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INDIA

A mockery of justice: The case concerning the 'disappearance' of human rights defender Jaswant Singh Khalra severely undermined

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While Amnesty International members worldwide are campaigning to defend the defenders of the rights enshrined in the Universal Declaration of Human Rights (UDHR) during the 50th anniversary of the Declaration, the organization has received disturbing reports that the judicial process underway in India to bring to justice those responsible for the "disappearance" of Jaswant Singh Khalra -- one of the human rights defenders highlighted in the organization's campaign -- is being severely undermined.

This brief document sets out Amnesty International's concerns at allegations that accused police officers have delayed proceedings and intimidated witnesses. Those who have been seeking to defend Jaswant Singh Khalra's rights -- his wife Paramjit Kaur Khalra and members of the Khalra Action Committee -- have themselves suffered intimidation and abuse. Combined with delays in the judicial proceedings and disregard of judicial orders, the attempts being made to suppress evidence against police officials and prevent further investigations into the fate of Jaswant Singh Khalra make a mockery of justice.

Khalra had been involved in a campaign to highlight the plight of hundreds of people who "disappeared" after being arrested by the Punjab police during the 1980s and early 1990s. He was instrumental in filing a petition in the Supreme Court concerning the fate of those who had "disappeared". This petition has led to the Supreme Court of India instructing the National Human Rights Commission (NHRC) to investigate widespread allegations of human rights violations in Punjab. The campaign has mobilised lawyers and human rights activists in the state to form the Committee for Coordination on Disappearances in Punjab with the purpose of systematically documenting violations and mobilising public opinion to press for a thorough and transparent investigation into past abuses in Punjab. While the hearings of the Supreme Court petition and the campaign continue, the fate of Jaswant Singh Khalra remains unknown.

Background to the case

- 6 September 1995** Jaswant Singh Khalra, General Secretary of the Human Rights Wing of the Akali Dal political party, "disappeared" after several witnesses saw him being picked up by Punjab police outside his home in Amritsar in the Indian state of Punjab. Police officials denied that he was arrested or detained.
- 12 September 1995** Jaswant Singh Khalra's wife, Mrs Paramjit Kaur Khalra, filed a *habeas corpus* petition in the Supreme Court of India. In response to this petition, the Punjab police continued to deny that he had been arrested.
- November 1995** The Supreme Court ordered an investigation by the Central Bureau of Investigation (CBI) into the "disappearance" of Jaswant Singh Khalra.
- 30 July 1996** The CBI presented its investigation report to the Supreme Court identifying nine Punjab police officials as responsible for the abduction of Jaswant Singh Khalra and recommended their prosecution. It also found evidence that Jaswant Singh Khalra had been held at the Kang Police Station in Tarn Taran district after police picked him up but that he had been moved from there on 24 October 1995 after which time his whereabouts were unknown. The Supreme Court requested the CBI to continue its efforts to establish the fate of Jaswant Singh Khalra.
- 19 August 1996** The Government of Punjab granted sanction (required by law in India for the prosecution of public servants) for the prosecution of the police officials.

For further details, please see the following Amnesty International materials: *India: Determining the fate of the 'disappeared' in Punjab*, October 1995, AI Index: ASA 20/28/95; *India: Appeal Cases*, July 1997, AI Index: ASA 20/32/97; Urgent Action 213/95, Fear of 'disappearance'/Fear of torture, 7 September 1995; Further information on UA 213/95, 21 September 1995; Further information on UA 213/95, 16 November 1995; Further information on UA 213/95, 12 August 1996.

1. Allegations of intimidation of human rights defenders and witnesses by the accused

Accused police officials released on bail, some continuing police duties

Following the submission of the CBI report to the Supreme Court in July 1996, the Court ordered the government of the state of Punjab to transfer all the accused police officers away from the districts of Amritsar and Tarn Taran where the abduction of Jaswant Singh Khalra occurred and where witnesses and relatives of the victim were present. However, Amnesty International has received reports that four of the accused continue to work in Tarn Taran police district. One of the accused, while duly transferred, was given a promotion and posted as Station House Officer at Mahal Kalan police station, Sangrur district.

All those accused have been on bail during the run-up to their trial. In November 1996, in anticipation of their arrest, the accused applied for "anticipatory bail" to the Punjab and Haryana High Court. The Court issued a notice to the CBI to submit its arguments on this application and in the meantime, granted the accused "interim bail". The application remained pending for over a year, during which time the accused remained on bail. Finally, on 21 January 1998, the High Court directed the accused to apply for regular bail as interim charges had already been filed. Regular bail was subsequently granted by the Special CBI Court on 7 March 1998 amidst threats shouted against lawyers acting for Paramjit Kaur Khalra in front of the judge.

Three of the accused were already under suspension and facing charges for the "disappearance" of Kuljit Singh in July 1989. One of the three suspended had also been detained in October 1996 in connection with the abduction of a lawyer Kulwant Singh in January 1993. However, this police officer was granted bail

by a District and Sessions Judge in 1997 and, despite appeals to the Supreme Court, his bail order remains in force. Another of those under suspension, Senior Superintendent of Police, Ajit Singh Sandhu, died in May 1997 -- reportedly by suicide.

