

## EXECUTIVE SUMMARY

### High Court Petition to Investigate and Prosecute Gill for Murder of Khalra

Jaswant Singh Khalra began his last international speech with a moving fable about the struggle of truth and light against expanding darkness. Khalra described how, as the Sun set and Darkness placed his foot on earth, one Lamp lifted his head in protest against the expanding darkness. The Lamp said, "I challenge the Darkness. If nothing else, then at least around myself, I will not let it settle. Around myself I will establish Light."

Jaswant Singh Khalra gave his life in defense of truth and the pursuit of justice for victims of human rights abuse. Eleven years ago today, on September 6, 1995, members of the Punjab Police, operating under Director General of Police (DGP) KPS Gill's command, abducted Khalra for investigating and exposing the "disappearances" and secret cremations of thousands of Sikhs in Punjab by security forces. Gill's subordinates illegally detained and tortured Khalra for nearly two months, before murdering him in late October 1995. Ten years later, in November 2005, six Punjab Police officers were held accountable for Khalra's abduction and murder. The architect of the crimes, however, remains free.

Paramjit Kaur, represented by High Court attorney Rajvinder Bains, filed a petition in the Punjab and Haryana High Court after the Central Bureau of Investigation (CBI) failed to investigate and prosecute Gill. Ensaaf, a nonprofit organization based in the U.S., worked with Bains to draft the petition and apply the international law doctrine of superior responsibility to the present case. The petition requests the court to issue an appropriate writ, order, or direction to the CBI to further investigate the direct participation and/or superior responsibility of Gill in the conspiracy to abduct, illegally detain, torture, and murder Khalra; and to further direct the CBI to produce the result of its investigation before the Court so that Gill can be held accountable in accordance with the law. Paramjit Kaur filed this petition after the CBI failed to respond to two representations from her and one joint letter by international human rights groups.

#### New Evidence

The petition begins with a discussion of the new evidence that emerged in February 2005, near the conclusion of the trial of Gill's subordinate officers for the abduction and murder of Khalra. Special Police Officer (SPO) Kuldeep Singh testified in court and explained the sequence of events leading to the custodial murder of Jaswant Singh Khalra, including how Khalra was brought to the house of Senior Superintendent of Police (SSP) Ajit Sandhu several days before Diwali in October 1995. The DGP of Punjab, KPS Gill, also visited SSP Sandhu's house and interrogated Khalra for half an hour that day. Kuldeep Singh testified how Khalra's body bore evidence of torture prior to the interrogation. Later, when Station House Officer (SHO) Satnam Singh took Khalra back to the secret place of detention, SHO Satnam Singh told Khalra that if Khalra had agreed to the advice of KPS Gill, Khalra would have saved himself and the police officers.

The petition further discusses Gill's motive to kill Khalra, his knowledge about the conspiracy to abduct, illegally detain, torture and kill Khalra, his direct interrogation of Khalra, and his failure to punish his subordinates or abide by the Supreme Court's order to produce Khalra.

## Role of CBI

The petition discusses the failure of the CBI to bring charges against Gill, highlighting its resistance to including SPO Kuldeep Singh as a prosecution witness. Kuldeep Singh was joined as a prosecution witness by court order only after Paramjit Kaur filed a petition. The Sessions Judge, Patiala, wrote in his November 2005 order convicting Gill's subordinates: "[Kuldeep Singh] did respond properly to all the queries put forward to him by the defence counsel who could not shake his veracity despite detailed and lengthy cross-examination of this witness." The findings of fact contained in the November 2005 order establish the conspiracy to abduct and murder Khalra, as well as the role of senior level officers like Gill.

## International Law

*The international legal arguments are available at: <http://www.ensaaf.org/Gill-petition.html>*

The petition demonstrates that the CBI must also investigate KPS Gill's liability for the crimes committed against Jaswant Singh Khalra under the international law of superior responsibility. The doctrine of superior responsibility is well established in international law and has achieved customary status. Therefore, the international law of superior responsibility is also the law of India and governs the present case. Under the international law of superior responsibility, a superior is liable when three criteria are met:

- (i) The existence of a superior-subordinate relationship;
- (ii) The superior knew or had reason to know that the criminal act was about to be or had been committed; and
- (iii) The superior failed to take the necessary and reasonable measures to prevent the criminal act or punish the perpetrator thereof.

Thus, the doctrine of superior responsibility imposes liability on superiors for the unlawful acts of their subordinates, where the superior knew or had reason to know of the unlawful acts, and failed to take the necessary and reasonable measures to prevent and/or punish those acts. Based on his acts and omissions, KPS Gill is liable under the doctrine for Khalra's abduction, illegal detention, torture, and murder.

KPS Gill possessed both *de jure* and *de facto* command of the Punjab Police, demonstrating the existence of a superior-subordinate relationship. Gill was both formally appointed as the DGP and performed tasks that establish his *de jure* command. Gill stated in an interview that he created an "active and accountable police leadership," and that he led "from the front." His *de jure* command, as evidenced by his own admissions and the high-level tasks he performed, creates a presumption of effective control. His *de facto* command over his subordinates also demonstrates his effective control, as evidenced by his ability to issue orders that were followed; his powers to initiate investigations and discipline subordinates; his powers to reward and promote subordinates; his regular communications and meetings with subordinates; and how others acknowledged him as the person with control over the Punjab Police. All of these factors

demonstrate that Gill had effective control over the subordinates who committed the crimes against Jaswant Singh Khalra.

KPS Gill had actual and constructive knowledge that his subordinates committed and/or were about to commit unlawful acts against Jaswant Singh Khalra. Gill possessed actual knowledge of the unlawful acts because he witnessed Khalra's illegal detention and tortured body. Further, his position in the chain of command, the timing of the abduction after Khalra exposed the mass cremations, the extensive use of police infrastructure and personnel to commit the crimes, the similarity of the crime to disappearances of other human rights activists, and the violent reputation of the individuals involved in the commission of the crimes, also establish his actual knowledge of the crimes. KPS Gill had reason to know, or constructive knowledge, of his subordinates' crimes against Khalra because of the number of complaints and court notices he received about Khalra's abduction and threats to Khalra's life, the information available in the public domain about the role of his subordinates in Khalra's abduction, and general information on the violent history of his subordinates. Despite this actual and constructive knowledge that his subordinates had committed and were about to commit unlawful acts against Khalra, Gill refused to take any action against his subordinates.

Gill failed to take necessary and reasonable measures to prevent his subordinates from committing unlawful acts against Khalra and/or to punish them afterwards. Gill could have prevented his subordinates' crimes against Khalra with a simple release order and an order prohibiting further harm against Khalra. This measure was necessary because it was legally required by the Supreme Court and within his material ability. Gill could have undertaken a wide range of actions beyond a release order, that would have prevented his subordinates' crimes against Khalra, such as ordering a raid on the place where Khalra was illegally detained. Given these circumstances and Gill's wide powers, no superior could have considered it reasonable to refrain from action, as Gill did. In addition to failing to prevent the crimes of his subordinates, Gill also failed to investigate and punish his subordinates' after he learned of their crimes.

Further, Gill facilitated the crimes against Khalra by creating a climate of impunity. Gill created a climate of impunity by allowing and publicly defending the widespread human rights abuses perpetrated by his subordinates. In addition to permitting his subordinates to commit atrocities under his command, Gill has continued to contribute to a climate of impunity for past abuses by ridiculing the judiciary. For example, in 2001, Gill described the Indian judiciary as "among the most obtuse legal systems in the world." He further criticized the Court, stating the judiciary "pre-judged" cases that had been "concocted" against police officers, thus doubting the ability of the judiciary to independently adjudicate such cases.

Thus, Gill knew and had reason to know of his subordinates unlawful acts against Khalra, yet he failed to prevent the unlawful acts or punish the perpetrators. Accordingly, he must be held responsible for the abduction, illegal detention, torture, and murder of human rights defender Jaswant Singh Khalra.

*The petition also includes an extensive collection of annexures, including newspaper clippings and court documents, among other representations.*

### Further Information & Resources

Video of Jaswant Singh Khalra's April 1995 speech in Canada:

<http://www.ensaaf.org/Khalravideo.html>

International advocacy regarding Khalra:

<http://www.ensaaf.org/khalra.html>

Executive Summary of November 2005 order, along with complete order:

<http://www.ensaaf.org/khalra.html>

Biography of Khalra in Chapter 1 of *Reduced to Ashes: The Human Rights and Insurgency in Punjab*:

<http://www.ensaaf.org/reducedtoashes.html>