law and they did what they like. On many occasions the courts even became deaf and dumb at the tale of police excesses and failed to deliver justice. Even today, this perverse attitude has been adopted by the courts while hearing the cases of human rights violations. Undue leniency is being shown to the police officials accused of human rights violations and bail is granted to every policemen accused of most heinous crime in the annals of mankind. That's why not even a single police officer accused of human rights violations in the militancy period has been arrested. Human rights activists are at loss to understand the indifferent approach of the lower and even the Higher judiciary in the State towards cases of human rights violations. This mindset of judges if continued anymore may bring serious repercussions and may give wrong signals to the rowdy Policemen who will consider themselves

even more powerful and free from bounds of the law and total loss of faith in the judicial system by the families of the killed persons making the system to be a Qazi like one.