



SHAH COMMISSION OF INQUIRY

(Appointed under Section 3 of the Commissions of Inquiry Act, 1952)

INTERIM REPORT II

APRIL 26, 1978

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CHAPTER VIII

I. Translation of the Congress Election Manifesto by All India Radio and Directorate of Advertising and Visual Publicity Translators

8.1 On February 7, 1977, services of 22 translators of the Directorate of Advertising and Visual Publicity (DAVP) and All India Radio (AIR) were utilised for translating the Congress Party election manifesto into ten Indian languages. They were taken to the Vishwa Yuvak Kendra in Chanakyapuri, New Delhi, by the late Shri Narendra Sethi, Director, DAVP, who was coordinating this operation and had been assigned the task. The translators were not allowed to leave the Kendra till such time as they had completed their work. It has been alleged that this work was done for the Congress Party at the instance of Shri Vidya Charan Shukla, who was then the Minister for Information and Broadcasting.

8.2 According to Shri K.S. Srinivasan, Senior Copywriter of the DAVP, on February 7, 1977 Shri Sethi had called him and told him that all his officers should be ready as he wanted them for something urgent. Shri Srinivasan then went to the big hall where the Assistant Editors used to sit and told them that they should remain present at the seats as Shri Sethi required them.

8.3 Smt. G. Mukherjee, an Assistant Editor, said that at about 1.30—2 p.m., they had gone to Shri Sethi's room. He was not looking composed, and had said that being in the Government many things had to be done against one's will. He had then told them that they would be entrusted with some job which would take them outside the office. Neither the duration and nature of the job nor the destination where they were to be taken was disclosed to them. Shri Sethi, however, reminded them that they were Government servants and were under an oath of secrecy and that they should not divulge to anyone the fact that they had been taken out for a special job. Shri Sethi then took Smt. Mukherjee, Dr. Mangamma, Shri D.N. Swadia, Assistant Editors in his staff car to a building near Teen Murti, New Delhi. Smt. Mukherjee later on came to know that this building was the Vishwa Yuvak Kendra.

8.4 Dr. J. Mangamma and Shri D.N. Swadia, Assistant Editors of the DAVP, both corroborated Smt. Mukherjee. Shri D.N. Swadia also said that while they were in Shri Sethi's office, Shri Sethi had spoken to Shri S.C. Bhatt, Director, News Services, All India Radio and told him to send some language translators to the Kendra.

8.5 After speaking to Shri Bhatt, Shri Sethi took eleven officers of the DAVP to the Vishwa Yuvak Kendra at about 2—2.30 p.m. The eleven officers of the DAVP are :—

- | | |
|----------------------|----------|
| (1) Shri S.S. Sarna | Punjabi |
| (2) Shri D.N. Swadia | Gujarati |

- | | |
|---------------------------------|-----------|
| (3) Shri G.P. Sohoni | Marathi |
| (4) Shri B.K. Saikia | Assamese |
| (5) Shri P.K. Tripathi | Oriya |
| (6) Shri M. Kolaindavelu | Tamil |
| (7) Dr. J. Mangamma | Telugu |
| (8) Shri C.K. Mandal | Bengali |
| (9) Shri Sampath | Tamil |
| (10) Smt. G. Mukherjee | Bengali |
| (11) Shri K.L. Sreekrishna Dass | Malayalam |

When they reached the Vishwa Yuvak Kendra they were introduced by Shri Sethi to two gentlemen, who were already there but whose identity was not revealed to them. They were taken to a large room where they were given articles of stationery and a cyclostyled English text running into 17 to 18 pages. They were asked to start translating it into different Indian languages. It was only when they got these cyclostyled sheets did they come to know that their services were being used for translating the Congress Party election manifesto. The translators were told that they could not leave the place till the work was over. Shri Sethi remained on the spot till he got the work started. Thereafter, though he left the place, he came back again after an hour or so to satisfy himself that the work was progressing.

8.6 Smt. Mukherjee said that one of the two gentlemen present had told her that she could go home only after finishing the work. She had sought permission to inform her family and this was allowed but she was not permitted to disclose the place of duty or the nature of the job. Shri Swadia corroborated Smt. Mukherjee and said that he had informed a friend of his, Shri A.L. Chhatre, on the telephone that he would be reaching home late. While doing so he was flanked by two unknown persons. Shri P.K. Tripathi confirmed that Shri Sethi had told him that the job had to be finished that very day and that they could leave the place only after it was over.

8.7 Shri S.C. Bhatt, Director, News Services, All India Radio, said that sometime in the first or second week of February, 1977, Shri V.S. Tripathi, Special Assistant to Shri V.C. Shukla, Minister for Information and Broadcasting had telephoned him to convey Shri Shukla's instructions that the All India Radio should provide translators for rendering the Congress Party manifesto into different Indian languages. Shri Tripathi had also told him that Shri N. Sethi was coordinating the entire operation and that the job of the AIR was to provide such translators as were required to supplement the DAVP's own staff. Though Shri Bhatt had protested, Shri Tripathi had told him that these were the Minister's instructions, which had to be carried out. Soon thereafter, Shri Sethi telephoned Shri Bhatt and had

said that he had just then received instructions from Shri Tripathi conveying the Minister's instructions. Thereupon, Shri Bhatt had told him that he had also received similar instructions. Shri Sethi then indicated to Shri Bhatt the number of translators required. Shortly after Shri Sethi again telephoned him and told him that the translators had to report to Vishwa Yuvak Kendra in Chanakyapuri. Shri Bhatt then called Shri D.N. Munshi, Joint Director of News and Shri A.K. Roy, Deputy Director in-charge of Indian Languages Unit and asked them to make necessary arrangements.

8.8 Shri Munshi has confirmed that Shri Bhatt had asked him on February 7, 1977 at about 2—2.10 p.m. to organise a few persons from the Indian Languages Unit of the AIR to be sent for some urgent translation work of the Congress Party manifesto, and that these were the Minister's instructions communicated through his Special Assistant, Shri V.S. Tripathi. Shri Bhatt had also told him that Shri Sethi was coordinating this effort and that the AIR should provide the extra assistance necessary.

8.9 Shri A.K. Roy, Deputy Director of News has corroborated both Shri Bhatt and Shri D.N. Munshi.

8.10 The DAVP translators reached the Vishwa Yuvak Kendra first and started the work. In the meantime, Shri Munshi and Shri Roy started getting in touch with the AIR translators required by Shri Sethi. Shri Roy said that on receiving Shri Bhatt's instructions they had immediately started working. Only two persons were readily available and regarding the rest of the people they had prepared a list and sent out the staff cars to fetch them. Shri Munshi said that he and Shri Roy had first thought of the persons who would be available and who could be trusted to do the job. It took them about half an hour in trying to fix up the personnel. Many of the persons were not readily available and had to be brought from their homes and they started sending the people to the Vishwa Yuvak Kendra only after 3 p.m., some of the people who had to be fetched from their houses could reach the Kendra only at about 4—4.30 p.m.

8.11 In all 11 translators from AIR were sent; they are :—

(1) Shri Ramakrishna }	Kannada
(2) Shri Ranga Rao }	
(3) Shri Venkataraman	Tamil
(4) Shri N. Rehman	Assamese
(5) Smt. S. Batra	Punjabi
(6) Shri Deepak Dholakia	Gujarati
(7) Kum. Iva Nag	Bengali
(8) Shri Shankar Narayanan	Malayalam
(9) Smt. Indumati Kale	Marathi
(10) Shri S. Panda	Oriya
(11) Shri G.R. Rao	Telugu

8.12 The fact that when the AIR staff reached the Vishwa Yuvak Kendra the DAVP staff was already

working there has been confirmed by Smt. G. Mukherjee S/Shri Swadia, Kolaindavelu, Sreekrishna Dass and Saikia of the DAVP. This fact has also been confirmed by Smt. Indumati Kale, Smt. Sawinder Batra, Kum. Iva Nag and Shri Deepak Dholakia of the AIR. It would be recalled that Shri Swadia has stated that Shri Sethi rang up Shri Bhatt in his presence and asked him to send some translators from the All India Radio to the Vishwa Yuvak Kendra and after that the DAVP translators were taken by the Director himself straightaway. The All India Radio took some time to organise the staff and that is why their staff reached late.

8.13 Shri Bhatt's statement that Shri Sethi was coordinating the entire operation appears to be correct, as indicated by the statements of Smt. G. Mukherjee, S/Shri Kolaindavelu, Sreekrishna Dass and Saikia, who have all stated that Shri Sethi had returned to the Kendra to find out how the work was progressing. Shri Sethi also rang up Smt. Mukherjee two or three times to find out the progress of the job. Shri Venkataraman of the AIR had also said that when he reached the Vishwa Yuvak Kendra he had seen Shri Sethi directing the operations. It may also be noted here that no one saw S/Shri Bhatt, Munshi or Roy at the Vishwa Yuvak Kendra when the translation work was going on.

8.14 Though the translators were given food and other refreshments while they were doing the translation work there was an element of coercion in the task entrusted to them. They had been told by Shri Sethi that they had taken an oath of secrecy and that they could not leave the place till such time as they had completed the work. Moreover, when they left they had to surrender to the persons in-charge at the Kendra all the rough notes and other loose sheets of paper which they had with them.

8.15 A few days after the incident was over, Shri Munshi during a conversation that he had with Shri B.R. Bowry of the All India Congress Committee, told him about the translation of the manifesto and had suggested to him that some payment should be made to the translators. It was suggested that Rs.125 per language would be paid. Shri Bowry arranged for the payment from the A.I.C.C. The amount was received by the PA to Shri Munshi and was paid to the translators. Shri Munshi produced before the Commission the receipt which had been obtained from the translators in token of the payment of Rs.125 each. That this payment was made can be seen from the fact that AIR had sent 11 translators for 10 languages. The total amount received was Rs. 1250 and S/Shri Ranga Rao and Ramakrishna for Kannada language each received only Rs.62.50.

8.16 Shri B.R. Bowry, who was working in the A.I.C.C. office confirmed that he had had a conversation with Shri Munshi regarding the payment to the translators. The note dated February 10, 1977, which he had put up to Shri V.B. Raju, General Secretary of the All India Congress Committee, for payment of Rs.1250 to the translators and the payment voucher for this amount dated February 16, 1977 were shown to him and he authenticated them. This note reads:

"English manifesto of the party has been translated into 10 languages as desired by the General Secretary. We have to pay Rs. 125 per language. The total amount comes to Rs. 1250 only.

Languages are :—

1. Marathi
2. Gujarati
3. Bengali
4. Punjabi
5. Telugu
6. Tamil
7. Kannada
8. Malayalam
9. Oriya
10. Assamese

Sd/-
(B. R. Bowry)
10-2-77"

Shri O. P. Giri, Accountant of the A.I.C.C., confirmed that this amount was paid on the note of Shri Bowry and identified the payment vouchers.

8.17 The Log Book of Car No. DHC 5972 of the DAVP shows that Shri Sethi had twice visited the Vishwa Yuvak Kendra on February 7, 1977—once at 2.20 p.m. and the second time between 3.30 p.m. and 5.40 p.m. This corroborates the fact stated by a number of witnesses that Shri Sethi went twice to the Kendra—once to get the work started and the second time to check the progress of the work.

8.18 There is a considerable body of evidence to show that the translators of the DAVP and the AIR were utilised for the translation of the Congress Party Election manifesto. The documents in token of payment of Rs. 1250 at the rate of Rs. 125 for translating in each language produced by Shri Munshi and the All India Congress Committee records produced by Shri Giri for this amount along with the statement of Shri Bowry conclusively prove that this translation was got done by Government translators.

8.19 On February 18, 1977 there was a newspaper report that All India Radio and DAVP translators had been utilised for the translation of the Congress Party Election manifesto. At about 11 p.m. the same morning Shri K. N. Prasad, Additional Secretary, Ministry of Information & Broadcasting held a meeting in his room. At this meeting S/Shri Sethi and Bhatt were asked by him whether the facts as reported in the press were correct. Shri Bhatt said that he had told Shri Prasad that this was true. Shri Prasad had then asked from Shri Tripathi, Special Assistant to Shri Shukla, whether the instructions regarding the translation of the Congress Party Election manifesto were issued at the instance of Shri V. C. Shukla. Shri Prasad then asked Shri Sethi and Shri Bhatt to obtain statements from all the persons concerned denying that any translation work had been done by them.

8.20 "Denial statements" were accordingly obtained from the translators of the DAVP and the AIR except from S/Shri Sampat and Mandal of the DAVP. The translators gave the "denial statements" as desired by their superior officers because the emergency was on and they feared that anything could happen to them if they did not give these "denial statements." Shri K. S. Srinivasan who had obtained the "denial statements" from the DAVP staff at the instance of Shri Sethi said that he had issued an internal note on February 19, 1977 to the translators asking them to give a written statement. The next day they gave him their one-line "denial statements". According to Shri Srinivasan, he had told the translators that in case this translation work became the subject of any inquiry in future they should speak out the truth. Shri Srinivasan has been corroborated by Smt. Mukherjee and Shri Swadia.

8.21 Shri Munshi of the AIR said that a few days after the work was over Shri Bhatt had told him that Shri Prasad and Shri Tripathi had directed him to obtain denial statements from the persons who had gone out on this work. Shri Bhatt had said that these were the orders and had to be followed.

