

Full Report of (Retd.) Justice Katju Commission Regarding Killings in Behbal Kalan, Punjab, India.

The (Retd.) Supreme Court Justice Katju Commission holds Punjab Police guilty of excessive and unprovoked firing and lathi charge against peaceful congregation without any reason and without the statutory magisterial orders. The Commission has recommended for punishment for police officers responsible for unprovoked and unjustified firing and lathi charge at unarmed civilians. The report of Retd, Justice Katju Commission regarding Behbal Kalan, Punjab killings is released on 26th of March, 2016. The copy of Full Report is as under;

FULL REPORT :-

JUSTICE KATJU COMMISSION OF ENQUIRY
VILL.BEHBAL KALAN (JANUARY 30/31, 2016)
DISTT. FARIDKOT, PUNJAB

JUSTICE (Retd.) SH. MARKANDEY KATJU SUPREME COURT OF INDIA CHAIRMAN

SH. SHASHI KANT IPS (Retd.) FORMER DGP
GEN. SECRETARY

Preliminary:

This commission has been formed at the request of Sikhs for Human Rights (SFHR), Lawyers for Human Rights International (Regd) (LFHRI), Punjab Human Rights Organization (PHRO) to enquire into the incident of 14th October, 2015 at village Behbal Kalan and Kotkapura, Faridkot, Punjab, in which two persons were killed and several others injured due to Lathi Charge and Firing by the Punjab police and damage to private property. Although the Punjab government has since set up a commission of enquiry into the matter; many people have expressed the opinion that they do not have confidence in this 'official commission', and, as such requested for the formation of this 'People's Commission'. Thus, the purpose of this 'Peoples Commission' is to investigate into the aforesaid incidents, record its findings and put them in the public domain for the people to know the truth.

The reasons for lack of confidence in Jora Singh, Commission constituted by the State of Punjab were expressed by a large number of people stating that the Govt.of Punjab was dilly dialing its constitution for a long period and no action was taken against the police personnel who committed a heinous crime like murder of innocent persons, recoding of a blind F.I.R. although the culprits in the police force were well known, releasing false information to the public form highly placed police officers that there was a foreign hand in the incidents of sacrilege of Guru Granth Sahib. It proved

to be wrong since soon after the announcement of the same by an ADGP rank officer, a settler in a foreign country made known to the public that he had sent money to such of the persons who were falsely implicated by the police. Money was sent through legal channel. Further reasons included arrest of innocent persons and torturing of a number of persons and use of third degree by the police, non-action by Govt. of Punjab on the incident of theft of Guru Granth Sahib much before the subsequent incidents of sacrilege. Such incidents were repeated time over again and people harassed. People were threatened not to render any type of assistance to the assistance to commission.

Thus, I, Justice Markandey Katju, a former Judge of the Hon'ble Supreme Court of India, as Chairman of this 'Peoples Commission' and Sh. Shashi Kant, a former D.G.P. of Punjab, as its General Secretary; accompanied by members of the Bathinda Bar Association and others visited the spot of police action at Behbal Kalan on 31.1.2016 for site inspection. The village was also visited on 31.1.2016 and a sitting was held from 11.00 A.M. onward in local Gurudwara Sahib.

The commission issued prior notices as detailed in the Index of Chief Secretary, Home secretary and DGP of Punjab Government for appearance but no one appeared. On 31.1.2016 a notice was sent to Sh. Amar Singh Chahal, DIG, Ferozepur who is member of SIT formed by the Punjab State Government for appearance. This was done comply with the rules of natural justice and give opportunity to the State. However, no representative of the State Government of Punjab or of the police department appeared before us. Again a final notice was issued to the Punjab Government, though its Chief Secretary and others to appear, as final and last opportunity, before the commission to depose and get their statement recorded by February 8 but again none of them appeared thereby indicating their willful choice not to co-operate with this commission. We were therefore constrained to proceed in their absence.

Procedure:

A number of witnesses presented their affidavits to this Commission, Instead of blindly relying upon their affidavits, these witnesses were examined, at length, orally, before taking their testimony on record. Several other witnesses and victims chose to depose, on the spot, before the commission and were examined accordingly. The affidavits and depositions are enclosed with this finding and have been flagged/referred to specifically, as and where needed.

