

Reference made by the Supreme Court of India on Writ Petition Nos. 447/95 and 497/95.

CORAM

Dr. Justice A.S. Anand

Justice Shri Y. Bhaskar Rao, Member

Shri R.S. Kalha, Member

PRESENT

1. Shri Ashok Agrwaal, Advocate for the petitioners in
W.P. No. 447/95, CIIP
2. Shri R. Venkataramani, Amicus Curiae along with
Shri Ashok Panigrahi, Advocate
3. Shri C.Gonsalves, Sr, Advocate along with
Shri Parminder Singh Grewal, Advocate on behalf of Committee for Coordination on
Disappearances in Punjab
4. Shri H.S. Phoolka, Sr. Advocate along with Shri P.S.Grewal
and Shri Siddhartha Shankar Ray, Advocates, AFDP/CCDP
5. Shri Navkiran Singh, Advocate on behalf of
Smt. Paramjit Kaur & 32 applicants
6. Shri Altaf Ahmad, Senior Advocate along with
Shri R.S. Suri, Advocate for the State of Punjab
7. Shri Sudhir Walia, Advocate for Punjab Police Officers
8. Shri H.S. Dhillon, I.G.P. /Commando, Punjab
9. Shri Jagdish Kumar, DIG/Lit, Punjab along with
Shri H.S. Sidhu, AIG, Litigation, Punjab
10. Shri I.G. Sindwani, Under Secretary, Ministry of Home

Affairs, Government of India

11. Shri Dhan Kishore, Public Prosecutor, CBI

ORDER

This matter is under consideration of the Commission on a remit from the Hon'ble Supreme Court of India. The facts and circumstances under which the reference came to be made require a brief notice at the threshold:

Two writ petitions were filed before the Supreme Court of India being W.P. (Crl.) No. 497/95, Paramjit Kaur Vs. State of Punjab and others; and Writ Petition (Crl.) No. 447/95, Committee for Information and Initiative on Punjab Vs. State of Punjab. Serious allegations were made in the writ petitions about large scale cremations resorted to by the Punjab Police of persons allegedly killed in what were alleged as "encounters". The main thrust of the Writ Petitions was that there were 'extra-judicial executions' and hasty and 'secret cremations' rendering the State liable for action. The two writ petitions relied upon a Press Note issued on 16th January 1995 by the Human Rights Wing of the Shiromani Akali Dal under the caption "Disappeared" "cremation ground". The Press Note had alleged that a large number of human bodies had been cremated by the Punjab Police after labelling them as "unidentified". The Supreme Court was apparently disturbed by the gravity of the allegations and it ordered an inquiry by the CBI into the allegations. Accordingly, the CBI, after completing its enquiry, submitted its fifth and final report to the Supreme Court on 9th December 1996. The Supreme Court after examining the report relating to cremation of dead bodies on December 11, 1996 after examining the final report (5th) of the CBI observed:

"The report indicates that 585 dead bodies were fully identified, 274 partially identified and 1238 unidentified. Needless to say that the report discloses flagrant violation of human rights on a mass scale".

and directed:

"We, therefore, direct the CBI to take further action into the matter and register the cases, where necessary, hold investigations and proceed in accordance with law on the basis of the material collected during investigation The CBI shall, after every three months, place a status report regarding the investigation in this Court".

The Hon'ble Supreme Court vide its order dated 12th December 1996, made a reference to this Commission observing:-

"We request the Commission through its Chairman to have the matter examined in accordance with law and determine all the issues which are raised before the Commission by the learned counsel for the parties. Copies of the order dated November 15, 1995 and all subsequent orders passed by this Court alongwith the copies of all the CBI reports in sealed covers be sent to the Commission by the Registry

Since the matter is going to be examined by the Commission at the request of this Court, any compensation awarded by the Commission shall be binding and payable. If any approval or further assistance from this Court is necessary, the same may be sought by the Commission.....”

(emphasis supplied)

That is, how, the matter is before the Commission. On receipt of the reference, Commission issued notice to the parties and the authorities and directed the listing of the case for preliminary hearing on 28th January 1997.

By its proceedings dated 28th January 1997, the Commission desired to know from the parties and their learned counsel their views “as to the scope and ambit of the subject-matter before the Commission” in the proceedings pursuant to the orders of the Supreme Court of India “and the capacity in which the Commission was to function: whether under within the pale of the Protection of Human Rights Act, 1993 (‘Act’ for short) on the premise that the mandate of Supreme Court has had the effect of removing the bar of limitation under section 36(2) of the Act or whether the NHRC is designated sui-generis to perform certain functions and adjudicate certain issues entrusted and referred to it by the Supreme Court”. Learned counsel were asked to “clarify what according to them is the concept and content of the idea of compensation referred for determination by the Commission.”

On 4th August 1997 after hearing Learned Counsel for the parties the Commission framed following preliminary issues with a view to determine the Commission’s jurisdiction under the Hon’ble Supreme Court’s dispensation and the capacity in which it was to function under that dispensation:-

1. Whether the order dated 12th December 1996, is referable to the plenitude Article 32 and has the effect of designating the National Human Rights Commission, not as a mere statutory authority functioning within the strict limits of the provisions of the Act, but as a body sui- generis to perform functions and determine issues entrusted to it by the Supreme Court.
2. If the answer of issue no. 1 is in the affirmative, whether in the discharge of its functions under the said remit, the powers of the Commission are not limited by Section 36(2) and other provisions of the ‘Act’.
3. Whether, the order of the Supreme Court, requires the Commission to adjudicate on the compensation and whether such adjudications are binding on the Governments concerned. Whether such empowerment of the Commission amounts to an investiture of a new jurisdiction on the Commission not already existing under law and whether the order of the Supreme Court amounts to a constitutionally impermissible delegation of its own judicial powers.
4. Whether the Commission could, to aid speedy disposal of the claims for compensation, set-up adjudicatory mechanism under it, subject in each case to its final approval.

The Commission after hearing learned Counsel for the parties and examining their written submissions, decided the preliminary issues. On issues no. 1 and 2, it observed:-

"In the light of the foregoing discussion, the Commission holds that the Commission was designated as a body sui-generis to carry out the mandate of the Supreme Court. As a logical consequence, it requires to be held on Issue No. 2 that the powers of the Commission in carrying – out this mandate are not limited by Section 36(2) or other limiting provisions, if any, under the Act."

While deciding issue No. 3, the Commission held that the order of remit from the Supreme Court required the Commission to adjudicate on the issue of compensation and that any compensation awarded by the Commission "shall be binding and payable" and negated the plea that the conferment of such power would amount to "a constitutionally impermissible delegation of its own judicial powers" by the Supreme Court. Issue No. 4 was then decided in the affirmative.

In the course of the aforesaid proceedings dated 4th August 1997, it was also observed:-

"Now a word as to the nature and content of the idea of compensation in such cases. Today, public law remedies are expanded and include award of compensation for violation of Human Rights. A range of decisions of the Supreme Court, more notably in *Neelabati Behera vs. State of Orissa* 1993 (2) SCC – 746, *D.K. Basu vs. State of West Bengal* (9) Scale – 298 and *PUCL vs. Union of India* (1997) 2JT 311 lay down the broad parameters of this emerging concept of damages in public law as part of the constitutional regime. There are also guidelines as to the nature and content of the idea of compensation in public law, its distinctiveness from the private-law remedies and of component elements in its quantification."

