

5.00 P.M.

CLARIFICATION ON THE STATEMENT BY MINISTER

Lawyers' Strike

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Members to seek clarifications on the statement laid on the Table on the 28th February by Shri Ram Jethmalani, Minister of Law, Justice and Company Affairs regarding lawyers' strike and the incident that occurred in the vicinity of Parliament on the 24th February, 2000. I have with me two names. Shri Kapil Sibal.

SHRI KAPIL SIBAL (Bihar): Thank you, Mr. Vice-Chairman.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): We have to conclude seeking clarifications and the reply by six o'clock at the most.

SHRI KAPIL SIBAL: Subject to the consensus of the House.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Yes. But there was a lot of bitterness about the consensus of the House yesterday.

SHRI KAPIL SIBAL: That is right. I am sure there will be no bitterness today.

Thank you very much, Mr. Vice-Chairman.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI RAM JETHMALANI): If Mr. Kapil Sibal will yield for a second, Sir, I have made this statement as far back as the 28th of February. If hon. Members want that I should bring it up to date and that then clarifications will be asked, I have no objection. But, if they want to proceed on this now, then also I will have no objection.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Mr. Jethmalani, I feel that if there are further developments, perhaps, there will be fewer clarifications.

Mr. Sibal, would you continue?

SHRI RAM JETHMALANI: I don't mind.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): It might invite more clarifications or it may minimise them. Both things are there.

SHRI RAM JETHMALANI : Sir, on 28th February, when I made the statement. I presumed hon. Members have gone through it. After that, a Commission of Inquiry, as promised, has been brought into existence, though there has been some delay in the creation of that Commission. I do not wish to go into the causes of that delay, but if hon. Members do wish to

inquire into the causes of the delay, I will certainly provide that information.

The Commission has been, by the terms of reference, allowed to make any interim recommendations. The whole matter is at large and the entire disputed questions which, even the High Court has noticed in its judgment of yesterday, are left to be decided by the Commission.

There were two other issues i.e. the issue of foreign lawyers and continuing tests for lawyers. We had made it clear before this strike and we had made it clear after the strike, that there is not even a remote contemplation on the part of the Government to amend the Advocates Act. All this has arisen as a result of a misunderstanding. The Law Commission has prepared a working paper in which the two subjects have been touched upon. That has been thrown open for a national debate and it would include a necessary discussion with the lawyers, hearing their opinions and taking their advice. So, Sir, that is out. In regard to the Civil Procedure Code (Amendment) Bill, we have made a promise that we will hear the lawyers again before we enforce the provision.

But, Sir, the strike unfortunately continued on the issue of lathi-charge which took place on a procession on 24th February. It must be conceded that there was violence used, that there has been some excessive use of force against individual lawyers by individual police officers. We thought, whether the police officers should be transferred or suspended was a matter which would be decided by the Commission, but there was an insistence that something must be done. Sir, we went to quite some length in satisfying the wishes of the hon. members of the Bar, but the subjects that we took up were not found adequate by the lawyers and the strike, unfortunately, continued. In the meantime, a public interest litigation was filed in the Delhi High Court and the matter became sub judice. As a result we could not have a discussion on it, in any event because of the rules in this House. The matter was sub judice till yesterday. Yesterday the Delhi High Court delivered the judgment. It was supposed to be delivered today, but the learned Judges preponed it to yesterday and proceeded to deliver it. By about 1'o clock, I believe, the judgment was over. It is a long judgment, which runs into 64 pages. It contains some prima facie findings, it contains some final findings, and it also contains some directions, which constitute the operative part of the judgment.

Sir, the Home Ministry, which is the nodal Ministry, which is supposed to deal with the conduct of the police officers and personnel and

others, is very actively and seriously considering the implications of the judgment. But, I believe, the judgment has had a very salutary effect. Yesterday itself, the strike in the Delhi High Court was called off by the lawyers and the High Court worked normally the rest of the day, after the judgment was delivered. I find from the report in The Tribune of this morning that the Punjab and Haryana High Court lawyers met and unanimously decided to call off the strike.

Sir, I have no doubt that this healthy trend will continue as soon as the judgement becomes available and known in those pockets where the strike is still continuing. I believe, that the strike will come to an end. There is a powerful finding by the court. Sir, I do not wish to bother this House with 64 pages of this judgement. The only last paragraph which is the operative part of the judgement, that is, paragraph 35, I want to read. Before I read it, I would like to say it is possible that a stray word, stray sentence, sometimes a careless word or a sentence or sometimes something said in heat or passion might arrest this healthy trend which has started like yesterday. I would, therefore, appeal to the hon. Members to allow this matter to stand off for three or four days by which time things will become clearer. If the hon. Members insist, I suppose, they do insist, they are entitled to have the clarifications. Now, Sir, let me say what is our attitude to the judgement which has been delivered. First of all, the judgement is a long judgement. A copy of which became available yesterday has to be considered because the House knows that police in Delhi is almost a concurrent subject. The Government deals with it. The Lt. Governor of Delhi deals with it. The Home Minister deals with it. So, this matter has to be considered. The High Court has required us to do certain things. Now, I want to read paragraph 35 of the judgement which is the last operative part on page 62. It is a 64 page judgement. "In view of the fact that and the legal position stated above, we issue the following declarations and directions: (a) Lawyers have no right to strike. Strike by lawyers is illegal and unethical; (b) If on the ground of strike, a lawyer abstains from appearing in court in a case in which he holds the vakalat for the client, he is committing professional misconduct, a breach of contract, a breach of trust and a breach of professional duty; (c) If in the name of the strike, anyone obstructs or prevents a lawyer from discharging his professional duty of appearing in court, he is committing a criminal offence and is interfering with the administration of the justice and his committing contempt of court; and (d) " Sir, I hope that this will have effect upon my brothers and sisters

at the Bar for whom I have great affection. But, I do regret over what has happened during the last few weeks. There is absolutely no justification for the continuance of the ongoing strike by the lawyers and we expect them to recall it immediately." This is paragraph (d) of the directions. The lawyers are advised to recall and end the strike immediately. Then, (e) and (f) are two directions which are operative on the Government. "We direct respondents 2 and 5 to take appropriate decisions and transfer within a week from today. Mr. B. Nanda, DCP, New Delhi, Mr. T.S. Bala, ACP, Defence Colony, Mr. Vijaya Malik and Mr. Mongia of the Parliament Street Police Station to some other suitable posts in the light of the observations contained in this order." This direction is to be complied with by us within a week."(f) We also direct respondents 2 and 5 to take immediate and necessary steps to identify all the police officials who used unwarranted force against individual lawyers at the dispersal stage of the "Parliament March" on 24.2.2000 and to place them under suspension within two weeks from today."

So, our obligations are to be performed within a week or two weeks depending upon the nature of the obligation and the lawyers are expected to end their strike forthwith. Sir, I believe that with my colleagues at the Bar, with the help and cooperation and advice of senior Members of this House, who are practising lawyers themselves--Sir, you are yourself one of them--this will come to an end and this unfortunate episode will then, peacefully, become the subject-matter of an inquiry before the Commission of Inquiry which has been appointed. Sir, all this bickering, all this ill-will and hostility, must come to an end and the administration of justice must start. As soon as the lawyers call off their strike which is their immediate obligation, the Government, unless the judgment of the High Court by some method is stayed or set aside, will also comply with directions (e) and (f). I do not think really any clarifications are necessary. But if some are still necessary, I am here to be cross-examined.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): I have got a few names here. As was expressed by the Minister, certain things have changed. Certain developments have taken place. Certain directions have been given. It is possible that in the clarification that you seek, there might be rubbing of the old wounds inadvertently. Nobody would deliberately do it. I personally feel, let us postpone this clarification by about two weeks. (*Interruptions*). You may not agree. I saying it with this view. If they are

agreed, by then, certain directions would be complied with and perhaps, we will be able to look at it in a very dispassionate manner. If you feel it is possible, we may do so. As a lawyer, I am equally agitated. I have been in the field of agitation from boyhood when I was 10 years of age, when I took part in the freedom struggle. I am opposed to it. But, if certain things have changed, let us have a little time so that we can have a little dispassionate perspective of the entire dispute.

DR. BIPLAB DASGUPTA (West Bengal) : Mr. Vice-Chairman, the statement was given originally a long time ago. Since then, a number of things have happened. More than one and a half months have passed. A lot of cooling off period we have already had. What I am saying is, let there be a transparent discussion. One of the most important occupations, that of lawyers, is involved. We cannot treat them lightly. There are allegations of their being brutally treated by the police. I am not saying that our friend, Jethmalaniji, is responsible for it. But the police treated them brutally. That was the allegation. It came in papers. There is no way the discussion should be constrained. What I mean is, there is some procedure by which we conduct the discussion. The same procedure should be followed without any constraint.

SHRI R. MARGABANDU (Tamil Nadu) : In view of the lawyers' demands being complied with, because the judgment has given relief to the lawyers, there will not be any problem now. In almost all places, they have withdrawn the strike and they are attending the courts. On some of the aspects clarifications may be sought. It will not be an embarrassment to the Government. Let not the Law Minister think that he will be cross-examined.

SHRI KAPIL SIBAL: Mr. Vice-Chairman, Sir, we started the proceedings on this particular subject on this understanding. The statement of the hon. Minister was made in the House on 28th February. Since then, certain subsequent events have taken place which must be brought to the notice of the House. Therefore, before I could seek my clarifications, he wanted to inform the House of these subsequent events. Now that he has informed the House of the subsequent events, the proceedings may go on. And I must seek my clarifications. To say, "Please postpone the matter", at this point, is not consistent with the understanding with which these proceedings started.

I request you, Mr. Vice-Chairman, to allow me to proceed. Let me

say at the outset that it is not our intent, because at this point, we are not discussing whether lawyers should go on strike or should not go on strike. We cannot discuss that. There is a judgment of the Supreme Court much prior to the judgment of a Division Bench of the Delhi High Court in this case. It says that only in the rarest of rare cases should lawyers go on strike, and that also a token strike. We are not here to debate that issue nor do we intend to send a message to the people of this country that we are for lawyers going on strike. That is not the message that any political party, whether in the Treasury Benches or in the Opposition, would like to send to the people of this country because the ultimate persons to whom injustice is done by lawyers' going on strike are the litigant public. But the question then arises, if there is a protest made, and that is where the discussion starts, if on 24th of February, there was a peaceful protest, then how is it that on the 18th of April, 2000, we are discussing it when not a single sitting of the Commission has taken place? I remember last time when this matter was fixed for clarifications... *(Interruptions)* Sir, when the hon. Minister was speaking and when Mr. M. Venkaiah Naidu was speaking, we did not intervene. I do expect the hon. Members of this House not to interfere.

SHRI RAM JETHMALANI : There is heat and provocation for nothing. *(Interruptions)* You put a question and I am telling you....*(Interruptions)*

SHRI RAJU PARMAR (Gujarat): Mr. Minister, you please reply at the end.

SHRI RAM JETHMALANI: The High Court has directed that the Commission must not start work before 26th of April. *(Interruptions)*

SHRI RAJU PARMAR: Mr. Minister, you reply at the end.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Let us not generate heat. Let us have light, not heat.

SHRI KAPIL SIBAL: Let me throw some light on the subject.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Before we begin the clarifications, let me hear what Mr. Narendra Mohan has to say.

SHRI NARENDRA MOHAN (Uttar Pradesh): Sir, are you permitting the clarifications or are you postponing them?

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Perhaps, I

have not made myself clear. Certain directions have been given. They are of two types. The first direction is related to the transfer of the officers concerned. I think that will be complied with within a week because there is a further rider at the appropriate place.

SHRI RAM JETHMALANI: It will be complied with within a week.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Direction No. 2 is to identify those officers who have gone out of the way and inflicted injuries which were not called for. Now, if these two take place and the strike is called off, the tempers will cool down, and perhaps, we will be able to understand the entire approach in the light of the developments. Therefore, I appeal to you that it would be appropriate for us not to continue with this.

SHRI KAPIL SIBAL: Mr. Vice-Chairman, Sir, have you gone through the judgment of the Division Bench of the High Court?

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): No, Sir.

SHRI KAPIL SIBAL: I have got a copy of that judgment. The hon. Minister has read only paragraph No. 35. I would like to bring to your notice certain other paragraphs of this judgment which demonstrate without doubt the callousness of the Government in dealing with lawyers.
(Interruptions)

SHRI RAM JETHMALANI: I am sorry. That is the matter for the Commission of Inquiry. It cannot be debated. (Interruptions)

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): May I have the sense of the House? Would you like to continue the clarifications?

SOME HON. MEMBERS: Yes.

SHRI NARENDRA MOHAN: Sir, let us wait for a week.
(Interruptions)

THE MINISTER OF PARLIAMENTARY AFFAIRS AND MINISTER OF INFORMATION TECHNOLOGY (SHRI PRAMOD MAHAJAN): Sir, I am making a request in the capacity of a Parliamentary Affairs Minister. Sir, the statement had already been made on 28th February, 2000. We are already late so far as the clarifications are

concerned. Whatever clarifications are there, let the hon. Members put them. Let the Minister answer them and finish the subject today itself. If something new happens in the near future, we will see that at that point of time. Let us complete this subject now.

THE VICE CHAIRMAN (SHRI ADHIK SHIRODKAR): Yes; Mr. Kapil Sibal, you seek clarifications now.

SHRI KAPIL SIBAL : Thank you, Sir. I just wanted to lay some dates before the hon. Members of this House and take them back to what happened on the 24th February. (*Interruptions*) Mr. Vice-Chairman, I want to take you and the hon. Members of this House to 24th February, 2000, when thousands of lawyers marched in protest against the amendments to the Civil Procedure Code and against some amendments that were sought to be made under the Advocates Act. Now, whether the lawyers want to go on strike, or, don't want to go on strike, is another matter. But if lawyers go and protest in such large numbers and if they have genuine grievances, then, surely, we expect a sensitive Government, a responsive Government, to have a dialogue with them, talk to them, and if they find that there is some justification in some of the objections that they have raised, they should deal with it. That is the least that we expect from the Government. I am told that prior to 24th March, i.e. on 23rd March, there was a meeting of the lawyers with the DCP. It was decided as to what route the lawyers were going to take in the course of these protests. They were also told that certain barricades would be put and that the lawyers must not cross those barricades. And that in any case, there must be no violence. Now, again, I am not going into the merits of it. What transpired on the 24th resulted in injuries being caused to almost 200 lawyers. Around 87 of them were taken to the LNJP hospital, 13 of them suffered head injuries, one person fractured his rib, three had multiple fractures on their legs, two had serious eye injuries, 15 of them had plastic pellets in their bodies and 16 to 20 of them cannot attend to work for the next six months. Now, at the moment, I am not saying who did it and who did not do it. That is something which the inquiry will establish. But this is what happened. Four times there were meetings with the Minister of Law. The Minister of Law is a very forthcoming person. And I am sure, he must have tried to convince them that he will do something about it. There were meetings with the Lieutenant Governor and, in fact, on the 7th March, there was a human chain in which 13,270 lawyers participated. It was, naturally, peaceful. And what

the lawyers demanded was, you have the video tapes, we have the video tapes; look at the video tapes and then take some immediate action. And unless you do that, we will continue with our strike. "I, personally, as member of the legal community, feel that, as lawyers, we are doing harm to the public if we go on strike. At the same time, I strongly feel for the legal community. Because they were treated like mad dogs on the streets. Mr. Minister, these are not my words." These are the words of the High Court, in its judgement. I would, myself, have not used those words. During the course of the hearing before the High Court, the video cassettes were placed before in the court. The court said that it had looked at the video tapes. The court had looked at all the affidavits filed by the Government as well as the lawyers, and the court came to the conclusion that the lawyers were treated like mad dogs on the streets. In the 50 years of independence of this country, has a member of any community, or, any professional community, been treated like this? And see the response of the Government. From the 24th February to the 18th April, there was not a single sitting of the Commission. And a very persuasive attempt is being made today, or was made today, to postpone the matter further. Sir, we will not allow this to continue even for a minute. I would like to inform the hon. Members of this House as to what the High Court had said.

Sir, if you remember, when this march took place on 24th, or 25th there was a meeting with the Prime Minister. The hon. Minister was also present and in the meeting it was decided that immediate action should be taken. Ultimately, a public interest litigation was filed and no action was taken till the 13th March. It is only on 14th March that a decision was taken to set up an inquiry commission headed by a sitting Judge of the Supreme Court. It was conveyed by the Government to the hon. Chief Justice of India on 14th March, and on 16th March, within two days, the hon. Chief Justice of India responded by saying that he was willing to give a sitting Judge. Ultimately, the formal notification for the inquiry was issued on 28th March and that too was done because the High Court adjourned the proceedings to 27th March. Then a notification was issued for the purpose of setting up an inquiry commission with a retired Judge of the Rajasthan High Court as the person to conduct the inquiry. I am told that till date no communication has been sent to him for starting the inquiry. This is what is good governance. This is what is sincerity. This is what is a responsive Government. This is what is an able Government. This is what is a sensitive Government.

[18 APRIL, 2000]

RAJYA SABHA

Before I go further, let me mention some of the things which the High Court has said.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Mr. Sibal, I am sorry to interrupt you. We are not having a debate. You are seeking clarifications.

SHRI KAPIL SIBAL: Yes, it is not a debate. I am seeking clarifications on the findings of the High Court.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Will you kindly articulate your clarifications?

SHRI KAPIL SIBAL: Sir, I am reading the portion of the High Court judgement so that the clarification can be given. This is what the High Court says on page 10 of its judgement. The hon. Minister got a copy of the judgement yesterday evening. I got a copy late this morning. So, he must be quite aware of all the findings of the High Court. On page 10 of the judgement this is what the High Court says, and I quote:

"However, till 13th March, 2000, the Government did not approach the Chief Justice of India for nominating a sitting Judge of the Supreme Court to preside over the proposed commission. There was no explanation as to why the Central Government did not approach the hon. Chief Justice of India during the period from 25.2.2000 to 13.3.2000. This costly inaction or omission on the part of the Central Government helped only to further vitiate the atmosphere and complicate the situation resulting in loss of mutual confidence, hardening the stand of accusations against each other. Precious time was lost and the prospect of an amicable settlement for ending the strike faded. Had the Central Government shown greater urgency and sensitivity to take immediate steps for appointing the commission of inquiry, the escalation of the crisis would have been avoided and a better climate for a negotiated settlement would have been created."

This is why the hon. Minister would only wanted to read paragraph 35. The entire judgement squarely blames this Government for inaction and lack of sensitivity.

Sir, let me go further in the context of the lawyers' right to protest.

Let us see what the High Court has said on this aspect of the matter. The High Court says on page 31 and I quote:

"Whatever be the demerits and merits of their objections, the lawyers had a right to protest and they decided to hold the Parliament march on 24.2.2000 to lodge their protest."

On page 37 this is what the Court says on the prohibitory orders. One of the points raised by the Government before the High Court was that there was a prohibitory order and because the lawyers, in fact, breached that prohibitory order, they called for problems for themselves and, therefore, there was a lathicharge. This is what the High Court says on that. This is on page 37 and I quote:

"Hence prima facie the Parliament march held by the lawyers on 24.2.2000 was in violation of the prohibitory order issued under 144. The police were authorised and they were duty-bound to enforce the prohibitory orders to prevent its violation. They were also authorised and empowered to remove or disperse any unlawful assembly in accordance with the law. Hence they were justified in putting up the barricades. At the same time, the lawyers had the right even to violate a prohibitory order in a peaceful and non-violent manner and to court arrest as a mark of their protest. The police could have used only the minimum degree of force required to enforce the prohibitory order and to disperse the unlawful assembly."

Mr. Jethmalani should have seen the video tapes himself. No lawyer was carrying any weapon of offence with him. They were not carrying lathis with them. They were not carrying stones with them. They were not carrying ammunitions with them. This is the finding of the High Court. I am not saying anything. ...*(Interruptions)*... Mr. Jethmalani, I will show it to you. These are the findings of the High Court. The findings start from para 22. It says, "On careful consideration of the materials placed before this court, we are not inclined to hold that the actions and conduct of the police while dispersing the unlawful assembly warrant any legal action or disciplinary proceedings at this stage. We do not find any illegality or arbitrariness in the decision of the Government to await the recommendations of the Commission. At the same time, we are not at all

satisfied with the action taken by the Government against the police officials, who even according to the Government used force against some individual lawyers including a lady lawyer which was unwarranted and should have been avoided. In the video films those police officials were shown beating the lawyers as if they were mad dogs on the streets. Their action was totally unwarranted, unprovoked and unjustified." This is the finding of the High Court. It says, They were indicted even in the report submitted by the Divisional Commissioner, Delhi to the Lt. Governor. There were around eight to ten police officials who used such unwarranted force and assaulted individual lawyers in blatant violation of the rules relating to the use of force to disperse the unlawful assembly. But only three of the said police officials have been placed under suspension." On page 42 the High Court said, Whether the allegations are true or not, the conduct of the Government is capable of raising doubts about the sincerity and bona fides of the Government in taking action against the erring police officials." This is the finding of the High Court. It further says, Since the Government unjustifiably failed or refused to take necessary steps for identifying all the erring police officials and to place them under suspension which the Government should have done in the lawful and proper exercise of its power and discretion, the Government is liable to be directed by this Court to take immediate steps for identifying all those police officials who admittedly used unwarranted force against individual lawyers at the dispersal stage and also to place them under suspension immediately as in the case of three police officers. So the directions in paragraph 35 had to be given by the High Court because you chose not to perform your duty." That is why the High Court said, "All right, now we direct you to take action within one or two weeks."

This is what the court said in para 23 at page 43. The High Court said, "Though the legality and justifiability of the action taken by the police and the culpability if any of the police officials are the subject matter of inquiry, we feel disturbed by the degree of force used on a large number of lawyers who were injured and admitted in hospitals and grievous nature of their injuries and physical and mental pain and loss suffered by them. Though lathicharge has been admitted by the police, there is surprisingly no reference to any lathicharge or cane charge in the entries of 24th February, 2000 in the Log Book maintained by the police and produced for our perusal." Mr. Minister in your statement on 28th February you solemnly

said in this House - I would like to read the first sentence of your statement - that there has been a highly regrettable and unfortunate incident yesterday in the vicinity of Parliament during which several lawyers and police personnel have been injured, some rather seriously. You said, "Some police personnel have been injured some rather seriously." In the entire judgement of the High Court, in the affidavits filed in the High Court, in the evidence given in the High Court, there is not an iota of evidence that any police officer was injured. I am sorry to say that the Minister has misled the House on this count. Then on page 44 this is what the High Court said. This is very interesting. During the course of the proceedings, the High Court asked, Who is the person who directed the lathicharge? Who is that individual?" This is what the High Court said, "In the affidavit filed on behalf of respondent two, it was not even stated as to which officer had ordered the lathicharge."

It was after repeated probing by this court that the learned Additional Solicitor-General, Jaishankar, was kind enough to disclose on the last date of hearing that the lathicharge was ordered by P.Nanda, Deputy Commissioner of Police. They would not disclose even those facts to the court. But they talk of transparency; they talk of sensitivity; they talk of consensus.

Then, Sir, at page 44, the court further says, 'If the treatment meted out to some lawyers is at the dispersal state, as seen from the video films and the number of lawyers injured in the lathi charge; and if the nature of their injuries are any indication, it is not difficult to assume that the lawyers received a raw deal at the hands of the police on the 24th February, 2000.'

Then, at page 46, the High Court says that the officers liable to be removed from the post will include P.Nanda, DCP, who ordered the lathi-charge, Vijay Malik, Bhalla, Mongia, who were managing the event on the spot. That is how directions have come at page 35.

Now, Sir, what is most interesting is that they ordered two ACPs to be transferred - one to traffic; and the other, Bhalla, to the Defence Colony area. The High Court says that this is a sham because these are ostensibly better postings than what they had when they were on duty on 24th February, 2000. They were, in fact, rewarded. Therefore, the court

has said that you transfer them to places where it would not seem that you are, in fact, rewarding them. This is what the court has said. Now, Sir, in this context, the question the House has to ask is, what the responsibility of the Government in this regard is and what the responsibility of the hon. Minister is. Mr. Minister, you must accede...

AN HON. MEMBER: To resign.

SHRI KAPIL SIBAL: No, he will not. It is a long road he has reached. It is difficult to go back. Anyway, that is not the point. The point I was trying to make was, the Minister must have seen the photographs, injuries, fractures and head wounds. I have got the photographs with me. *(Interruptions)*

SHRI SATISHCHANDRA SITARAM PRADHAN (Maharashtra): You are not supposed to exhibit these photographs in the House.

SHRI KAPIL SIBAL: We will authenticate them. I will authenticate them.

SHRI SURESH PACHOURI (Madhya Pradesh): Not only the photographs, but we will authenticate the video cassette also. *(Interruptions)*

SHRI KAPIL SIBAL: The people of this country must know what your attitude towards hon. Members of a profession is.

SHRI SATISHCHANDRA SITARAM PRADHAN: We know your attitude very well. We know how you have tried to play. We know how you have ruled this country.

श्री सुरेश पचौरी : अच्छा है देश के वकील समझे कि आपका मत क्या है!...*(व्यवधान)*...

श्री राजू परमार : आपका रोल क्या है, वह समझ गये हैं...*(व्यवधान)*...

श्री सुरेश पचौरी : अब समझ में आया है देश के वकीलों को कि आप क्या सोचते हैं ...*(व्यवधान)*...

श्री सतीश प्रधान : हम भी बहुत अच्छी तरह से समझते हैं कि आप कैसे राज चलाते थे। ...*(व्यवधान)*... 40 साल हम लोगों ने आपकी लाटियां झेली हैं ...*(व्यवधान)*...

SHRI KAPIL SIBAL: The question that the hon. Minister must ask his conscience is, after the 24th February, we are on 18th April now, but

nothing has happened. Not a single meeting of the Commission has taken place. He has made a very significant statement.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Mr. Kapil Sibal, you have laid the background. Put questions now. You have made the background very effectively, I am happy about that.

SHRI KAPIL SIBAL: The Minister has made a very significant statement. Just now he said - you can check up from the record of the House - 'if the lawyers agree to comply with paragraphs 30(a) to (d), then he will comply.'

SHRI RAM JETHMALANI: No, I have never said that.

SHRI KAPIL SIBAL: You can get it checked from the records of the House. This is exactly what the Minister has said: 'If they agreed to withdraw, then only they will take action under (e) and (f).' This is the attitude of the Minister even today. In fact, any person, with his conscience, with any sense of morality, with a high standard of thinking, should stand up and say 'I have failed in my duties.' *(Interruptions)*

SHRI B.P. SINGHAL (Uttar Pradesh): He did not use the word 'then'. ...*(Interruptions)*.. He did not use the word 'then'. ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Mr. Kapil Sibal you have laid the background and you have generated heat. Please now put your clarifications now so that it does not generate further heat.

SHRI KAPIL SIBAL: Sir, I am seeking my clarifications. Mr. Minister, do you accept the moral responsibility for what has happened? Are you willing to resign on the basis of the strictures passed by the High Court on your Government? Or are you going in for an appeal to the Supreme Court and seek a stay on this judgement? Secondly, I would like to know from the hon. Minister whether he would comply with the directions from (e) to (f) of paragraph 35 without reference to (a) to (d). ...*(Interruptions)*... Yes, because these are the directions of the court. The court has not said that first the lawyer must comply with (a) to (d) and then the Government would comply with (e) to (f). Those are not the directions. So, the second clarification that I want from the Minister is whether he will implement (e) to (f) without any reference to (a) to (d)

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because as far as the legal community and the Members of this House are concerned, we do feel that it is against the public interest for the lawyers to continue their strike. We do feel that. We ourselves feel that. But, at the same time, we feel that the Government which has shown no sensitivity to this issue must own moral responsibility. And since the Minister has unjustifiably taken the burden on himself instead of the Ministry of Home Affairs, I am afraid, he will have to suffer the consequences for the same. The third clarification that I want from the hon. Minister is this. He said that they did not do anything in the matter because the matter was *sub judice*. What prevented the Minister or the Government from taking action and suspending the other police officials who are named in the High Court judgement. Even before that you could see them on the video. What prevented the Government from taking action when the matter was pending in the High Court? The Government itself would have come to a conclusion. I would like to know as to what prevented the Government when the matter was *sub judice* from taking action on its own, to suspend some of the persons who, in fact, were responsible for the excessive use of force. The last clarification that I want to seek from the Minister is this. The Minister has just now said that the Government is now actively and seriously considering the implications of the judgement. What does the Minister mean by that - implications on himself or the Government? What kind of implications are they? ...*(Interruptions)*... Is the Government going in for an appeal? What are those serious implications that he is talking about because according to him paragraph 35 is all the direction and those directions are in his favour firstly because the lawyers must not go on a strike and secondly, they have to take action? So, what are the serious implications of the judgement except what I have pointed out to the hon. Members of this House, the culpability of the Government and the culpability of the hon. Minister in this regard? So, these are some of the clarifications, Mr. Vice-Chairman, that I seek from the hon. Minister. I do feel that any right thinking person, any right thinking Minister will look into his conscience and take the moral responsibility.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Mr. Minister, would you like to respond one by one or would you reply to all the clarifications together?

SHRI RAM JETHMALANI: I will reply to all the clarifications together.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR: There are eight names before me. I wish to make it very clear that you shall seek only clarifications. The background is there. You cannot add to a senior counsel's background that he has projected. So, you seek only clarifications. Anything beyond that, will not go on record. So, I am cautioning you.

SHRI JIBON ROY (West Bengal) : Sir, I feel that the issues and developments that arise from this statement have wider ramifications than they seem to have.

Firstly, I consider the professional lawyers and advocates as the ruling professionals. If you go to the Assemblies or Parliament or Ministries, you will find there mostly lawyers and advocates. They were beaten up on the streets and the court had said, "like a mad dog."

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Please, do not repeat. You only seek clarifications from the Minister (*Interruptions*)... I am making a plea...(*Interruptions*)...If there is any repetition, then you have to continue beyond 6 o'clock ...(*Interruptions*)...If you continue like this, we will go beyond 6 o' clock ...(*Interruptions*)...You have asked me to stop it at 6 o' clock.

SHRI JIBON ROY: I am not going into the details. I will not repeat what Mr. Sibal has said...(*Interruptions*)...I do not have that capability.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR: Please, only seek clarifications.

SHRI JIBON ROY: Still my point is, if lawyers are beaten up like this, what happens to other people?

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR: That is not the subject matter.

SHRI JIBON ROY: My point is, this is the orientation. It is not a simple thing that some people had been beaten up on the streets. It is an orientation. Today, the students of the Jamia Milia were tear-gassed again...(*Interruptions*)...Yesterday, a Member of Parliament of the ruling party was beaten up.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR: Mr. Jibon Roy, if you have got a clarification on the Statement, please ask the question. If it requires a certain commentary from you, I will permit it. But, please, seek the clarification first and do not traverse in a cavalier or oblique manner to yesterday's subject...(*Interruptions*)...

SHRI JIBON ROY: I am seeking my clarification. I want to know from the Minister that since the High Court passed strictures and censured the Government, whether the hon. Minister is taking the moral responsibility for all the developments that have taken place and also for misguiding this House, while making the Statement on the 28th February, and resign from the Government or will he inform as to who would take the moral responsibility for these strictures.

The second point is, I support the issue raised by hon. Mr. Kapil Sibal. We want to know whether the Government is going in for an appeal to the higher court. Or, will you give time so that others can go in for an appeal so that the Government may not take action because the hon. Minister himself has indicated, while placing the new development, that the Government will take action if nobody goes in for an appeal to a higher court. I would like to know whether the Government is giving that advantage and take steps tonight itself - after the House is adjourned for the day.

The third and the most pertinent question, which Mr. Sibal has not raised, is the issue which concerns the lawyers. There are two issues. The first one is, allowing the foreign advocates and lawyers to appear before the Bench. Though the lawyers have raised the issue, it is a national issue. I compliment the lawyers and the advocate-community that, for the first time, a professional fraternity stalled the designs of the World Bank which tries to encroach upon the law profession. Sir, do you know what is the implication? What is the distinctive implication? Mr. Sibal has not raised this issue.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR) : Please seek clarifications.

SHRI JIBON ROY: This is my clarification.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Do not encroach upon it.

SHRI JIBON ROY: The CPC had been amended. Unfortunately, the CPC Amendment Act was passed without any discussion.

SHRI RAM JETHMALANI: I do not agree. It was passed with full discussion.

SHRI JIBON ROY: It was not discussed at length. Any way, the thing is...

SHRI SATISHCHANDRA SITARAM PRADHAN: Sir, how can he pass such nasty remarks against the House?

SHRI JIBON ROY: I have not made such remarks. If any wrong message has gone, I withdraw it... *(Interruptions)*... No matter... *(Interruptions)*...

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR: Mr. Roy, I once again request you that the Statement of the Minister confines to the lathi-charge. Please do not go into other things.

SHRI JIBON ROY: In the Statement itself the issue of foreign lawyers has come and the Minister, in his initial comments, also stated about it. It is there in the Statement.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): The Minister has also clarified that it has... *(Interruptions)* Please confine yourself to the statement. Please do not enter into a debate. *(Interruptions)*

SHRI JIBON ROY: I would like to know from the hon. Minister whether the Government has finally given up the idea of bringing foreign lawyers and asking the lawyers to update their knowledge every two years. Has the Government given up that idea? These are the points on which I would like to seek clarifications.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR: You could have done it in just three sentences. *(Interruptions)* It is not efficiency. *(Interruptions)*

SHRI NILOTPAL BASU (West Bengal) : Sir, you, being a super parliamentarian, cannot expect the same kind of performance from everybody. *(Interruptions)*

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Please sit down. *(Interruptions)* Now, Mr. Margabandu. *(Interruptions)*

SHRI R. MARGABANDU (Tamil Nadu): Sir, I am an eye-witness to the brutal attack that happened on that day. I also had to face tear-gas implications. The Minister has laid a statement saying, "The lawyers and the police have conflicting versions of what happened." Since that day

lawyers have been raising their voice that they had been brutally beaten up by the police like mad dogs on the street. They have been demanding suspension of certain police officials. They have given the names of the police officials also whom they wanted to be suspended. But the Government has suspended only two or three lower rank officials. It finds place in the judgement itself. The persons who were really responsible for ordering the lathi-charge have not been suspended. The lower ranks official have been transferred somewhere else. I do not know whether it is a reward for those police officers who attacked lawyers. It is the rarest of rare cases where the police has resorted to this type of attack. Lawyers were taking out a peaceful march to Parliament. When the Bill came up for discussion in Parliament on 29th November, I also participated in the discussion. I pointed about the draconian position of the amendment of the Civil Procedure Code that was sought to be amended. But, the Minister was so firm in saying that it was only the lawyers who were responsible for under valuing the suits. I stated in my submission that under section 102 for a second appeal, the limit is fixed. The limit is up to Rs. 10,000 ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Please bear in mind that there are ten more speakers. We are nearing six, and please do not tell me at six that you will not be sitting beyond six. So, please seek clarifications only. ...*(Interruptions)*...

SHRI R. MARGABANDU: Sir, the limit is only Rs. 10,000. When I requested the Minister to answer, the reply of the Minister was that the lawyers are under-valuing the suits. If they properly value the suits, it will be within the norms. Then I said, "Under the Court Fee Act, only 30 times of the value of the case is to be valued. Even property worth crores of rupees was to go a court of law, not more than Rs. 1,000 or Rs. 2,000 of court fee will...*(Interruptions)* For which he blamed the lawyers at that time...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): What is the clarification? ...*(Interruptions)*... We are entering into a debate; it would create more problems. ...*(Interruptions)*...

SHRI R. MARGABANDU: I am coming to that also. Now, Sir, that Act has been passed. But the Statement of the minister is that the date has not yet been fixed; the date notifying the date of coming into the force of the CPC Amendment has not yet been fixed. In the last line he says, "It

has been decided to start a dialogue on the basis of this statement". Yesterday, in the Lok Sabha, the hon. Minister, Shri Jaitley stated - it is reported in the newspaper - that it is only after the notification stage that the amendments will be discussed. This appeared in The Hindu. I am stating it on that basis. I do not know whether it is true or not.

Now, my submission would be that once that Act is notified, it will come into force. But the demand of the lawyers is that the notification has to be stayed and, in the meanwhile, the representatives of the lawyers, the bar council, will have to be called. It has to be discussed and necessary amendments have to be made. In the statement, no date has been fixed. The Government should fix a date for notifying this Act. I will appeal to you that it should not be notified and the Government must stand ...*(Interruptions)*...

SHRI T.N. CHATURVEDI (Utter Pradesh): You have to read "The Hindu" properly.

SHRI R. MARGABANDU : I have read it properly. The stand that 'only after notification, it will be discussed' is not correct. ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR) : I think the hon. Minister is sufficiently intelligent to understand the clarifications, without any background. There are 10 more speakers. Being a lawyer, I am equally anxious about this.

SHRI R. MARGABANDU : Sir, 200 lawyers were injured. The Minister, in his statement, has said, "Government welcomes the effort of all political and other leaders including Law Officers of the Government who have called on the injured lawyers in hospital and extended to them assurance of justice, punishment of the guilty and compensation for the innocent sufferers." I seek an assurance from this Government that compensation should be given to all those lawyers who have been injured. Sir, my last request is that this amendment is very draconian in nature. I have already submitted the proposed amendments to the Law Minister. My humble request is that the proposed amendments may kindly be taken into consideration. Sir, I also appeal to the Central Government that a portion of that fund which has been allotted to the judiciary can be kept for the welfare of the lawyers throughout the country. I appeal to the hon. Prime Minister as well as the hon. Law Minister that a portion of that fund

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which has been allotted to the judiciary can be allocated as the 'Advocates Welfare Fund'.

SHRI KA. RA. SUBBIAN (Tamil Nadu) : Thank you, Mr. Vice-Chairman, for giving me an opportunity to seek clarifications from the hon. Law Minister. Sir, from the papers, one could understand that our Chief Minister, Dr. Kalaingar, has sent a letter to the hon. Law Minister, after consulting senior leaders and advocates, to keep in abeyance the proposed C.P.C. and also to have a dialogue with all the lawyers. This letter has also been sent to the hon. Prime Minister. Since the hon. Vice-Chairman has given me only a few minutes, I will seek only one or two clarifications. Sir, the Delhi High Court has directed the Government to ensure that the Commission of Enquiry begins its work on or before 25th April.

I want to know whether the hon. Minister has got any information and whether he is in a position to enlighten this august body that the Commission of Inquiry will commence its work on or before the 25th of April, as directed by the High Court of Delhi.

A further direction has been given by the High Court that the police officials who are concerned, should be transferred to some other place. So, based on the direction given by the hon. High Court, are any steps being taken to transfer the police officials concerned from this place?

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Mr. Subbian, if the direction has been given, the Minister has no other choice. They have to do it, and they will do it.

SHRI KA. RA. SUBBIAN: There is only one request. Is the hon. Minister in a position to give an assurance that what all has happened in Delhi on the 24th of February, will not be repeated again so that the advocate community from Kashmir to Kanyakumari get justice in the hands of this Government? So, I request the hon. Minister to give the assurance to this effect.

With these words, I conclude.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR: Thank you, Mr. Subbian.

Now, may I have the sense of the House? It is two minutes past six of the clock. Our time is up to six o'clock. Would you like to continue?

SOME HON. MEMBERS: Please continue.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): I am very happy. I had failed yesterday.

SHRI N. THALAVAI SUNDARAM (Tamil Nadu): Yesterday, you were supporting the Minister.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): No, no. Now, Mr. Pachouri. If possible, please don't repeat anything.

SHRI SURESH PACHOURI: I will be very brief.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Mr. Sibal, in his eloquent manner, has built up the tempo. Don't add to it.

श्री सुरेश पचौरी: महोदय, पूरे देश के जब करीब सात लाख वकील केन्द्रीय सरकार के एडवोकेट एक्ट से संबंधित प्रस्तावित संशोधन के विरोध में शांतिपूर्ण प्रदर्शन कर रहे थे उस समय उन वकीलों पर पुलिस के द्वारा जो लाठी चार्ज हुआ, लोहे की रोड का, वाटर केनन का जो प्रयोग हुआ उसके सिलसिले में माननीय मंत्री जी ने जो वक्तव्य किया है और उस दुर्भाग्यजनक घटना से सम्बन्धित जो दिल्ली हाई कोर्ट में जस्टिस देवेन्द्र गुप्ता और अन्य माननीय न्यायाधीशों ने जो अपना निर्णय दिया है वह अपने आप में बहुत महत्वपूर्ण भी है और चौंकाने वाला भी है। महत्वपूर्ण इसलिए कि उस निर्णय के उपरान्त सरकार को उसका परिपालन करना है और चौंकाने वाला इसलिए है कि सरकार के कार्यकलापों के बारे में बहुत गंभीर टिप्पणी इस निर्णय में की गई है। माननीय मंत्री जी क्लाज 'ए' से 'एफ' तक को तो पढ़ रहे हैं पृष्ठ-63 तक, लेकिन पृष्ठ-64 का क्लॉज 'जी' जानबूझकर उन्होंने छोड़ा है जो कि आखिरी क्लॉज है। इसलिए मैं उसको पढ़ना चाहता हूँ। पृष्ठ-64 में क्लॉज 'जी' में दिल्ली हाई कोर्ट का जो निर्णय है इसमें जो कहा गया है मैं उसको उद्धृत करना चाहूँगा:

"We reiterate the interim order passed on 7th April, directing the Government to take immediate, effective steps to make the Commission of Inquiry functional and to enable the Commission to hold its first meeting as early as possible, but not later than 25th April, 2000."

महोदय, मैं यह जानबूझकर इसलिए पढ़ना चाहता हूँ कि कमीशन आफ इन्क्वायरी का गठन किया गया है। यह माननीय मंत्री जी ने बताया है। लेकिन कमीशन ऑफ इन्क्वायरी की जिम्मेदारी जिन माननीय जज को सौंपी गई है, क्या उन्हें वह जिम्मेदारी सौंपने संबंधी पत्र दे दिया गया है? मेरी अपनी जानकारी के अनुसार जस्टिस कोचर को लिखित में सूचना नहीं दी गई है। यदि जानकारी दी गई है तो माननीय मंत्री जी जब अपना उत्तर दें तो उसमें इस बात का उल्लेख अवश्य करें, ऐसा मेरा उनसे अनुरोध है। मेरी खबर तो यह है कि उनको भी बदलने का एक प्रस्ताव चल रहा है। यही वजह है कि उन्हें, इस संबंध में नोटिफिकेशन होने के बाद भी लिखित में सूचना नहीं दी गई है। उस कमीशन ऑफ इन्क्वायरी की अभी तक पहली सिटिंग भी नहीं हुई है। वकीलों के साथ जो बर्बरतापूर्ण व्यवहार हुआ है उसके संबंध में मैं ज्यादा फोटोग्राफ तो नहीं दे पाऊंगा, लेकिन आपकी इजाजत से यह बताना चाहूंगा कि एक लेडी एडवोकेट के साथ जो ज्यादाती हुई है और उसके जो फ्रेक्चर हुआ है, उसके हैड इंजरी हुई और काफी कुछ हुआ है उसके संबंध में इस फोटोग्राफ में स्पष्ट दिख रहा है। वकीलों के साथ ऐसा व्यवहार किया गया जो पागल कुत्तों के साथ किया जाता है। इस वीडियो टेप को देखने के बाद माननीय न्यायाधीश इस नतीजे पर पहुंचे हैं। मैं वह वीडियो टेप लेकर आया हूँ। अगर आपकी इजाजत हो तो मैं उसे यहां टेबल पर प्रस्तुत कर सकता हूँ। माननीय मंत्री जी उस वीडियो टेप को देख सकते हैं। मैं चाहूंगा कि माननीय न्यायाधीश जिस नतीजे पर पहुंचे हैं, माननीय मंत्री जी भी उत्तर देने से पहले उस नतीजे पर पहुंचेंगे कि वकीलों के साथ किस ढंग से निर्दयतापूर्ण व्यवहार किया गया था। वकीलों की जो पिटाई की गई है, जो उनके साथ बर्बरतापूर्ण व्यवहार किया गया है, जिन्होंने ये सब किया है वे सब पुलिस अधिकारी निश्चित रूप से दोषी हैं। प्रश्न उठता है कि लाठी चार्ज का आर्डर किसने दिया?

महोदय, जब एक जिम्मेदार पुलिस अधिकारी यह कहता है कि लाठी चार्ज के लिए मैं जिम्मेदार हूँ तो फिर किस प्रकार की इन्क्वायरी की आवश्यकता है। दिल्ली के पुलिस कमिश्नर की होम मिनिस्टर के साथ जब मीटिंग हुई तब इस बात को स्वीकार किया है और स्टेटमेंट में यह छपा है। यदि यह गलत है तो माननीय मंत्री जी अपने उत्तर में उसको स्पष्ट कर सकते हैं। Mr. Sharma, who is the Delhi Police Commissioner, said like this. It is published in newspapers.

"Mr. Sharma was reported to have met the Home Minister at a meeting a few days ago. Mr. Sharma said: I take full responsibility for the police action, which was absolutely right. I had ordered the lathi charge." पुलिस कमिश्नर खुद कह रहे हैं कि मैंने लाठी चार्ज का आर्डर दिया, मैं इसकी जिम्मेदारी लेता हूँ। अब माननीय न्यायाधीश यह कहते हैं कि लाठी चार्ज का आर्डर देने वाले पुलिस अधिकारी के खिलाफ कार्रवाई होनी चाहिए। क्या माननीय मंत्री जी, यद्यपि यह उनके विभाग से संबंधित

नहीं है फिर भी वह उत्तर देते समय क्या यह स्पष्ट करेंगे कि दिल्ली के पुलिस कमिश्नर का ट्रांसफर जो निर्णयानुसार क्लाज 'ई' और 'एफ' में कहा गया है, करेंगे? अपने उस निर्णय में माननीय न्यायाधीश ने जिम्मेदार पुलिस अधिकारियों के खिलाफ एक वीक या दो वीक में कार्रवाई करने के लिए कहा है। मैं जानना चाहता हूँ कि क्या इस परिधि में डीसीपी, एसीपी के साथ-साथ दिल्ली के पुलिस कमिश्नर भी आयेंगे?

मैं अपनी बात खत्म करते हुए यह भी पूछना चाहता हूँ कि जिन लेडी एडवोकेट्स के साथ जैट्स पुलिस अधिकारियों ने मारपीट की जिसको स्पष्ट रूप से इस वीडियो टेप में दिखाया गया है, यह वीडियो केसेट प्रशासन के पास भी मौजूद है, तो क्या वह उन पुलिस अधिकारियों के खिलाफ कार्रवाई करेंगे? कार्रवाई करने से पहले क्या उनका ट्रांसफर कर दिया गया है? क्या इस बात की पुष्टि माननीय मंत्री जी अभी तक की है? मैं आपके माध्यम से माननीय मंत्री जी से यह जानना चाहता हूँ।

महोदय, मैं आखिरी बात और पूछना चाहता हूँ। खुद मंत्री जी ने अभी अपना जो सप्लीमेंट्री स्टेटमेंट दिया है, आज के स्टेटमेंट को मैं सप्लीमेंट्री स्टेटमेंट कहना चाहूंगा। उसमें उन्होंने स्वीकारा है, excessive use of police force हुआ है इंडिवीजुअल लायर्स के साथ। तो जो एक्सस यूज आफ फोर्स का पालन किया गया है उसके लिए वह किसको जिम्मेदार ठहराते हैं? जिस इंडिवीजुअल लायर्स के साथ किया गया है वह इंडिवीजुअल लायर्स कौन था? और उस पर उस फोर्स का इस्तेमाल करने के लिए कौन जिम्मेदार है? यह मैं आपके माध्यम से मंत्री जी से जानना चाहता हूँ।

मैं अपनी बात समाप्त करने से पहले यह जानना चाहता हूँ कि क्या मंत्री जी इस बात से संतुष्ट हैं कि जो आयरन राड्स का प्रयोग किया गया, जो वाटर कैनन का प्रयोग किया गया वहां से प्रदर्शनकारियों को भगाने के लिए तो क्या उनके भागने के लिए कोई पैसेज था? क्या इस बात की उन्होंने जानकारी ली है कि जब वाटर कैनन का उपयोग करेंगे, जब लोहे की रॉड्स का उपयोग करेंगे, जब लाठी का उपयोग करेंगे, क्या उस वक्त उन वकीलों के भागने के लिए कोई पैसेज था? इस बात की जानकारी क्या उन्होंने हासिल की है? यदि कोई पैसेज नहीं था तो उसके लिए वह किसको जिम्मेदार ठहराते हैं? मैं इन बातों को जानना चाहूंगा और यदि इन सब बातों से वह संतुष्ट हैं कि वकीलों के साथ बर्बरतापूर्वक व्यवहार किया गया है और इसके लिए जो पुलिस अधिकारी जिम्मेदार हैं, जिन्होंने इस प्रकार का व्यवहार किया है - एक न्याय मंत्री के नाते जब समय पर उन्होंने कोई कार्यवाही करने संबंधी पहल नहीं की, एक जाने-माने वकील के रूप में भी माननीय मंत्री जी जाने जाते हैं तो क्या नैतिकता के नाते वकील समुदाय के साथ वह खड़े होने का निर्णय लेंगे? यह निर्णय लेते

[18 APRIL, 2000]

RAJYA SABHA

हुए क्या अपने पद से नैतिकता के नाते त्यागपत्र देने की आज वह पहल करके एक अनुकरणीय कदम उठाने का साहस करेंगे? यह मैं आपके माध्यम से जानना चाहता हूँ। धन्यवाद।

SHRI N. THALAVAI SUNDARAM : Mr. Vice-Chairman, Sir, the brutal attack on the lawyers by the Delhi Police was a very unfortunate incident. Mr. Vice-Chairman, you are basically a lawyer; and you know the effect of the lawyers' strike on the country. Why has this situation arisen? This was created by the Law Minister. On the first day of the strike, he had issued a statement to the press, "Lawyers' strike was illegal". We, from Chennai, were seeking a meeting with the Law Minister. We were told that the Law Minister had gone abroad. He remained abroad for five days. He said that the lawyers' strike was illegal. What has happened? The Law Minister is basically a lawyer. He is a criminal lawyer. He is a senior lawyer. This is the way.

SHRI KAPIL SIBAL: A lawyer practising in criminal law is not a criminal.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Mr. Sibal is worried because tomorrow you may call him a criminal lawyer.

SHRI N. THALAVAI SUNDARAM : This is how the Law Minister has issued a statement against the lawyers. I am not able to understand it. *...(Interruptions)...* I am putting my question to the Law Minister/ Mr. Jethmalani.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): What is your clarification?

SHRI N. THALAVAI SUNDARAM: Mr. Vice-Chairman, Sir, you are a lawyer, I hope, at least you have sympathy for the lawyers.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): When I sit in the Chair, I cannot afford to be emotional or sentimental. I have to go by the rules. Therefore, please seek only clarifications. I will tell you outside about my reaction to the lawyers' strike.

SHRI N. THALAVAI SUNDARAM: You are occupying the Chair; at least, you must have some sympathy for the lawyers.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Please seek your clarifications. Let us further the cause of the lawyers.

SHRI N. THALAVAI SUNDARAM: The lawyers' strike was created by the Law Minister. Why did he issue a statement against the lawyers? This is my first clarification.

Number two, after issuing the statement on 24.2.2000, and after the brutal attack on the lawyers by the Delhi Police, why couldn't he interact with the lawyers? When we approached the Law Minister, he repeated the same statement. As the hon. Member, Mr. Kapil Sibal, said, paragraph 35 contains directions to be enforced against the lawyers; but what about the relevant portion of the judgement that is against the Government. Why have you ignored it? Again, the Minister has said that the lawyers strike is illegal and that they should call off the strike. That is how he was saying. Basically, he must protect the lawyers. I think, he is against the lawyers community because he is occupying the post of the Law Minister and supporting the Government. When we requested the Law Minister to transfer the Delhi Police officials who were responsible for the lathi-charge against the lawyers, he told us, "It is not my job. It is the job of the Home Ministry."

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): What is your clarification? What is happening is, you are making a statement, not seeking clarifications.

SHRI N. THALAVAI SUNDARAM: Whenever we are raising a point, every time you are asking, "What is your clarification?" These are all our clarifications. Once you occupy the Chair, you should not be biased. You are asking every Member, "What is your clarification?". I am very sorry.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Mr. Minister, kindly take all his statement as seeking clarifications.

SHRI N. THALAVAI SUNDARAM: Everything is to be clarified. That is why we are discussing it here. I request the Minister to take necessary steps in the interests of lawyers and protect them. Otherwise, if you are acting against our community, you must resign the post. Thank you.

SHRI NARENDRA MOHAN: Thank you, Mr. Vice-Chairman. I shall confine myself to the clarifications only.

The first clarification I seek is this. The first paragraph of the statement of the Minister, dated 28th February, says that several lawyers and police personnel have been injured. Would he like to give to this august

House the list of policemen who were injured, so that the House knows it? A case has been presented by my able friend Kapil Sibalji as if no policeman has been injured.

SHRI KAPIL SIBAL: I have said that there is nothing in the High Court judgment. There is no such statement in the affidavit before the High Court. There is no statement otherwise before the Court that any policeman has been seriously injured. I do not have any personal knowledge. I am only saying that nothing was placed before the High Court. The Minister may conjure up something now. I do not know.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): No, no, please. Don't cast aspersions. You are a senior advocate. "Conjure up" is not very right.

SHRI KAPIL SIBAL: I have the confidence that he will not.

SHRI NARENDRA MOHAN: Sir, I am seeking a clarification from the hon. Minister whether he has got the list of the police personnel who have been injured. How many have been injured and what sort of injuries have they got? As far as I know, some photographs were published in newspapers about lawyers and policemen, police officers, also being injured. Several newspapers have published them.

My second clarification is on the second paragraph. "Nothing untoward was expected." Everyone believed that there would be a peaceful march. What converted that peaceful march into a violent demonstration? Why did the unfortunate incident occur and the police was compelled to resort to a lathi-charge? What was the provocative point? (Interruption). Let me seek clarifications, my friend.

SHRI NILOTPAL BASU: There is no provocation for him to continue like this.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Mr. Narendra Mohan, please continue. Now, the third query.

SHRI NARENDRA MOHAN: Page 2, second paragraph. A public statement has been made by some political leaders as well as leaders of the Bar that an inquiry by a sitting Judge of the Supreme Court is suitable. The Government has no objection to this. I would like to know from the Minister why a sitting Judge of the Supreme Court could not be found out. What were the reasons behind?

The fourth clarification I would seek is this. A Commission of Inquiry has been instituted already. When does he expect that inquiry will

be completed? Has any time-frame been given or has he got something in his mind about the period that this inquiry will take? When will it be completed and after the completion, how much time will the Government take to take a decision on that Inquiry Commission report?

Coming to my fifth point, the Minister has said in his statement that he is willing to enter into a dialogue, a fruitful dialogue, with the lawyers. He has said, "I have appealed to lawyers to start a fruitful dialogue." When does he want to start a fruitful dialogue? Is he still willing to have a fruitful dialogue? If so, how much time will he take to initiate a discussion or dialogue with the Delhi Bar Association?

There is a need for building confidence. I agree with the Minister and also with my friend, Mr. Kapil Sibal, that there is a need for building confidence. Now, who is going to take the initiative about the confidence-building measures? How will the confidence-building measures start? When will they start? Who will be the party? What is the time-frame for it? The Minister has been very candid in saying that the injured are in the hospitals and he has extended them the assurance, though in the statement, the words used are 'assurance of justice, punishment to the guilty and compensation to the sufferers; three assurances have been given by the Minister in his statement. The first assurance is related to justice. What justice will be given when there is so much evidence? Has he seen the video tape? Has he seen the photographs? What is his personal perception? I know that a Commission of Inquiry is there. But still, the hon. Minister might have seen the video tapes. I would only like to know from him whether he has seen the video tapes, and if so, while seeing the video tapes, whether he has seen the police officers dragging the lady lawyers. How did he react to that? What assurance of justice is he going to give to those who have suffered? Then I come to the punishment of the guilty. After seeing the video tape, why couldn't the Government take any decision at the *prima facie* level? After all, there is no doubt that a Commission of Inquiry is there. The final declaration will come only from them. But when a video film is available, one can easily draw a conclusion, and it is the duty of the Government to draw some conclusion, at least, after seeing the video tape. What conclusion has been drawn by the Government after seeing the video film? If the Minister has not seen the video film, his Secretary might have seen it. The stricture of the High Court is very, very harsh. It has been said that the lawyers were beaten up like mad dogs. It is a very harsh

stricture and the High Court has reached this finding after seeing the video tape. So, I would like to know as to at what level the video tapes have been screened and seen and what reaction they have had. I would further like to know whether they have been concretised. If so, how has it been done? The next point is about the compensation. What compensation is the Government having in mind? It is a very important thing. An assurance has been given on the floor of this House by the Government. We would like to know from the Minister what sort of compensation he is having in mind. Unless we know it, it will not be a very fruitful discussion. Thank you.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Thank you, Mr. Narendra Mohan. You have asked nine clarifications. Now, Mr. Ram Gopal Yadav.

प्रो. रामगोपाल यादव (उत्तर प्रदेश) : श्रीमन्, प्रथम दृष्टया वकीलों के उत्पीड़न में पुलिस के लोग दोषी हैं, उन पर कार्यवाही करने में विलम्ब हुआ है। मैं माननीय मंत्री जी से उनके स्पष्टीकरण में जानना चाहूंगा कि यह विलम्ब वरिष्ठ अधिकारियों की निष्क्रियता के कारण था या केन्द्र सरकार के इन्स्ट्रक्शन्स थे कि किसी के खिलाफ कार्यवाही न की जाए? यह मेरा पहला स्पष्टीकरण है। जो प्राइमाफेसी दोषी हैं, मैं मानता हूँ कि ट्रांसफर करना कोई पनिशमेंट नहीं होता। क्या माननीय मंत्री गृह मंत्रालय के जरिए ऐसे लोगों को सस्पेंड करवाने की कार्यवाही करेंगे, मेरा यह दूसरा स्पष्टीकरण है। और मेरा तीसरा स्पष्टीकरण यह है कि हाई कोर्ट जजमेंट के जो पैरा ग्राफ श्री कपिल सिब्बल साहब ने पढ़े, एक तरफ हम कहते हैं कि जब किसी मंत्री के खिलाफ चार्ज फ्रेम होता है तो वह त्यागपत्र दे, यह पूरी गवर्नमेंट के खिलाफ एक सेंसर है हाई कोर्ट का, कलेक्टिव रेस्पॉन्सिबिलिटी की यह डिमांड है कि यह गवर्नमेंट त्यागपत्र दे लेकिन कभी-कभी गवर्नमेंट को बचाने के लिए व्यक्तिगत उत्तदायित्व के आवरण में एक मंत्री त्यागपत्र देकर सरकार को बचाने का काम करता है। मैं माननीय मंत्री जी से यह जानना चाहूंगा कि क्या वे इस मामले में बलि का बकरा बनना चाहेंगे?

SHRI S.R. BOMMAI (Karnataka) : Sir, it is unfortunate that -- the hon. Law Minister is himself a reputed lawyer and belongs to the legal fraternity - during his tenure, such a shocking and inhuman attack on the members of the legal profession has taken place. I will seek only clarifications because most of the points have already been mentioned by some hon. Members. One clarification which has also been put forth by some Members is: keep in abeyance the amended Civil Procedure Code

until there is a dialogue between the representatives of the advocates and the Government and till they come to some agreement. Until that, don't issue a notification, bringing into force the amended CPC. That is one clarification.

Secondly, I do not know why a sitting judge of the Supreme Court was chosen to head the inquiry. The other day I asked him, he said, "I am trying to do that." Today, a retired judge of the Rajasthan High Court is being appointed to head the Inquiry. Why? Can it be corrected? Is it possible? If it is not possible, then, I would like to know whether the Government will prescribe a term, or, a period, within which the Commission should complete its inquiry and submit its report. That's all.

THE VICE CHAIRMAN (SHRI ADHIK SHIRODKAR): Now, Mr. Minister, please. I request the Members: no side comments and no interruptions please. This is a very serious subject.

SHRI RAM JETHMALANI: Sir, I said in the beginning that nothing should be said in this House which might, in any way, impede the very healthy process that has started after the High Court judgement. I will, therefore, forget all the provocations; I will forget even the personal insults which have been heaped on me. I will forget the somewhat rude language that has been used against me, personally. I do not wish to reciprocate it at all. Mr. Kapil Sibal asked me a question. Are you willing to resign? My answer is, no. *(Interruptions)*

AN HON. MEMBER: We knew that. *(Interruptions)*

THE VICE CHAIRMAN (SHRI ADHIK SHIRODKAR): Please, don't interrupt. You had put a question and it is being replied to. No interruptions.

SHRI KAPIL SIBAL: Sir, I thought there is some place for emotions also. *(Interruptions)* ...you would always be smiling all the time.

THE VICE CHAIRMAN (SHRI ADHIK SHIRODKAR): But there is a limit to my endurance also. After sitting here for five hours, I see that people who sought clarifications and who had raised questions, have left.

SHRI RAM JETHMALANI: Assuming that the police officers in this case misbehaved; assuming that they had no justification for using violence; assuming that they committed a serious offence against the law, which theory of constitutional law, of which Shri Kapil Sibal claims to be an

expert, requires that as soon as an offence is committed by a public servant, the Home Minister, or, the Law Minister should resign? Unfortunately, the Constitutional knowledge of Mr. Kapil Sibal cannot be tested in this House.

SHRI KAPIL SIBAL: It has been tested. Yours has been tested outside this House many times.

SHRI RAM JETHMALANI: When an offence of this kind or an incident takes place, it is the duty of every civilised Government to offer a proper investigation, to offer that if anybody is found guilty after a proper trial and the due process of law, that person will be punished, that he will meet his dessert and that adequate compensation will be given to those who have been injured as a result of the offence. The very first statement which I made in the House on the 28th February contains the assurance:

"The Government welcomes the effort of all political and other leaders including Law Officers of the Government who have called on the injured lawyers in hospital and extended to them assurance of justice, punishment of the guilty and compensation for the innocent sufferers".

The Government stands by this promise. The Government will carry it out. But we shall not convict the people without a hearing. The more prolific the evidence against a person, the more he is entitled to the right of defence. Every lawyer, every lawyer worth his salt, knows that in spite of the seemingly, almost impossible and indefensible, look of a case, it has turned out that the allegations are false and the accused has been acquitted in courts. Therefore, all that we promise is investigation and inquiry. The lawyers in this case said, "We want not an investigation by the police because the police themselves were being accused of serious offences." They said, "We want an inquiry by a sitting Judge of the Supreme Court". On 25th February I made a statement in the other House and on 28th February I repeated that statement here where I said that these were rival versions and you see how accurately the two versions have been described in the statement that I made in this House:

"There has been a highly regrettable and unfortunate incident yesterday in the vicinity of Parliament during which several lawyers and police personnel have been injured, some rather seriously. I had promised the hon.

Rajya Sabha yesterday to make a statement after making some inquiry. Unfortunately, the House has been adjourned. Various lawyers' organisations had given advance notice of a strike. The routes, etc., have been settled. Nothing untoward was expected. Everyone believed that there would be a peaceful march which would end at the unusual barricades with presentation of a representation by selected lawyers. Unfortunately, this did not materialise and a series of violent incidents occurred at or near the barricades."

This hon. House will see how careful I was in making this statement so that I should not find fault either with the lawyers or with the police:

"The lawyers and police have conflicting versions of what happened. The lawyers claim that the police assault on them was totally unprovoked and excessive to the point of being brutal."

This is the lawyers' case. I have correctly and accurately summarised this before this hon. House:

"They are naturally agitated by the indignity and injuries that they have suffered. The police, on the other hand, claim that they had shown unusual restraint in the face of disorderly conduct and they have acted strictly in discharge of their painful duties. They admit the use of water cannon, tear-gas and lathi charge."

"These rival versions only call for a totally impartial and thorough probe. Yesterday afternoon itself I expressed Government's willingness to have an immediate inquiry at whatever level leaders of the bar want."

From the statement that has been made...(Interruptions)...

SHRI KAPIL SIBAL: Mr. Minister, we have read this statement.

SHRI RAM JETHMALANI: You may have read it. But I want to reread it.

श्री सुरेश पचौरी : लेकिन जो क्लैरीफिकेशंस पूछे हैं उनका आन्सर दें ... (व्यवधान)... यह तो 28 फरवरी को आलरेडी मिनिस्टर स्टेटमेंट दे चुके हैं... (व्यवधान)...

SHRI NILOTPAL BASU: Where is the answer? *(Interruptions)*

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Please sit down. *(Interruptions)*. When I am standing, please sit down. *(Interruptions)*. Please sit down. Let us have decorum. You have sought some clarifications. The Minister, in the context of the your questions and the statement is trying to give a cohesive answer. Whether you like it or not, that is his answer. You cannot ask him to answer in this way. *(Interruptions)*. You cannot ask the Minister to answer in this way. *(Interruptions)*. You cannot dictate terms that you want to have an answer in a particular manner only.

SHRI NILOTPAL BASU: Sir, we have put some questions. So much time has passed. We have not heard any answer. He has not yet answered any question. *(Interruptions)*.

SHRI RAM JETHMALANI: I have answered the first question. I was asked, "Will you resign?" I have said, "No, I will not resign because I have acted in the best possible manner." *(Interruptions)*. I will come to the High Court. I will deal with the High Court. *(Interruptions)*.

SHRI NILOTPAL BASU: Sir, I seek your protection. *(Interruptions)*. Sir, we are not getting your protection. *(Interruptions)*.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): The option is open to you. The Minister is giving the answer to the best of his ability. You cannot dictate terms that he should give the answer in this manner. He is replying to the questions. What else do you want?

SHRI NILOTPAL BASU: Sir, we seek you protection. *(Interruptions)*.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): What protection? Should he give answer in the manner you want? That is not protection. *(Interruptions)*. Please sit down.

SHRI SATISHCHANDRA SITARAM PRADHAN: Sir, I am on a point of order.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Yes, Mr. Pradhan.

श्री सतीशचन्द्र सीताराम प्रधान : मेरा प्वाइंट आफ आर्डर है...(व्यवधान)... सुनिए तो सही। प्वाइंट आफ आर्डर जरा सुनिए तो सही....(व्यवधान)...

श्री नीलोत्पल बसु : कौन से रूल के अंदर प्वाइंट आफ आर्डर कर रहे हैं ...(व्यवधान)...

श्री सतीशचन्द्र सीताराम प्रधान : रूल 259...(व्यवधान)...

SHRI NILOTPAL BASU: Under which rule? (*Interruptions*). Sir, under which rule is he raising a point of order? (*Interruptions*).

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): If the hon. Members are serious about the answer, then listen to him undisturbed. You are not allowing the Minister to give his answer. If you are dissatisfied with the answer, that is a different matter. But don't dictate terms that the answer must come in a particular manner. I will not accept it. You cannot say that he must answer only in this way.

SHRI NILOTPAL BASU: Sir, we seek your protection.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): What protection? I allowed you to seek clarifications. What protection do you want?

SHRI NILOTPAL BASU: Sir, you are not directing him to answer our questions.

SHRI RAM JETHMALANI: Sir, I am still answering the first question. The question was, "Are you willing to resign?" (*Interruptions*).

SHRI BRATIN SENGUPTA (West Bengal): Sir, I agree with you regarding what you have said about clarifications. That is perfectly all right. Sir, I think you will also share the opinion of the House. The atmosphere of the discussion has got radically changed after the indictment of the Government by the High Court. The situation is not as it was earlier. After we came to know about the indictment of the Government by the Delhi High Court, the atmosphere of the discussion has totally changed. (*Interruptions*). I would like to know whether the Minister will take moral responsibility in view of the judgement of the Delhi High Court.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): He has answered it. (*Interruptions*) No interruptions will go on record. Mr. Minister will continue to answer in spite of repeated interruptions. If you want to hear, you please hear. The same thing happened in the morning when Mr. Naik was doing it. Then you staged a walk out. I am very much concerned with the replies. Let him give his replies in a manner he decides. If you are dissatisfied, you have other options. Interruption is not an option. Mr. Minister, kindly continue. Interruptions will not be taken on record.

SHRI RAM JETHMALANI: Sir, on the 29th February, 2000, representatives of the Bar - I want to place the authenticated document on the Table. The representatives of the Bar, namely, the Chairman of the Delhi Bar Council, Shri B.S. Sherawat, Shri K.K. Sood, senior advocate, former Chairman of Delhi Bar Council, Mr. Rajiv Khosla, Secretary, Delhi Bar Association, Member, Delhi Bar Council and R.N. Watts, Member, Delhi Bar Council and former President, Delhi Bar Association represented.

SHRI NILOTPAL BASU: Sir, a point of order. I think, while the Minister is clarifying the position, he can't introduce a new document because on the basis of which we can ask further clarifications. This should have come in the beginning itself to substantiate some of the points that he has made already.

SHRI RAM JETHMALANI: This is a document of 29th and the statement was made on the 28th.

SHRI NILOTPAL BASU: Sir, in the beginning itself he could have supplemented it.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): All rules and procedures are meant to enable us to function and go to the truth proper. We can't use it as a hindrance to arrive at the truth. If he is giving information, if there is anything further to be given, there is no rule to say that the document can't be placed. If there is one, please show me that rule. Where is it?

SHRI RAM JETHMALANI: Sir, these venerable gentlemen have recorded: 'We are fully satisfied with the letter issued by the hon. Law Minister regarding the amendments in the Civil Procedure Code and the Advocates Act. We are also happy that the Commission, presided over by a sitting Judge of the Supreme Court will inquire into the police action against the lawyers on the 24th February, 2000. We have, however, insisted that some immediate action be taken against the police officers who may be found to be *prima facie* involved. It is only right that pending the inquiry, stern action should be taken against the erring police officers. We therefore urge the hon. Law Minister, who has been a lawyer himself and in whom we have full faith, to get the needful done by the Government. We assure our hon. Law Minister that on this being done by the Government, we will call off the strike immediately.'

This is on the 29th. The leaders of the Bar wrote to me. Sir, I have given you the respectable names who had written to me and who had full faith and confidence with the Law Minister. They had confidence in what I have done till then.

Sir, Mr. Kapil Sibal says about resignation. Why am I supposed to resign?

SHRI KAPIL SIBAL: On the judgment of the High Court.

SHRI RAM JETHMALANI: I understand.

SHRI KAPIL SIBAL: Do you also know how to read the judgment of the High Court? The High Court says time and again that the Government has treated the lawyers as mad dogs on the street. That is why we want the resignation.

SHRI RAM JETHMALANI: I am coming to this 'mad dogs in the street', Sir. Let me go seriatim with the questions raised by Mr. Kapil Sibal. First, he said, "What about this Commission? Why has there been so much delay? Why did it not come earlier?" Some hon. Member wanted to know when it is going to complete its work. Sir, the hon. High Court has directed that the first sitting of the Commission must take place before 25th April.

SHRI KAPIL SIBAL: Why so long?

SHRI RAM JETHMALANI: I am here to answer why so long. You will have a long answer. The High Court directed that the Commission will hold its first meeting on 25th April. The Government stands by this. The Commission shall sit on the 25th of April. ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Please continue irrespective of interruptions, otherwise I direct.

SHRI RAM JETHMALANI: Why this delay? Unfortunately, we had agreed in the beginning and this was on the insistence of my lawyer friends whom I was anxious to please, who wanted a sitting Judge and not a retired Judge. We said, "All right, a sitting Judge." You see this letter. They have thanked me that a sitting Judge of the Supreme Court will be deciding this matter. Sir, now why delay? Sir, it is true that in writing for the first time I addressed a letter to the Chief Justice of the Supreme Court

and said, "Please assign me a Judge." Sir, this is preceded by a lot of things. No Judge of the Supreme Court was willing to give sitting in this Commission. They said, "We will not get involved in this." Ultimately, Sir, I made a statement that the hon. Chief Justice of India out of sheer regard for me told me, "You approach each individual Judge of the Supreme Court of India and find out if anyone is willing to act." Sir, I had to sit and approach each Judge of the Supreme Court. Ultimately I have persuaded Mr. Justice Saghir Ahmad to sit and I communicated this willingness of Justice Saghir Ahmad to the Chief Justice of India. This had to be received in a formal shape and the formal shape was given when I had secured the consent of Justice Saghir Ahmad. This is the letter of the Chief Justice to me. It says, "This has reference to your D.O. letter of March 14, 2000, requesting me to nominate a Judge of the Supreme Court of India to preside over the Commission of Inquiry proposed to be constituted to inquire into the unfortunate incident which took place on the 24th and connected matters. In principle I am not in favour of sparing the services of a sitting Judge of the Supreme Court to preside over a commission of inquiry." Sir, this was in principle on which every Judge acted and apart from other things which they said and which are unmentionable. So, I do not wish to mention them. They refused. Finally, when this one Judge was persuaded, we gave it a legal shape. "You called on me this afternoon" says the Chief Justice of India, "at my residence and I apprised you of my views on the subject. You requested me to treat it as a very special case and nominate a sitting Judge to preside over a commission of inquiry. On your request, therefore, as a very special case, which should not be treated as a precedent...*(Interruptions)*...

SHRI SURESH PACHOURI: Sir, I am on a point of order under Rule 249 which says, "If a Minister quotes in the Council a despatch or other State Paper which has not been presented to the Council, he shall lay the relevant papers on the Table.: मान्यवर, आप के माध्यम से मैं माननीय मंत्री जी से आग्रह करना चाहता हूँ कि जिन-जिन पत्रों को वे उद्धृत कर रहे हैं, जिन का उल्लेख कर रहे हैं, उन सभी पत्रों को कृपया सदन के पटल पर ले कर दें।

SHRI RAM JETHMALANI: I am doing it. ...*(Interruptions)*.. I will do it collectively at one point of time. I have said it. So, I will do that. There is no problem. ...on your request, as a very special case, which should not be a precedent, I am pleased to nominate hon. Mr. Justice Saghir

Ahmad, a sitting Judge of the Supreme Court of India to preside over a commission of inquiry in addition to his duties as the Judge of the Supreme Court of India. The draft of the proposed terms of reference may be shown to Mr. Sahgir Ahmad and the same be finalised in consultation with him. You may get in touch with Justice Saghir Ahmad. ...”

As assured by you, I take it that with my nominating the hon. Justice Saghir Ahmad to preside over the Commission of Enquiry, the lawyers strike would be called off immediately. I am awaiting confirmation of this position from you.” Sir, I could not give an assurance to the hon. Chief Justice of India that the lawyers will call off their strike because the calling off or the strike had been promised on the 25th February, 2000, and, unfortunately, though the Bar Council of India, on the 29th February, 2000, gave a call to stop this strike, because of the unfortunate incidents of lathi charge, the Delhi strike continued in the Delhi High Court and the courts subordinate to it; maybe, in some other pockets surrounding Delhi, or, maybe, even in Punjab and Haryana. But, I was in no position to give this assurance to hon. Chief Justice of India and, Sir, all that I could give was, I sent him a copy of the earlier letter dated 29th February, 2000, which the leaders of the Bar had signed, and had assured me that this strike will be called off on your doing things but you proceed to do something more. They said, “We have perfect confidence in you and see that you get something more for us so that the dignity of the lawyers, as a whole, should remain sacrosanct and intact.” Sir, I claim that I was unfair with the police but I was partial to my lawyer brothers and sisters. I went out of my way and sat and sat and persuaded the Commissioner of Police and the Home Minister to transfer one person. When I got that, I came back. They said, “Our leadership is being challenged by our followers. They will not accept this.” On the second day, one more transfer and after the third or the fourth day, unfortunately, I had to go out of India and I asked my colleague, Mr. Arun Jaitley, to continue and he arranged a series of meetings in the Home Ministry. As a result of which, much more was done. But, it did not satisfy the lawyers and I do not blame the lawyers. If the lawyers want to stick to it, they are entitled to, and they stuck to it, and the litigation went on. Mr. Justice Saghir Ahmad said, “No.” On 21st - after four or five days - he said, “I am not coming.” Of course, the reason that he gave was, “The National Human Rights Commission is also enquiring into the matter and I do not want to get involved in this.” This was the last Supreme Court

Judge we could not get. I got into a conversation with the Members of the Bar. They suggested two names of retired judges of the High Court. I do not mind telling you that even the judges of the high court refused to sit on this Commission. But, ultimately, they suggested two names. Mr. Lekhi came to me and I said, "Please take any name that you like." They suggested Mr. Kochar's name and I appointed and issued a notification for Mr. Kochar. Mr. Kochar, then, Sir, put some conditions - give me a house, allow me the right of practice and allow me to go before arbitration. Sir, ultimately, we could not accept those conditions. Ultimately, we went back again and said, now let us have a retired judge of the Supreme Court and, Sir, Mr. Justice Kochar's appointment is over. Now, it is Mr. Justice Nanavathi, a retired judge of the Supreme Court, who is finally appointed.

SHRI KAPIL SIBAL: Mr. Nanavathi is also not interested.

SHRI RAM JETHMALANI: We cannot help it. This is what has happened. This is why nobody wanted to get involved in this dispute. It is not our fault.

SHRI KAPIL SIBAL: You should have acted on your own and suspended those people...*(Interruptions)*...

SHRI RAM JETHMALANI: One minute. Will you please, Mr. Kapil Sibal; you think that you are too wise and what you say has no answer. Please, listen and then seek an answer.

SHRI KAPIL SIBAL: Your wisdom is unsurpassed. I accept that...*(Interruptions)*...

SHRI RAM JETHMALANI: Please sit down and hear the clarification...*(Interruptions)*...Sir, I am not yielding...*(Interruptions)*...

SHRI KAPIL SIBAL: Your wisdom is unsurpassed. That is why you are in this position today. That is why the High Court has passed strictures against the Government.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Mr. Sibal, please...*(Interruptions)*...

SHRI RAM JETHMALANI: The High Court had done whatever it wanted to do; we will deal with that within a minute.

THE VICE-CHAIRMAN: Mr. Sibal, you have asked your clarifications. He is answering...*(Interruptions)*...

SHRI KAPIL SIBAL: Sir, the point is, he is not answering the questions. The High Court has answered all these questions...*(Interruptions)*...

SHRI NILOTPAL BASU: Sir, strictures have been passed against the Government. That is the whole issue...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR) : If Mr. Jethmalani heard you without any interruption and at certain times, as is stated, you made certain remarks which were disparaging, I did not intervene because, perhaps, I have my own weakness, being a lawyer, but let him first reply in absolute uninterrupted silence. Please, I beg of you. Otherwise, you will lose the focus of the agitation that they are carrying out.

SHRI NILOTPAL BASU: He has to address, at least, 10 per cent of the queries that have been raised. He is speaking since the forty-five minutes. Not even 10 per cent of the clarifications have been replied...*(Interruptions)*... Sir, the right to reply cannot be arrogated like this. *(Interruptions)* We are constrained to say that the right to reply is being totally abused by the Minister. *(Interruptions)*

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): No. *(Interruptions)* No. You absolutely give the impression that you do not want to hear the reply. ...*(Interruptions)*...

SHRI KAPIL SIBAL: How can you say that we do not want to hear the reply? *(Interruptions)* We object to it. *(Interruptions)*

SHRI NILOTPAL BASU: You cannot say like this, Sir. *(Interruptions)* We do not accept this. *(Interruptions)*

SHRI BRATIN SENGUPTA: Sir, he is putting the entire nation to a shameful position. *(Interruptions)* He is putting the whole House to a shameful position. *(Interruptions)* He has continuously been shying away from the basic issue. *(Interruptions)* You are supposed to protect the interest of the House and of the nation, Sir. ...*(Interruptions)*... This is the only logical conclusion. ...*(Interruptions)*... He knows what is the logical conclusion. ...*(Interruptions)*... After taking the moral responsibility, he knows it very well. ...*(Interruptions)*...

(At this stage some hon. Members left the Chamber.)

SHRI RAM JETHMALANI: Sir, Mr. Kapil Sibal has left. He left at a very convenient time to him. I was about to disclose to the hon. Member and his colleagues about the attempt that has been made to mislead this House. Did he, or, did he not say it time and again that no

police officer was injured? No case was made out there, that injuries were suffered by the police officers. He says, "not an iota of evidence"! And he claims that he had read the High Court's judgement. Sir, paragraph 15 of the High Court's judgement records, "According to the reply affidavit filed on behalf of respondent No. 2, the Commissioner of Police, New Delhi, the issues raised in the writ petition are incapable of resolution by judicially manageable standards." It is stated that unfortunate incident and so on and so forth. In the course of discharge of their duty of enforcing prohibitory orders in the vicinity of Parliament House, the police took steps that they considered appropriate to prevent members of the unlawful assembly from reaching Parliament House and crossing prohibited areas. This is the honest affidavit of the Commissioner of Police. Some members of the Bar, undoubtedly, have been hurt in the action taken by the police. Some members of the police force also had sustained injuries. Sir, to say solemnly, you never, never told the High Court that officers were injured and you made a false statement to this hon. House, is a travesty of truth. If I have to resign because I have promised an honest inquiry and compensation and punishment, then Mr. Kapil Sibal should resign his Membership of this House for having spoken this kind of a * which cannot be justified. Sir, since those who wanted clarification, no longer want it, unless they want to see it in the Press tomorrow morning, for their benefit, I will very, very briefly... (*Interruptions*)...

SHRI SHANKAR ROY CHOWDHURY (West Bengal): I am here, Sir.

SHRI RAM JETHMALANI: Thank you, sole survivor of the co-partners. Sir, the question asked was, what will you do if the lawyers do not comply with their obligation of following the High Court's advice, which is almost a directive, because it has held that their strike was illegal, immoral, unprofessional. There is not the slightest justification for its continuance for a minute longer. It must come to an end forthwith. Now, my answer to that question is that the Home Ministry will certainly consider the new situation. If the lawyers do not comply with that part of the judgement, maybe, the Home Ministry might decide to go back to the High Court and ask for fresh directions from them. But, I have made it very clear that so long as this judgement is either not stayed, or set aside, the Government is bound to comply with it.

* Expunged as ordered by the Chair.

7.00 P.M

We have assured the High Court that we will comply with it, and I assure this House also that we will comply with it, unless there are judicial proceedings by which the injunctions issued are modified. Now, Sir, the question was raised : why did you not take action when the matter was sub-judice? Sir, I would like to draw the attention of this august House to the end of paragraph 21 at page 39 of the judgement itself. Kindly see, Sir, what the High Court has said, and everything that the High Court has ultimately said is subject to this. "In the light of the above rival contentions, the basic issues are : whether the police used force without sufficient provocation or justification; whether the police used excessive force; whether, before the use of force and lathi-charge, the police had observed the mandatory requirement under the law; whether the police committed any illegality or misconduct of criminal offence; and whether the conduct of the police officials warrant any legal action or disciplinary proceedings against them. These are the matters which would definitely come under the purview of the inquiry by the Commission of Inquiry appointed by the Central Government, and it is not for the Court to express any opinion or to make any comments on such matters. We shall confine ourselves to making some interim orders, namely, strike, and suspension and transfer."

Sir, therefore, there is no finding of the High Court that the police have either used excessive force or that the police have used force which, in any sense, constitute an irregularity or an offence. That is a matter which the Commission of Inquiry will go into. That Commission of Inquiry will make its report. We, as a civilised Government, will be bound by the findings of the Commission of Inquiry. But Sir, it is well known that even the findings of an Inquiry Commission under the Commissions of Inquiry Act are purely recommendatory, and the Government still has a right to consider and not accept those recommendations. Sir, we do not wish to go into that question at all. Paragraph 22 of the judgement says, "On a careful consideration of the material placed before this court, we are not inclined to hold that the actions and conduct of the police, while disbursing the unlawful assembly on 24.02.2000, warrant any legal action or disciplinary proceedings against the police officers at this stage." Sir, the Government can suspend its officers only as a step in the direction of disciplinary proceedings. We were not satisfied because we took the position that all interim findings and final findings must be rendered by the Commission

itself. In the disciplinary proceeding which is taken by the executive against its employees, the final decision lies with the executive. Therefore, they make interim findings as well, but where, ultimately, the Commission of Inquiry has been given the power, both to make interim orders and final orders, we did not wish to take any responsibility because that would be unfair to the police officers and, perhaps, to the lawyers also. Sir, what means have we of following the principles of natural justice? The investigations are not complete. Where has the investigation taken place so far? There are no FIRs lodged at the police stations so that an inquiry could have been made at least by the police into offences alleged to have been committed by the police. We cannot go on suspending people without having the basis of an investigation, at least, done by our own agencies. No such investigation exists, no such findings occur. On the contrary, the Additional Commissioner has recorded findings in a departmental inquiry that the officers have used no force which was not a part of their official duty. The question is raised : why did you not do what the High Court has now asked you to do? We could not do what the High Court has now asked us to do, for the simple reason that the High Court can make this kind of an observation before asking us.

Of course, they have asked us ultimately to transfer so and so and to identify some others who are involved. But they say in paragraph 34:

"We do not consider it necessary to issue any specific directions to respondents 3 and 6 and the striking lawyers as we hope that at least now good sense will prevail and they will call off strike forthwith and avoid the unpleasant situation that might arise if they continue to abstain from work. In case the strike is not called off, the courts concerned will deal with the situation and proceed with the cases in accordance with"

Then, Sir, in para 26 at page 51, they say:

"We also wish to clarify that our direction to the Government to remove the police officers concerned from the posts held by them will not constitute any stigma in their career and that our observations and directions should not be treated as a reflection of any adverse opinion

about their integrity, efficiency or conduct. We may add that our directions are only to ensure a proper and fair inquiry into the incident of 24-2-2000."

Sir, I do not blame the Home Ministry and its advisors for having taken the view that if the Government wants to suspend somebody, it has to record the prima facie finding of guilt. The High Court can do this. They say: "In the general interests of things and so on and so forth, we direct that you do this, but it is nothing of a stigma." Therefore, Mr. Kapil Sibal is wrong when he thinks that we could have done what the High Court had asked us to do. We could have never done what the High Court had asked us to do. We would have been involved in making prima facie findings against our own officers who had the right to defend themselves before the Commission.

Then, Sir, Mr. Sibal has asked like an innocent babe: "What are the serious implications of the judgement? It does not appear to him that there are very serious implications! The serious implication is the finding of law. We have told the High Court, "Whatever directions you give, we will abide by them." But, Sir, it is a very serious question of constitutional law whether the High Court has the jurisdiction to issue such directions. We may try this out in this case without disturbing the final suggestions made by the Court. But this is a serious matter of precedent. This is a serious matter of administration. We have also to run the police force. We have also to defend the morale of our police officers, and we have also to maintain the law and order in the country. They police officers will tell us, "Whenever we use some force, you come down on us. We are not going to use any force." So, every dacoit, every robber and everybody else will go free. There will be chaos in this country. This is not what we want. We have to look at things from the point of view administration: my friend sitting in the Opposition has no such obligation. He has no such responsibility to discharge: we have.

Sir, the Government's view has been that we will await the result of the report. The High Court has justified this. The High Court says that the Government is absolutely right in taking the view that they will not take any action until the report is received. It says in paragraph 24:

"In the facts and circumstances of this case, we do not find sufficient reason or justification to direct the Government to suspend from service any of the police

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RAJYA SABHA

officials except those who admittedly used unwarranted force against individual lawyers after the dispersal stage."

And this is the line which I wish to emphasise on:

"We do not find any legal grounds to interfere with the decision of the Government not to suspend the other police officers at this stage. The said decision of the Government cannot be said to be improper or illegal or arbitrary."

They say from the video they have identified three constables who seem to have prima facie been found to be guilty of excessive force. They say that they have seen videos and they can identify some more. They have given us two weeks to identify some more. We will certainly abide by the High Court's directions, unless, as I said (a) if we go back upon the High Court's directions contained in the earlier paragraphs and (b) we complain to the High Court and take the permission of the High Court. Otherwise we, as a Government, are bound by the rule of law. We have such a great respect for the judiciary, who, in a sense, have acted at our instance as well, because we had told them to make interim orders and we will abide by them.

Sir, I have substantially answered all the points which have been raised by the hon. Members. There is nothing which calls for clarifications. But if a clarification was honestly asked for, it has been abundantly given.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Mr. Minister, there was one query by Mr. Narendra Mohan. He wanted to know whether you have crystallised the terms of reference and whether a time-bound framework has been made.

SHRI RAM JETHMALANI: Yes, Sir, we have crystallised the terms of reference and we have also made it a time-bound framework. The first sitting is on 25th of April and the Commission has to give its findings within three months. The terms of reference are settled already. They are part of the notification.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Some Members wanted that these letters should be laid on the Table. Would you like to do it.

SHRI RAM JETHMALANI: Yes, Sir.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): They have not heard your clarifications.

SHRI T.N. CHATURVEDI: Mr. Vice-Chairman, Sir, they have left. That shows how much they are interested in that kind of a document.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): I am not concerned with their behaviour. He has made a statement. Why not it be laid on the Table?

SHRI T.N. CHATURVEDI: The hon. Minister at the very beginning had said that he would not have any objection to it. He has taken the House into confidence and he wants to take the country into confidence.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): That is why it is advisable that he lays it on the Table. That is what I feel. If I am wrong, you may say so.

SHRI SATISHCHANDRA SITARAM PRADHAN: Sir, Mr. Kapil Sibal has shown certain photographs and he had assured the House that he will authenticate them. And when Mr. Suresh Pachouri has shown the cassette...

SHRI T. N. CHATURVEDI: That only shows their sense of seriousness in the matter.

SHRI RAM JETHMALANI: I am grateful to the Members of the House, who have been patient enough.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Mr. Minister, you had made a reference to certain disparaging remarks on you. Normally I would have intervened, but I did not do it, because I did not want to show any...

SHRI RAM JETHMALANI: Sir, my shoulders are broad enough.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): I have always ridden on your shoulders. There is a famous saying: A man asked God, whenever I am in a good situation I see your footprints along with me, and when I am in a bad situation, why do I not see your footprints. God said: You are in my hands and what you see are my footprints. You add your own footprints. Thank you, Mr. Minister.

The House is adjourned till 11'o clock tomorrow morning.

The House then adjourned at fourteen minutes past seven of the clock till eleven of the clock on Wednesday, the 19th April, 2000.