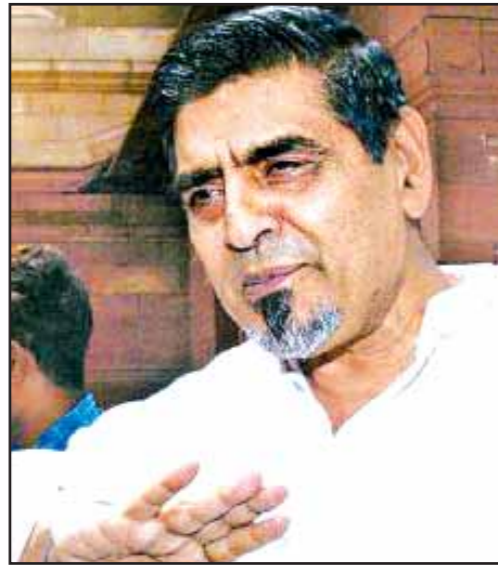


DENYING JUSTICE

India's CBI: How it trashed own officers to deny justice to the Sikhs?

Who is more powerful: The Joint Director of the CBI or the Reebok sneaker of journalist Jarnail Singh? In a complete expose of the ways in which India's top sleuthing agency, the



Central Bureau of Investigation (CBI) worked in denying justice to the Sikhs and bringing to book those guilty of a most horrible pogrom in 1984, it has now been revealed that the investigators had indeed recommended a strong case against Jagdish Tytler in another case known as Bara Hindu Rao genocide killing case, but the director of the CBI, Ashwani Kumar gave a clean chit to the Congress politician.

Priyaleen K Renuka

Clearly, the politics was at play in the labyrinths of India's justice dispensing machinery, and Sikhs could hope little. If Jarnail Singh threw a shoe at the entire Indian establishment, it was a step fully justified by the systematic and systemic ways in which justice is denied to the minorities, the poor, the have nots and the marginalised. One reading of the expose, led by a leading Indian daily The Indian Express, makes one wonder why not many more shoes are being flung in the face of Indian politicians all across the country.

Now, it has been conclusively brought up by sections of the media that the Joint Director and the DIG clearly recommended, in writing, that Jagdish Tytler was guilty of murder, rioting and damage to property in the Bara Hindu Rao pogrom case but the CBI director Ashwani Kumar signed on the clean chit to Tytler.

After the shoe controversy sparked outrage and Tytler and fellow accused Sajjan Kumar were told to withdraw from the elec-

toral race, both the Congress and the UPA said the Government was unaware of the clean chit to Tytler.

However, records also show that the CBI clean chit came after its Director of Prosecutions S K Sharma, who reports to the Law Ministry also opined that the evidence against Tytler was too weak.

On April 2, CBI filed its final investigation report in the Bara Hindu Rao case (one of the seven the CBI registered after the Nanavati Commission report in 2005) despite this sharp division within.

Also, in December 2008, even after the CBI took the unprecedented step of sending a team to the US to question two crucial witnesses Jasbir Singh and Surender Singh on directions of the court and although it had secured testimonies indicting Tytler, it chose to pick holes in their version of events.

This is evident from status reports submitted by the CBI to the Ministry of Home Affairs, which directed the agency to register cases against Tytler, Kumar and Dharam Das Shastri after the Nanavati report was tabled in Parliament.

The CBI informed the Home Ministry that both witnesses had reiterated their allegations and the agency was trying to verify their statements and trying to trace one Sucha Singh, with whom Jasbir Singh claimed to have stayed during the riots.

The two testimonies — and details therein which the CBI was finding it difficult to corroborate after a gap of 25 years — were hastily processed within the CBI. Eventually, the Investigating Officer (I O) . Superintendent of Police (SP) and the Deputy Legal

Advisor (DLA), among others, recommended closure of the case, citing contradictions in the statements of witnesses.

A contrary view was taken by the DIG and the JD.

In a three-page opinion, Joint Director Arun Kumar discussed the merits and demerits of the evidence against Tytler at length. Kumar acknowledged that Surender Singh had done several flip-flops in his testimony against Tytler. For example, he told the Nanavati Commission in January 2002 that Tytler led the mob and incited it to "burn the Gurudwara and kill Sikhs," but he retracted this and filed a second affidavit in August 2002 denying the first.

He reaffirmed this affidavit in April 2006 but then in an interview in December 2007, he claimed he had seen Tytler inciting the mob, a charge he repeated when he was examined in the US.

"The cases have been politically used and misused time and again. If one relies upon the statements of witnesses, their changing statements will be quoted to prove them unreliable. On the other hand, the other side will argue that accused persons are so influential that nobody can depose truthfully in India. Both important witnesses are presently in USA. If they are insisting on certain narration of facts, it will be difficult to ignore only by citing contradictions... Given the circumstances of these cases, it will not be appropriate to totally deny the present statements of Jasbir Singh and Surender Singh regarding the incident. It will be appropriate to finally leave the decision in the hands of trial court. Hence, I tend to go with the opinion of the DIG and recommend prosecution of Jagdish Tytler under Sections 147, 149 and 109 IPC read with 302, 295, 427 and 436 IPC."

CBI officials handling the case claim that faced with such "contradictory" advice, Director Ashwani Kumar sent the file to Sharma, the



CBI Director Ashwani Kumar, the man who signed the clean chit for Tytler in spite of strong recommendation from his own sleuths. CBI's Director of Prosecution (DoP). He, too, said that the evidence showing presence of the accused on the scene of crime was weak and the director then signed off the file regarding the value of the testimonies recorded in the US.

Sharma, incidentally, is the bridge between the agency and the government and this isn't the only case in which opinions of senior law officers have changed the direction of the probe.

Indian media contacted Jasbir Singh in San Francisco. He said he was shocked to learn about the CBI's attempt to close the case. Although he said he was not given a copy of his statement, he said he had told CBI investigators how on November 3, 1984, he had heard the Congress leader telling an assembled crowd near Teg Bahadur Hospital that, "I had assured you that you kill Sikhs and nothing will happen to you. I had given a promise to the Centre. Despite this, by killing least number of Sikhs you have lowered my prestige."

"The CBI officers before whom I deposed told me nothing will come out of the case and I was wasting everyone's time," claimed Jasbir Singh. "I gave clear evidence against Tytler. Should my evidence be disregarded because of the inefficiency of the CBI?"

Says Gurbatwant Singh Pannu, the attorney who was present when the statements of Jasbir Singh and Surender Singh were recorded in San Francisco and New York respectively: "If the CBI wanted to strengthen their case they would have also recorded the statements of Resham Singh and Giani Chain Singh, both of whom were available and ready to give evidence in the same case and about whose presence I informed the CBI before the team landed here. But they were not interested and obviously only wanted to give a clean chit to Jagdish Tytler before the elections."

CBI Director Ashwani Kumar did not respond to written questions on the case by the Indian media which exposed the contradictions within the CBI. In fact, the shamelessness hit rock bottom when the CBI spokesman said that the newspaper should not discuss the Jagdish Tytler case since it was sub judice and that in view of the guidelines issued by the Election Commission, they could not reply to questions on cases which have political overtones.

NEW DELHI: Hearing in the appeal by the CBI in the Delhi High Court against acquittal of Congress leader Sajjan Kumar in a 1984 anti-Sikh genocide case has hardly made any headway even six years after the agency filed it.

On March 5, 2007, the court had fast tracked the case on requests from the CBI and relatives of the victims. Though the day-to-day hearing ordered by the court never took off, most of the time the court was forced to adjourn the matter following requests from the CBI or lawyers representing kin of victims in the 15 hearings after it.

A Bench of Justices B.D. Ahmed and P. K. Bhasin gave a "final opportunity" to Anwar Kaur, the widow of one Navin Singh, killed in the riot, a witness Fota Singh and Delhi Sikh Gurudwara Prabhanda Committee who have challenged the acquittal along with the CBI, to address on the maintainability of their petitions at a time when the CBI has already filed an appeal. They have to begin arguments on May 21.



EVEN HIGH COURT JUDGE GETS ANGRY: TAREEK PAR TAREEK

"You file petitions for early hearing and then seek adjournments after adjournments. You should abide by commitments," Justice Ahmed told lawyers representing all of them when they sought a "short" adjournment on the ground that a senior lawyer arguing for all the petitioners was not available. "The petitioners are yet to address on maintainability of their petitions in view of the state through the CBI having filed an appeal. Thus before proceeding to hear the matters on merit, the petitioners in the aforesaid revision petitions are required to address on maintainability of their petitions," the court said on July 1, 2008.

The CBI's case was based on the statement filed by Kaur, who had told police that a mob instigated by Sajjan Kumar had killed her husband Navin Singh, in front of her residence at Sultanpuri. But it collapsed when she declared in the trial court that she was not sure whether it was Kumar who led the mob. The CBI said the police, who initially handled the case, failed to investigate it properly. In its appeal it said Sajjan Kumar's acquittal was the result of the trial court not evaluating the statements of the prosecution witnesses properly.

WSN Bureau NEW DELHI

Even as Jarnail Singh was being led away, India's Home Minister P Chindambaram tried to remain smug, and later claimed he was being gentle. His favourite words were: "The law will take its own course." Here is the course a quest for justice takes in India.

In case of Sajjan Kumar, guilty of 1984 genocide of the Sikhs, the CBI took FIVE years to admit an appeal, and for four years, failed to even file a chargesheet. Best guess is that it was waiting for the justice seekers to get tired, exhausted, frustrated, or perhaps die.

The CBI, which trashed the opinion of its own senior officers and preferred to give a clean chit to Jagdish Tytler and thus splash dirt on its own face, has also being found completely and deliberately inefficient in case of moving against Sajjan Kumar.

The Sultanpuri case was the only 1984 anti-Sikh pogrom case against Sajjan Kumar being probed by the CBI before it registered five more cases against him following the Nanavati Commission report in 2005. One Navin Singh was murdered, the complainant in the case being his wife, Anwar Kaur.

In December 2002, the trial judge had acquitted Sajjan Kumar, among others, in the Sultanpuri case alleging his involvement in the killing in Sultanpuri saying the CBI had "miserably failed to prove the case."

It took the CBI a full five years to get its appeal against the acquittal admitted in the Delhi High Court. And to this date, even arguments haven't seriously begun.

During the hearing on March 5, 2007, when the appeal was admitted, the CBI counsel named three witnesses as having given depositions that "categorically implicate" Sajjan Kumar, and informed the court that one of them even suffered "trishul injuries" during the riots.

And what about Sajjan Kumar?



The bench, comprising Justice Manmohan Sarin and Justice S L Bhayana, said it would conduct day-to-day hearings and granted bail to Sajjan Kumar. High Court records show that in the two years since the appeal was admitted, hearings have been repeatedly adjourned on one pretext or the other. Most recently, due to a change in the bench, judges recusing or non-appearance of CBI's counsel. The pace of CBI's investigations in the five other cases against Sajjan Kumar — registered after the Nanavati report following which he had to resign from the post of Chairman, Delhi Rural Development Board — has been similarly tardy.

There are no chargesheets in sight despite the fact that the agency was handed over the entire set of case records by the Delhi Police that included thousands of pages of affidavits filed before various commissions of inquiry. Progress reports submitted by Home to the Ministry of Home

Affairs reveal that in a majority of these cases, key witnesses have deposed against the Congress leader. Some of the salient statements, as per the CBI's own admission:

● In the case of killings in the Delhi Cantonment area, the CBI recorded the testimony of Jagdish Kaur, the wife of one of the victims and Jagsher Singh, the brother of another victim, both of whom have said they had seen Sajjan Kumar "inciting the mob" against Sikhs. Their statements are now being recorded before a magistrate under Section 164 CrPC.

● In another case of Sultanpuri, the CBI has examined 82 witnesses and added 47 "important" documents to the pile of evidence. Other witnesses, according to the agency, are still being examined.

● In the case of the killing of a doctor in Mangolpuri, the CBI has said that while one key witness has passed away, it has got the testimony of one Surender Singh in Ludhiana. He had also given an affidavit to the Nanavati Commission and has claimed to the CBI that Sajjan Kumar "instigated" the mob to kill Sikhs.

● In the last of the Sultanpuri cases, dealing with the killing of 60 persons, the CBI has managed to get seven witnesses who have given 164 CrPC statements about the alleged "involvement" of Sajjan Kumar.

And yet the wait for the chargesheets continues.

So when P Chindambaram told the media, like many of his predecessors, that the law will take its own course, one thing was clear: We all knew it will take the course it has always taken, a course decided by the perpetrators of a crime most worse in contemporary Indian history.