The Commission then went on to say:-

"In India great strides have since been made in the field of evolving legal standards for remedial, reparatory, punitive and exemplary damages for violation of Human Rights. In a recent judgment of far reaching significance that will shape the future in *D.K. Basu Vs. State of West Bengal*, the Supreme Court said:

"..... Thus, to sum up, it is now a well accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right of life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation."

and added:

"The Supreme Court has laid down that principles for award of compensation by the courts as a part of the public law regime which will supplement the inadequacies of the statutory law. There is, thus, an enforceable right to compensation recognized in the public regime in India."

On 4th September 1997 the Union of India moved an application before the Commission for stay of further proceedings, for a period of three months, in order to enable the Union of India to approach the Supreme Court against the order of the Commission dated 4th August 1997. The proceedings in the Commission were accordingly adjourned.

The Supreme Court on September 10, 1998, disposed of the Petition filed by the Union of India questioning the correctness of the order of the Commission dated 4th August 1997. While declining to interfere with the order of the Commission it observed: -

"The findings on all the issues are explicit and clear and truly reflect the intention of this Court as set out in its order dated 12th December 1996, which was passed in the aforesaid two Writ Petitions under Article 32 of the Constitution.

The matter relating to 585 dead bodies (which were fully identified), 274 partially identified and 1238 unidentified dead bodies, has already been referred to the Commission which has rightly held itself to be a body sui generis in the instant case."

The Court explained:

"In the present case this Court in exercise of the jurisdiction under Article 32 of the Constitution entrusted the National Human Rights Commission to deal with certain matters in the manner indicated in the course of its order. All authorities in the country are bound by the directions of this Court and have to act in aid of this Court. National Human Rights Commission is no exception. The Commission would function pursuant to the directions issued by this Court and not under the Act under which it is constituted. In deciding the matters referred by this Court, National Human Rights Commission is given a free hand and is not circumscribed by any conditions. Therefore, the jurisdiction exercised by the National Human Rights Commission in these matters is of a special nature not covered by enactment or law, and thus acts sui generis."

The Court then clarified :-

"The investigation by the CBI has been ordered and is being done to determine and establish some other facets, including culpability of those responsible for violation of Human Rights. The remaining issues have been referred to the Commission. They obviously relate to violation of Human Rights. If on a publication of general notice, as proposed by the Commission, which incidentally was also done by the CBI in pursuance of our Order dated 22.7.1996, complaints relating to violation of human rights are filed before the Commission, it will investigate into those complaints in accordance with the provisions of the Act, specially Section 17 thereof and will also take such steps, after enquiry, as are deemed fit by it in the light of the provisions contained in Section 18 of the Act.

The various objections raised before the Commission, which had to frame preliminary issues and dispose them of, indicate the attitude of the parties appearing before the Commission, which we are constrained to say, is not a healthy attitude and does not represent the effort to assist the Commission for a quick conclusion of the proceedings so that if there have been any violations of human rights, the families affected thereby may be rehabilitated and adequately compensated. We also do not

approve of the conduct of the parties in approaching this Court for clarification of the order of the Commission by way of a Misc. Petition which was filed on 3.10.1997 and has remained pending in this Court for ten months, during which period the Commission could have had disposed of the whole matter."

(Emphasis ours)

Even after the above order of the Supreme Court and the observations made therein the matter could not make any progress because a controversy was raised by learned counsel for the petitioners as to the "scope" of enquiry before the Commission.

On 16th October, 1998, the Commission heard arguments from Learned Counsel of the parties with regard to what they perceived as the proper scope of inquiry which the Commission was required to undertake under the remit of the Supreme Court of India. The Commission after detailed discussion held:-

"For the reasons stated above, the Commission considers it fair to say that the scope of the inquiry under the Supreme Court's direction, is limited only to those illegal killings / disappearances that culminated in the cremation of 2097 bodies (585 bodies fully identified, 274 bodies partially identified and 1238 bodies unidentified) in the crematoria located at Durgyana Mandir, Patti Municipal Committee Crematorium and Tarn Taran Crematorium located in the Police districts of Amritsar, Majitha and Tarn Taran, which were also the subject matter of inquiry by the CBI in pursuance of the Order of Supreme Court dated 15th November 1995. The contention of the Petitioners to the contrary that the Commission should undertake an investigation of all the alleged Police killings in the State of Punjab, apart from being extremely expansive in nature, does not seem to square or be reconcilable with the express terms of the Court's remit".

(Emphasis supplied)

Subsequent to the above order of the Commission, some proceedings took place before it on various dates for settling the modalities in regard to the issue of a public notice and processing of the claims. It transpires from the record that the issue of scope of enquiry which the Commission was to undertake under the remit of the Supreme Court's order dated 12th December 1996 was once again raised before the Commission. Learned counsel for the petitioner argued that the Commission was required to inquire into all incidents of what are referred to as "extra judicial eliminations" or "involuntary disappearances" "fake encounters" etc. while the contention of the State of Punjab and the Union of India, on the other hand was, that the enquiry was restricted to 2097 cases in the three districts as opined by the Commission on October, 1998. After hearing learned Counsel for the parties, the Commission on 13th January 1999 held that the scope of the Commission's jurisdiction was confined to matters relating to the alleged 'unlawful cremation' of the 2097 bodies in the police districts of Amritsar, Tarn Taran and Majitha only and rejected the plea raised by Learned Counsel for the petitioners.

A "public notice" inviting claims / applications from the legal heirs/ defendants of the deceased claiming that the deceased was illegally cremated by the Punjab Police was thereafter issued. 88 claim petitions were received in response to the said notice. The case was adjourned to consider the claims etc. however, before the scrutiny

could take place Learned Counsel for the Petitioners once again pleaded before the Commission to review its order or seek a clarification from the Hon'ble Supreme Court about the true scope of enquiry by it. On March 24, 1999 the plea was once again rejected by the Commission.

An application was filed by learned counsel for the petitioners for "disclosure and inspection" of the status reports filed by the CBI in the Supreme Court, which were being forwarded to the Commission under sealed covers. The petition was disposed of by the Commission on 5th August, 1999. Following observations from that order need a notice at this stage :-

"In the meanwhile, as directed in the Supreme Court's order, the C.B.I. is conducting investigations in respect of a related area – as to the criminal liability, if any, of public authorities for the deaths and the cremations. During the course of investigation, again as directed by the Supreme Court, the CBI has been forwarding status reports from time to time to the Supreme Court which are, in turn, forwarded by the registry of the Supreme Court to the Commission. They are kept in sealed covers. The present application has come to be filed by the petitioners for disclosure and inspection of those status reports from the CBI.

(Emphasis ours)

The question, therefore, is whether it is proper and expedient at this stage to permit the petitioners to inspect the Status Reports of the CBI by opening the sealed covers and giving them access to information contained in them. There are two aspects of this question. The first is the general principle of the need for fairness and openness in administration and how this great principle is served by the recognition of the Right to Know. The second is the more mundane question of the law of criminal procedure treats and endorses confidentiality of information particularly during the investigation into crimes. Commission may take-up the second aspect first."

After referring to various provisions of Code of Criminal Procedure and some decided cases on the subject the Commission declined the prayer of learned Counsel for the petitioners and opined:

"It would thus be seen that it is the duty of the Commission to balance the competing interests of the public service and the access to information, by assessing the effects of disclosure whether it would advance the cause of justice or impede the progress of investigation. As stated earlier, it is not the contention of the Counsel for the C.B.I. that the contents in the sealed cover of the status reports are not to be looked into by the Commission. But their objection is that the access to the contents of the documents to the claimants / complainants / Public Police officials would hamper smooth investigation.