8.22 According to Shri Bhatt, "this was to be done in order to avoid any embarrassment to the Minister and the ruling party if the truth came out". Shri Bhatt conveyed these instructions to his Joint Director Shri Munshi and asked him to obtain the statement of denials not only from the 11 persons, who had been deputed for this job, but also from a few others connected with the Language Unit. The statements were accordingly obtained. Shri Bhatt added that he had made no inquiries from the translators themselves on the 18th because he was aware that they had been used for translating the Congress Party Election Manifesto at the instance of Shri V. C. Shukla. Shri Munshi has confirmed that Shri Bhatt had told him about the meeting in Shri Prasad's room and pursuant to Shri K. N. Prasad's direction, Shri Bhatt asked him to obtain the denial statements from the translators. Shri Bhatt said that he had informed Shri P.C. Chatterjee, DG AIR "as soon as the work had been done, as soon as denials had been obtained or they were in the process of being obtained. I had informed him what happened at the 18th morning meeting and so the question of Mr. Chatterjee asking me after the inquiry was received does not arise". Regarding the report which the DG AIR had sent to the Ministry on the subject, Shri Bhatt said that the whole thing was "from the beginning to the end.... a series of falsification". The fact that the DG AIR was kept in the picture has been corroborated by Shri Munshi. The Director General had told Shri Munshi "do it quickly and get the denials", because Shri Chatterjee himself did not relish what was being done but felt that they were helpless and that they had no choice.

8.23 Shri K. N. Prasad denied having given any instructions to Shri Sethi and Shri Bhatt that they should obtain denial statements from the translators. He has said that he had come to know about the allegations through a press report on February 18, 1977 and that he only wanted to know if the report was

true or false. He had asked that the "denial statements" should be obtained from all the translators as he wanted to "pin them down", in the light of what Shri Bhatt had told him that a few translators had been asked and they had denied doing this work. He had asked Shri A. K. Verma, Joint Secretary to hold an inquiry into the allegations but he did not feel the necessity of making a personal investigation as according to him under the normal Secretarial practice he did not have to make such an inquiry. He had only ascertained and had been told by Shri A. K. Verma that the matter had been referred to the DG AIR and the DAVP. Regarding the delay in the submission of the report, Shri Prasad conceded that it was an 'omission' on his part. He agreed that this was a matter of grave concern but even so he had himself not made any investigations.

8.24 Shri V. S. Tripathi also denied that he had given any instructions to Shri Bhatt or Shri Sethi regarding the translation of the Manifesto. He said that at the meeting in the room of Shri K. N. Prasad, neither Shri Bhatt nor Shri Sethi had indicated that translators had been sent at anybody's behest. Shri Tripathi admitted that he had informed the Minister about the conversation that had taken place on the subject in Shri Prasad's room but the Minister had not made any comment on it.

8.25 About the meeting of February 18, 1977, Shri Bhatt's testimony, in the opinion of the Commission, is preferable to the testimony of Shri K. N. Prasad and Shri V. S. Tripathi, for two reasons: the meeting in Shri Prasad's room was held at about 11 a.m. in the morning. The allegations had appeared in the newspapers the same day. Shri Prasad and Shri Tripathi have both said that when Shri Bhatt and Shri Sethi were asked about the newspaper reports both had said that they had asked the translators and they had denied it. This cannot be correct because neither Shri Bhatt nor Shri Sethi would have had the time to obtain denial statements from all the translators and then reach the Ministry for the meeting. Besides all the translators have stated that they were not asked anything on 18th and that their statements were recorded after February 18, 1977. Shri Bhatt's statement has also been corroborated by Shri Munshi.

8.26 Shri P. C. Chatterjee, DG AIR said that he was told by Shri S. C. Bhatt on February 21, 1977 on his return to the office from leave that AIR translators were used for translating the Congress Election Manifesto and that they had been sent for this job at the instance of Shri V. S. Tripathi, who had conveyed the Minister's instructions on the telephone. Since it was an information given to him in private Shri Chatterjee "neither accepted it nor rejected it". He also felt that Shri Bhatt was then trying to entangle him in this matter. He said that he had not been informed about the meeting in Shri Prasad's room on February 18, 1977 by Shri Bhatt. It was only on March 4, 1977 when Shri A. K. Verma, Joint Secretary, I & B Ministry's letter was received along with the complaint of Shri L. K. Advani, received through the Chief Election Commissioner, that he had again asked Shri Bhatt about the matter. Shri Bhatt had then told him that denials had already

been taken from the translators at the instance of the Ministry. According to Shri Chatterjee, as Shri Bhatt's report to him on February 21, 1977 was a private, oral report and his report of March 10, 1977 denying the allegations was made in writing, he took the latter at its face value. He did not ask Shri Bhatt to reconcile the differences between these two reports. Shri Chatterjee admitted that he never enquired about the truth of the matter from the translators directly, that he did not examine the transport log books of AIR nor did he make any probe or inquiry himself into the affair due to administrative constraints. He denied that Shri Munshi had been told by him to speed up the procurement of denial statements from the translators.

8.27 When asked by the Commission as to why he had not made a deeper inquiry even though he was the head of the Department, Shri Chatterjee first said that if he had done so the translators would have been in greater trouble. Subsequently he said that he was acting under certain "physical and mental restraints".

8.28 Shri Chatterjee admitted that instructions had been issued by him in the AIR that all oral orders should be complied with. The instructions *inter alia* read as follows:—

"The instructions of MIB are that his orders including verbal orders, conveyed personally or through his Special Assistant or his Private Secretary are to be complied with within a period of three days. These instructions has been confirmed in writing by the Ministry. Therefore, whatever difficulties we may face, the instructions have to be carried out *forthwith*".

In view of these instructions S/Shri Bhatt, Munshi, Roy and the translators would seem to be in no position but to carry out and comply with the orders of Shri V. C. Shukla as conveyed to them through Shri Tripathi. There is Shri Munshi's supporting evidence to substantiate Shri Bhatt's testimony regarding what he had told Shri Chatterjee. That Shri Bhatt had told him on February 21, 1977 about the use of the translators is accepted by Shri Chatterjee. That Shri Bhatt would have told him also about what exactly transpired in the meeting convened by Shri K. N. Prasad on 18th is a matter of inference. There was no reason for Shri Bhatt not to divulge to Shri Chatterjee about this meeting when he had admitted to him a much greater impropriety regarding the translation done by his staff. The fact that Shri Chatterjee also did not try to ask Shri Bhatt why he was making two contradictory reports also indicates that Shri Chatterjee was aware of the facts but chose, due to various constraints, not to take a deeper interest in the matter. Shri Chatterjee's testimony remains uncorroborated by either oral or documentary evidence or even by the sequence of circumstances.

8.29 Shri V. C. Shukla during his examination by the Commission denied that he had ever directed Shri Sethi and Shri Bhatt to send translators to the Vishwa Yuvak Kendra to translate the Congress

Party Election Manifesto and that Shri Bhatt was speaking a falsehood. He admitted that Shri Tripathi had brought the incident to his notice at Raipur but since he knew that the Additional Secretary and the Joint Secretary were making an inquiry into the matter he had not attempted to make any personal inquiries. When he had come to Delhi for a few days in March he had tried to ascertain the progress of the inquiry and he had been told that it had not yet been completed.

8.30 Shri Shukla was served with a notice under rule 5(2)(a) of the Commissions of Inquiry (Central) Rules. In his reply to the notice he has reiterated the above facts and has said that Shri Bhatt and others have deposed against him because they want to please the present Government in order to get some reward and because of the fear that if they do not carry out the instructions of the present Government they would get into trouble.

8.31 From the evidence before the Commission the fact that the Congress Party Election Manifesto was translated by the Government servants belonging to the Directorate of Advertising and Visual Publicity and All India Radio is fully and convincingly established. Besides the translators themselves, S/Shri Bhatt, Munshi and Roy have testified to this effect. S/Shri Bowry and Giri, the employees of the All India Congress Committee, have confirmed the facts regarding payments to the translators. The documents of the AICC support their evidence. Similarly the log book of Shri Sethi's car shows that he visited the Kendra twice on February 7, 1977. There were only two persons in the Information and Broadcasting Ministry, who had the authority and would have been interested, to direct these two Departments to render this assistance. One of them was Shri Vidya Charan Shukla, the Minister and the other was Shri Dharam Bir Sinha, the Deputy Minister. Shri Sinha did not have the authority over the two Departments; only Shri Vidya Charan Shukla could have given these instructions. The two Departments could not have acted on their own without the Minister's permission as this was a big operation which involved at least 30 odd persons of two Departments of the Ministry, and on their own these two officers had no interest in getting the translation of the Congress Election Manifesto done. Shri V.S. Tripathi, who gave the instructions to Shri Bhatt was the Special Assistant to Shri Vidya Charan Shukla and in such an important matter he would not have conveyed the instructions of any one else other than Shri V.C. Shukla himself. Shri V.C. Shukla's involvement has also been testified to by Shri Bowry. Shri Bhatt had also conveyed contemporaneously to Shri Munshi and Shri Roy that the orders conveyed by Shri V.S. Tripathi were at the instance of Shri V.C. Shukla, the Minister.

8.32 The fact that Shri Shukla did not show any concern, surprise or annoyance when Shri Tripathi told him about the newspaper article regarding the translation when he met him in Raipur is strongly suggestive of the fact that he knew about it and that accounts for the absence of any reaction in him.

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8.33 The Commission is firmly of the opinion that Shri Bhatt has spoken the truth and has given a full and correct account of the entire incident. This is evident from the fact that his entire testimony on every major point is corroborated by witnesses and, therefore, is preferable to the testimony of Shri K.N. Prasad, Shri V.S. Tripathi and Shri P. C. Chatterjee.

8.34 Shri Shukla's act of using Government officials for translating the Congress Party election manifesto is a gross misuse of authority and also is an offence under section 123(7) of the Representation of Peoples Act of 1951, which reads as follows:—

“123. Corrupt practices:—The following shall be deemed to be corrupt practices for the purposes of this Act:—

*** *** ***

“(7) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other persons (with the consent of a candidate or his election agent) any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, from any person in the service of the Government and belonging to any of the following classes, namely :—

- (a) gazetted officers;
- (b) stipendary judges and magistrates;
- (c) members of the armed forces of the Union;
- (d) members of the police forces;
- (e) excise officers;
- (f) revenue officers other than village revenue officers known as lambardars, malguzars, patels, desh mukhs or by any other name, whose duty is to collect land revenue and who are remunerated by a share of, or commission on, the amount of land revenue collected by them but who do not discharge any police functions; and
- (g) such other class of persons in the service of the Government as may be prescribed.”

8.35 Shri V.C. Shukla did not participate in the proceedings towards the later stages. On April 13, 1977, when there were still more witnesses to be cross-examined and he had to examine his own witnesses, he appeared before the Commission in response to the summons issued under section 8B of the Commissions of Inquiry Act, and pleaded that in view of his pre-occupation with one of his cases in the Sessions Court he wanted the Commission to adjourn the proceedings. Shri V.C. Shukla was informed that if this facility was given to him, the same facility will have to be extended to others also who are similarly placed. Shri Shukla was informed

that on the 13th, when the case had come up for hearing in its concluding stage, the Sessions Court was not functioning as it was a closed day. In spite of it he chose not to assist the Commission. Under the circumstances, the Commission was compelled to proceed with the case and to come to its finding *ex parte*. As mentioned earlier, Shri Shukla had given his statement in reply to the notice that was given to him under Rule 5(2)(a) of the Commissions of Inquiry (Central) Rules. His statement has been taken into account. The Commission is of the opinion that Shri V.C. Shukla has violated the basic norms of administration and had indulged in abuse of authority in getting the translators attached to the AIR and DAVP for translating the Congress Election Manifesto. Apart from that, as pointed out earlier, his conduct also comes within the mischief of section 123(7) of the Representation of the Peoples Act, 1951.

II. Design of election posters for Shri V.C. Shukla by artists of the Directorate of Advertising and Visual Publicity

8.36 It has been alleged that on February 13, 1977 Shri J. Bhattacharjee, Chief Visualiser of the Directorate of Advertising and Visual Publicity was asked by Shri Narendra Sethi, Director, to come on some urgent work to the office and to bring along with him some of the other Artists of the Department. Accordingly, Shri Bhattacharjee came to the office and asked Shri U.R. Datta Gupta, Art Executive and Shri D.K. Das, Senior Artist of the DAVP also to come to office. When they came to the office Shri Sethi gave them some written and visual instructions to prepare posters for the election campaign of Shri Vidya Charan Shukla, the Minister for Information and Broadcasting. As per the directions of Shri Sethi the posters were prepared and shown to Shri Vidya Charan Shukla at his residence on the evening of the same day. Shri V.C. Shukla suggested a few changes which were incorporated on February 14, 1977 and on February 15, 1977 the finished posters were handed over to Shri Sethi by the Artists.

8.37 Shri J. Bhattacharjee, Chief Visualiser, DAVP said that on Sunday, February 13, 1977 at about 8.30 a.m. Shri Sethi, Director, DAVP asked him to come urgently to the office for some special work and to bring along with him as many senior Artists as possible. Shri Bhattacharjee contacted Shri D.K. Das, Senior Artist and Shri U.R. Datta Gupta, Art Executive. They all reached the Parliament Street office of the DAVP at about 9.30—10 a.m. At the office Shri Sethi directed them to design five posters as follows:—

- (1) A poster showing Shri V. C. Shukla with Shrimati Indira Gandhi ;
- (2) Shri V.C. Shukla alone ;
- (3) Shri S.C. Shukla with Smt. Indira Gandhi ;
- (4) Shri S.C. Shukla alone ;
- (5) Shrimati Indira Gandhi alone ;

Shri Sethi gave visual and written instructions as to how the posters were to be designed. The written instructions in pencil in Shri Sethi's own handwriting

were handed over to the Commission by Shri Bhattacharjee.