As already stated, while examining the affidavits and oral evidence presented before us, we had, in

the interest of justice, decided that the commission will not blindly accept that any witness say, but will rather first attempt to test his/her credibility. Witnesses' were informed accordingly and in course of the enquiry, discrepancies were indeed found in the some of affidavits and actual oral deposition/examination. In such cases the statements which were inconsistent with the earlier depositions of concerned witnesses, were not accepted and summarily rejected. This procedure was adopted to ensure total objectivity, judiciousness and fair play. No reliance was placed on any hearsay either.

Proceedings:

Statements only of the eye witnesses were taken in to account and no hearsay was taken into account. Each of the witnesses was thoroughly examined by the Commission and divided into the following broad categories to facilitate in-depth examination of each of them:

- i) Statements of relatives of those who had lost their lives in the unfortunate incident of police firing.
- ii) Statements of individuals who had received bullet injuries in the said police firing.
- iii) Statements of those individuals who received blunt injuries in the police lathi charge and whose property was destroyed in the police action. This category also includes persons who were target of police action in any other related way and had directly suffered.

Affidavits of the Legal heirs:

A) In the police firing of 14th October, 2015 two persons namely Krishan Bhagwan Singh son of Mohinder Singh r/o V. Niamiwala and Gurjit Singh son of Sadhu Singh r/o V. Sarawan were killed. Sworn affidavits of legal heirs of these individuals are placed on record. These two deaths are a matter of record and not disputed in any way. Though no such evidence was placed before the Commission but we are sure that the postmortem of the bodies of these two persons was conducted as per the law laid down in this regard. It is unfortunate that the postmortem reports and other relevant papers not presented either by police or other concerned authorities of the Punjab government to this commission despite specific and repeated written requests to the Chief Secretary Govt. of Punjab, Principal Secretary Home of Govt. Punjab and Director General of Police, Punjab. It is reiterated that written requisitions were also sent to Sh. Amar Singh Chahal, DIG Faridkot who is also a member SIT formed by the Punjab Government subsequent to massive

public outrage on the police action. Sh. Chahal and other concerned officials who were present on the occasion should have, in the interest of justice, presented their view point and documentary evidence to this Commission so that their view point could be taken into account as per the tenets of the principle of natural justice.

However the Commission is in possession of a copy of the FIR which was lodged, on a subsequent date by the Punjab police in police station Baja Khana under whose jurisdiction the spot of police firing falls. This FIR No.130 dated 21.10.2015 is registered under Sections 302/307/34, & 25/27/54/59 Arms Act. It is lodged on the basis of letter number No.318/PA/DIR/BOI dated 21.10.2015 from the Director Bureau of Investigation-cum-Chairman Special investigation Team Punjab, Chandigarh to the Senior Superintendent of Police Faridkot. The FIR is against unknown persons and specifically refers to the case of police firing at village Behbal Kalan P.S. Baja Khana District Faridkot. It also refers to an order No.1306/Crime-E-3 dated 14.10.2015 of the Director General of Police, Punjab declaring constitution of a Special Investigation Team headed by Sh. Iqbalpreet Singh Sahota, IPS, Director Bureau of Investigation Punjab with Sh. Amar Singh Chahal I.P.S D.I.G, Ferozepur Range Ferozepur and Sh. R.S. Khatra, IPS, D.I.G. Bathinda Range Bathinda as its members. The FIR further states that the SIT had gone to Faridkot on 16.10.2015 to take stock of the situation regarding the firing at village Behbal Kalan and perused the concerned record. The FIR, while referring to the said letter of the Punjab police further specifically states that two persons namely Krishan Bhagwan Singh son of Sh. Mohinder Singh and Gurjit Singh son of Sadhu Singh had died in the said police firing. Postmortem reports of deceased stated that the cause of the death was on account of the bullet injuries. The police report goes on to state that a police party was headed by Charanjit Singh S.S.P. Moga was on the spot of the police firing. Strangely enough, the report further states that 'after perusing the facts it came to the notice of the SIT that in people's perception it was a case of murder and as such the case needed to be investigated after the registration of a case under Sections 302/307/34, & 25/27/54/59 Arms Act. It further states that the case will be supervised by the said Special Investigation Team.