It would, therefore, be seen that the Code prescribes, under Section 173, the procedure to supply, along with the charge-sheet/ Police report, all documents or relevant extracts thereof, on which the prosecution proposes to rely, to the accused person, other than those already sent to the Magistrate during investigation. The status reports at the present stage indicate the progress of investigation conducted by the CBI. In view of the legal position and the circumstance that in many cases investigation is yet to be completed, the Commission is of the view that it should decline to throw open the status-reports of the CBI for inspection by the petitioners."

[emphasis supplied]

A perusal of the record of the case reveals that on 15th February 2001, a plea was once again raised by Shri Ashok Agrwal, Learned counsel for the petitioners to make a reference to the Supreme Court seeking 'clarification about the scope of enquiry remitted to the Commission'. (Shri Justice J.S. Verma had by then taken over as Chairperson of NHRC on the expiry of the term of Shri Justice M.N. Venkatachaliah). The Commission however, did not consider it necessary to seek "any such clarification" and observed :-

"The scope of this enquiry relates to 2097 cremations according to the CBI report out of which 585 were identified, 274 partially identified and the remaining 1238 unidentified. In response to the public notice issued by the Commission, only 88 claims have been filed. It is obvious that as far as practicable efforts must be made to enquire into all or as many out of 2097 cremations as possible and for that purpose the necessary particulars would be required. In respect of 585 cases which according to the CBI report are identified, the particulars available in the CBI report should furnish the basis for proceeding with the enquiry irrespective of the question whether any claim has been filed in respect of them or not. In respect of the 274 partially identified, the available particulars have to be utilized for making full identification and obtaining the requisite particulars to enable the inquiry to proceed. In respect of the remaining 1238 unidentified cremations, efforts should be made to obtain the necessary particulars in every possible manner so that even in respect of them an enquiry, if possible, can be held."

Vide its proceedings dated 3rd May 2001, the Commission took on record the three lists marked as List 'A' (identified dead bodies), List 'B' (partially identified dead bodies) and List 'C' (unidentified dead bodies). List 'A' contained a total number of 582, List 'B' - 278 and List 'C' - 1237 items.

The proceedings of the Commission dated 8th May, 2003, state:

"Vide proceedings of the Commission dated 16 September, 2002, while granting time to the State of Punjab to inspect documents in possession of the CBI, the Commission had fixed a time schedule for examination of those documents and directed the affidavits to be filed by the State of Punjab by 31st October, 2002. Shri R.S. Suri, learned counsel appearing for the State of Punjab submits that the inspection of documents could not be completed within the time specified by the Commission because of the huge volume of records and that the inspection could be completed only by 31st January, 2003. He also submitted that the State of Punjab has already filed affidavits of 216 officers in respect of the bodies which stood identified. It is submitted that since the records have to be translated from vernacular, they would require more time to file affidavits regarding remaining 366 identified bodies. We grant him time to do the needful on or before 21st July, 2003 so that the matter can be taken up on 24 July, 2003 at 3 P.M."

On 2nd September 2003, the Commission granted some more time to the parties to verify the details given in the three lists filed by the CBI. Learned counsel for the parties agreed that they would file a tabulated chart in respect of the persons mentioned in the three lists and the case was adjourned to 20th October, 2003. Tabulated charts were filed in the meanwhile.

On 20th October 2003, Learned Counsel for the petitioners pointed out that the State had admitted that some of the deceased were in the custody of the police before their death and that it would be useful to deal with their cases. The Commission, in its proceedings of October 20, 2003 observed:-

"It has been stated before us that there are a number of cases in which the State itself has admitted that the deceased persons had been taken into custody. It would be helpful to have a chart of such cases in which there is admission of the State of taking the deceased persons into custody. Shri Agrwall submits that he will submit a list of such cases from the material already furnished before this Commission to Shri Suri before 25th October 2003. Shri Suri submits that he would submit comments, if any, on that list by 28th October 2003."

In its proceedings dated 13th November 2003, the Commission noticed that Shri Agarwal had submitted a list of deceased persons, from the material already furnished before the Commission, who were according to him "admittedly" in the custody of the police before their death and cremation. Shri R.S. Suri submitted his comments on the list filed by learned counsel for the petitioners. It was noticed that the issues which were framed on 4th February 2002, centered around consideration of 582 fully identified bodies which were cremated out of the total of 2097 bodies only and not qua the alleged illegal cremation of all the 2097 bodies. Learned Counsel for the parties submitted before the Commission that for proper disposal of the matter before the Commission, the issues framed on 4.2.2002 required to be reframed. The Commission found merit in their submission Learned counsel undertook to file draft issues for assistance of the Commission.

While the matter rested thus, on March 17, 2004, the Commission in the Course of its proceedings observed:

"It appears to us that for proper adjudication of the rights and for effective determination of compensation etc. in respect of the cases of identified and partially identified bodies, it is desirable that the Commission once again issues a public notice inviting the 'NOK' of all such persons whose names figure in these lists to submit their claims, if any, or make other submissions in person or through counsel. Even NOK of persons, other than those mentioned in Lists 'A' & 'B', who also consider that they have some claims to prefer in respect of any of their 'unidentified' deceased relations, may also likewise submit their claims to the Commission in person or through their counsel. The claims shall be accompanied by affidavits of the claimants indicating their relationship with the deceased and also disclosing the names and addresses of the legal heirs of the deceased.

Those 88 claimants who had responded to the Commission's earlier notice shall also be served with personal notices regarding the next date of hearing. They shall also be called upon to file affidavits in support of their claims disclosing their exact relationship with the deceased and also the names and addresses of other legal heirs of the deceased so that their claims are also considered properly."

Public notices were accordingly prepared and published in different newspapers on 19.7.2004. The public notice required filing of claims by individual claimants within 8 weeks from the date of the publication of the notice. In response to the public notice, 1536 claim petitions were received in the Commission by due date duly supported by affidavits in support of the claims. 55 claim petitions supported by affidavits were

received from the office of Shri Ashok Agarwal on 20.9.2004 after the due date, but they were also entertained waving the delay in the submission of the same.

On 23.9.2004, when the Commission took up for consideration the responses received from the NOK of some of the claimants, it was observed that the total number of claim petitions received in the Commission were 1591. Since, most of the petitions were filed in Punjabi language, the Registrar (Law) was directed to have them translated into English for assistance of the Commission. Learned Counsel appearing for the parties also volunteered to assist the Commission by furnishing English translations of the claim petitions. Counsel for the petitioners were also permitted to file other claim petitions, before the next date with an advance copy to the State of Punjab, as it was submitted by them that some more claim petitions were in the pipeline. Case was adjourned to November 5, 2004.

Learned counsel for the parties have agreed that as a first step, the Commission may consider the cases of such of the deceased persons who were admittedly in the custody of the police prior to their death and were cremated in police districts of Amritsar, Majitha and Tarn Taran, for the purpose of awarding 'compensation' to their next of kin. Agreeing with the submissions of learned counsel for the parties, the Commission has heard arguments on the following questions:

(a) Whether any of the deceased who were cremated in police districts of Amritsar, Majitha, Tarn Taran by the police were admittedly in the custody of the Punjab police prior to the time of their death and cremation?