8.38 The Artists set to work on the job and at about 1.00—1.30 p.m. the designs were got ready. Shri Sethi who in the meantime had left the office had told Shri Bhattacharjee that the final art work should be taken to the Special Assistant to Shri V.C. Shukla, Shri V.S. Tripathi. Accordingly, Shri Bhattacharjee accompanied by Shri A.S. Rao, Production Manager, Out-door Publicity, DAVP and Shri U.R. Datta Gupta went to the Shastri Bhavan office of Ministry, of Information and Broadcasting. While Shri Datta Gupta waited outside, Shri Bhattacharjee and Shri A.S. Rao went to Shri Tripathi and showed him the designs. Shri Tripathi directed Shri Bhattacharjee to show the designs to the Minister in the evening at his residence. Shri Bhattacharjee then reported the matter to Shri Sethi on the telephone.

8.39 In the evening Shri Bhattacharjee and Shri Datta Gupta reached Shri V.C. Shukla's house. Shri Sethi was also present there. Shri Shukla came after sometime and saw the designs. He wanted certain changes to be made in the design.

8.40 This statement of Shri Bhattacharjee has been corroborated by Shri U.R. Datta Gupta, Shri D.K. Das and Shri A.S. Rao in so far as it relates to the preparation of the design, on the instructions of Shri Sethi. Shri A.S. Rao has also corroborated that one of the poster designs contained a photograph of the former MIB with Shrimati Indira Gandhi and another contained the photograph of Shri V.C. Shukla alone. Shri A.S. Rao has also confirmed that the designs were taken to Shri V.S. Tripathi in his office at about 1.30 p.m. and shown to him. Shri Datta Gupta has also corroborated the visit to Shri Shukla's house to show him the designs.

8.41 The visit to the residence of Shri Shukla along with the Chief Visualiser (Shri J. Bhattacharjee) and the Art Executive (Shri U.R. Datta Gupta) has been corroborated by the log book entries on February 13, 1977 of the staff car of the DAVP No. DHC 5972, which shows that the car went to 7, Race Course Road, the residence of Shri V.C. Shukla and was used by the Director, DAVP (Shri Sethi) for going to the residence and back and by the Chief Visualiser (Shri Bhattacharjee) and the Art Executive (Shri Datta Gupta) for returning from Shri Shukla's house.

8.42 Shri K.N. Prasad, Additional Secretary, Ministry of I & B, has said that while he was at the residence of Shri V.C. Shukla on the afternoon of Sunday, February 13, 1977, he had seen some posters displayed in the Minister's drawing room and one of these posters contained the photograph of the Minister. He did not know who had prepared these posters.

8.43 Shri Bhattacharjee said that on February 14, 1977 he along with Shri B.B. Banerjee, Senior Artist, Shri U.R. Datta Gupta, Art Executive and Shri D.K. Das, Senior Artist incorporated the changes desired by the Minister and handed them over to

Shri Sethi at about 11 a.m. on February 15, 1977. This statement of Shri Bhattacharjee has been corroborated by S/Shri U.R. Datta Gupta and D.K. Das.

8.44 Shri V.C. Shukla during his deposition before the Commission in the first stage admitted that such posters were used in his election campaign. He also admitted that the designs of these posters were brought to his residence for his approval on Sunday, February 13, 1977 and that along with Shri K.N. Prasad and Shri Sethi some other officers of the DAVP were also present. He, however, denied that these posters were got prepared by the DAVP but said that they were got prepared by the All India Congress Committee.

8.45 Shri V.C. Shukla was served with a notice under Rule 5(2)(a) of the Commissions of Inquiry (Central) Rules and summons under Section 8B of the Commissions of Inquiry Act. In his reply to the notice under Rule 5(2)(a) Shri Shukla has said that he had requested Shrimati Margaret Alva, Assistant General Secretary of the All India Congress Committee in-charge of publicity to provide him with posters for use during his election campaign. He said that Shrimati Alva had arranged for the production of these posters and had got them designed by Artists whose services were engaged by the All India Congress Committee. The final designs of these posters were brought to his residence at 7, Race Course Road on February 13, 1977 for his approval by the representatives of the Tej Press, Delhi on instructions from the AICC. He said that Shri K.N. Prasad and Shri Sethi were present at his residence at that time. They had come to his residence to finalise the DAVP's advertisement rate structure. He denied that DAVP Artists had designed the posters and said they had deposed against him only because they wanted to please the present Government in expectation of some reward and also because they feared that if they did not carry out the instructions of the Government they would be in trouble.

8.46 Amongst the list of witnesses whom Shri V.C. Shukla wanted to examine was the name of one Shri Shiksharathi, resident of Drummond Road, Allahabad. He was the artist who was supposed to have designed the posters on behalf of the AICC. Subsequently Shri V.C. Shukla wrote to the Commission that he had inadvertently given the name of Shri Shiksharathi who was not the person concerned. The real person who had designed the posters was Shri Yugal Sharma resident of Munirka, New Delhi. According to Shri Ranoo Basu, Administrative Officer of the AICC, a perusal of the records of the AICC showed that neither of these two artists were ever employed by the Congress Party.

8.47 Shri O.P. Giri, Accountant of the AICC has said that no bills have been paid by the AICC for any poster designed and printed for Shri V.C. Shukla. He said that the AICC did not prepare posters for individual candidates but only prepared general posters for the party. From the records he said that no payment had been made to the Tej Press or Shri Shiksharathi or Shri Yugal Sharma by the AICC for printing and designing any posters for Shri Shukla.

8.48 Shri V.C. Shukla's version of the events during his deposition as well as in his affidavit tallies with the statement of Shri Bhattacharjee except for the fact that Shri V.C. Shukla has denied that the DAVP Artists have been used and that instead the AICC was getting the job done. No satisfactory explanation has been given as to how Shri Bhattacharjee could have invented a story which tallied in so many details with what Shri V.C. Shukla has himself said. Shri Bhattacharjee's statement is further corroborated by the "original written and visual instructions" in Shri Sethi's own handwriting which he produced before the Commission. Since Shri Sethi passed away in March, 1977 these written and visual instructions in his handwriting could not have been made at a subsequent date. The log book entries in the DAVP staff car No. DHC 5972 also corroborate Shri Bhattacharjee.

8.49 Shri Shukla's own conduct points to the fact that his version is not correct. During his initial examination by the Commission he did not mention Shrimati Margaret Alva, the Tej Press or the two supposed poster designers at all. It was only in his statement under Rule 5(2)(a) that he first mentioned the name of Smt. Margaret Alva and the Tej Press. Even the names of the artists, who supposedly designed the posters for him were not known to Shri V.C. Shukla. First he gave the name of Shri Shiksharathi, whose address was mentioned as Drummond Road, Allahabad. Subsequently he sent a letter to the Commission in which he said that Shri Yugal Sharma was the real designer of the posters and not Shri Shiksharathi. It is difficult to understand why Shri V.C. Shukla could not give these details in his initial examination and one is forced to conclude that these are only his after-thoughts. Moreover, the records produced by AICC Accountant, Shri Giri and his statement along with that of Shri Basu prove that Shri Shukla's testimony and statement under Rule 5(2)(a) are not factually correct.

8.50 Shri V.C. Shukla did not participate in the proceedings towards the later stages. On April 13, 1977, when there were still more witnesses to be cross-examined and he had to examine his own witnesses, he appeared before the Commission in response to the summons issued under section 8B of the Commissions of Inquiry Act, and pleaded that in view of his pre-occupation with one of his cases in the Sessions Court he wanted the Commission to adjourn the proceedings. Shri V.C. Shukla was informed that if this facility was given to him, the same facility will have to be extended to others also who are similarly placed. Shri Shukla was informed that on the 13th, when the case had come up for hearing in its concluding stage, the Sessions Court was not functioning as it was a closed day. In spite of it he chose not to assist the Commission. Under the circumstances, the Commission was compelled to proceed with the case and to come to its finding *ex parte*. As mentioned earlier, Shri Shukla had given his statement in reply to the notice that was given to him under Rule 5(2)(a) of the Commissions of Inquiry (Central) Rules. His statement has been taken into account. The Commission is of the opinion that Shri V.C. Shukla has violated the basic

norms of administration and had indulged in abuse of authority in getting posters for his election campaign designed by the DAVP Artists. Apart from that, his conduct also comes within the mischief of section 123(7) of the Representation of the Peoples Act, 1951.

III. *Harassment of Shri Kishore Kumar, Playback singer, by the Ministry of Information and Broadcasting :*

8.51 The Ministry of Information and Broadcasting, in January 1976, started negotiations with the representatives of the Film Industry in order to get their cooperation for the programmes to be put out in praise of the 20-point programme over the AIR/TV. Accordingly Shri C. B. Jain, Joint Secretary, Ministry of Information and Broadcasting, Shri P. V. Krishnamoorthy, Director-General, Doordarshan and Shri A. K. Verma, Director of Films, had, on the orders of Shri Vidya Charan Shukla, the then Minister for Information and Broadcasting, gone to Bombay in the first week of April, 1976.

8.52 A meeting was held in Bombay to discuss how film artistes could be associated with films produced for TV. Amongst those who attended this meeting were S/Shri Sriram Vohra, G. P. Sippy, B. R. Chopra and Subodh Mukherjee. Shri G. P. Sippy said at this meeting that Shri Kishore Kumar was not prepared to cooperate in any manner in this programme and that the Ministry officials should contact him directly. Accordingly, Shri C. B. Jain spoke to Shri Kishore Kumar on the telephone and explained to him briefly the Government policy in this matter. Shri Jain also suggested to Shri Kishore Kumar that they would come to his residence and meet him in this connection. Shri Kishore Kumar did not agree to meet the Ministry officials and told Shri Jain that he was not well; that he does not go for singing on the stage; that he had some heart trouble and the doctor had advised him not to see anybody; and that in any case he does not want to sing for Radio or TV. This, according to Shri Jain, was a curt and blunt reply, and his refusal to meet Shri Jain and the other officers was a grossly discourteous behaviour.

8.53 When Shri Jain returned to Delhi he reported to Shri S. M. H. Burney, Secretary, I & B Ministry that Shri Kishore Kumar was not only not cooperating with the Government programme but his behaviour towards the Ministry officials was "grossly discourteous and uncalled for".

8.54 On April 30, 1976, Shri S. M. H. Burney, Secretary, Information and Broadcasting, recorded a note which, *inter alia*, said : "JS(B) mentioned how non-cooperative Shri Kishore Kumar was. He did not condescend to meet any of them and was persuaded to speak to them on the telephone".

8.55 Accordingly Shri Burney noted that :-

- (a) All songs of Shri Kishore Kumar should be banned from AIR and Doordarshan (Television).
- (b) All films in which Shri Kishore Kumar was acting were to be listed out for further action.

(c) The sales of gramophone records of Shri Kishore Kumar's songs were to be frozen.

8.56 That the action against Shri Kishore Kumar was not merely meant to punish him; but also to coerce other film producers and artistes to cooperate with the Government can be seen from the fact that Shri Burney noted that "measures against Shri Kishore Kumar as mentioned above had tangible effect on film producers".

8.57 Shri Kishore Kumar's songs were banned in the broadcast by the AIR on May 4, 1976 and by Doordarshan on May 5, 1976. Officials of the Ministry also got in touch with Polydor and HMV Record Companies on May 20, 1976 and June 4, 1976, respectively, to discuss ways and means to freeze the sale of Shri Kishore Kumar's records. While Polydor Company was noncommittal, HMV agreed to "stop getting Kishore Kumar to record any individual recording of solo items on HMV's own initiative".

8.58 The action proposed to be taken by Shri Burney was approved by Shri Vidya Charan Shukla on May 14, 1976. Shri V. C. Shukla during his examination said that the particular episode regarding Shri Kishore Kumar was regrettable and that he accepted the entire responsibility in the matter and that no officer should be blamed for it. He admitted that there was no legal backing to the agreement which was sought to be made between the individual artistes and the Government for boosting up the 20-point programme. Shri V. C. Shukla added that it was a wrong act and as soon as he heard Shri Kishore Kumar's version he had ordered the cancellation of all action contemplated against him.

8.59 Shri Vidya Charan Shukla was served with a notice under rule 5(2)(a) of the Commissions of Inquiry (Central) Rules and with summons under Section 8B of the Commissions of Inquiry Act. In his reply to the notice Shri Shukla reiterated his earlier version and added that efforts to enlist the cooperation of film artists and producers for this policy was designed to subserve a public purpose. He said that some officers felt that Shri Kishore Kumar was not willing to cooperate and, therefore, some action was contemplated by the Ministry. He again took the responsibility for this incident.

8.60 The decision on the part of the Ministry of Information and Broadcasting to ban all songs of Shri Kishore Kumar on Radio and TV which decision was approved by Shri Vidya Charan Shukla, the Minister, amounted to gross misuse of authority. From Shri Burney's note which was approved by Shri V. C. Shukla, it is clear that it was decided to teach Shri Kishore Kumar a lesson because of his alleged misbehaviour with the Ministry officials. This fact has been admitted by Shri V. C. Shukla in his reply to the notice under rule 5(2)(a), where he has said that "the team of I & B Ministry officers..... were unhappy over the attitude displayed by one of the leading artistes, Shri Kishore Kumar. Because of the feeling that Shri Kishore Kumar was not willing to cooperate with Akashwani and Doordarshan some action was contemplated".