In the absence of cooperation by Punjab Police and Punjab Government this commission has no way to ascertain what all action was taken subsequent to registration of the said FIR on 21.10.2015. What surprises the commission is the fact none of those deposing before the commission were aware of the follow-up action taken by the police. None of them was even aware of the visit of the SIT or even any member thereof to the spot. None of the witnesses were examined by police officials or their statements recorded either on spot or in any of the villages, the eye witnesses belonged to. Several of the injured and eye witnesses, however declared publically that some individual police officials of the Police Station Baja Khana has indeed visited their houses and got their signatures/thumb impression on blank papers after threatening them and their families of dire consequences.

All affidavits and depositions of witnesses indicated that the crowd sitting on 'dharna' was peaceful and unarmed. Only the police party was armed with weapons and that the police had resorted to firing hiding behind the pillars of a nearby brick structure which was being used as a bus shelter, by the villagers and passersby. Some of the witnesses also stated that the police had 'turned turtle' a tractor trolley and used it as a vantage point (called 'Morcha' in Punjabi) to fire at the unarmed and hapless civilians. It is a pity that neither the report of the SIT, referred to in the above mentioned FIR, nor the remaining body of the FIR mentions about the type of bullets which were recovered from the bodies of the dead. We have reasons to believe that it was perhaps done deliberately to ensure that this dubious statement could be used by the police to its advantage as and when the case comes before a court of law. We, in our carriers had never seen a situation where a FIR was registered under section 302 of the IPC only on account of the 'perception of the people.

Statements of the witnesses clearly indicate that at the scene of occurrence only the police party was present duly armed and that they had resorted to firing without any prior warning. This Commission has no reason to disbelieve their testimony. Claim of the police stating that the FIR was lodged only on the ground of 'people's perception' only strengthens the suspicion of the commission. Had the Punjab police been sensitive to the 'perception of the people' and had a truly 'Human Face', such an incident of police brutality would not have occurred. Thus it appears that bullets in question were fired by government weapons held by the police authorities and the commission is very sure that the nature of injury, cause of death and the type of bullets which caused the deaths, as revealed in the postmortem reports would finally indicate source of the bullets, that is the type of weapons used. The police action only indicates a deliberate ploy by concerned agencies to delay the matter as much as possible and this commission takes due notice of this distinct possibility. The fact that the police firing was sudden and without any provocation, also finds indirect corroboration from the news paper cuttings, of the very next day, which were presented to this commission.

Affidavits of persons injured in Police Firing;

Five persons namely Harjinder Singh s/o Sh. Beant Singh r/o Gurusar, Gurcharan Singh s/o Jarnail Singh of village Sarawan, Beant Singh s/o Balkaran Singh r/o V. Behbal Khurd @ Niamiwala, Angrej Singh s/o Jugraj Singh r/o V. Behbal Kalan and Gurjit Singh s/o Resham Singh r/o V. Behbal Kalan were injured in the police firing on 14.10.2015. The statements of these individuals are placed on record.

Harjinder Singh son of Beant Singh received firearm injury on his little finger of left foot and the same was blown off. Gurcharan Singh s/o Jarnail Singh received 'scraping' injury on his forehead. The bullet scraped through his forehead and passed through the turban. Beant Singh s/o Balkaran Singh received bullet injuries on his left thigh and one bullet passed through his urinary and private parts totally damaging them. His condition is still serious even after several months. Angrej Singh s/o Jugraj Singh received bullet injury in his right upper arm below the shoulder. The bullet had penetrated through. Gurjit Singh s/o Resham Singh received injury on his ankle. The bullet scratched through touching ankle.

Affidavits of persons who received blunt injuries in the lathi charge or otherwise suffered by way of damage to the property etc;

Many persons submitted their affidavits under this category which are placed at Annexed with the report. Five more individual including one child namely Pushpinder Singh aged 13 years s/o Lakhwinder Singh r/o V. Behbal Kalan also deposed before the commission and got their statements which are placed on record. Besides this minor child, four ladies also deposed in this connection alleging unprovoked firing along with sudden Lathi Charge etc. on the mob which was sitting peacefully on the Link Road leading to village Behbal Kalan.

It is significant to mention that a number witnesses including women and even a child stated that the police had resorted to Lathi Charge and firing without any advance warning. They also stated that police fired at the peaceful and unarmed crowd; themselves taking shelter from behind a nearby brick construction cum bus-stand as also from behind a trolley which was turned turtle to act as a 'Morcha (firing post)'.

Police action on a peaceful civilian crowd only a few hundred strong including minor children and women is forth right deplorable and condemnable.

Following individuals also accused police of deliberately setting fire to their private property including motorcycles/scooter, trolleys etc. parked nearby as also the tents and tenting material which was installed nearby:

Dilbagh Singh s/o Gurtej Singh r/o V. Behbal Kalan;

Gurtej Singh s/o Buta Singh r/o V. Behbal Kalan.

Gurpreet Singh s/o Ajaib Singh r/o Behbal Kalan;

Gurbhej Singh son of Buta Singh r/o V. Behbal Kalan;

Gora Singh s/o Jalour Singh r/o V. Behbal Kalan;

Jaswant Singh V. Dhelwan;

Findings;

From our spot inspection and also the evidence placed before us the following facts come to notice:-

1. In the month of June, 2015 a number of unfortunate, condemnable and painful incidents of desecration of Holy Shri Guru Granth Sahib, took place in several districts / places of Punjab. They were obviously acts of miscreants and agent provocateurs. This angered the Sikhs as also other communities since Shri Guru Granth Sahib is equally revered by all. As a reaction there to, protest demonstrations took place almost all over Punjab, including the localities where the incidents in question had taken place.

2. From the testimony of witnesses it appears that one such protest was also held on the main road from Bathinda to Kotkapura passing through Bajja Khana, near village Behbal Kalan. However when the police arrived at this venue, crowd dispersed from the main road and settled on an adjacent link road leading to village Behbal Kalan. A map of this location is enclosed at annexure to the report. The protest went on for several hours and it appears that there was no disruption on this adjacent main road

3. From the testimony of witnesses it further appears that on 14/10/2015 police posted at the spot under the charge of Sh. Charanjit Singh, S.S.P. Moga resorted to Lathi Charge as also firing on the crowd which was sitting peacefully on the spot. Testimony of the witnesses' reveal that the police

action was unprovoked, sudden and without any warning as the law demands. As per law, the police action as to be as per a specifically defined law, that is the crowd has to be informed well in time declaring it to be an unlawful assembly and warning them to leave the spot peacefully failing which lathi charge, could be ordered followed by use of water cannons and tear gas etc. The act of police firing, as a last resort, also necessitates a prior warning with ample time space to enable 'dispersal'. All these mandatory notices/ warnings are to come from an accompanying magistrate. Testimonies of witnesses and their deposition shows that no such warning was issued at all which make the police action out right 'unlawful and illegal'.

4. Witnesses deposing before this Commission clearly stated that no such warning or announcement was made by the police/magistrate, and we see no reason to disbelieve them. No State or police authority has cared to appear before us to contradict this version of eye witnesses.

5. It was also brought to the notice of the Commission that some news papers datelined 15.10.2015 i.e. a day after the incident had also highlighted that no such mandatory announcement or warning was made by the police/magistrate before resorting to the Lathi Charge and firing.

Apparently there was no contradiction to these media report either by the state or the police authorities. The commission is well aware of the unfortunate, illegal and unethical practice that in most of such cases, a statement is subsequently got signed by the police authorities from an individual having magisterial powers, stating that the statutory warning and due notice was given to the public. Statements and deposition of the witnesses give no ground to this Commission to believe the plausible theory of a police defense which might be tabled subsequently. Testimonies of the witnesses and circumstantial evidence are enough to convince this Commission of the illegal and arbitrary nature of the police action in this instant case. The FIR registered on 21.10.2015 at the behest of the police 'on the ground of common perception of people' does not refer to the statutory provisions. Had any mandatory warning been issued by the police, such a fact should have been included in the said FIR.

Copy of the FIR is placed on record.

6. In some statements and affidavits to this Commission, names of some police officials have been specifically mentioned. These names include those of Sh. Charanjit Singh S.S.P. Moga and one Sh. Kular, SHO. A number of witnesses, during verbal examination, stated that they did not want to take any names on account of their apprehension that they will be further victimized. This commission could see fear anxiety writ large on their faces and such, would like to particularly again refer to the FIR dated 21.10.2015, which has already been referred to in the preceding paragraphs and which states that sh. Charanjit Singh, SSP Moga was leading the police contingent posted at the venue of police firing and lathi charge. Obviously he cannot be absolved of his responsibility. Punjab Government is reported to have suspended this official, which indicates that even the Punjab Government is of the opinion that Sh. Charanjit Singh, was guilty of dereliction duty.

The Commission takes strong adverse cognizance of the statements of several witnesses that the police had resorted to the Lathi Charge and firing in a very haphazard manner as if they were firing in 'an enemy target group' on a war like situation. The police is alleged to have fired on unarmed civilians themselves hiding behind the pillars of a small brick construction located at the cross road of the scene of occurrence as also from behind a tractor trolley which was turned 'turtle' on the link road in question and used as a 'vantage point' for hiding themselves and shooting at the hapless crowd which included women and even minor children.

Police firing is an extreme measure to be resorted to only in very rare and exceptional situation. We have already pointed out in preceding paragraphs that the crowd had left the main road and was not blocking or obstructing it. It had in fact dispersed towards the nearby link road leading to the village Behbal Kalan. Even assuming that the crowd was blocking the link road in question, it could easily have been dispersed by first making some announcement on loud speakers and then by use of water cannon, tear gas and rubber bullets etc. Some witnesses have stated that tear gas was used, but along with and accompanied by police firing with live bullets. This, in our opinion, was totally uncalled for and unjustifiable. We are living in democracy and people have right to protest and assemble peacefully without arms as provided for in Article 19 of the Indian Constitution. The crowd assembled at Behbal Kalan was unarmed and peaceful. They had neither committed any violence nor threatened police. Therefore, it was just no occasion for the police to resort to such an extreme step as firing with live bullets. This commission unequivocally condemns the efforts of the Punjab Government to suppress the facts and trying brush it under the carpet. This commission thus holds Punjab Government to be a willful accomplice in this instant case and holds it guilty.

Incidentally some of the witnesses offered to try locating empties of some cartridges allegedly fired by the police on that day. Stating that a large number of them were fired and that a few of the same could still be located buried in the ground. They stated that the police are out to destroy all inimical evidence against them and had also been 'pressurizing' the witnesses not to depose against them in any manner. While taking due cognizance of their fear and apprehension and as such bringing it on record, the Commission, however directed the witness to co-operate with the police and present all such evidence that any of them could have, to the authorities, in accordance with proper

procedure and law of the land.

7. Beant Singh, one of the injured witnesses also appeared before us. This young man, who aspired to join the BSF, was so very badly injured that even several months after the incident he is not able to get up from bed because the bullets which entered his thigh penetrated his urinary tract and private part, totally damaging them. He was brought to the venue of the commission in a vehicle from which he could not come out. The chairman and others had to go to his vehicle to examine him. We recommend the State Government to immediately grant him cash compensation of Rs.50,00,000/- and also to bear expenses of his entire medical treatment. One of his family members also needs to be given a job by the Punjab government.

The Commission, would also like to bring on record, the fear and apprehension of police pressure and repression on him and his family, by the Punjab police. The family and the injured were so traumatized by this fear that his family members again approached the Commission in Bathinda in the morning of February 1, 2016. Subsequently, they also appeared before the local press in course of the press conference of the Chairman.

8. The commission also feels that all other persons who had also suffered injuries in the aforesaid mindless police action should forthright be compensated with an amount of Rs.5,00,000/- each.

9. As regard to two individuals namely; 1.Krishan Bhagwan Singh and 2. Gurjit Singh, who lost their lives in the police action; we recommend that their legal heirs should forthwith be provided with a compensation of Rs. 1,00,00,000/-(Rs.One Crore) each, and a job to a member of each of the two the traumatized families.

10. As already stated in one of the preceding paras, some of the statements of witnesses had also named the S.H.O. Bajja Khana and also some other police officials as well.

In this connection we would like to say that while those police officials who were guilty of excesses and unjustified act should certainly be punished, but at the same time proper identification of such officers is of utmost importance, to void 'witch hunt'. We would certainly not like action to be taken against those who were not guilty of any dereliction of duty and may be made scapegoats instead.

We are informed that a high level Special Investigation Team, under an officer of the rank of Additional Director General of Police, has been formed by the Government and we would request the SIT to look into the matter without any fear or bias. The Commission is however, anguished to note that no progress appears to have been made by this SIT, since its commissioning several months back. No such information is available in the public realm and the state police and government, sadly, appear to have taken a stand of 'non-cooperation' vis a vis this Commission.

The commission, however, in public interest and to keep the flag of the principle of natural justice, high; would, on its own accord, like to cooperate with Punjab government and as such requests the

deponents to send their affidavits to Punjab government, through the 'official commission' appointed by it, and hope that this 'official commission' of enquiry' would also take everything in to account and ensure justice by it as well.

11. In course of the press conference held at Bathinda, on 1/02/2016, this Commission had made it abundantly clear that 'doors' of this Commission shall remain open for about a week (till 8/02/2016) and the state government and police officials shall be free to submit their reply / submissions, in the form of their affidavit to Sh. Shashi Kant, IPS (Retd), the General Secretary) of the Commission. This was just to ensure fair play and just implementation of the principle of natural justice. The notices were, accordingly sent and now are annexed to the report.

It is, however, unfortunate that Punjab government still decided to ignore even the last request of this People's Commission and as such this Commission is constrained to give out its verdict on the basis of the available facts.

12. We have also received copy of a report from a body, whose members met us in Bathinda on 1/02/2016 and gave their report to us. A copy of their report is also enclosed herewith as Annexed to the report for information on the public domain.

13. Before concluding, we would like to say that in a democratic country like India, the police are the servant of the law and not of politicians. I am told that some police officers of Punjab police had approached Sh. Shashi Kant, General Secretary of this Commission claiming immunity on the ground that they just receive orders with regard to the actions to be carried out, directly from their political masters and that they have no option but to carry them out, willingly or unwillingly. In this context, this Commission is constrained state categorically that if a police officer receives an illegal order from his political masters, it is his duty not to carry them and instead clearly inform his political masters accordingly. This strange plea of "Orders are Orders" was also taken by the Nazi war criminals at the Nuremburg Trials after the end of Second World War, but this plea was out rightly rejected and many of the accused were hanged.

It is about time now, that the police in India learns to start acting responsibly. We are no longer living under a foreign rule, but are an independent democratic and sovereign country in which people themselves, are the real masters and all State authorities including the police are their servants. The police must therefore, change its ways and stop acting as a colonial strong arm of their political masters. They are accountable to the law of the land and to the Indian populace as such. In the Supreme Court decision in Parkash Kadam Versus Ram Parkash Gupta (2011), it was clearly held that a fake encounter by police even on direction of its so-called superiors amounts to murder and those police men who committed the crime may face death penalty. Similar is the position in this instant case. No police officer can take a plea that he had resorted to Lathi charge, firing or any other such drastic action at the instance of any politician or was even otherwise

remotely controlled by his superiors. The officer on ground has to take the decision as per law of the land, procedures there for and be responsible for it. Besides statutes, orders of the superior courts are also equally enforceable and any violation thereof may find the guilty officer not only of willful dereliction of duty and disobedience of law but also of a willful and

criminal contempt of the orders of the judiciary.

This Commission would, while reprimanding such officials would also like them to ponder over the question as to in how many of such cases where escaped despite being guilty or where they were actually held to be guilty, had any of their superiors or political masters, stood by them and admitted to be their accomplice on the ground that such guilty officers were just carrying out their orders.

14. Lastly, this People's Commission hopes and wishes that in this instant case, police and administration will desist from using their pressurizing and intimidating tactics to force people of Behbal Kalan and neighbouring areas 'into submission'. We could see the fear writ large on the faces of those who deposed before this commission and would like to continue monitoring the situation.

Chandigarh (Chairman)

Dated 26th March 2016 (General Secretary)