(b) Whether the State of Punjab is not liable to pay compensation to the next of kin of those deceased, who were admittedly in the custody of the police prior to their death and cremation?

If the answer to (b) is in the affirmative, then

(c) What should be the quantum of compensation payable to the next of kin of those deceased?

Shri Altaf Ahmed, learned Senior Counsel assisted by Shri R.S. Suri, appearing for the State of Punjab submitted that though the State does not dispute that 99 persons, as mentioned in the affidavits filed by the State of Punjab, were in the custody of the police prior to their death but it was asserted that none of the officials of the State could be held directly responsible for causing the death of any of those deceased persons. He, therefore, submitted that stricto sensu the judgment of the Supreme Court in "Nilabati Behera Vs. State of Orissa and others" (1993 2 SCC 746) would not be applicable to the facts and circumstances of the case since the police was performing their duty of protecting the sovereignty and security of the nation and was responding to a situation which was of an extraordinary nature.

He argued that during the relevant period, the State was facing terrorist activities and the police was obliged to act in defence of the State and while performing such duties if a citizen lost his life, not attributable to any direct action of the State officials, the State should not be blamed for it. He pointed out that during that period, the State itself had lost as many as 10,784 police and para military personnel and 300 family members of such police and para military forces besides as many as 11,694 civilians as a result of terrorist related violence. Shri Altaf Ahmed went on to

submit that the Commission should take into account the extraordinary situation prevailing in the State while considering the question of grant of any monetary relief to the next of the kin of the deceased. According to Shri Altaf Ahmed, in case the Commission decides to order payment of money to the NOK of the deceased, the same should be in the nature of ex-gratia payment and not by way of damages or compensation and should be without prejudice to the rights of the State and its officials in any civil, departmental or criminal actions. He added that while fixing the quantum of the amount payable to the next of kin of the deceased, who were admittedly in the custody of the police, prior to their death, all these factors be kept in view. Learned counsel asserted that the terrorists who were fighting against the law did not deserve to be treated at par in the matter of award of monetary relief, with what would be payable to an ordinary citizen who lost his life while in police custody due to some action of the police. He, however, fairly submitted that though the State was engaged in a war like situation, he was not even remotely pleading sovereign immunity but pleaded that the Commission, while dealing with the case, at this stage, should also clarify that since CBI investigation as directed by the Supreme Court, was already in progress, its order of granting monetary relief to the next of kin of the deceased was without prejudice to the rights of the parties and that the same should not be construed as any expression of opinion on the culpability of any of the State functionaries.

Learned senior counsel for the petitioners, Shri Gonsalvis submitted that State could not be permitted to take the life of a citizen in its custody as it was obliged to keep the citizens in its custody safe from any harm and if the state failed to do so, it was liable to pay compensation to the next of kin of the deceased, who prior to their death, were admittedly in the custody of the police. The arguments of Shri Ashok Agrwal, Advocate, oral as well as written were also on the same tenor. Shri Phoolka and Shri Nav Kiran Singh, Advocates, also argued on the same platitude and asserted that the State was vicariously liable where a citizen loses his life while in custody of its officials. They also submitted that the amount of compensation should be fair and reasonable. It was pointed out that the Supreme Court had in certain cases awarded as much as ten lakh of rupees while the High Court had awarded amounts ranging from 3.5 lakhs to 5 lakhs under somewhat similar circumstances. It was pointed out that the State has also been making upward revisions of the amount of compensation payable to NOK of its employees, who died in terrorist related violence.

Shri Venkatramani, Learned Counsel assisting the Commission, submitted that in any civilized country, the power to detain a person in custody, where the necessity for the same is felt, only can be conceded, but that power cannot be extended to the taking away of the life of such a person, while the person is in its custody. Learned counsel submitted that no such right can ever be conceded to the State by which it can resort to "extra judicial killing" even of hardened criminals whether by its act or omission. He went on to say that for loss of life there is an obligation of the State to compensate but agreed with Shri Altaf Ahmad that any award made by the Commission in favour of the NOK of the deceased, must be without prejudice to the rights of the parties and the same should not be construed as any expression of opinion on the culpability or otherwise of anyone.

Before we consider the submissions of learned counsel for the parties in their correct perspective, it needs to be pointed out that human rights of citizens are non-negotiable and non-derogable. No compromise with violations of the same is

permissible in any civilized society. These rights recognize the essential worth of a human being and acknowledge the dignity inhering in all human beings, irrespective of their race, sex or economical level of living. While this is a historical fact, it is also a reality that the cult of terrorism strikes at the very root of human rights of innocent people. Terrorism and human rights are natural enemies with no possibility of their co-existence. No person who supports human rights can support terrorism, which results in a grave violation of human rights of innocent citizens.

It needs to be acknowledged that there can be no alibis and justification for terrorism and nothing justifies terrorism and that the menace of terrorism has to be curbed. However, the Commission is firmly of the view that whereas terrorism must be countered effectively and strongly, no democratic society can be permitted to chill civil liberties of the citizens while taking measures against the terrorists. In the fight against terrorism, sensitization level of human rights cannot be allowed to be sacrificed. A critical task of striking a fair balance by way of security concerns and human rights is to be performed and need of proportionality must not be ignored. While fighting war against terrorism relentlessly, the State cannot be permitted to go over board and in effect declare a war on the civil liberties of people because the rationale of anti-terrorism measures is aimed at protecting human rights and democracy. Counter terrorism measures should, therefore, not undermine democratic values or subvert the rule of law. It is during anxious times, like the decade in Punjab under our consideration, when care has to be taken that state does not take recourse to bend the rule of law.

In this connection, it would be useful to refer to the opinion of the Supreme Court of India in D.K. Basu Vs. State of West Bengal 1997(1) SCC 416:

Challenge of terrorism must be met with innovative ideas and approach. State terrorism is no answer to combat terrorism. State terrorism would only provide legitimacy to "terrorism". That would be bad for the State, the community and above all for the rule of law. The State must, therefore, ensure that various agencies deployed by it for combating terrorism act within the bounds of law and not become law unto themselves. That the terrorist has violated human rights of innocent citizens may render him liable to punishment but it cannot justify the violation of his human right except in the manner permitted by law.

According to the petitioners 146 number of persons were in the custody of the police prior to their deaths and cremation, while according to the State of Punjab 99 persons only are admitted to have been in the custody of the police prior to their death. Our independent analysis of the charts filed by the petitioners and the affidavits filed by the State show that atleast 109 persons were in the custody of the police prior to their death and cremation. Even if it be assumed for the sake of arguments, though not conceding, that all or some of them were 'terrorists', they were still required to be dealt with in accordance with law and their human rights had to be protected by the police while those persons were in its custody. In D.K. Basu's case (supra) it was observed:

"That the terrorist has violated human rights of innocent citizens may render him liable to punishment but it cannot justify the violation of his human right except in the manner permitted by law.

Expressing its anguish in cases of “deaths in custody”, in D.K. Basu’s case it was said:

“Custodial death is perhaps one of the worst crimes in a civilized society governed by the rule of law. The rights inherent in Articles 21 and 22(1) of the Constitution require to be jealously and scrupulously protected. If the functionaries of the Government become law-breakers, it is bound to breed contempt for law and would encourage lawlessness and every man would have the tendency to become law unto himself thereby leading to anarchism. No civilized nation can permit that to happen. Does a citizen shed off his fundamental right to life, the moment a policeman arrest him? Can the right to life of a citizen be put in abeyance on his arrest? These questions touch the spinal cord of human rights’ jurisprudence. The answer, indeed, has to be an emphatic “No”. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, under trials, detenus and other prisoners in custody, except according to the procedure established by law placing such reasonable restrictions as are permitted by law.”