Allegations of intimidation/threats to silence witnesses

"Special Police Officer" **Kuldip Singh** was present when Jaswant Singh Khalra was taken from Kang police station in October 1995. In January 1998, he approached the Khalra Action Committee with his testimony. After presenting his evidence to the CBI and recording a statement, he was granted police protection. He reportedly requested guards from the Central Reserve Paramilitary Force (CRPF) but was provided with officers from the Punjab police. Lawyers for the petitioner fear that accused police have subjected Kuldip Singh to intimidation in order to persuade him to withdraw his testimony.

For the past few weeks, Kuldip Singh was untraceable. When members of the Khalra Action Committee attempted to contact him, members of his family claimed that they were not aware of his whereabouts and reportedly accused lawyers acting for Paramjit Kaur Khalra of putting Kuldip Singh's life in danger. After appeals from lawyers to the Punjab state authorities to establish the whereabouts of Kuldip Singh and ensure his safety, on 19 April 1998 it was reported in several daily newspapers that Kuldip Singh had filed a complaint against Paramjit Kaur Khalra and several members of the Khalra Action Committee (see below).

Another witness appears to have been targeted for speaking out. Following the testimony he gave which implicates the Punjab police in the illegal detention and torture of Jaswant Singh Khalra, **Kikkar Singh** has been implicated in five criminal cases by police.

Kikkar Singh was himself illegally detained at Kang Police Station in Tarn Taran district in October 1995. He testified to the CBI that he saw Jaswant Singh Khalra in custody there, 48 days after his "disappearance" and that Jaswant Singh Khalra had been severely tortured. He further testified that Jaswant Singh Khalra was removed from the Kang Police Station on 24 October 1995.

Although Kikkar Singh challenged his own detention as being illegal, and was granted compensation when the High Court upheld his claims, he has since been implicated in several cases by police. In four of the cases, the High Court has granted anticipatory bail but in the latest case in which he has been charged (along with other members of his family) with attempted murder, he has been denied bail and remains in judicial custody in Nabha jail. Although medical evidence reportedly indicates that the person he was alleged to have attacked sustained minor injuries (requiring oral medication) Kikkar Singh and other members of his family have been accused of using firearms in an attempt to murder. The High Court has reportedly stayed the trial pending verification of evidence. Lawyers allege that these charges have been filed in an attempt to put pressure on him to retract his statement and are false.

Intimidation of human rights defenders

Paramjit Kaur Khalra has alleged that she has been threatened on numerous occasions by police officers in Punjab to withdraw her petition. These threats have included visits to her home in the days following the "disappearance" of her husband and telephone calls to her home. She has now been charged with attempting to bribe a witness, Kuldip Singh. His complaint alleges that Paramjit Kaur Khalra and other members of the Khalra Action Committee visited his wife in her home in Jalandhar late one evening and offered a bribe of Rs.50,000, promised to send Kuldip Singh to the United States of America and to provide him with a house in Amritsar, if he testified against police.

A First Information Report (FIR) filed at Shahkot police station in Jalandhar district on 11 April 1998 was registered under sections 8, 9 and 12 of the Prevention of Corruption Act on the basis of his complaint.

Kuldip Singh is further reported to have made a statement before a magistrate that members of the Khalra Action Committee kidnapped and illegally confined him for a month before he made his statement to the CBI, alleging that he was forced to testify under pressure. On 21 April the houses of several members of the Khalra Action Committee were raided by police from Jalandhar district.

Lawyers acting for the petitioner have also been subjected to threats. At the hearing on 7 March 1998 at the special CBI court in Patiala, the accused policemen reportedly openly abused Brijinder Singh Sodhi, one of two lawyers acting for the petitioner (Paramjit Kaur Khalra) and threatened them in front of the magistrate presiding over the hearing. Brijinder Singh Sodhi has testified that the magistrate did not try to prevent the accused police from threatening him and proceeded to grant them bail. After the hearing, as Mr Sodhi was leaving the court premises, the accused police officers continued to threaten him and said "We will see that he does not come after today". Mr Sodhi has subsequently received threatening telephone calls. He has reportedly been threatened to stop the cases against police officials or he would "meet the fate of other advocates" who have "disappeared" in Punjab in recent years.

At the same hearing on 7 March 1998, the tyres of a vehicle belonging to members of the Khalra Action Committee were slashed outside the court building.