8.61 Action against Shri Kishore Kumar was taken because the film artistes and producers had "not responded to the suggestions made to them in the manner expected". From this note also it can be seen that harsh measures taken against Shri Kishore Kumar had "tangible effect" on the film producers. It was only after this that the film producers promised that they would contact their association and guild members and persuade them to take part in the Government programme. That this was indeed the intention on the part of the I & B Ministry officials, viz. to teach Shri Kishore Kumar a lesson and in the process make him an example to the rest in the film world, is evident from Shri C. B. Jain's note of June 16, 1976, on a letter dated June 14, 1976 from Shri Kishore Kumar in which he had agreed to cooperate with the Government, "in view of the undertaking given by Shri Kishore Kumar in writing to cooperate, we may lift the ban and watch the degree of cooperation that he extends".

8.62 Shri V. C. Shukla has stated that he takes the responsibility for whatever had happened. It needs to be pointed out that by accepting responsibility for whatever had happened, it would appear as though he himself had no part in the transaction and as one in charge of the Ministry he is merely accepting his

constitutional responsibility. Apart from the constitutional responsibility, he is actually responsible for gross misuse of power. He had approved all the actions taken against Shri Kishore Kumar on May 14, 1976, which means that he was in the picture even while the harassment of Shri Kishore Kumar was going on. Shri V. C. Shukla, therefore, was in fact fully responsible for the various disabilities that were inflicted on Shri Kishore Kumar. It was only after Shri Kishore Kumar had indicated his willingness to cooperate that the Ministry officials relented in their vindictive actions.

8.63 Shri V.C. Shukla who was served with a notice under rule 5(2)(a) of the Commissions of Inquiry (Central) Rules, 1972 and summons under section 8B of the Commissions of Inquiry Act, had given his statement and had also appeared before the Commission. Since his prayers to the Commission for adjourning the proceedings were not granted, he did not participate in the proceedings insofar as it concerned his arguments in this case. Shri Shukla on his own admission has taken the responsibility for whatever had happened. This was a clear case of vindictiveness and gross misuse of Governmental authority against a film artiste of renown only because the artiste did not want to go along with the Government sponsored programme due to certain personal reasons.

CHAPTER IX

I. Baroda Rayon Corporation—Search and Seizure under section 132 of the Income Tax Act, 1961

9.1 On April 21, 1976, Shri Harihar Lal, Director of Inspection (Inv.), sent for Shri S. N. Shende, Deputy Director (Int.) at about 11 a.m., and told him that a major All-India search was proposed to be carried out shortly in the cases of Baroda Rayon Corporation, its Directors and important executives and that the search operations should be organised within a week. It was decided at that stage that the search operations should commence on Tuesday, April 27, 1976. Until that point of time, neither Shri Shende nor any of the Assistant Directors (Int.) had any information about the proposed search and seizure operations u/s 132 of the Income Tax Act in this case. Nor had they collected any "intelligence" regarding evasion of tax by Baroda Rayon Corporation or any of its Directors or employees.

9.2 Shri Shende started collecting information. He deputed two Assistant Directors to go the same evening to Bombay and Surat to carry out survey operations mainly with a view to assessing the manpower requirements. Late that afternoon, Shri Harihar Lal sent for Shri Shende again and told him that the search and seizure operation should be advanced from April 27, as originally planned, to April 24, 1976. Shri Shende was further told that the residential premises of Shri V. K. Shah, Managing Director of Baroda Rayon Corporation, and Shri Fateh Singh Gaekwad, the Chairman of the Company, should not be searched. Shri Shende felt surprised on receiving this latter direction and desired to know the reasons for it. He was, however, told by Shri Harihar Lal "that it was decided that the residential premises of Shri V. K. Shah at Bombay and of Shri Fateh Singh Gaekwad are not to be searched under any circumstances".

9.3 On April 22, 1976, Shri Shende recorded a note in which he stated that information was received in the Intelligence Wing from a "source" about large-scale tax evasion practised by Baroda Rayon Corporation. He also listed several allegations in this regard. It is seen from Shri Harihar Lal's note of the same date that Shri Shende's note constituted the information on the basis of which he had reason to believe that the conditions specified in sub-section (1) of Section 132 of the Income Tax Act, 1961 existed in this case. He, therefore, authorised search and seizure operations in respect of various persons and places connected with the Baroda Rayon Corporation on the same date. Shri Harihar Lal has stated that Shri S. R. Mehta, Chairman of the Central Board of Direct Taxes, had told him that he had information that certain large industrial houses including Baroda Rayon Corporation, had amassed wealth by indulging in large-scale tax evasion and that Shri Harihar Lal should gather intelligence in regard to this and take

necessary action against them including organizing of search and seizure operations. The information which Shri Harihar Lal had so received from Shri Mehta was admittedly not specific or detailed but of a general nature and was conveyed to him orally. It was not reduced to writing by either Shri Mehta or Shri Harihar Lal then or soon thereafter. Shri Harihar Lal has stated that he received some information personally from certain informants. Here again, he did not record the names and addresses of the informants. Even the contents of the information so stated to have been received have not been recorded or retained on the file. In his "satisfaction" note dated April 22, 1976, Shri Harihar Lal has stated that he has carefully considered the information set out in Shri Shende's note regarding tax evasion by Baroda Rayon Corporation and that he had discussed the matter at length with Shri Shende. At this stage, neither Shri Harihar Lal nor Shri Shende thought it necessary to record that the information, if any, was in fact collected by Shri Harihar Lal himself.

9.4 Search operations commenced on April 24, 1976, at the Company's factory premises at Udhna near Surat and the residential premises of some of its executives. As April 24, 1976, was a Saturday and the Company's office premises were closed, the premises at Bombay were sealed on that date, and the actual search operations commenced on April 26, 1976, and continued till late in the evening on the next day. In the course of the search operation on April 27, 1976, Shri S. Talwar, Assistant Director, told Shri G. B. Parida, who was one of the authorised officers for the search operation, that they were to search for certain documents and papers regarding donations collected by Shri V. K. Shah, Managing Director of the Company. Shri Talwar told Shri Parida that the direction to search for these special documents was from Shri Harihar Lal.

9.5 S/Shri Parida and Talwar met Shri V. K. Shah's Personal Secretary and asked her to produce files regarding donations collected by Shri V. K. Shah. It would appear that after consulting Shri V. K. Shah, the Secretary produced certain files. These were perused hurriedly by S/Shri Parida and Talwar. Shri Parida remembers having seen papers in those files showing names of various companies and persons from whom money was stated to have been collected as donations for the Congress Party. At this stage, Shri Talwar telephoned Shri Harihar Lal who was camping at Bombay. Shri Harihar Lal directed Shri V. R. Vaidya, Deputy Director of Inspection (Int.), to go personally to supervise the search in the chamber of Shri V. K. Shah, Managing Director of Baroda Rayon Corporation. He was specifically asked to ensure that Shri V. K. Shah's brief-case was also searched. During this search, certain papers recording substantial amounts against the names of some individuals and industrial and business concerns

were brought to the notice of Shri V. R. Vaidya. These papers were shown to Shri V. K. Shah who admitted that these amounts represented donations received from businessmen and industries for the Congress Party and "certain payments made to some individuals who were influential persons in Gujarat at the relevant time". Shri V. K. Shah told Shri Vaidya that this was "explosive material". Shri Vaidya has added that :

"The D.I. (Inv) had asked me to bring to his notice any papers of such nature. Accordingly, with the permission of Shri V. K. Shah, I carried these papers from the premises of Baroda Rayon Corporation, to Aayakar Bhawan and showed them to D.I. (Inv) who was camping in Bombay. The D.I. (Inv) kept these papers and asked me to see him after about an hour."

Thereafter, Shri Vaidya was ordered by Shri Harihar Lal to seize those papers and to make a separate panchnama in relation to them. Shri Vaidya returned to the Company's premises alongwith the papers and informed Shri V. K. Shah that those papers were proposed to be seized. On being directed to seize these papers under a separate panchnama, Shri Parida objected to preparing a separate panchnama and said that these papers should also form part of the seizure as per the general panchnama for the day which was being prepared and under which other papers and documents were being seized after being entered in different annexures with running numbers. Shri Parida felt that preparing a separate panchnama for the "donation files" would look irregular though not illegal. However, Shri Harihar Lal's specific orders were carried out and a separate panchnama was prepared in relation to 4 documents. These are listed in the inventory prepared at that time as under :

"Inventory of loose papers, files etc. found and seized from the office premises of M/s. Baroda Rayon Corporation, Hocheat House, Nariman Point, Bombay on 27-4-1976 (in the Mgr. Director Shri V. K. Shah's Room, 15th Floor, Bombay) :

1. Yellow coloured file—Miscellaneous file one paper found in the personal brief-case of Shri V. K. Shah, Mgr. Director.
2. Yellow coloured file—Miscellaneous file containing pages 1 to 51 seized from the room of the Secretary to Shri V. K. Shah, Mgr. Director.
3. Yellow coloured file—Miscellaneous file containing one paper found in the strong room in 15th floor.
4. One lever box file—containing receipts 351 from Souvenir Committee, All India Congress Committee, New Delhi."

9.6 Shri Harihar Lal took possession of the first three items. The fourth, being a file containing 351 receipts of the Souvenir Committee of the All India Congress Committee issued in favour of Baroda Rayon Corporation for a total sum of about Rs. 3½ lakhs, was

left with Shri V. R. Vaidya who was directed by Shri Harihar Lal to keep it in his personal custody until further orders. Besides the three items entered in the separate panchnama, Shri Harihar Lal took possession of one item listed as item No. 1 of Annexure 7-a file containing sixty-one pages—of what may, for the sake of convenience, be referred to as the general panchnama dated 27-4-1976.

9.7 Shri Harihar Lal accordingly took possession of the first three items of the special panchnama and one item seized under the general panchnama. All these were taken by him when he returned from Bombay to Delhi on the evening of April 28, 1976. Before leaving Bombay, Shri Harihar Lal had telephoned Shri Shende who was at Delhi, to meet him at the Palam Airport at the time of his arrival from Bombay that night. Shri Shende complied with the direction and accompanied Shri Harihar Lal on the drive from Palam Airport, New Delhi to Shri Harihar Lal's residence. Shri Harihar Lal took the four sets of papers brought by him from Bombay in a closed envelope to Shri S. R. Mehta, sometime in the afternoon of April 29, 1976. Shri Mehta desired that the papers be left with him for his perusal. Sometime thereafter Shri Mehta appears to have returned some, but not all the papers that Shri Harihar Lal had handed over to him on April 29, 1976. It was seen from the records of the Income Tax Department produced before the Commission that two sets of papers, being item No. 3 of the separate panchnama and the only item from the general panchnama taken by Shri Harihar Lal to New Delhi, were returned by Shri Harihar Lal to the Deputy Director of Inspection. Items No. 1 & 2 of the special panchnama were not so returned. It is seen from the records maintained in this connection that Shri Mehta had called on Shri R. K. Dhawan, Additional Private Secretary to the then Prime Minister on the day on which Shri Harihar Lal handed over the papers to him and on the following day.

9.8 Shri Harihar Lal had taken some seized papers to Shri Mehta because the latter had told him before his departure for Bombay in connection with the search and seizure operations in this case, that if any documents indicating unaccounted payments or receipts be found, they should be brought to Delhi and shown to Shri S. R. Mehta.

9.9 Shri S. R. Mehta says that he had a "quick look" at these papers as he was very busy in connection with budget matters, and he took them to Shri Pranab Mukherjee, the Minister for Revenue and Banking. This, according to Shri Mehta, was done because information regarding concealment of income in this case had been given to him by the Minister himself. The Minister too, it is stated, was very busy and asked Shri Mehta to leave the papers on his desk and promised to return them after "going through them". Shri Mehta never got them back from Shri P. K. Mukherjee and, therefore, never returned them to Shri Harihar Lal.

9.10 It was said that the investigation carried out by the concerned authorities in the Income Tax Department pursuant to the search and seizure operations has not revealed any concealment based on

such seized material. No concealed profits, it was submitted, have been estimated in the order under sub-section (5) of Section 132 of the Income Tax Act, 1961.

9.11 It was also noticed that Shri Harihar Lal had, on April 22, 1976, issued a few blank warrants of authorisation for search and seizure under section 132 of the Income Tax Act.

9.12 On these facts, the Commission is called upon to consider—

- (i) Whether the power of search and seizure was exercised for the purposes for which the law authorises it to be so exercised; or whether it was exercised, as alleged, for a collateral purpose extraneous to the considerations set out in Section 132 of the Income Tax Act, 1961.
- (ii) If the power was exercised for a collateral purpose, to identify the persons responsible for such unlawful and improper action.
- (iii) Were the requirements of sub-section (8) and (9A) of Section 132 fulfilled in this case and, if not, who were responsible for failure to comply with these statutory requirements?

9.13 Notices under Rule 5(2)(a) of the Commissions of Inquiry (Central) Rules, 1972 and summonses under section 8B of the Commissions of Inquiry Act, 1952 were issued and served on S/Shri P.K. Mukherjee, S: R. Mehta and Harihar Lal. S/Shri S. R. Mehta and Harihar Lal have filed statements in response to the notices under Rule 5(2)(a) and have also appeared before the Commission in response to the summonses issued to them. Shri S. R. Mehta also availed of the opportunity to cross-examine Shri Harihar Lal. He did not desire to cross-examine any one else nor to examine any witnesses. The opportunity extended to make submissions before the Commission was also availed of by S/Shri S.R. Mehta and Harihar Lal. Shri Pranab Mukherjee entered into correspondence with the Commission when the Notice under Rule 5(2)(a) and the summons under section 5(2) read with Section 8B, were issued to him. In one of his letters he stated that without prejudice to certain other arguments advanced by him, he would like to cross-examine certain witnesses in regard to this case. However, when he did appear before the Commission on January 12, 1978, Shri Mukherjee refused to file a statement as required by the Notice under Rule 5(2)(a). He also refused to take an oath and to answer any questions in regard to this and other matters. The Commission has, therefore, filed a complaint u/s 178 and 179 of the Indian Penal Code against Shri Pranab Mukherjee in the court of the Chief Metropolitan Magistrate, Delhi.

9.14 By Section 132, certain designated officers are invested with power to issue an authorisation or authorisations in favour of authorised officers to search the premises and exercise other powers set out in the Section. The Section does not confer any arbitrary authority upon the revenue officers. Exercise of the powers constitutes a serious invasion upon

the rights of the tax payers; the powers need to be exercised strictly in accordance with law, Shri S.R. Mehta is said to have mentioned to Shri Harihar Lal that according to his information, Baroda Rayon Corporation was indulging in large-scale tax evasion and that suitable action under the Income Tax Act should be taken against them. When Shri Mehta actually spoke to Shri Harihar Lal and what intelligence Shri Harihar Lal collected, thereafter, are not clear as there is no contemporaneous record in this regard. Shri Harihar Lal has stated that the information which he gathered from various persons was written down by him on slips of paper and that those slips were destroyed by him after he passed the relevant information to his subordinate officers. However, Shri Harihar Lal had not at all mentioned this matter to his officers nor directed them to collect any intelligence in regard to Baroda Rayon Corporation until April 21, 1976.

9.15 Judicial decisions as well as Departmental instructions have emphasised the need for recording in writing information received orally. Absence of such contemporaneous record regarding collection of information exposes any search and seizure operation conducted on the basis of such information to the charge that it was arbitrary or even *mala fide*. An officer of Shri Harihar Lal's experience could not have been unaware of this. Besides, if "intelligence" was being collected by Shri Harihar Lal, as he claims, over a period of several weeks, it passes understanding why he did not direct his subordinate officers in the intelligence and investigation wings to gather information. The inescapable inference is that Shri Harihar Lal himself was told about the need for urgent action in this case on or about April 21, 1976. Shri Harihar Lal's own statements about acting to the best of his judgment having regard to the constraints of time and circumstances prevailing during the Emergency confirm this view.

9.16 It was noticed that the search and seizure operation was originally fixed for April 27, 1976, when Shri Harihar Lal spoke about it first to Shri S.N. Shende on the morning of April 21, 1976. Subsequently, the same afternoon Shri Harihar Lal directed that operations should commence on the 24th of April. According to Shri Harihar Lal, Shri S. R. Mehta had desired that the search and seizure operation should commence when he (Shri Mehta) would be out of Delhi. In his arguments before the Commission Shri Mehta denied responsibility for advancing the date. He stated that he had in fact returned to Delhi from Calcutta, where he had gone on tour, on the morning of the 24th and that throughout the period of the search and seizure operations, namely, from April 24 to April 27, he was in Delhi.

9.17 The next relevant circumstance is that Shri Mehta had directed that the residential premises of Shri V. K. Shah, the Managing Director of the Company, and Shri Fateh Singh Gaekwad, Chairman of the Company, should not be searched. Shri Mehta has argued that this was only a suggestion and not a direction. He has also sought to justify it by saying that there was no specific information regarding concealment in relation to these two persons. Shri Harihar Lal, on the other hand, has affirmed that

there was a clear direction to this effect from Shri S. R. Mehta. This is also borne out by the manner in which Shri Harihar Lal had communicated this decision to S/Shri S. N. Shende and V. R. Vaidya. In his report dated April 27, 1976 to Shri Harihar Lal, Shri B. R. Adwalpalkar, Assistant Commissioner of Income Tax at Bombay, who was in charge of the search and seizure operations at Udhna, describes the events of April 24, 1976 thus :

"It was not long before we could realise that the entire control of the Company's production and marketing policy of the Company as well as the financial and administrative control vested on the Managing Director stationed at Bombay. The D.I. (was) accordingly informed on the telephone and it was suggested that the MD and other top executives of the Corporation (apart from those already covered u/s 132) should also be covered u/s 132. The D.I. expressed certain difficulty in the matter."

9.18 The "difficulty" could only have been the clear injunction by Shri S. R. Mehta prohibiting search and seizure operations at the Managing Director's residence. In his affidavit before the Commission, Shri Harihar Lal has stated that this direction hampered effective search for incriminating evidence regarding concealed income or undisclosed assets which are quite often hidden at the residences of top executives of business concerns. Besides, Shri Mehta's submission that his suggestion that the residence of Shri V. K. Shah and Shri Fateh Singh Gaekwad need not be searched was because there was no specific information regarding concealment in their cases cannot stand the test of scrutiny. By the same token, he should in that case have suggested to Shri Harihar Lal not to search the residences of other executives, directors, etc. It has in fact been brought on record that residences of the Joint Managing Director and various other executives of the Company were actually searched.

9.19 Another striking feature is the fact that before Shri Harihar Lal left for Bombay in connection with these operations, Shri S. R. Mehta directed him to bring for his scrutiny certain papers. According to Shri Harihar Lal, no such instruction or request appears to have been made by Shri S. R. Mehta to Shri Harihar Lal in any other case. Certain seized papers were accordingly brought by Shri Harihar Lal to Delhi and handed over to Shri S. R. Mehta. Some of those papers were taken by Shri Mehta to Shri Pranab Mukherjee. The significant fact is that two of the seized items have not been returned to the concerned officers in the Income Tax Department till now.

9.20 It is necessary, at this stage, to deal in some detail with all the circumstances relating to these papers :

- (i) Shri Mehta specifically directed Shri Harihar Lal to bring "any unusual papers or documents" seized during the search.
- (ii) Shri S. Talwar tells Shri G. B. Parida that, as directed by Shri Harihar Lal, they have to

search Shri V. K. Shah's chamber for certain documents and papers regarding donations collected by Shri V. K. Shah.

- (iii) Shri Parida's statement that the search of the office premises of Baroda Rayon Corporation at Bombay was conducted on 26th and 27th and that these papers were actually seized on the 27th, is supported by record.
- (iv) S/Shri V. R. Vaidya and G. B. Parida described these documents as containing lists of donations to a political party by certain individuals and organisations. Shri Talwar also admits that Shri V. K. Shah referred to these papers as "explosive material".
- (v) Shri Harihar Lal and Shri S. R. Mehta claim to have vague recollections about these papers. It cannot be forgotten that Harihar Lal had kept the papers informally brought to him for about an hour before ordering that they be seized under a separate panchnama. It is difficult to accept the plea that he considered them as important from the tax point of view and seized them and then took them to Delhi for showing to his Chairman, Shri S. R. Mehta if, according to him, the papers related only to certain "proposed" donations. Shri Vaidya has stated that Shri V. K. Shah had told him that it was "explosive material". Shri Harihar Lal's impression of what Shri Vaidya had told him about it seems to be erroneous especially because Shri Harihar Lal resiled from it during cross-examination and admitted that his impression could be wrong. An officer of Shri S. R. Mehta's seniority and experience would not take to his Minister papers which he himself had not examined carefully. What "budget matters" kept him so busy at the relevant time is not explained anywhere.
- (vi) From Shri Vaidya's statement it is clear that he had no doubt about the nature of the papers that Shri Harihar Lal had desired to be brought to his notice. Subsequent events proved that he had not erred in his judgment.
- (vii) From the specific direction to Shri Vaidya that he should, personally, search the chamber and brief-case of Shri V. K. Shah, it is evident that Shri Harihar Lal knew not merely what he was looking for, but where it was. This would also explain Shri Mehta's direction that the Managing Director's residence need not be searched.
- (viii) It is obvious that papers of the nature described by Shri Vaidya would have been of great interest to persons in authority then. It would not have been wise to leave evidence of the nature and purpose of certain payments alleged to have been made to influential persons in Gujarat at that time. This equally applies to any list of contributions to a political party; especially if they represent unaccounted money.

(ix) If the papers that Shri Vaidya was specially asked to obtain were relevant only to income tax proceedings in the case of Baroda Rayon Corporation, there is no reason why S/Shri Parida, Talwar and other authorised officers could not have decided whether they should be seized or not. Shri Vaidya's action in removing those papers from the searched premises and taking them informally to Harihar Lal, leaving the papers with Harihar Lal, for about an hour, and their subsequent seizure under a separate panchnama clearly indicate that the papers were not directly related to the assessment of Baroda Rayon Corporation.

(x) Having taken possession of the "explosive material", Shri Harihar Lal took no risk whatsoever of losing them. He asked Shri Shende to meet him at the Palam Airport on his arrival from Bombay and to escort him to his residence. The precaution taken by Shri Harihar Lal for ensuring the safety of the papers is extraordinary.

9.21 The seized papers taken to Delhi were handed over by Shri Harihar Lal to Shri Mehta, who states that he handed over some of them to Shri P. K. Mukherjee. For nearly a year thereafter Shri S. R. Mehta continued to be Chairman of the Central Board of Direct Taxes, but failed to ensure the return of those papers to the concerned officers in the Department, in spite of oral reminders from Shri Harihar Lal.

9.22 According to Shri Mehta, the papers that he handed over to Shri Mukherjee consisted of one file cover with three typed sheets in it. While he is clear on the number of pages, his memory is vague about their contents. Actually there was no file containing three sheets among the papers brought to Shri Mehta by Harihar Lal, who has testified that he had not disturbed or re-arranged them in any manner. Of the two items missing, one consisted of a file with one sheet of paper and the other, a file with fiftyone pages. Shri Mehta's evidence in regard to this, his recollection of the contents of those documents and reasons for taking them up to his Minister are unconvincing. Shri Mehta has no rational explanation of his failure to comply with the requirements of Section 132(9A) of the Income Tax Act under which the books of accounts or other documents or assets seized should be handed over to the Income Tax Officer having jurisdiction, within a period of fifteen days of the seizure. This failure led to non-compliance with section 132(8), which prescribes a maximum retention period of 180 days, beyond which seized material can be retained only after recording the reasons for such retention and obtaining the approval of the Commissioner.

9.23 It appears that search and seizure proceedings under Section 132 of the Income Tax Act, 1961 were a mere facade and that search and seizure operations were commenced and carried out in this case for a totally extraneous purpose of gaining possession of certain papers which had nothing

to do with the income tax proceedings in the case of Baroda Rayon Corporation. There can also be no doubt that Shri S. R. Mehta who had directed that—

- (a) certain papers should be brought back to him;
- (b) that the residential premises of S/Shri V. K. Shah and Fateh Singh Gaekwad should not be searched; and
- (c) the search itself should be advanced from April 27 to April 24,

had in fact also directed that the search and seizure operations should be initiated in this case. In the face of the overwhelming evidence in support of this view, Shri Harihar Lal's protestations that he had reasons to believe that conditions for invoking Section 132 of the Income Tax Act existed, cannot be accepted. They stem from a reluctance to accept that he had allowed his judgment in the exercise of this extraordinary power to be swayed by extra legal directions of his superior officer. The Commission is of the view that Shri S. R. Mehta's action in directing Shri Harihar Lal to initiate action under section 132 of the Income Tax Act in this case amounts to subversion of lawful processes and an abuse of authority.

9.24 Evidence before the Commission has established that the missing papers had been handed over by Shri Harihar Lal to Shri S. R. Mehta. Shri Mehta has stated that he had left the papers with Shri Pranab Mukherjee for his perusal. Shri Mukherjee has chosen not to appear before the Commission and give evidence. The Commission relies on the statement that the papers were left by Shri S. R. Mehta with Shri P. K. Mukherjee. What was done with those papers thereafter remains a mystery. The records of the Income Tax Department clearly establish that two sets of papers being items No. 1 and 2 of the annexure to the special panchnama, which were handed over to Shri S. R. Mehta have not thereafter seen the light of day. As the head of the Income Tax Department, Shri Mehta cannot absolve himself of blame for this very grave loss of seized material which should have been returned to the person from whom it was seized, by merely stating that he had left the papers on his Minister's desk. The responsibility for return of those papers to the concerned officers was clearly his and his alone. The Commission is, therefore, of the view that Shri Mehta's failure or omission in this regard amounts to subversion of lawful processes.

9.25 On the uncontroverted statement of Shri S. R. Mehta that these papers were handed over to Shri P. K. Mukherjee, Shri P. K. Mukherjee's action in obtaining and retaining seized documents and subsequent failure or omission on his part to return them to the Chairman of the Central Board of Direct Taxes or to any other concerned or duly authorized officers in the Income Tax Department, also amounts to subversion of lawful processes and abuse of authority.

9.26 In the opinion of the Commission Shri Harihar Lal was aware of the illegality of his action. The Commission is, however, inclined to take the

view that in the circumstances then prevailing, Shri Harihar Lal's choice was limited; and he chose to render himself a helpless and unquestioning tool of Shri S. R. Mehta.

9.27 The Commission expresses its concern at the arbitrary and high-handed manner in which executive authority was misused in this case for a collateral purpose. The extraordinary power of search and seizure under section 132 is intended to protect the interests of revenue against the tax evader. By the exercise of the power a serious invasion is made upon the rights, privacy and freedom of the tax-payer. The power must be exercised strictly in accordance with the law, which provides the necessary safeguards; and only for the purposes for which the law authorises it to be exercised. It is distressing that, in spite of a wealth of judicial pronouncements and departmental instructions emphasising the need for utmost restraint and strict compliance with the law, the then Chairman of the Central Board of Direct Taxes, Shri S. R. Mehta was himself instrumental in unleashing this dangerous weapon which could unjustly and irretrievably damage the business reputation and standing of the parties affected.

II. Search and Seizure Operation by Income Tax Department in the case of the Bajaj Group of Companies.

9.28 On May 18, 1976, the Income Tax Department mounted a very massive "search and seizure" operation on the Bajaj and Mukand groups of companies and related organisations and individuals under Section 132(1) of the Income Tax Act 1961. During this operation, deploying about one thousand one hundred officials and spread over more than a week, one hundred and fourteen premises were searched and nine were surveyed. Not even the residence at Wardha of Smt. Janki Devi Bajaj, the octogenarian widow of the late Shri Jamnalal Bajaj was spared. The officer who led the party sent to Wardha reported that her house was surveyed "without any results worth reporting".

9.29 According to Shri Harihar Lal, Shri S. R. Mehta, Chairman of the Central Board of Direct Taxes had told him that it had come to his knowledge that the Bajaj and Mukand Groups, among others, had amassed huge wealth by indulging in tax evasion on a large scale and that Shri Harihar Lal should gather information regarding their concealed income and wealth and take necessary action against them by authorising and organising search operations. The information which Shri Harihar Lal had so received from Shri Mehta was admittedly not specific nor detailed but of a general nature and passed on to Shri Harihar Lal orally. It was not reduced to writing either then or soon thereafter. Shri Harihar Lal also claims to have received some information about these cases personally from certain informants. Here again, he did not record the names and addresses of the informants nor was even the information so stated to have been received by Shri Harihar Lal recorded or retained on the files.

9.30 Some time in the third week of March 1976, Shri Harihar Lal sent for Shri S. Talwar, Assistant

Director of Inspection (Intelligence) on the eve of Shri Talwar's visit to Bombay in some other connection and asked him to collect whatever information he could, regarding the Mukand Group. In his statement before the Commission, Shri Talwar stated that on return from Bombay later in the same month (March 1976), he had mentioned to Shri Harihar Lal that the Mukand Group was closely connected with the Bajaj Group and that whatever local enquiries he could make at Bombay suggested that the Bajaj group had a clean reputation. Shri Talwar has added that nothing further regarding the Group was mentioned to him thereafter and he got the impression that the matter was closed.

9.31 No further action seems to have been taken in the matter until Shri Harihar Lal called a meeting of Shri S. N. Shende, Deputy Director of Inspection (Intelligence) and the Assistant Directors, then working at New Delhi, early in May 1976, and told them that he (Shri Harihar Lal) had with him some information regarding evasion of tax by the Bajaj and Mukand Groups and that a search should be conducted very early.

9.32 The entire action in this case, therefore, was initiated on the basis of the notes recorded by Shri Harihar Lal on May 14, 1976, to the effect that on the information placed before him by his Assistant Directors and Deputy Director, he had reason to believe that the condition necessary for invoking the power of search and seizure existed in respect of the Bajaj and Mukand Groups.

9.33 In his statement, Shri Shende has stated that the meeting was held mainly with a view to informing Shende and the Assistant Directors present that it has been decided to carry out search and seizure operations jointly in these Groups within a short time and to direct them to take all necessary consequential action. Admittedly the decision to carry out such a massive search and seizure operation in these cases was taken before holding this meeting. Such "intelligence" as was collected thereafter by Shri Shende and the Assistant Directors was only by way of carrying out reconnoitering operations for the smooth and successful implementation of the decision already taken.

9.34 Several blank warrants of authorisation u/s 132 of the Income Tax Act 1961 read with rule 112 of the Income Tax Rules 1962, were also issued in this case. It is clear from the evidence adduced that some of those blank warrants signed by Shri Harihar Lal on May 14, 1976 were used on May 18, 1976 and on the days immediately following, after filling up the names and other particulars, especially in connection with the searches of bank lockers at New Delhi.

9.35 The questions that arise for consideration on the basis of these facts are—

(i) whether the power of search and seizure was exercised in this case for the purpose for which the law authorises it to be used; and

(ii) whether the power was exercised strictly in accordance with the law.

9.36 The constraints under which the extraordinary powers of search and seizure may be invoked under the Income Tax Act and the safeguards provided to protect the citizens against arbitrary, excessive or *mala fide* exercise of such power, are clearly provided in the statute itself. The powers are obviously intended to be exercised in accordance with the law and only for the purpose for which the law authorises them to be so used.

9.37 Shri Ramakrishna Bajaj has stated that the persons in authority at the relevant time may have been unhappy with the Bajaj family, because of their close association with Shri Jayaprakash Narayan and the Sarvodaya movement and because of the part that some close relatives of the family, like the late Shri Sriman Narain, had played in the Acharya Sammelan held at Wardha in January 1976. Shri Bajaj has added that he had been advised by a senior political functionary of those days that the "Government" desired that Shri Bajaj should use his influence to ensure cancellation of the then proposed second and larger Acharya Sammelan, which was to be held in June 1976. Shri Ramakrishna Bajaj had apparently informed the person concerned that it was neither desirable nor proper to do so. Shri Bajaj also said that Shri Viren Shah, Managing Director of Mukand Iron and Steel Works Ltd., whose family was closely connected with the Bajaj family for over fifty years was one of the principal accused in the Baroda Dynamite Case.

9.38 Shri Ramakrishna Bajaj submitted that what disturbed him most was the attempt to denigrate the image of the Bajaj Group, so assiduously built up by his late father, Shri Jammalal Bajaj. In this connection, reference was made to the extraordinary publicity given through press, radio and television to this "raid". This, it was submitted by Shri Viren Shah, was in sharp contrast to the Government's stand in another, much smaller search operation, in relation to Baroda Rayon Corporation Ltd. In that case, about a month after the "raid", Shri P. K. Mukherjee, the then Minister for Revenue and Banking, mentioned in Parliament that no publicity had been given because "the details of the matter are yet to be examined". Shri Viren Shah also said that the Central Bureau of Investigation was dealing with the Baroda Dynamite Case from early March 1976, and that the CBI might have been responsible for Shri Harihar Lal's direction to one of his Assistant Directors, that he should collect intelligence on the Mukand Group.

9.39 In his statement before the Commission, Shri Rahul Bajaj had emphasised that whatever concealed income may or may not have been detected in relation to other persons as a result of this search and seizure operation, nothing incriminating had been detected in the case of any of the companies of the Bajaj Group.

9.40 Certain circumstances noticed by the Commission in this and another matter before it are disturbing. Shri Harihar Lal has stated that the information which he gathered from various persons was written down by him on slips of paper

and that those slips of paper were destroyed by him after he passed on such information to his subordinate officers. His explanation for not retaining the slips is unsatisfactory. The officer issuing the authorisation has a duty to establish the propriety of his action and he cannot do so if the contemporaneous record indicating collection of basic information on which he forms the reasons to believe that action u/s 132 of the Income Tax Act should be taken, is not retained by him. Such evidence may be required for scrutiny by appropriate authorities. It is but proper that it should be kept not on separate slips of paper and destroyed at his sweet will and pleasure. Judicial decisions and departmental instructions brought to the notice of the Commission appear to have been observed only in their breach. Stern action by the Income Tax Department is necessary to prevent such wanton disregard of the law as well as the privacy of the citizens.

9.41 This case illustrates boldly the prevailing misconception that if an authorising officer has, in consequence of information in his possession, reason to believe that action u/s 132 should be initiated in the case of a Company or a group of companies, he will be justified in authorising indiscriminate searches and seizures at the business or residential premises of all persons connected with the company, however remote the connection may be with these companies or even with their Directors or employees. The conditions justifying the exercise of this extraordinary power did not exist in the case of a large number out of one hundred and twenty places searched or surveyed. It was argued by Counsel for Harihar Lal that it was the "normal procedure" to enter and search the premises of employees, of relatives, of directors and of associates, etc., on the basis of "information" against a company or a group of companies. Earlier such "normal procedure" is stopped by the Income Tax Department, the better it is for the citizens of the country; for, this amounts to acting mechanically without applying one's mind to specific information, which is a condition precedent for the issue of a warrant authorising search and seizure. The contrast between this matter and that of Baroda Rayon Corporation Ltd., where the residences of the Chairman and the Managing Director were not searched, even after the need for it was specifically pointed out by the officer in charge of the search operations at Udhna, cannot be missed. Needless to add, if the condition for the exercise of the power is not satisfied in regard to several warrants of authorisation issued in connection with a particular search and seizure operation, the entire proceeding is liable to be struck down.

9.42 Mention should be made of a very serious matter which has been noticed repeatedly during proceedings before the Commission. This relates to the issue of blank warrants of authorisation. While Shri Harihar Lal has accepted that this was a procedural lapse on his part, he has sought to justify it on various grounds, namely, that large number of premises of associated persons all over the country were to be searched simultaneously and in some cases full information regarding their names and addresses

was not readily available and that, at any rate, there was no risk of the misuse of these warrants as they related to specific groups and were to be handed over only to the Deputy Director of Inspection. These explanations do not stand the test of scrutiny. Several completely blank warrants of authorisation were produced before the Commission. Where a blank warrant of authorisation is issued, the authorising officer has acted without any information on which he could have reason to believe that the statutory conditions for the exercise of the power of search existed. Such action is clearly unlawful. The Commission is of the view that the issue of blank warrants of authorisation is not a mere procedural lapse. Such warrants can be misused so as to cause damage to the reputation of any innocent person. It is, therefore, an improper act without any mitigating circumstance whatsoever. It was suggested that the blank warrants are often issued to ensure successful implementation of action under section 132 of the Income Tax Act. This is a totally fallacious argument. If there are genuine difficulties, the solution to the problem lies in seeking to amend the law, consistent with the requirement of adequate safeguards and not in flouting the statutory requirements with impunity.

9.43 The information on the basis of which Shri Harihar Lal formed the reason to believe that search and seizure action should be initiated in this, as well as the matter of the Baroda Rayon Corporation should also be adverted to. Such information as was recorded appears to have been collected from published material like trade directories, annual accounts of the parties etc. To this have been added vague and general allegations that the assessee is indulging in such well known methods of concealment as inflating purchases, suppressing sales, selling scarce products at a premium, undervaluing stocks etc. The information recorded does not give the impression that it has been collected over a period of several weeks as claimed by Shri Harihar Lal.

9.44 Notices under Rules 5(2)(a) of the Commissions of Inquiry (Central) Rules, 1972 and summonses under Section 8B of the Commissions of Inquiry Act, 1952 were issued to S/Shri S. R. Mehta and Harihar Lal in this case. Both filed statements in response to the notices under Rule 5(2)(a) and had also appeared before the Commission in response to the summonses. The Commission has taken note of their version of the case. The enquiry into the search and seizure operations under section 132 of the Income Tax Act, 1961 in the Bajaj and Mukand Groups of cases has revealed several serious irregularities. There can be no doubt, therefore, that the power was not exercised strictly in accordance with the law. Legal infirmities, however, seem to have resulted more from excessive zeal than any wrongful intent. Undoubtedly, there are several circumstances which do give rise to a suspicion that the operations were also motivated by collateral considerations. However, the Commission is of the view that it cannot be said to have been clearly established that the action taken was *mala fide* or that the power was exercised for a collateral purpose.

III. Special Instructions on matters relating to Maruti Ltd.

9.45 In the course of certain inquiries made by the Income Tax Department at Calcutta, it was noticed by the Department that identity of two ladies who were registered as shareholders of Maruti Ltd., could not be established since there were no such persons living at the addresses mentioned in the registers of the Company against their names. The Commissioner of Income Tax at Calcutta who believed that the names of these ladies, among others, had been utilized by someone who had invested his own funds in assumed names, wrote to the Commissioner of Income Tax, Kanpur to request the Income Tax Officer dealing with the case of Maruti Ltd., to make the necessary enquiries and to let him know how and when the subscriptions for the shares were paid to the Company in regard to the shares held in the names of these two ladies. In particular, it was requested that if payment of subscription money was made by cheques, the numbers of the cheques, the dates on which they were drawn and also the Branches of the Banks on which they were drawn should be ascertained by the Income Tax Officer and reported to the Income Tax authorities at Calcutta to enable them to trace the shareholders, and if the subscription money was paid in cash, the names of the persons who deposited the cash may be supplied in case those names were recorded in the Company's books.

9.46 Since Maruti Ltd. was not being assessed within the jurisdiction of the Commissioner of Income Tax, Kanpur, the letter was forwarded to Shri N. S. Raghavan, Director, Special Cells, New Delhi, who passed it on to Shri Harihar Lal, Director of Inspection (Inv.) for necessary action. Shri Harihar Lal received Shri Raghavan's letter and its enclosures on 8-7-75 and passed them on to Shri K. Singh, Deputy Director of Inspection (Investigation).

9.47 Certain information relating to shareholders of Maruti Ltd., was required in connection with an assurance given to the Lok Sabha in reply to a question in this regard. This information was sought to be collected from Maruti Ltd. by the Income Tax Officer, Gurgaon who had jurisdiction over the Company. Shri V. V. Badami, Director of Inspection (Investigation) wrote to the Central Board of Direct Taxes on January 7, 1975 mentioning, *inter alia*, that the Company had "taken exception to furnish the required information to the I.T.O. Gurgaon". He added further "the Chairman has also since talked to me about this matter and he desired that it would be appropriate for the Board to obtain the required list of shareholders directly from the Company Law authorities". Shri Badami's statement in this regard is also borne out by Shri S. R. Mehta's own order dated 10-2-1975, at page No. 6 of the notes in the relevant file, in which it was directed that information should be gathered through official agencies only and that neither the Company nor the shareholders should be approached for furnishing the information. Shri Mehta had added further that this may be made clear in the letter to the Director

of Inspection (Investigation), and that direction was accordingly communicated to the Director of Inspection (Investigation) on 13-2-1975.

9.48 While processing the request of the Commissioner of Income Tax, Calcutta, to make enquiries regarding the two shareholders of Maruti Ltd., Shri Harihar Lal's subordinate officers drew his attention to the Board's communication dated 13-2-75 as well as to Shri Badami's orders (presumably, based on Shri S. R. Mehta's direction referred to in Shri V. V. Badami's letter dated 7-1-75) that no direct enquiries should be made in the case of M/s. Maruti Ltd. without prior direction from the Board. Accordingly, in his note dated 19th July, 1975, Shri K. Singh submitted to Shri Harihar Lal that "if approved, the letter from the Commissioner of Income Tax, West Bengal, may be sent to the Board requesting them for instructions whether in view of what had been stated in the Board's letter dated 13-2-75, the Commissioner of Income Tax, Patiala may be asked to get the required information collected and sent to the Income Tax Commissioner, West Bengal".

9.49 Thereupon, Shri Harihar Lal seems to have taken the papers personally to Shri S. R. Mehta on or about 24-7-75, on which day he recorded to the following endorsement:—

"Chairman has desired that no enquiries should be made regarding this case till further instructions from him."

9.50 No "further instructions" were received from Shri S. R. Mehta until he handed over as Chairman, Central Board of Direct Taxes, about twenty months hence.

9.51 There can be no doubt that the information contained in the letter from the Commissioner of Income Tax, Calcutta did *prima facie* indicate that the two ladies who were shown as shareholders of Maruti Ltd., were either non-existent or were Benamidars of some other persons. Therefore, there was a *prima facie* case of evasion of liability for income-tax, requiring full investigation of the extent of benami shareholding, if any, in Maruti Ltd., with a view to ascertain the real owners of the shares. Shri Harihar Lal has stated that he would normally have written about this to the concerned Commissioner of Income Tax without seeking any instructions from Shri S. R. Mehta. But in this case he had brought the matter to the notice of the Chairman of the Central Board of Direct Taxes personally because the notings in the file clearly required that the Board's prior permission had to be obtained before enquiries could be made in relation to affairs of Maruti Ltd. Shri Harihar Lal has added further that in view of the Chairman's directions that no enquiries should be made regarding this case till further instructions from him, he had kept the matter pending.

9.52 A notice under Rule 5(2)(a) of the Commissions of Inquiry (Central) Rules, 1972 and summons under Section 8B of the Commissions of Inquiry Act, 1952 were issued to Shri S. R. Mehta,

and Shri Mehta has filed a statement in response to the notice. Appearing before the Commission in response to the summons under Section 8B, he also cross-examined S/Shri Harihar Lal, S. Narayan and K. Singh.

9.53 Shri S. R. Mehta has admitted that when Shri Harihar Lal brought up the matter to him, he said that until Shri Harihar Lal obtained instructions from him (Shri Mehta), he need not take any further action in the matter. Shri Mehta added "he wanted my instructions and the prohibition was only to this extent that he may not take action until he gets instructions from me". To justify his action he stated that he got the impression that the Commissioner of Income Tax, West Bengal wanted to know how the enquiry should be conducted in these two individual cases and that he was barred from giving such instructions individual cases by Section 119 of the Income Tax Act. This explanation, to say the least is frivolous. There could have been no doubt whatsoever in Shri Mehta's mind why Shri Harihar Lal had taken the papers up to him. It was not with a view to seeking Shri Mehta's directions as to how the investigations should be conducted in these two individual cases. Had Shri Mehta's version of Shri Harihar Lal's conversation with him and his own difficulty in giving instructions because of Section 119 of the Income Tax Act been correct, he would straightaway have referred Shri Harihar Lal to the provisions of Section 119 of the Income Tax Act, 1961 and told him to take such action as he considered appropriate. Instead, on his own admission, he had asked Shri Harihar Lal not to take any further action in the matter until Shri Harihar Lal got instructions from him.

9.54 Shri Mehta also submitted that Shri Harihar Lal had left no papers with him and that he had also failed to remind Shri Mehta about this matter. However, when cross-examined on this point by Shri S. R. Mehta, Shri Harihar Lal, has stated that from the trend of conversation it was clear to him that he would invite trouble if he reminded Shri Mehta about this matter and that Shri Mehta had made it very clear that no reference in this regard should be made. There is no reason to disbelieve Shri Harihar Lal's statement in this regard.

9.55 Shri Mehta also suggested that if Shri V. V. Badami (Shri Harihar Lal's predecessor) had received any instructions from the Board that no direct enquiries should be made from M/s. Maruti Ltd., he would have made a record of such instructions soon thereafter. Such a record was in fact made by him in his letter dated 7-1-75 to the Member, Investigation in the Central Board of Direct Taxes. This letter was among the papers put up to Shri S. R. Mehta and on which he recorded the order dated 10-2-75, referred to in paragraph 9.47 above. Besides, Shri Harihar Lal has stated that when he met Shri S. R. Mehta on or about 24-7-75 regarding the letter which he had received from the Commissioner of Income Tax, West Bengal, he mentioned to Shri Mehta that, it was said in the file that the Board's permission should be taken before making

any enquiry with regard to Maruti Ltd. He, therefore, sought Shri Mehta's permission to take the "normal action", namely, making suitable enquiries in that case. If Shri Mehta had not imposed any restrictions or if he was not aware of any such instructions of the Board to this effect, he would have said so to Shri Harihar Lal.

9.56 Shri S. R. Mehta first ordered that no enquiries regarding shareholding in the Maruti Ltd. should be made from the Company or shareholders. It was never clarified that this order was limited to the purpose of collecting information in relation to questions raised in Parliament. When in view of this order, Shri Harihar Lal placed this specific matter before Shri Mehta on or about 24-7-75, Shri Mehta ordered that no enquiry should be made regarding this case till further instructions from Shri Mehta. Pursuant to this oral direction, Shri Harihar Lal made no enquiries in the matter. Shri Mehta did not give any further instructions during the period of about a year and eight months when he continued to hold the office of Chairman, Central Board of Direct Taxes. He is now attempting to place the blame upon Shri Harihar Lal for not reminding him about the matter later.

9.57 Taking into account the nature of the direction, and the manner in which it was stated to have been given, Shri Harihar Lal's action in this regard appears to have been guided by what he regarded as prudent in the prevailing circumstances of emergency.

9.58 What happened to these enquiries after Shri Mehta handed over charge and whether they have or have not proceeded with reasonable speed,

would not be relevant to considering the matter before the Commission.

9.59 In the opinion of the Commission, Shri Mehta subverted administrative procedures and abused his authority in giving oral instructions to Shri Harihar Lal which had the effect of frustrating or, at any rate, inordinately delaying legitimate enquiries relating to the benami shareholdings in Maruti Ltd. which *prima facie* indicated evasion of tax.

9.60 This is yet another instance where patently wrong orders were given orally and were complied with by subordinate officers without demur. When called upon to explain his conduct, Shri S. R. Mehta claimed that by his oral instructions he meant something different from what was understood by Harihar Lal and acted upon.

9.61 Herein lies the danger in making and acting upon oral orders or instructions. They may either be denied, twisted or misinterpreted by either party, to suit his convenience. Hence the salutary rule that such directions of superior officers should be obtained in writing immediately, and where it is not practicable to obtain them in writing, written confirmation thereof should be obtained as soon thereafter as possible, and in the meanwhile the recipient should record the oral direction or instruction.

9.62 The Commission has come across several instances in which important orders or decisions have been communicated orally, with no subsequent confirmation, leaving it open to the authority later to deny that such directives or instructions were given or to give a different complexion to the directions or instructions.

CHAPTER X

Import of Aircraft by Dharendra Brahamchari of Aparna Ashram

Background of Dharendra Brahamchari

10.1 Swami Dharendra Brahamchari (hereinafter referred to as Brahamchari) held positions of authority in Vishwayatan Yōga Ashram and Central Research Institute for Yoga at Delhi practically from the time these institutions were set up. These institutions had received grants in the past from the Central Government. The CBI is reported to be investigating a case against Brahamchari for misappropriation of the grants given by the Government to these institutions.

10.2 In 1973 Brahamchari founded Aparna Ashram and registered it with the Registrar of Societies on May 25, 1973, with its registered office at A-50, Friends Colony, New Delhi. The Ashram is located at Mantalai in District Udhampur in the State of Jammu & Kashmir on a 50 acre plot of land at a height of 6300 feet. The primary objects of this institution are said to be to impart education in the art and science of Yoga, to undertake and facilitate practical courses and training and to carry on fundamental research in the field of Yoga. The Registrar of Companies, Delhi and Haryana, has informed the Commission that Aparna Ashram has invested a sum of Rs. 3,00,000 in the shares of Maruti Ltd.

10.3 Brahamchari, it appears, wielded considerable influence on various Ministers and officers in the Government of India because of his association with the former Prime Minister Smt. Indira Gandhi whom, it is said, he was teaching Yoga. The evidence shows that Brahamchari has been accustomed to writing freely to senior Ministers and officers in the Government for various favours. Some of the witnesses have also stated that Brahamchari wielded considerable influence with the former Prime Minister and her son, Sanjay Gandhi. Prof. D. P. Chattopadhyaya, for sometime Minister for Health and then Minister for Commerce in Smt. Indira Gandhi's Ministry, has stated that Brahamchari was an influential man and had influence in the Prime Minister's house. Shri N. K. Singh, the Special Assistant to Prof. Chattopadhyaya in the Commerce Ministry, has also mentioned about the influence of Brahamchari on the former Prime Minister Smt. Gandhi. According to him, Brahamchari used to boast that he got the late Shri T. P. Singh, father of Shri N. K. Singh, removed from the post of Secretary, Finance, in the Government of India because he—Shri T. P. Singh—did not oblige Brahamchari in the matter of getting a plot of land in which Brahamchari was interested. Shri N. K. Singh further stated :

"Sir, all that people said, at least they said about in my father's days that the Swami was a frequent visitor to the former Prime Minister's

house, he was—he had taught her yoga, she would listen to him, she would lend her ears to him....."

According to Shri Singh, during the time the late Shri L. N. Mishra was the Commerce Minister (on whose personal staff Shri N. K. Singh was working), Brahamchari used to take interest in the files relating to the Commerce Ministry and used to get even his unreasonable requests complied with. According to Shri Singh, such was the influence of Brahamchari that there used to be a flutter in the corridors when Brahamchari visited Government offices and he could not afford to be 'officious' in dealing with him.

10.4 Shri V. N. Kapur, Director of Aeronautical Inspection in the Government of India, stated that he had "heard that he (Brahamchari) was very close to the Prime Minister". According to Shri A. M. Sinha, the then Deputy Director in the Delhi Office of the Enforcement Directorate, Shri Sanjay Gandhi and Brahamchari were close to each other and Brahamchari "was an important person with the Government of the day". Shri G. S. Maingi, presently Additional Collector, Customs, Palam Airport, Delhi, has stated that Brahamchari was "known as a V.I.P. in the good old days".

10.5 Shri R. K. Dhawan, former Additional Private Secretary to Smt. Gandhi, has stated that Brahamchari was a frequent visitor to the former Prime Minister's house and was visiting all the members of the staff in the household and the family members.

10.6 Brahamchari, who had been prominently holding himself out to be an instructor of Yoga, was also found to be interested in business affairs. With the object of dealing in aircraft in 1973, Brahamchari floated Aparna Agro Private Limited, with the Registered Office at A-50, Friends Colony, New Delhi. He asked for brochures, price lists and other information relating to aircraft manufactured by Messrs. Maule Aircraft Corporation and other manufacturers and also procured dealership of M/s. Maule Aircraft Corporation in the name of Messrs. Aparna Private Limited. He also pursued matters with the Director of Agricultural Aviation at Safdarjang Airport relating to import of some aircraft.

Import of Aircraft

10.7 On March 29, 1976, Brahamchari wrote a letter to the Chief Minister, Jammu & Kashmir Government, intimating that his Aparna Ashram is getting as a donation 'an agricultural spraying aircraft' from Maule Aircraft Company, U.S.A. and

requested for the said Government's permission to keep this aircraft in Mantalai. On April 1, 1976, the Jammu & Kashmir Government decided that it would have no objection to the import of a 'spraying aircraft'. The original letter communicating this decision addressed to the Secretary, Foreign Trade in the Government of India, was enclosed by Brahamchhari with the application for a Customs Clearance Permit. How he came to have custody of this letter which should legitimately have been with the Secretary, Foreign Trade, Government of India, is not explained.

10.8. On the same day, *i.e.*, March 29, 1976, Brahamchhari also addressed a letter to Shri V. N. Kapur, Director, Aeronautical Inspection in the Office of the Director General, Civil Aviation (DGCA) informing him that he was getting on donation an 'agricultural spraying aircraft' and that he desired permission to keep the same at Mantalai. This letter was received on March 30, 1976 by Shri Kapur, and he examined the request the same day. He called for some more details relating to the aircraft required in "Certificate of Registration Application Form" and also advised the applicant's representative to submit a formal application to the Chief Controller of Imports & Exports (CCI&E) with a copy to DGCA for making recommendations for the issue of Customs Clearance Permit.