It would also be useful to recall the following observations of the Supreme Court in Nilabati Behera Vs. State of Orissa, [1993 (2) SCC 746]:

“It is axiomatic that convicts, prisoners or under trials are not denuded of their fundamental rights under Article 21 and it is only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental right by such persons. It is an obligation of the State to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with law, while the citizen is in its custody. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, under trials or other prisoners in custody, except according to procedure established by law. There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life. His liberty is in the very nature of things circumscribed by the very fact of his confinement and therefore his interest in the limited liberty left to him is rather precious. The duty of care on the part of the State is strict and admits of no exceptions. The wrongdoer is accountable and the State is responsible if the person in custody of the police is deprived of this life except according to the procedure established by law.”

[Emphasis supplied]

That State would, therefore, be liable where it fails to keep the prisoner in its custody ‘safe’ as its duty of care is strict. The responsibility on the police and authorities to ensure that the right to life of a citizen is not taken away, while the citizen is in its custody, except in accordance with law and that proper care to safeguard the lives of such persons against the risk of avoidable harm, even self harm, while they are in their custody cannot be disputed. This view is fortified by judgements of other jurisdictions also.

We may here usefully refer to the opinion of the House of Lords in R (on the application of Amin) Vs. Secretary of State for the Home Department, 2003 (4) All E.R. page 1264. Lord Bingham of Cornhill in his opinion, with which Lord Slynn of Hadley, Lord Steyn, Lord Hope of Craighead and Lord Hutton concurred, said:

"A profound respect for the sanctity of human life underpins the common law as it underpins the jurisprudence under Article 1 and 2 of the convention. This means that a state must not unlawfully take life and must take appropriate legislative and administrative steps to protect it. But the duty does not stop there. As Anand J. succinctly put in *Nilabati Behera V. State of Orissa* (1992) 2 SCR 581 at 607 : 'There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life.' Such persons must be protected against violence or abuse at the hands of state agents. They must be protected against self harm (See *Reeves v. Comr. Of Police of Metropolis* [1993] 3 All ER 897, [2000] 1 AC 360). Reasonable care must be taken to safeguard their lives and persons against the risk of avoidable harm."

[Emphasis ours]

On the basis of the settled law, we, therefore, unhesitantly hold that human rights of 109 persons, who were admittedly in the custody of the police immediately prior to their death, stood invaded and infringed when they lost their lives, while in custody of the police thereby rendering the state vicariously liable. There was a very great responsibility on the part of the police and other authorities to take reasonable care so that citizens in their custody were 'safe' and not deprived of their right to life as in such cases "the duty of care on the part of the State is strict and admits of no exception". The State of Punjab is, therefore, accountable and vicariously responsible for the infringement of the indefeasible right to life of those 109 deceased persons as it failed to "safeguard their lives and persons against the risk of avoidable harm". The first question is answered accordingly.

The next question, which now requires our consideration is regarding the nature of relief to be granted to the heirs of the deceased for the infraction or invasion of the right to life of the deceased guaranteed under Article 21 of the Constitution of India. It is not our concern in these proceedings to determine as to which police officer or officers were responsible for violation of the right to life of those persons, as that is a matter to be decided by the competent court, after the CBI concludes its inquiry / investigation, as per the directions of the Supreme Court, and files chargesheets wherever so required and our order should be read in that context. While considering the nature of relief to be granted to the next of kin of the deceased we are of the opinion that in the facts and circumstances of case monetary amends need to be made by the State by way of redressal for the infringement of the right to life of the deceased. This issue came up for consideration of the Supreme Court in *Nilabati Behera Case* (supra) wherein it was held:

"Adverting to the grant of relief to the heirs of a victim of custodial death for the infraction or invasion of his rights guaranteed under Article 21 of the Constitution of India, it is not always enough to relegate him to the ordinary remedy of a civil suit to claim damages for the tortuous act of the State as that remedy in private law indeed is available to the aggrieved party. The citizen complaining of the infringement of the indefeasible right under Article 21 of the Constitution cannot be told that for the established violation of the fundamental right to life, he cannot get any relief under the public law by the courts exercising writ jurisdiction. The primary source of the public law proceedings stems from the prerogative writs and the courts have, therefore, to evolve 'new tools' to give relief in public law by moulding it according to the situation with a view to preserve and protect the Rule of Law."

A similar approach of redressing wrongs by award of monetary compensation against the State for its failure to protect the fundamental rights of the citizen has been adopted by Courts in other jurisdictions also.

The informative and educative observation of O'Dalaigh, CJ in *State (At the Prosecution of Quinn) vs. Ryan* [1965 IR 70] (IR at p.122) deserve a special notice. The Learned Chief Justice said:

"It was not the intention of the Constitution in guaranteeing the fundamental rights of the citizens that these rights should be set at naught or circumvented. The intention was that rights of substance were being assured to the individual and that the Courts were the custodian of those rights. As a necessary corollary, it follows that no one can with impunity set these rights at naught or circumvent them and that the court's power in this regard are as ample as the defence of the Constitution requires." (Emphasis supplied)

The Court of Appeal in New Zealand in *Simpson v. Attorney General* [1994 NZLR 667] held as under:

"Enjoyment of the basic human rights are the entitlement of every citizen, and their protection an obligation of every civilized State. They are inherent in and essential to the structure of society. They do not depend on the legal or constitutional form in which they are declared."

The Court of Appeal then relied upon and referred to the law laid down in *Nilabati Behera v. State* and opined:

"Another valuable authority comes from India, where the Constitution empowers the Supreme Court to enforce rights guaranteed under it. In *Nilabati Behera v. State of Orissa*, the Supreme Court awarded damages against the State to the mother of a young man beaten to death in police custody. The Court held that its power of enforcement imposed a duty to 'forge new tools', of which compensation was an appropriate one where that was the only mode of redress available. This was not a remedy in tort, but one in public law based on strict liability for the contravention of fundamental rights to which the principle of sovereign immunity does not apply. These observations of Anand, J. (at p.2912 of Cri LJ) may be noted: (SCC p.768, paras 33 and 34).

The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much as protector and guarantor of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. ... The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights."

The Supreme Court of India in *D.K. Basu's case* (supra), the dealing with the issue observed:

"The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much, as the protector and custodian of the

indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim—civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at time perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the breadwinner of the family.”

The court further opined:

The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortious acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the courts under the public law jurisdiction for penalizing the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.”

The concluding paragraph of the judgment in D.K. Basu’s case is educative it reads:

“To sum up, it is now a well-accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrongdoer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The object is to apply balm to the wounds and not to punish the transgressor for the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait-jacket formula can be evolved in that behalf.” (Emphasis Supplied).

It, therefore, follows that this Commission would be totally justified and, in the facts and circumstances of the case, duty bound and obliged to redress the grievances of the next of kin of the deceased by award of monetary compensation for infringement of the indefeasible right to life of deceased and apply balm to their wounds. This claim, as has been noticed in an earlier part of the order is based on the principle of strict liability. The award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is an appropriate remedy available in public law jurisdiction for repairing the public wrong. The NOK of the deceased, therefore, must receive the amount of compensation from the State of Punjab which is vicariously liable and cannot be absolved of 'its responsibility of safe keeping of the citizen in its custody. We accordingly hold the State of Punjab liable to make monetary amends for the infringement of the right to life of the deceased, who were in the custody of its police prior to their death by paying compensation to NOK of the deceased. The second question is answered accordingly.

The next question for our consideration is with regard to the quantum of compensation to be paid to the next of kin of the deceased. Learned counsel for the petitioners, as already noticed, have referred to various orders of the courts pointing out that compensation in some of the cases in similar circumstances had been granted ranging between 3.5 lakhs to 10 lakhs while Shri Altaf Ahmed, Senior Advocate and Shri R.S. Suri, learned counsel appearing for the State of Punjab have argued that the monetary relief to be granted to the next of kin of the deceased should be reasonable and not excessive.

Indeed, the quantum of compensation depends upon the circumstance of each case and there is no rule of thumb which can be applied to all cases nor even a universally applicable formula. In our opinion the compensation has to be fair and reasonable. It should neither be punitive nor illusory. After giving our careful consideration to the submissions made before us by learned counsel for the parties, it appears to us that it would be reasonable to grant monetary relief to the extent of Rupees Two Lakh Fifty thousand (Rs. 2,50,000/-) to the next of kin of each of the following deceased persons.

POLICE DISTRICT-- AMRITSAR

Sr.No.	CBI No.	Name of deceased, parentage and address
1.	53/1	Tejinder Singh s/o Roor Singh r/o Tharu, PS Tarn Taran City, Distt. Amritsar
2.	88/6	Nishan Singh s/o Bahal Singh r/o Ranian, PS Lopoke, Ajnala Distt., Amritsar
3.	121/7	Parminder Singh @ Balour S/o Amrik Singh Jat r/o Kalia Sakatra, P.S. Khemkaran, Amritsar
4.	122/8	Harinder Singh @ Shaheed s/o Pyara Singh r/o Kohali, PS Lopoke, Ajnala Distt., Amritsar
5.	160/11	Dalbir Singh s/o Karnail Singh r/o Bal Saran, PS Beas, Phatak Dhanpai Road, PS Islamabad, Amritsar
6.	161/12	Rajinder Singh s/o Preetam Singh r/o Gali No. 13, Gurunanak Pura, PS Islamabad, Distt. Amritsar

7.	162/13	Vijay Kumar s/o Joginder Pal r/o Near Jwala Flour Mills, PS Islamabad, Amritsar.
8.	163/14	Harish Chander s/o Inderjit r/o Nawan Kot, PS Islamabad
9.	167/16	Arjinder Pal Singh @ Toni @ Nihal Singh s/o Chain Singh Jat r/o Kasel, Mane KI Patti, Sarai Amanat Khan, The TTN, P S Sadar, Distt. Amritsar
10.	201/25	Daljit Singh @ Billa s/o Sucha Singh r/o Mohalla Bog, Phagwara
11.	202/25	Gurinder Singh @ Jinda s/o Bhakshish Singh Jat s/o Basarke Gillan, PS Chheharta, Distt. Amritsar
12.	218/27	Kashmir Singh @ Laddu s/o Kundan Singh r/o Nehru Colony, Amritsar
13.	220/28	Jaspal Singh s/o Preetam Singh r/o Mustafabad, Batala Road, PS Sadar, Distt. Amritsar
14.	263/33	Avtar Singh s/o Dalip Singh r/o Kot Khalsa, PS Sadar, Amritsar
15.	266/34	Amrik Singh @ Bau @ Fakkar s/o Jagir Singh r/o Kirtangarh, Thandey, PS Sadar, Distt. Amritsar
16.	273/36	Harjinder Singh @ Kala s/o Sadhu Singh r/o Amritsar, Shahid Udham Singh Nagar, Gali No. 2, Distt. Amritsar
17.	292/44	Sucha Singh @ Charan s/o Mohinder Singh r/o Chhina Subjpur PS Raja Sansi, Ajnala Distt. Amritsar
18.	313/50	Udham Singh s/o Gajjan Singh r/o Thathgarh, PS Jhabal, Distt. Amritsar
19.	350/62	Randhir Singh @ Dhir Singh s/o Chanan Singh r/o Pairewal, PO & PS Ramdas, Ajnala Distt. Amritsar
20.	352/63	Mohinder Singh s/o Mohan Singh r/o Sultanwind
21.	363/67	Piara Singh s/o Shingara Singh Jat r/o Sultanwind, Amritsar
22.	379/69	Jhujar Singh @ Neetu s/o Heera Singh r/o Gali No. 1, Anterzami Colony, PS A-Division, Distt. Amritsar
23.	198/32	Swaran Singh S/o Lal Singh R/o Talwandi, Jalle Khan, PS Zira, Amritsar
24.	199/33	Daljit Singh s/o Saudagar Singh R/o V Chhapa, PS Chabal, Amritsar.
25.	219/37	Inderjit Singh S/o Harbhajan Singh Jat R/o Shangana, PS Sadar, Amritsar

POLICE DISTRICT--MAJITHA

26.	93/4	Jaswinder Singh , S/o Darshan Singh Arora, R/o Shaheed Udham Singh Nagar
27.	95/2	Randhir Singh @ Dhira, S/o Mann Singh Jat R/o Munda Pind, PS Jandiala.

28.	100/6	Jaswant Singh ,S/o Chanan Singh,R/o Sharifpura, District Amritsar
29.	124/13	Sukhdev Singh @ Sukha S/o Pyara Singh,R/o Tarsikka, PS Majitha.
30.	233/34	Raghbir Singh @ Bira S/o Pratap Singh,R/o Runseeke , PS & Tehsil Derra Baba Nanak, Distt. Gurdaspur, Punjab.
31.	234/25	Nirmal Singh @ Bittu S/o Mohinder Singh, R/o Runseeke, Ramgarian PS & Tehsil Derra Baba Nanak, Distt. Gurdaspur, Punjab.
32.	239/26	Satnam Singh, S/o Ajit Singh Jat, R/o Bhagupur, PS Patti, Police District Tarn Taran, Distt. Amritsar, Punjab.
33.	253/30	Kartar Singh @ Fauji, S/o Buta Singh Mazbi, R/o Adaliwal, PS Raja Sansi, Tehsil Ajnala, Distt. Amritsar, Punjab.
34.	255/31	Mangal Singh @ Bittu, S/o Kartar Singh caste Mazbi R/o Adaliwal, PS Raja Sansi, Tehsil Ajnala, Distt. Amritsar, Punjab.
35.	262/32	Gurmail Singh @ Gullu @ Pappu @ Udhna Sup S/o Naranjan Singh, R/o Village Cheema Bath, PS Beas, Tehsil Baba Bakala, Distt. Amritsar, Punjab.
36.	263/33	Prem Singh @ Prema S/o Mohinder Singh, R/o Village Cheema Bath, PS Beas, Tehsil Baba Bakala, Distt. Amritsar, Punjab.
37.	270/36	Lakhwinder Singh, S/o Balwant Singh, R/o Sathiali PS Kahnuwan District Gurdaspur
38.	272/37	Narinder Singh @ Ninda, S/o Rattan Singh, R/o Bham, PS Shri Har Gobindpur, Batala, Distt. Gurdaspur, Punjab.
39.	274/39	Baljit Singh @ Chhota , S/o Gurdit Singh, R/o Nangli , PS Mehta, Tehsil Baba Bakala, Distt. Amritsar, Punjab.
40.	284/42	Swaran Singh @ Swarana, S/o Dhian Singh Jat , R/o Mandranwala, Po & PS Ramdas, Tehsil Ajnala, Distt. Amritsar, Punjab.
41.	298/44	Randhir Singh @ Dhira s/o Chanan Singh Jat R/o Natibpura, Model Town, Division No. VI, Jalandhar, Punjab.
42.	311/50	Gurinder Singh @ Hira , S/o Major Singh Jat, R/o Nagoke, PS Verowal, Tehsil Tarn Taran, Distt. Amritsar, Punjab.
43.	316/51	Narinder Singh, S/o Manga Singh Jat , R/o Jalalpura, PS Majitha, Tehsil & Distt. Amritsar, Punjab.
44.	322/52	Mangal Singh @ Manga, S/o Sohan Singh Jat , R/o Village of Arjun Manga, PS Mehta, Tehsil Baba Bakala, Distt. Amritsar, Punjab.
45.	327/54	Paramjit Singh, S/o Avtar Singh, R/o Udhowali
46.	332/55	Surta Singh, S/o Malook Singh Jat, R/o Harar Kalan, PO,PS & Tehsil Ajnala, Distt. Amritsar, Punjab.
47.	343/56	Kewal Singh, S/o Hazara Singh, R/o Village Kiampur
48.	344/57	Paramjit Singh @ Kala, Ranjha, S/o Hazara Singh, R/o Chhina Shahbazpur.
49.	348/58	Balwant Rai @ Gulu @ Gurdit Singh, S/o Harichand Arora, R/o Khilchian
50.	349/59	Balkar Singh, S/o Mohinder Singh, Village Jabhowal District