International Standards

The **UN Declaration on the Protection of All Persons from Enforced Disappearance** sets out standards for the prevention of "disappearances" and measures for providing redress. In particular, it refers to the issue of the possible intimidation of witnesses and establishes safeguards which should be followed in order to prevent this:

Article 13(3): *Steps shall be taken to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal*

Article 13(5): *Steps shall be taken to ensure that any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or the investigation procedure is appropriately punished*

Article 16(1) *Persons alleged to have committed any acts referred to in article 4, paragraph 1 [enforced disappearance] shall be suspended from any official duties during the investigation referred to in article 13.*

In addition, the draft **UN Declaration on Human Rights Defenders** declares that "*The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of their legitimate exercise of the rights referred to in the Declaration*" (Article 12(2)). This Declaration was adopted by consensus at the 54th Session of the UN Commission on Human Rights which recommended its speedy adoption at the forthcoming session of the UN General Assembly which begins in September. India was a member state of the 54th session of the UN Commission on Human Rights.

UN Basic Principles on the Independence of the Judiciary

2. *The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.*

2. Developments in the trial process

Delays in the proceedings

The proceedings in the case have been subject to severe delays. Official charges have yet to be drawn up against the accused. In January 1997, the accused filed a petition in Special CBI Court in Patiala

arguing that the petitioner (Paramjit Kaur Khalra, wife of Jaswant Singh Khalra) should not be allowed to be represented by private lawyers but only by a lawyer engaged by the prosecution (in this case the CBI). The Court took eight months to decide this question and finally ruled on 3 September 1997 that private lawyers for Paramjit Kaur Khalra could address the court. This order was challenged before the Punjab and Haryana High Court by the accused on 16 September 1997 and the High Court granted an interim stay on the proceedings until March 1998 when it allowed the proceedings to continue.

Determination of charges against the accused

At the next hearing in the case which is due to take place on 28 April, the court will hear arguments from either side before deciding on the charges to be framed against the accused. The magistrate is required to examine the evidence in the investigation report filed by the CBI and then decide what charges the accused should be tried under and thereby whether the case would be tried in the Special CBI Court where it is currently being heard, or in a Sessions Court (where more serious charges are heard).

In January 1997, the CBI presented the results of its investigations in the form of a *challan* (charge-sheet) before the Special CBI Court under section 365 of the Indian Penal Code (IPC) (*kidnapping or abducting with intent secretly and wrongfully to confine person*). Lawyers for the petitioner are concerned that this charge does not reflect the gravity of the offence and will argue that the accused should be charged under sections of the IPC including 364 (*kidnapping or abducting in order to murder*), 346 (*wrongful confinement in secret*), 330 (*voluntarily causing hurt to extort confession, or to compel restoration of property*) and 331 (*voluntarily causing grievous hurt to extort confession, or to compel restoration of property*).

International Standards

The **UN Declaration on the Protection of All Persons from Enforced Disappearance** states that an act of enforced disappearance "*constitutes a violation of the rules of international law guaranteeing, inter alia, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life*", thereby defining the gravity of the offence of enforced disappearance. In light of this, Article 4(1) of the Declaration states that "*All acts of enforced disappearance shall be offenses under the criminal law punishable by appropriate penalties which shall take into account their extreme seriousness*". To date, India has failed to include an offence of enforced "disappearance" in criminal law. Amnesty International believes that charges filed and sentences imposed should be commensurate with the extreme gravity of the crime of enforced "disappearance".

WHAT YOU CAN DO:

Please write polite letters to the central and state authorities in India listed below making the following points:

- Urge the authorities order immediate investigations into allegations of the harassment and intimidation of witnesses, the petitioner and members of the Khalra Action Committee. Any criminal cases found to have been falsely filed against individuals as a means of intimidation should be immediately withdrawn. Prompt action should be taken against any officials found responsible for harassment or intimidation.
- As a step towards ensuring the protection of witnesses, recommend that they be assigned protection from law enforcement officials who are not attached to the Punjab police. In addition, urge that immediate steps be taken to ensure that if accused police remain on bail, they are prevented from interfering in the judicial process. All accused police officers should be suspended from police duties immediately, in line with Article 16(1) of the UN Declaration on the Protection of All Persons from Enforced Disappearance.
- Urge the authorities to ensure that investigations to establish the fate of Jaswant Singh Khalra should continue in line with Article 13(6) of the above-mentioned Declaration which states that "*An investigation... should be able to be conducted for as long as the fate of the victim of enforced disappearance remains unclarified*".
- State that Amnesty International is calling on India to demonstrate its stated commitment to protecting human rights defenders in their work in India by ensuring that those responsible for the "disappearance" of Jaswant Singh Khalra are brought to justice fairly and promptly.

Mr Lal Krishna Advani
Minister of Home Affairs
Ministry of Home Affairs
North Block
New Delhi, India

Mr Prakash Singh Badal
Chief Minister of Punjab
Office of the Chief Minister
Chandigarh
Punjab, India

Mr P.C. Dogra
Director General of Police, Punjab
Police Headquarters
Chandigarh
Punjab, India

Please also send a copy of your letters to the Chair of the Punjab State Human Rights Commission, a Statutory body set up under the Protection of Human Rights Act 1993, which is mandated to work for the protection of human rights in Punjab:

Justice V.K. Khanna
Chair, Punjab State Human Rights Commission
Mini Secretariat, Section 9A
Chandigarh
Punjab, India

KEYWORDS: