



കേരള സർക്കാർ

ആഭ്യന്തര (രഹസ്യ വിഭാഗം - എ) വകുപ്പ്

# നടപടി റിപ്പോർട്ട്

ജസ്റ്റിസ് (റിട്ട.) പി. എ. മുഹമ്മദ്  
ജുഡീഷ്യൽ അന്വേഷണ കമ്മീഷൻ

കേരള സർക്കാർ

ആഭ്യന്തര (രഹസ്യ വിഭാഗം - എ) വകുപ്പ്

## നടപടി റിപ്പോർട്ട്

ജസ്റ്റിസ് (റിട്ട്) പി. എ. മുഹമ്മദ്  
ജുഡീഷ്യൽ അന്വേഷണ കമ്മീഷൻ

1952 - ലെ കമ്മീഷൻസ് ഓഫ് എൻക്വയറി ആക്ടിലെ സെക്ഷൻ 3(4) പ്രകാരം 2016 ജൂലായ് 20-ാം തീയതി ഹൈക്കോടതിയുടെ മുഖിൽ അഭിഭാഷകരും മാധ്യമപ്രവർത്തകരും തമ്മിലുണ്ടായ സംഘർഷത്തെ തുടർന്നുണ്ടായ പോലീസ് ലാത്തിച്ചാർജ്ജിലേയ്ക്ക് നയിച്ച സംഭവങ്ങളെപ്പറ്റി അന്വേഷിക്കുന്നതിനായി നിയമിതനായ ജസ്റ്റിസ് (റിട്ട) പി.എ. മുഹമ്മദ് കമ്മീഷൻ റിപ്പോർട്ടിലെ കണ്ടെത്തലുകളിലും ശിപാർശകളിന്മേലും സ്വീകരിച്ച നടപടി റിപ്പോർട്ട്.

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2016 ജൂലായ് 20-ാം തീയതി ഹൈക്കോടതിയുടെ മുഖിൽ അഭിഭാഷകരും മാധ്യമപ്രവർത്തകരും തമ്മിലുണ്ടായ സംഘർഷത്തെ തുടർന്നുണ്ടായ പോലീസ് ലാത്തിച്ചാർജ്ജിലേക്ക് നയിച്ച സംഭവങ്ങളെപ്പറ്റി അന്വേഷിക്കുന്നതിനായി ജസ്റ്റിസ് (റിട്ട) പി.എ. മുഹമ്മദ് കമ്മീഷനെ 08.11.2016-ലെ 60903/എസ്.എസ്.എ 2/ 2016/ആഭ്യന്തരം വിജ്ഞാപന പ്രകാരം (14.11.2016-ലെ എസ്.ആർ.ഒ. നമ്പർ 686/2016) സർക്കാർ നിയമിച്ചു.

2. 03.05.2017-ലെ 60903/എസ്.എസ്.എ 2/2016/ആഭ്യന്തരം നമ്പർ വിജ്ഞാപന പ്രകാരം പ്രസിദ്ധീകരിച്ച കമ്മീഷന്റെ പരിഗണനാ വിഷയങ്ങൾ താഴെപ്പറയുന്നവയായിരുന്നു.

i. 2016 ജൂലായ് 20-ന് ഹൈക്കോടതിയുടെ മുഖിൽ നിലനിന്നിരുന്നതോ സംഭവിച്ചതോ ആയ സാഹചര്യങ്ങളോ സംഭവങ്ങളോ, മറ്റോ പോലീസിനെ ലാത്തിച്ചാർജ്ജ് നടത്തുവാൻ നിർബന്ധിതമാക്കിയിട്ടുണ്ടോ, ആയത് നീതീകരിക്കാവുന്നതാണോ എന്ന വസ്തുത അന്വേഷിക്കുക.

ii. അധിക സേനാവിഭാഗത്തെ ഉപയോഗിച്ച് ഹൈക്കോടതി മുന്മാകെ പോലീസ് നടത്തിയ ലാത്തിച്ചാർജ്ജിൽ പോലീസ് കുറ്റക്കാരാണോ എന്ന് അന്വേഷിക്കുക.

iii. മാധ്യമപ്രവർത്തകരുടെ ഭാഗത്ത് നിന്നും ഉണ്ടായ എന്തെങ്കിലും പ്രവർത്തിയോ പ്രകോപനമോ ഹൈക്കോടതിയുടെ മുമ്പാകെ നടന്ന പോലീസ് ലാത്തിച്ചാർജ്ജിന് അവസരമൊരുക്കിയിട്ടുണ്ടോ എന്ന് അന്വേഷിക്കുക.

iv. അഭിഭാഷകരുടെ ഭാഗത്ത് നിന്നും ഉണ്ടായ എന്തെങ്കിലും പ്രവർത്തിയോ പ്രകോപനമോ ഹൈക്കോടതിയുടെ മുമ്പാകെ നടന്ന പോലീസ് ലാത്തിച്ചാർജ്ജിന് അവസരമൊരുക്കിയിട്ടുണ്ടോ എന്ന് അന്വേഷിക്കുക.

3. ശ്രീ. ജോൺസൺ മാത്യു മാനയാനി ഫയൽ ചെയ്ത WP (C) 40634/2017 എന്ന ഹർജിയിന്മേലുള്ള ബഹുമാനപ്പെട്ട ഹൈക്കോടതിയുടെ 20.12.2017-ലെ വിധിന്യായത്തിന്റെ അടിസ്ഥാനത്തിൽ സർക്കാർ അന്വേഷണ കമ്മീഷന്റെ പരിഗണനാ വിഷയങ്ങൾ 28.07.2018-ലെ 60903/എസ്.എസ്.എ 2/2016/ആഭ്യന്തരം നമ്പർ വിജ്ഞാപന പ്രകാരം പരിഷ്കരിച്ചു. പരിഷ്കരിച്ച പരിഗണനാ വിഷയങ്ങൾ താഴെപ്പറയുന്നവയായിരുന്നു.

i. 2016 ജൂലായ് 20-ന് ഹൈക്കോടതിയുടെ മുമ്പിൽ നിലനിന്നിരുന്നതോ സംഭവിച്ചതോ ആയ സാഹചര്യങ്ങളോ സംഭവങ്ങളോ, മറ്റോ പോലീസിനെ ലാത്തിച്ചാർജ്ജ് നടത്തുവാൻ നിർബന്ധിതമാക്കിയിട്ടുണ്ടോ, ആയത് നീതീകരിക്കാവുന്നതാണോ എന്ന വസ്തുത അന്വേഷിക്കുക.

ii. ഒരു കൂട്ടം മാധ്യമ പ്രവർത്തകർക്ക് 19.07.2016-ൽ പ്രതിഷേധ പ്രകടനം നടത്താനും അതീവ സുരക്ഷയുള്ളതും പ്രതിഷേധവും പ്രകടനവും നിരോധനം കല്പിച്ചിരിക്കുന്നതുമായ ഹൈക്കോടതി പരിസരത്ത് ഇവ സംഘടിപ്പിക്കാൻ പോലീസ് അനുമതി നൽകിയ സാഹചര്യം അന്വേഷിക്കുക.

iii. അധിക സേനാവിഭാഗത്തെ ഉപയോഗിച്ച് ഹൈക്കോടതി മുമ്പാകെ പോലീസ് നടത്തിയ ലാത്തിച്ചാർജ്ജിൽ പോലീസ് കുറ്റക്കാരാണോ എന്ന് അന്വേഷിക്കുക.

iv. മാധ്യമപ്രവർത്തകരുടെ ഭാഗത്ത് നിന്നും ഉണ്ടായ എന്തെങ്കിലും

പ്രവർത്തിയോ പ്രകോപനമോ ഹൈക്കോടതിയുടെ മുമ്പാകെ നടന്ന പോലീസ് ലാത്തിച്ചാർജ്ജിന് അവസരമൊരുക്കിയിട്ടുണ്ടോ എന്ന് അന്വേഷിക്കുക.

v. അഭിഭാഷകരുടെ ഭാഗത്ത് നിന്നും ഉണ്ടായ എന്തെങ്കിലും പ്രവർത്തിയോ പ്രകോപനമോ ഹൈക്കോടതിയുടെ മുമ്പാകെ നടന്ന പോലീസ് ലാത്തിച്ചാർജ്ജിന് അവസരമൊരുക്കിയിട്ടുണ്ടോ എന്ന് അന്വേഷിക്കുക.

vi. ഇതുമായി ബന്ധപ്പെട്ട ആകസ്മികവും അനുബന്ധവുമായ വസ്തുതകൾ കൂടി കമ്മീഷന്റെ അഭിപ്രായ പ്രകാരം അന്വേഷിക്കുക.

4. അന്വേഷണ കമ്മീഷനെ ആറ് മാസകാലാവധിയിലേക്കാണ് നിയമിച്ചതെങ്കിലും അന്വേഷണകാലാവധി വിവിധ സർക്കാർ വിജ്ഞാപനങ്ങളിലൂടെ നാല്പത്തിമൂന്ന് മാസം പതിനെട്ട് ദിവസം വരെ ദീർഘിപ്പിച്ച് നൽകിയുണ്ടായി. 30.06.2020-ൽ കമ്മീഷൻ സർക്കാരിൽ റിപ്പോർട്ടും അനുബന്ധ രേഖകളും സമർപ്പിച്ചു.

5. അന്വേഷണ കമ്മീഷന്റെ റിപ്പോർട്ടിലെ കണ്ടെത്തലുകളും ശിപാർശകളും സർക്കാർ വിശദമായി പരിശോധിക്കുകയും തുടർന്ന് 09.07.2021-ലെ സ.ഉ.(കെ) നം.128/2021/ആഭ്യന്തരം നമ്പർ ഉത്തരവിലൂടെ ചുവടെ പ്രതിപാദിക്കുന്ന തീരുമാനങ്ങൾ കൈക്കൊള്ളുകയും ചെയ്തു.

i. ഹൈക്കോടതി പരിസരത്തുണ്ടായ സംഭവങ്ങളുമായി ബന്ധപ്പെട്ട് പോലീസ് എടുത്തിട്ടുള്ള ക്രിമിനൽ കേസുകൾ വിവിധ ഘട്ടങ്ങളിലായതിനാൽ കമ്മീഷന്റെ ഇതു സംബന്ധിച്ച കണ്ടെത്തലുകൾ/ശിപാർശകളിൽ സർക്കാർ പ്രത്യേക നിലപാടു സ്വീകരിക്കേണ്ടതില്ല എന്നു തീരുമാനിച്ചു.

ii. ഇത്തരം സംഭവങ്ങൾ ഭാവിയിൽ ആവർത്തിക്കാതിരിക്കുവാനുള്ള ശിപാർശകൾ പരിശോധിച്ച് നടപ്പിൽ വരുത്തുവാൻ ആഭ്യന്തര വകുപ്പ് അഡീഷണൽ ചീഫ് സെക്രട്ടറിയേയും, നിയമ വകുപ്പ് സെക്രട്ടറിയേയും ചുമതലപ്പെടുത്തി.

iii. അന്വേഷണ കമ്മീഷൻ ചൂണ്ടിക്കാണിച്ച ന്യൂനതകൾ പരിഹരിച്ചുകൊണ്ട് 1952 ലെ കമ്മീഷൻസ് ഓഫ് എൻക്വയറി ആക്ടിന് അനുസൃതമായി സമഗ്രമായ ഒരു പുതിയ ചട്ടം നിയമ വകുപ്പുമായി കൂടിയാലോചിച്ച് രൂപീകരിക്കുവാൻ തീരുമാനിച്ചു.

09.07.2021-ലെ സ.ഉ.(കൈ) നം.128/2021/ആഭ്യന്തരം നമ്പർ ഉത്തരവ് ഇതോടൊപ്പം ഉൾക്കൊള്ളിച്ചിട്ടുണ്ട്.



ആലോചനാ കമ്മിറ്റി  
ഗവ. സർവ്വകലാശാലകളിൽ  
സംസ്കൃത ഭാഷാ വിഭാഗം  
ഗവ. സർവ്വകലാശാലകൾ



GOVERNMENT OF KERALA

Abstract

Home Department –Report containing findings and recommendations of the Justice (Rtd) P.A. Mohammed Commission of Inquiry to inquire into the incidents that led to Police lathicharge following the dispute between advocates and media persons in front of High Court of Kerala on 20th July, 2016 – Orders issued.

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HOME (SECRET SECTION - A) DEPARTMENT

G.O.(Ms) No.128/2021/Home Dated, Thiruvananthapuram, 09.07.2021.

- Read:-
1. Notification No.60903/SSA2/16/Home dated 08.11.2016.
  2. Notification No. 60903/SSA2/16/Home dated 03.05.2017
  3. Notification No.60903/SSA2/2016/Home dated 28.07.2018
  4. Report of the Justice (Rtd) P.A. Mohammed Commission of Inquiry.

ORDER

The Government as per the notification read as 1<sup>st</sup> paper above, had constituted Justice (Rtd) P.A. Mohammed Commission of Inquiry to inquire into the incidents that led to Police Lathicharge following the dispute between Advocates and Media persons in front of High Court of Kerala on 20th July, 2016. As per the notification read as 2<sup>nd</sup> paper above, the Terms of Reference of the Commission were notified. Later the Terms of Reference were amended vide notification read as 3<sup>rd</sup> paper above. Originally the term of appointment of the commission was for a period of six months, which was further extended to forty three months and eighteen days through separate Government notifications.

2. The Commission submitted its report along with supplementary documents to Government on 30.06.2020.

3. The report containing findings and recommendations of the Commission with respect to all the Terms of Reference are appended as Annexure.

4. Government after detailed scrutiny of the recommendations contained in the Report of the Commission of Inquiry are pleased to order as follows :-

i. Since the cases registered by the Police against the incidents happened on the premises of Hon'ble High Court on 19th July, 2016 and 20th July, 2016 have been under various stages, no specific stand is taken by the Government on the findings/recommendations of the Commission in this regard.

ii. Additional Chief Secretary, Home and Secretary Law Departments are entrusted to examine and implement the recommendations to avoid recurrence of such incidents in future.

iii. A new comprehensive rule with regard to the Commissions of Inquiry Act 1952 shall be framed addressing the drawbacks pointed out by the Commissions of Inquiry in consultation with Law Department.

5. The report of the Commission together with a memorandum of action taken be placed before the Legislative Assembly u/s 3(4) of the Commissions of Inquiry Act forthwith.

(By order of the Governor)  
T.K.JOSE  
ADDITIONAL CHIEF SECRETARY

To

The Principal Accountant General (A&E/G&SSA), Kerala,  
Thiruvananthapuram. (with C/L)  
The State Police Chief, Kerala, Thiruvananthapuram (with C/L)  
Law Department. ( Vide UO (F) No.462/LS/2020/Law dated 30.11.2020)  
General Administration (SC) Department.  
(Vide item No. 104 dated 08.07.2021.)  
Stock File/ Office Copy.

Forwarded/by order,



Section Officer.

Copy to:-Private Secretary to Chief Minister.  
PS to ACS, Home Department.  
PS to Secretary, Law Department.



ANNEXURE

Sl. No.	Terms Of Reference	Findings/Observations of the Commission
1	i) To inquire into as to whether the situation or incidents, if any, that prevailed or occurred in front of the High Court on 20th July 2016 necessitate or justify the action on the part of the Police to resort to lathicharge.	<p>1) The situation or incidents on 20<sup>th</sup> July 2016 prevailed or occurred in front of the High Court is proved as established by the oral testimonies given by the witnesses on the side of the Advocates, Media men, Police and independent witnesses.</p> <p>2) The injuries sustained by the Advocates are found established in view of the evidence given by the persons who had themselves sustained injuries and also by others who witnessed the incident.</p> <p>3) The injuries sustained by the Advocates (Adv. Martin Chacko, Adv. Antony Robert Dias, Adv. Riyal Devassy, Adv. Rilgin V. George, Adv. Serji Joseph, Adv. Jeevan manayani, Adv. Vishnu Jayapalan, Adv. J.S. Ajithkumar, Adv. Jiji S., Advocate Clerk Sajeesh &amp; Advocate Clerk Vipin Das) were caused by the physical force by some of the mediemen, who were members of unlawful assembly.</p> <p>4) The majority of the injuries sustained by the Advocates and Advocate Clerks were caused by the exercise of lathicharge by police and also by physical force.</p> <p>The plea of the police that there was no lathicharge was not established in the</p>

inquiry by the Commission. If such plea is insisted notwithstanding the distinct terms contained in the Reference that can be established in the proceedings, if any, available under law. The Commission is strictly bound by the terms of reference.

Second subject of inquiry coming under Terms of Reference No.(i) is extracted also discussed along with the subject item no.(i) as specified above.

*“Whether such situation or incidents justify the action on the part of the police to resort to lathicharge”*

While giving the testimony by the Secretary of the Association (AW2) on 24.11.2017, deposed before the Commission that there was no occasion for the police to resort lathicharge in the incident that took place on 20.07.2016.

The District Collector, in his statement ('Exhibit X10'), submitted before the Commission thus;

*“It is respectfully submitted that after the incidents which happened on 19.07.2016 and 20.07.2016 the District Collector came to knowledge of the fact that police resorted to lathicharge in front of the High Court premises because of the dispute between media persons and advocates”.*

One of the police officers viz., Sri. Rajesh K.R. (CW4) (He was on vigilance duty on that

day i.e. on 20.07.2016) had given testimony before the Commission, unequivocally stating in cross examination held on 15.03.2019 as thus;

ചോദ്യം : ഹൈക്കോടതിയുടെ മൂന്നാം നമ്പർ ഭാഗത്ത് നിന്ന് പടിഞ്ഞാറ് ഭാഗത്ത് വാഹന ഗതാഗതം നടക്കുന്നുണ്ടായിരുന്നോ

ഉത്തരം : ഉണ്ടായിരുന്നു. പൊതുജനങ്ങൾക്ക് പോകാമായിരുന്നു.

ചോദ്യം : അവിടെ ഒരു രണ്ടാമത് ഫോഴ്സിനെയാകെ വിളിച്ച് വരുത്തിയിരുന്നില്ലേ. ഏകദേശം എത്ര പേർ ഉണ്ടായിരുന്നു.

ഉത്തരം : ഞാനത് ശ്രദ്ധിച്ചില്ല.

ചോദ്യം : അവിടെ ഒരു ലാത്തിച്ചാർജ്ജ്ജാ, വളരെയധികം ഫോഴ്സ് ഉപയോഗിച്ച് ജനങ്ങളെ പിരിച്ചുവിടേണ്ട ഒരു സാഹചര്യം ഉണ്ടായിരുന്നില്ല.

ഉത്തരം : ഉണ്ടായിരുന്നില്ല.

ചോദ്യം : സൂട്ടറിൽ നിന്ന് വീണ് അഭിഭാഷകന് പരിക്കു പറ്റിയത് സംബന്ധിച്ചുണ്ടായ ചെറിയ ഒരു വാക്കു തർക്ക മാത്രമാണ് അവിടെ ഉണ്ടായത്.

ഉത്തരം : അതെ.

*From the above questions and answers in the cross examination of the witness CW4, it is established that there was no occasion for the police to resort to lathicharge. Thus the incidents that happened on 20th July, 2016 do not support the case that there was occasion for causing lathicharge as contented by the police.*

Further, from the evidence given by the CW3 particularly in the cross examination by the Counsel for the petitioner in petition No.3/17, it is established that he had instructed his superior officer Assistant Police Commissioner, about the incident that took place on 19th July, 2016. This statement was given to the question raised by the Counsel for the petitioner in respect of the failure to inform the details of the incidents that took place on 19.07.2016 to the District Collector or City Police officials. The answer given by the witness is insufficient to come to a final conclusion as to whether he had personally informed the matter to District Collector. But he had stated that he had informed about the incident to his immediate superior officer. Whatever that be the Collector himself categorically stated that the concerned police officials failed to inform the matter to the District Police Authorities.

This is the conclusion that can be arrived at by the Commission in answering the Terms of Reference No. (i) which relates to the second part as aforesaid.

The report also established the nature of injuries sustained by the lawyers and Advocate clerks and also media person.

2. To inquire into the

The deposition given by the parties

<p>circumstances under which the local police permitted on 19.07.2016, a group of media persons to conduct a protest march in the surroundings of the High Court, which is deemed a High Security area, where protests and processions are not permitted</p>	<p>(AW16, AW22,AW24 &amp; AW26) established the circumstances under which the protest march was conducted by the media men on 19.07.2016. It is further established that the media persons conducted the aforesaid protest march without obtaining prior permission from the local police or any other superior authorities. From the oral testimony given by the witnesses and also from the documents available it is strongly established that no permission was granted by the police authorising media persons to conduct a protest march in the surroundings of the High Court on 19.07.2016. The FIR prepared Suo Motu on the basis of the complaint filed by the aforesaid witnesses (A party) is produced during the inquiry as 'Exhibit C1'. The above complaint is still pending investigation before the Magistrate Court. In view of the aforesaid testimony given by the witnesses it is sufficiently established that no permission had been granted by the local police or other superior authorities to the media persons to conduct a protest march on 19.07.2016 in the surrounding of the High Court.</p> <p>Observation of the Commission with regard to Terms of Reference II</p> <p>The view expressed on behalf of the 'C' party that the word 'permitted' embodied in</p>
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reference no(ii) is subject to evidence as propped up in the inquiry and therefore those words will not operate as estoppel to the contentions contrary, has been repelled by the Commission by an elaborate analysis in relation to the inquiry under terms of reference no(i). Therefore the Commission cannot accept another interpretation to the explicit terms contained in reference no.(ii) that the local police had 'permitted' on 19.07.2016,a group of media persons to conduct a protest march.

The police officers who had given deposition before the Commission in relation to the terms of reference (ii) deposed before the Commission that no permission was granted by the local police to mediemen to conduct aforesaid march. Apart from the terms of reference above police officers unequivocally stated that no permission was granted to the media men to conduct a protest march on 19.07.2016. Further as revealed from the evidence given by the journalist before the Commission that they had not obtained any permission to conduct a protest march in the surroundings of the High Court. The aforesaid circumstances persuade the commission to examine as to how the media persons conducted such a wrongful protest march in front of the High

Court. The journalists who participated in the protest march are fully aware that nobody has granted permission to conduct a protest march. Two leaders on the side of the press also admitted before the Commission while giving depositions that the police had not granted permission to conduct a procession in front of the High Court. The most astonishing point on this question is that everybody involved, the police, media and others, openly admit that no permission was granted. This question remains unanswered. Here what is to be noted is the force available to media men to organise collective march towards the surroundings of the High court which is deemed a high security area where 'protests and processions are not permitted'.

**Observation II**

Is there any oblivious authority allowing Media persons indirectly to do such illegal action. Anyway this question cannot be inquired by the present Commission governed by the terms of reference. The observation of the Commission is that there is no semblance of proof for existence of such force anywhere in the overall evidence before it. Even admitting the existence of such authority, rule of law does not permit to exist such evil forces any further. It is the

		<p>bounden duty of all citizens to eradicate such evil forces by nipping it at bud. This is the justice to the rule of law in the absence of which democratic society may march towards destruction.</p>
3.	<p>To inquire into as to whether the Police is guilty of using excess force by resorting to lathicharge in front of the High Court.</p>	<p>Here there is no evidence to show that the police was attacked by lawyers or others. The lathi was used against the lawyers by the police. There may be minimum force or maximum force or reasonable force by the police. But there was injury and physical pain only for lawyers, not others. When lathi is used for offence or defence as circumstances warranted, the quantity of force to be exercised by the parties in a scuffle or fight between the parties to be determined. The quantity of force used by the police to be determined for fixing the criminal liability. Such determination is a pre-requisite for fixing the liability. When the force used is excessive it is totally unlawful. The power of resistance may be different and varies from person to person. Such factors to be considered while fixing the criminal liability.</p> <p>The counsel appearing for the 'C Party' (Police) as per the statement dated 21<sup>st</sup> August 2019 raised a contention in paragraph 22 thus;</p> <p>'The Lawyers and Journalists started</p>



exchanging physical violence and the Police was forced to interfere in the matter. Police used reasonable and necessary force for dispersing the offensive activities of the groups. Police used only minimum and reasonable force for containing the situation.'

No evidence is forthcoming from the side of the police to establish that there was only reasonable force. No answer is given by the police as to how Advocates and others suffered injuries and treated in hospitals. No explanation in this regard is forthcoming from the police. From the evidence it is abundantly established that the Advocates and Advocates clerks sustained injuries in the action of lathicharge by the police.

The counsel for Police has not suggested as to how the quantity of force used by the police in a given situation be determined. Without actually deciding the quantity of force required in a given situation the question whether the police is guilty in using the force by resorting to lathi cannot be decided. Therefore there shall be an appropriate body to determine this question whether the police is guilty of using excess force for resorting to lathicharge. That being so, the quantity of force exercised by the police either minimum or reasonable or

		<p>maximum or excessive has to be determined only by an expert body at the stage of investigation or trial. What is before the Commission is depositions of parties from both sides. Final determination is only possible after fixing the extent of penal liability. It is only thereafter criminal liability by the police can be determined. All the criminal cases are pending at investigation stage. The extent of liability of each party can only be determined thereafter.</p>
4 & 5	<p>To inquire into as to whether there occurred any provocation or action on the part of the media persons providing occasion for the Police to resort to lathicharge in front of the High Court.</p> <p>To inquire into as to whether there occurred any provocation or action on the part of advocates providing occasion for the Police to resort to lathicharge in front of the High Court."</p>	<p>This Terms of references relate to the provocations providing occasion for the police to resort lathicharge in front of the High Court.</p> <p>Reference no.(iv) relates to the provocations on the part of the media persons. So also reference No.(v) relates to the provocation on the part of the Advocates. Therefore the facts available before the Commission regarding provocations both by media persons and advocates can be considered together. In the instant case provocations may be by using abusive languages, either by placards or public speech. So also provocations may take place due to the physical force. In the present case the provocations both by Media persons and Advocates can be seen as witnessed in the statement given by Sri.Gopakumar examined</p>

on the side of the media as BW1. He deposed before the Commission on 07.12.2018 while narrating the incidents that took place on 20<sup>th</sup> July 2016 as thus;

'മാധ്യമപ്രവർത്തകരാണ് ഈ അഭിഭാഷകനെ ആക്രമിച്ച് എന്ന് പറഞ്ഞ് അഭിഭാഷകതം, ക്ലർക്കമാതം പോലീസിനെ തള്ളിമാറ്റിക്കൊണ്ട് ഞങ്ങളെ ആക്രമിക്കാൻ ശ്രമിച്ചു. ഇതിനിടയിൽ സിറ്റി പോലീസ് കമ്മീഷണറെ തള്ളിയിടാൻ ശ്രമിച്ചപ്പോൾ പോലീസ് ജനക്കൂട്ടത്തെ പിരിച്ച് വിടാൻ വേണ്ടി ബലപ്രയോഗം നടത്തി".

From the above words the provocation is seen to have been created both by the media persons and advocates against the police.

Though the freedom of speech is guaranteed shouting of provocative slogans is restrained by rules. The facts of the case proved that the Mediāmen had raised abusive slogans against the lawyers on 19.07.2016 in front of the High Court. This has really provoked lawyers gathered in and around. Some of the witnesses deposed before the Commission that provocations were there even from the beginning of the procession by way of shouting abusive slogans. This incident can said to be a provocation against the community of lawyers. It is not against the police, though some of them alleged so.

Another instance of provocation is noticed in one of the First Information Reports (Exhibit 'C5') produced by the police. The following statement contained therein may be noticed.

"ടി സ്ഥലത്ത് പിന്നെയും തമ്പടിച്ചിരുന്നാൽ ക്രമസമാധാന പ്രശ്നം ഉണ്ടാകാൻ സാധ്യതയുള്ളതിനാലും ടിയാൻമാരുടെയും പ്രവർത്തി നിയമവിരുദ്ധമാണെന്ന് ടിയാന്മാരോട് പല തവണ ഉച്ചത്തിൽ വിളിച്ച് പറഞ്ഞ് സ്ഥലത്തുനിന്ന് പിരിഞ്ഞു പോകാൻ ആവശ്യപ്പെട്ടിട്ടും ടിയാൻമാർ പോലീസിനെതിരെ മുദ്രാവാക്യം വിളിച്ച് ന്യായവിരോധമായി നിന്നും പൊതുജനങ്ങളുടെ സൈര്യവിഹാരത്തിന് തടസ്സം സൃഷ്ടിക്കാൻ ഇടയാക്കിയും'.

Though the Commission do not propose to accept the above statement as a legal proof it is verified as an information available before the Commission.

During the inquiry it is established that all unlawful actions alleged by the Police as against the Media persons are amounted to provocations against them. So also all illegal actions alleged by the Police against lawyers are found to be provocations against the police. During the inquiry proceedings all illegal actions alleged against the Media Persons and Advocates including provocations on either side are discussed as

and when required. Further the criminal cases taken against them are pending investigation. Therefore, separate discussions are not resorted to. The Terms of Reference item No. (iv) & (v) are concluded accordingly by the Commission.

## 2) Invocation Of Section 144 of CrPC

An important question that arises for consideration before the Commission is the alleged failure of the concerned Authorities to invoke the provisions contained in Section 144 of Criminal Procedure Code. Section 144 inter alia provides that in the cases where in the opinion of District Magistrate, a Sub Divisional Magistrate or any other Executive Magistrate specifically empowered can take immediate preventive measures directing the persons to refrain from causing disturbance or annoyance in respect of any person causing obstruction, annoyance, injury, danger to human life or both, safety etc if there are sufficient grounds. The width and amplitude of the section does not allow the Authority to invoke Section 144 as a matter of course. There shall be adequate and sufficient grounds for exercising the power. The actual situation all around including the report from Inferior Authority shall be gone into. The contention raised in this case is that in view of the incident on

19<sup>th</sup> July 2016 it is imperative for the Authority concerned to invoke Section 144. The contesting parties did not go into minutely on this question with facts and figures. The District Collector himself admits that he did not get information from the Inferior Authorities. The failure of the Authorities to inform the District Collector in respect of the factual situation is fatal. But failure to invoke Section 144 is totally a different question which attracts different considerations. The location of the incident could not be overlooked while examining the inevitability of invoking the power under Section 144. In the present case the location is the front portion of the High Court where the large number of litigants, advocates, general public media men etc., gathered every day. Of course, if Section 144 is invoked large flow of people in the area could have been avoided and incidents that happened on 20<sup>th</sup> July 2016 in front of the High Court could have been successfully avoided. Of course that is a point in favour of those who are pleading for the action under section 144. On an overall consideration including the availability or adequacy of police force and the solemn surroundings of the location are matters of paramount consideration. Hence it cannot be said to be a grievous failure in the

		<p>circumstances prevalent in the surroundings of the High Court. The promulgation of steps under Section 144 cannot be made on mere suggestion. It depends on the satisfaction of indispensable requirements by the authorities who are empowered to act in that behalf. One thing is abundantly discerned that if Section 144 of CrPC had been promulgated the incidents on 20<sup>th</sup> July 2016 could have been successfully avoided. Hence let the Authorities concerned may step in to act in whatever form feasible.</p>
		<p><b>Failure Of Co-Ordination</b></p> <p>During the inquiry it has come to the notice of the Commission that there is no proper co-ordination between the police officers at District level and the police officers at the lower levels. The various instances have been noticed by the Commission. For example, the District Collector in his statement (Exhibit X10) stated thus;</p> <p>‘It is submitted that prior to the incidents which happened on 19.07.2016 and 20.07.2016 there was no information from the concerned authorities in order to take preventive measures as provided in Criminal Procedure and Police Act.’</p>

From the above statement of the District Collector, it is sufficiently revealed the absence of the co-ordination between higher Police Authorities and lower Police Officers. Such situation may lead to failure to maintain the law and order or public order as the case may be.

**Findings with regard to Law and order situation prevailed at the time**

The commission is really surprised to hear the above said admission from the District Collector as regards the failure of the Authorities concerned to instruct the District Collector about the worsening situation and for remedial measures. If the above matter was brought to the notice of District Collector at the relevant time he could have taken adequate measures for preventing the incidents that had taken place atleast on 20th July 2016. The failure to take timely steps by the District Collector is very fatal for the occurrence of the incident on 20th July 2016. In this context the Commission is of the view that appropriate authorities have to take note of the above serious lapses on the side of the officers who had failed to inform the District Collector as alleged by him in his statement and to adopt



		appropriate steps as it deem fit and proper.
6.	Such other matters which, in the opinion of the Commission are availing as incidental to the above.	<p>Incidents happened outside the Media Room of the High Court Building on 20.07.2016.</p> <p>The incidents that occurred at about 1 PM on 20th July, 2016 outside the Media room of the High Court located at 4th floor of the building was narrated by the witnesses examined on the side of the Media before the Commission. One of the main witnesses examined was Sri. R. Gopakumar, the President of the KUWJ. Some other witnesses also gave details while giving the deposition. However, the Commission while analysing their statements found that the incidents in question took place at the 4th floor of High Court building. In view of the aforesaid reason, the Commission refrained from analysing the evidences for the reason that it has no authority to investigate the matter since it happened inside the High Court building. The Terms of Reference specifically provide to inquire into the incidents that occurred in front of the High Court on 20th July, 2016. The incidents referred to above admittedly took place in and around</p>

		the Media Room located inside the High Court building (See Chapter V, Para.36 of the Report).
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