	Amritsar.
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51.	350/60	Gurjit Singh @ Phumman Singh, S/o Bhajan Singh, R/o Chajjalwadi, PS Jandiala, Tehsil Baba Bakala, Distt. Amritsar, Punjab.
52.	371/68	Malkiat Singh @ Meeta, S/o Gulzar Singh Jat, R/o Rana Kala, PO Jabbowal, PS Jandiala Guru, Tehsil & Distt. Amritsar, Punjab.
53.	372/69	Gurmukh Singh @ Gorkhi , S/o Veer Singh, R/o Jani ki Patti, Mehta, Tehsil Baba Bakala, Distt. Amritsar, Punjab.
54.	375/70	Trilochan Singh, S/o Joginder Singh, R/o Doojowal, PS Ramdas, Tehsil Ajnala, Distt. Amritsar, Punjab.

55.
378/73
Balwinder Singh S/o Ajit Singh Jat, R/o Village Nangli Nusehra, PS Sadar, Distt. Amritsar, Punjab.

56.
392/78
Angrej Singh, S/o Charan Singh Jat, R/o Jalal Usma, PS Mehta, Tehsil Baba Bakala, Distt. Amritsar, Punjab.

57.
395/80
Gurdev Singh @ Bhutto S/o Harbans Singh, R/o Pakhoke, PS Tarn Taran (Sadar), Tehsil TarnTaran, Distt. Amritsar, Punjab.

58.
400/81
Lakhwinder Singh @ Lakha, S/o Surjit Singh Jat, R/o Chak Kamal Khan, PO Sorian, PS Ajnala, Tehsil & Distt. Amritsar, Punjab.

59.
401/82
Harjit Singh @ Har singh Butter, S/o Kashmir Singh, R/o Buutar Kalan, Mehta, Tehsil Baba Bakala, Distt. Amritsar, Punjab.

60.

415/89

Jagtar Singh @ Jagga, S/o Dilip Singh, R/o Kairon, PS Patti City, Tehsil Patti, Distt. Amritsar, Punjab.

61.

416/90

Sarwan Singh, S/o Mohinder Singh, R/o Village Makhi Margindpura, PS Bhikhiwind, Tehsil Patti, Distt. Amritsar, Punjab.

62.

417/91

Satnam Singh, S/o Jarnail Singh, R/o Kairon, PS Patti, Distt. Amritsar, Punjab.

63.

436/100

Sukhwinder Singh, S/o Dalip Singh Jat, R/o Manawala, PS Lopoke, Tehsil Ajnala, Distt. Amritsar, Punjab.

64.

437/101

Sucha Singh, S/o Bhagwant Singh, R/o Madiawala, PO Bhilowal, PS Lopoke, Tehsil Ajnala, Distt. Amritsar, Punjab.

65.

447/109

Sawinder Singh @ Shindu, S/o Shiv Singh, R/o Manga Sarai, PO Dhadde, PS Kathu Nangal, Distt. Amritsar, Punjab.

66.

449/111

Tarlochan Singh @ Husna, S/o Kishan Singh Jat, R/o Saidolehal, PS Mehta, Tehsil Baba Bakala, Distt. Amritsar, Punjab.

67.

450/112

Paramjit Singh, S/o Jaswant Singh Jat, R/o Village Vachnova, PS Jhander Singh, Tehsil Ajnala, Distt. Amritsar, Punjab.

68.

479/127

Baldev Singh @ Deva @ Fauji, S/o Buta Singh, R/o Basarke Baini, PS Chheharta, Tehsil & Distt. Amritsar, Punjab.

69.

480/128

Dalbir Singh @ Kala, S/o Kulwant Singh, R/o Pallah, PO Gagar Bhana, PS Mehta, Tehsil Baba Bakala, Distt. Amritsar, Punjab.

70.

481/129

Balwinder Singh, S/o Najar Singh, R/o Pallah, PO Gagar Bhana, PS Mehta, Tehsil Baba Bakala, Distt. Amritsar, Punjab.

71.

482/130

Shaib Singh, S/o Kahan Singh, R/o Chung, PO & PS Mehta, Tehsil Baba Bakala, Distt. Amritsar, Punjab.

72.

525/145

Tarsem Singh @ Sema, S/o Meju Kaka Sansi , R/o Bhourwala, PO Mohan Bhandarian, PS Ramdas, Tehsil Ajnala, Distt. Amritsar, Punjab.

73.

526/146

Anokh Singh, S/o Banta Singh, R/o Bindi Aulakh, PS Lopoke, Tehsil, Ajnala, Distt. Amritsar, Punjab.

74.

608/170

Lakhwinder Singh @ Lakha, S/o Harbhajan Singh Ramgaria, R/o Chowgan PS Mattewal Chogawan, Tehsil Baba Bakala, Distt. Amritsar, Punjab.

75.

611/171

Rupinder Singh @ Fauji, S/o Harbans Singh, R/o Borewal kang, PS Majhitha.

76.

207/25

Shri Kashmir Singh S/o Gulzar Singh Jat

R/oV Jhander, Tehsil Ajnala, Amritsar.

77.

330/41

Kulwinder Singh S/o Bawa Singh Jat

R/o Vill Dhardeo, PS Mehta, Majitha.

78.

396/58

Manjinder Singh @ Jinda S/o Thakur Singh

R/o Village Pakhoke, Majitha.

79.

582/92

Sukhdev Singh @ Billa S/o Kishan Singh

R/o Village Harian, PS K Nangal

POLICE DISTRICT --TARN TARAN

80.

37/99

Sarbjeet Singh S/o Tirath Singh Jat, r/o Nagoke, PS Verowal, Police District Tarn Taran, Amritsar.

81.

38/100

Gurbir Singh @ Raju S/o Joginder Singh Jat r/o Jhabal, PS Jhabal, Police District Tarn Taran, Amritsar

82.

48/121

Kuldip Singh @ Ghuggi S/o Kartar Singh Mehra r/o Chola Sahib, PS Sarhali, Police District Tarn Taran, Amritsar.

83.

49/122

Jassa Singh S/o Dharam Singh Majbi r/o Chola Sahib, PS Sarhali, Police District Tarn Taran, Amritsar.

84.

54/135

Darshan Singh S/o Dayal Singh Jat, r/o Mehmodpura, PS Valtaha, Police District, Tarn Taran.

85.

56/147

Balbir Singh @ Pappu S/o Mukhtiar Singh Jat, r/o Jella Roda, PS Mallanwala, District Ferozpur, Punjab. (However in CBI list, his name is mentioned as Balwinder Singh S/o Mukhtiar Singh)

86.

57/148

Dilbagh Singh @ Baba S/o Ram Singh Jat, r/o Koharka, PS Patti, Police District, Tarn Taran.

87.

72/183

Kashmir Singh S/o Dharam Singh Jat, r/o Jhander, PS Sadar Tarn Taran, Police District Tarn Taran, Amritsar.

88.

161/628

Inderjeet Singh @ Hardeep Singh @ Deepa S/o Karam Singh Jat , r/o Thatha, PO Sarhali Kalan, PS Harike, Tehsil Tarn Taran, District Amritsar.

89.

169/655

Dilbagh Singh @ Bagha S/o Harnam Singh Mazbi, r/o Ratoul PS City, Tarn Taran District Amritsar.

90.

172/662

Manjinder Singh S/o Ajit Singh Jat, r/o Ratoul, PS City Tarn Taran, District Amritsar.

91.

181/682

Kulwinder Singh @ Pappu S/o Jassa Singh Jat, r/o Valtoha, PS Valtoha, Police District Tarn Taran, District Amritsar.

92.

186/695

Shri Manjit Singh @ Manna S/o Sardool Singh Jat, r/o Tanda, PS Sarhali, Police District Tarn Taran District, Amritsar.

93.

202/745

Harjit Singh S/o Amrik Singh Jat, r/o Sukhawala, PS Jandiala Guru, Police District Majitha, District Amritsar.

94.

205/773

Jatinder Singh S/o Jagir Singh Mehra, r/o Nurdi, Bazar Tarn Taran PS City Tarn Taran, Police District Tarn Taran, Amritsar.

95.

206/774

Salwant Singh @ Kulwant Singh S/o Tarlok Singh Jat, r/o Padri Kalan, PS Jhabal, Police District Tarn Taran, District Amritsar.

96.

216/811

Parabhjot Singh @ Jyoti S/o Avtar Singh Jat , r/o Muradpur, PS City Tarn Taran, Police District, Tarn Taran.

97.

260/920

Gurnam Singh @ Palli S/o Mohinder Singh Swarnkar, r/o Gali Kaselian Wali, Nurdi Adda, Police Station - City Tarn Taran.

98.

261/925

Jagdeep Singh @ Makhan Singh S/o Pritam Singh Goldsmith, r/o Adda Nurdi, Tarn Taran, PS City Tarn Taran..

99.

262/926

Jatinder Singh S/o Darbara Singh Jat, r/o Mehmoodpura, PS Valtaha, Police District Tarn Taran, District Amritsar.

100

263/932

Rajinder Singh @ Bhupinder Singh Jat S/o Charan Singh Ramgarhia, r/o 3/36 Jandiala Road, Tarn Taran, PS Tarn Taran

101

264/933

Udham Singh @ Pastol Singh @ Bahadur Singh S/o Mehar Singh Ramgarhia, r/o Nanaksar, PS Tarn Taran, Police District Tarn Taran..

102

266/942

Harbans Singh @ Kabal Singh S/o Santokh Singh Jat r/o Rasulpur, PS Tarn Taran (Sadar), Police District Tarn Taran, District Amritsar.

103

305/101

Harbans Singh @ Bansa s/o Milkha Singh Jat r/o Uboke, PS Patti, Police District Tarn Taran, District Amritsar.

104

319/104

Desa Singh S/o Amar Singh Majbi, r/o Raniwalah, PS Sirhali, Police District Tarn Taran , District Amritsar.

105

320/104

Shinda Singh S/o Bachan Singh Majbi, r/o Raniwalah, PS Sarhali, Police District Tarn Taran, District Amritsar.

106

322/104

Mangal Singh @ Manga S/o Karnail Singh Majbi, r/o Dhunda, PS Gonidwal, Police District Tarn Taran, District Amritsar.

107

84/746

Shri Rupinderjit Singh S/o Bhajan

Singh Jat, R/o Village Kang, Police Station Sadar Tarn Taran

108.

113/1030

Paramjit Singh @ Pamma s/o Narinder Singh Jat

R/o Bahmiwala, Police Station Patti, Tarn Taran.

109.

629/1073 To 634/1078

Jagtar Singh @ Jagga s/o Bawa Singh Mehra

R/o Village Tarsika, Police Station Mehta, Majitha.

The amount, as directed by the Supreme Court "shall be binding and payable" by the State of Punjab. It would be disbursed in the following manner:

The District Magistrate of Amritsar himself or through the concerned S.D.M., shall pay the amount to the next of kin of the concerned deceased. 50% of the amount shall be deposited in fixed deposit for five years in the name of the next of kin in a nationalized bank, who shall be entitled, during the term, to withdraw interest on the fixed deposit. The balance amount of 50% shall be given to them in cash or through cheque against proper receipt. The disbursement shall be made by the District Magistrate or the concerned S.D.M. within two months from the date of receipt of the amount from the State Government. The State of Punjab shall deposit the amounts at the rate mentioned above with the concerned District Magistrate within two months. After disbursement has been made by the District Magistrate, proof of payment shall be forwarded to the Commission by the District Magistrate.

It is clarified that while granting the monetary relief as aforesaid, we are not expressing any opinion about the culpability or otherwise of any police officer or officials, nor shall we be understood to have expressed any opinion about the responsibility of any of the officials of the state for infringing the right to life of the deceased by any act of omission or commission, lest it should prejudice any of the parties in the investigation being carried out by the CBI to determine the culpability under orders of the Hon'ble Supreme Court. In fact, the grant of this monetary relief by us is without prejudice to the rights of the parties.

Before parting with this order, we would like to observe that after the unfortunate turmoil in Punjab, things have returned to near normalcy. Both the State Authorities and the citizens should, therefore, treat this order as an application of balm to whatever wounds were still left and to engage themselves to make the State of Punjab more prosperous and peaceful, in keeping with the great traditions of the State. This order should not be considered in the spirit of 'Win' or 'Lose' as, indeed, it is not meant to be so construed. We hope our observations would be received in the right spirit and the State Authorities as well as the citizens would ungrudgingly work towards the prosperity of the State. Peace must prevail. Let us remember the words of wisdom of Father of the Nation, Mahatma Gandhi, who said:

"Peace will not come out of a clash of arms, but out of justice lived and done"

For remaining issues, the case be listed on 23rd Dec., 2004 at 2.30 pm.

(Justice A.S. Anand)

Chairperson

(Justice Y. Bhaskar Rao) (R.S.Kalha)

Member Member