10.9 Next day, *i.e.*, on March 31, 1976, a two-page brochure was filed by the applicant. From the other literature available in the DGCA's office, it was noticed that the aircraft proposed to be imported had not been 'designated as agricultural aircraft'. The DGCA to whom the file was put up by Shri Kapur, desired that the Department must be certain about its utility. He suggested that the Director, Research & Development, might be consulted as he might have some data on the aircraft. However, before sending the file to the Director, Research & Development, Shri Kapur contacted Brahamchhari on March 31, 1976, on telephone and advised him to apply for the import of '4-seater Maule M-5 aircraft' without mentioning its use as an agricultural aircraft and send the file to Director, Research & Development, thereafter. Brahamchhari applied again on April 2, 1976, to Shri Ramamritham, DGCA, requesting permission to import the aircraft for his 'personal use for the purpose of furthering the activities of Aparna Ashram'. This application, though addressed to Shri Ramamritham, was received by Shri Kapur on April 2, 1976 and on the same day Shri Kapur recorded a note that since Brahamchhari wants to use the aircraft for his personal affairs (not for agricultural purposes), permission may be accorded for import of the aircraft. The suggestion was approved by the then DGCA and thereafter the papers dealing with the request of Brahamchhari were sent from the Ramakrishnapuram Office of the DGCA to the Ministry of Tourism & Civil Aviation (at Parliament Street) on the same day by Shri Kapur alongwith his recommendation.

10.10 Shri Kapur has stated that he advised Brahamchhari to indicate in his application that the import of aircraft was for personal use and not for agricultural spraying when it was discovered that
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the aircraft proposed for import was not fit for agricultural spraying; and that this was on the suggestion of Shri S. Ramamritham. Shri Ramamritham has denied making any such suggestion to Shri Kapur. When Shri Kapur's attention was drawn to this denial by Shri Ramamritham before the Commission in Shri Kapur's presence, he did not make any further comments in this matter.

10.11 From Shri Ramamritham's statement it appears that Shri Kapur had taken Brahamchhari to the room of Shri Ramamritham when the subject of clearance of the aircraft by the DGCA was being considered. Shri Kapur has admitted that he had suggested that his application to the DGCA should be accompanied by form 'B' for getting the Customs Clearance Permit (CCP), although the form 'B' application was not required for considering Brahamchhari's request for the Certificate of Airworthiness and Registration. Shri Kapur had also repeatedly stressed in his notings and in his communication to the Ministry that no foreign exchange was involved, even though there was no evidence before him at that time that the aircraft was being received as a gift except Brahamchhari's own statement.

Issue of Customs Clearance Permit (CCP)

10.12 Shri Kapur's note was received in the Ministry of Tourism and Civil Aviation on April 2, 1976, and was examined on the same day. The office note shows that the type of aircraft proposed to be imported by Brahamchhari was not one of the three executive types of aircraft permitted to be imported according to the policy of the Government. However, after discussion with the Minister, it was noted in the file that from the Civil Aviation point of view, there could be no objection to the Ashram importing the aircraft.

10.13 After this note, the file was sent to the Special Assistant to the Commerce Minister, Shri N. K. Singh, who received it on April 2, 1976, and marked it to the Chief Controller of Imports & Exports (CCI&E) on April 3, 1976. The CCI&E Shri P. K. Kaul, recorded a note on April 3, 1976 and marked the file to the Department of Economic Affairs for their comments. The Department of Economic Affairs, Ministry of Finance, recorded a note on April 5, 1976, stating that they have no comments to offer on the proposal since 'no outgo of foreign exchange is involved'. As soon as the file was received on April 5, 1976, Shri Kaul again marked it to the Ministry of Home Affairs for their comments. The Home Ministry did not find any objection from the security angle to this proposal but felt that 'motivation behind the offer of this gift by Maule Aircraft Corporation needs clarification' and enquiry in this matter may be made by the CCI&E. The Home Ministry's note was recorded on April 14, 1976, and on April 15, 1976, Shri Kaul marked the file to the Ministry of External Affairs for comments with a request for 'early return of papers'. The Secretary, Ministry of External Affairs, felt that this was an 'unusual kind of gift' but in view of the advice of the interested Ministries, he also recorded 'no objection' to the proposal which was approved by the then

Foreign Minister, Shri Y. B. Chavan, on April 20, 1976.

10.14 Shri N. C. Rastogi who was then Joint Chief Controller of Imports & Exports, has stated that the matter relating to the issue of CCP to Brahamchhari came before him for the first time on April 21, 1976 after the comments of the Ministries of Home Affairs, External Affairs and Finance (Department of Economic Affairs) had been recorded in the file, and that he was told by the then Chief Controller of Imports & Exports (Shri P. K. Kaul) that the case should be dealt with by himself and that "it had to be cleared by the Minister on the same day". When questioned about the special circumstances in regard to this application which made it necessary that it should be cleared on the same day, Shri Rastogi replied that he could not ask that question because of the conditions that prevailed at that time. . . . and at that time, it was very difficult for him to stand up. In the matter relating to Brahamchhari's application for CCP, Shri Rastogi felt that 'it was a question of doing and (or) dying' and he had to give it within 15 minutes. Shri Rastogi prepared his note on the understanding that the aircraft was to come as a gift and accordingly put it up to the Chief Controller. He also suggested that the case be put up to Inter Departmental Committee (IDC) for its *ex post facto* approval.

10.15 Shri P. K. Kaul put up this note to the Commerce Minister for approval for issue of CCP stating that the Ministries of Civil Aviation and Tourism, Home Affairs, External Affairs, Department of Economic Affairs and State Government of Jammu & Kashmir had approved the proposal. He did not, however, indicate in his note why the matter relating to the issue of CCP could not wait till it was considered by the Inter-Departmental Committee. He merely agreed with the suggestion of the Joint Chief Controller for *ex post facto* approval and did not indicate in his note the reasons for dispensing with the established procedure of getting the prior approval of the IDC. The Commerce Minister approved the proposal of Shri Kaul on April 21, 1976, and the Customs Clearance Permit was issued to Brahamchhari on the next day, i.e., April 22, 1976.

10.16 Prof. D. P. Chattopadhyaya, the then Minister for Commerce, has stated that the case as processed and put up to him, contained the conditions which had to be satisfied for giving the CCP and, therefore, other questions did not arise before him for consideration and on his own he did not think it fit to raise any other questions.

10.17 Shri Kaul who was examined at length both at the preliminary and the second stage has stated that he had dealt with the file of Brahamchhari because Brahamchhari had met him in this connection. He has, however, denied that he asked Shri Rastogi to put up the file within 15 minutes.

10.18 In obtaining *ex post facto* approval of the IDC also, full facts were not placed before the Committee. In the summary placed before the IDC for its consideration, it was stated that J & K Government

had forwarded and recommended the request of Aparna Ashram for the grant of a CCP to import the aircraft for Rs. 4,00,000 as gift, while, in fact, the J & K Government had not recommended the issue of a CCP. The J & K Government only stated that they would have no objection in Brahamchhari having a 'spraying aircraft' at Mantalai. Even the fact that the earlier request of Brahamchhari which was for an 'agricultural spraying aircraft' was subsequently changed for an 'aircraft for personal use' was also not brought to the notice of the IDC.

10.19 At the time of the issue of the CCP, another essential condition was overlooked, i.e., the CCI&E did not insist on the applicant filing the letter of donation in original from the donor, as required by the rules. This condition, however, appears to have been accepted as satisfied by the Controller of Imports & Exports (Shri K. D. Sharma) by merely making an endorsement on the CCP to the effect that the Ashram should forward the letter of donation from the suppliers of the aircraft for record purposes. In the process, an important requirement, i.e., getting the donor's letter certifying the aircraft to be a gift was dispensed with. Shri Kaul has admitted that no CCP should have been issued without obtaining the donor's letter, and it was an act of omission on the part of the office to have done so. The letter purporting to be a certificate of donation was received by Shri P. K. Kaul, CCI & E only on May 29, 1976. Pursuant to the noting of the Home Ministry, no clarification was obtained by the CCI&E regarding the motive of making the gift. According to Shri Kaul, he looked at the matter only from the point of view of gift and it was not his responsibility to go into other aspects.

10.20 Shri Rastogi, the Joint Chief controller of Imports & Exports stated that in many cases the certificate of donation is called for later. When he was asked to cite any specific instance in which this condition had been dispensed with at the time of the issue of CCP and the donor's letter was asked for subsequently, he could not mention any similar case. In the present case of Brahamchhari, there were no such compelling circumstances to warrant the short-circuiting of the established procedure. Shri Rastogi has also stated that he did not go into this question because everyone who had dealt with the application said that it was a gift. His Deputy Chief Controller handed over the licence to Brahamchhari without insisting on the submission of the donor's letter.

10.21 Not only that the CCP was issued by subverting the well-established administrative procedures, but even the value of the CCP was progressively increased in three different stages by the concerned authority on the request of Brahamchhari unsupported by documentary evidence to justify the enhancement. The application in form 'B' submitted by Brahamchhari estimated the value of the aircraft with spares to be Rs. 3 lakhs. Before the CCP could be issued, Brahamchhari filed another letter before the CCI&E requesting that the CCP be issued for the value of Rs. 4 lakhs since there had been a miscalculation earlier in mentioning the figure of Rs. 3 lakhs. No one

in the office of the CCI & E appears to have examined the case for an upward revision of the value of the CCP in the context of the earlier request of, a CCP for a lesser amount. The CCP was issued for a value of Rs. 4 lakhs. Thereafter, another request was received by the CCI & E vide letter dated June 30, 1976, requesting that the value of the CCP be raised to Rs. 4,50,000. By this time, a photostat copy of the donor's letter was received from Brahamchari and according to this communication, only an aircraft was reportedly donated and that the value of the aircraft was 40,585 American Dollars. This request was examined in the office of the CCI & E and it was suggested by Deputy Chief Controller that the request for enhancement should be considered only after documentary evidence regarding CIF value was received. This suggestion was approved by the Joint Chief Controller of Imports & Exports, Shri N. C. Rastogi on July 16, 1976. After three days, Deputy Chief Controller again put up the file to the Joint Chief Controller for reconsideration on the ground that the difference in the value indicated in the donor's letter and that mentioned in the request for enhancement was only to the extent of a few thousand rupees for which documentary evidence could be called for and that, in the meantime, they need not hesitate to enhance the value of the CCP "in anticipation of evidence due to the high reputation of the Ashram". This view was endorsed by Shri N. C. Rastogi on July 19, 1976, with the following remarks :

"O.K. (If we have to go by the high reputation !)"

Before a revised CCP for Rs. 4,50,000 could be issued, Brahamchari made another request on July 19, 1976, stating that the value of the CCP be enhanced to Dollars 67,356 as on the basis of the invoices received by him, the CIF value was Dollars 67,356. Brahamchari met Shri N. C. Rastogi personally with this letter and thereafter a decision was taken by Shri Rastogi that the value of the CCP be enhanced to Dollars 67,356 (as against 40,585 shown in the letter of donation). In the matter of enhancement of the value of the CCP to Rs. 6,14,000, Shri Rastogi has stated that he got a message from the then Special Assistant to the Commerce Minister, Shri N. K. Singh, that Brahamchari was coming to see Rastogi, that the goods had come and the CCP should be enhanced and returned the same day". He said that he could not afford to disregard the instructions of Shri N. K. Singh, as his "writ ran throughout the Ministry"; and that even though Shri N. K. Singh was an Under Secretary, even senior officer in the Ministry, Joint Secretaries, Additional Secretaries, had to wait in his ante-chamber for meeting him. Shri N. K. Singh has admitted that he did ring up Shri Rastogi and tell him that the man from Swamiji's Ashram "has come for the enhancement of this licence, please have a look at this quickly". But he has stated that he did not tell Shri Rastogi that orders for enhancing the CCP should be passed on that day. Shri N. K. Singh has also admitted that he was "well aware of Swamiji's influence", that "Swami could perhaps go to any length really to try and trouble officers" and that "I was not wanting that he should do any damage to me".

10.22 An endorsement was made in the amended letter calling upon the applicant to furnish documentary evidence to the effect that accessories and spares had been donated free by the suppliers and that the total CIF value of the aircraft, accessories and spares was Dollars 67,356. From the records it appears that no documentary proof has been made available to the Ministry till now, though this was promised then by Brahamchari.

Acquisition of the Aircraft

10.23 Evidence has been placed before the Commission that the aircraft, which is claimed to have been received as a gift by Brahamchari for Aparna Ashram was, in fact, purchased by him. Brahamchari was out of India between April 27, 1976 and May 23, 1976. He reached USA on April 30, 1976. He returned to London on May 21, 1976. Information collected by the CBI through the Federal Bureau of Investigation, USA, establishes that Brahamchari paid the price of the aircraft in American Dollars. Shri Bedford D. Maule of Maule Aircraft Corporation has denied that he had donated the aircraft to Brahamchari. The relevant portion from the memorandum captioned "Shri Dharendra Brahamchari" dated October 25, 1977 of the United States Department of Justice—Federal Bureau of Investigation on the matter reads as under :—

"... At this point, Mr. Maule was specifically asked whether or not he had donated the aircraft as indicated by the letter dated May 6, 1976 and replied 'No, but that's the way he wanted it'."

Shri Billy Fallon, the Attorney of Shri Maule, when interviewed, stated that 'the aircraft had in fact been sold for a cash sum'. He has stated that "the purchaser had approximately Dollars 20,000 in cash with him and prior to delivery of the aircraft made a trip to New York City returning with the balance of the cash needed to complete the total payment". The statement made by Shri Maule and his Attorney are confirmed by Marion S. Ramey, Chief, Records Services Section of the FBI, Washington in a statement sworn before a Notary Public at Washington on December 15, 1977 and these have also been certified by the First Secretary (Consular), Embassy of India at Washington.

10.24 Evidence in the office of the DGCA also shows that the aircraft was, in fact, purchased. Shri V. N. Kapur, Director of Aeronautical Inspection in the Office of the DGCA received a telegram dated May 12, 1976 on May 14, 1976 and also its post copy, which reads as under :—

"Export Certificate of Airworthiness E137169 covering Maule M-5-235C, Serial No. 7013C has foreign markings VT, EEK for this flight, is being purchased by Aprana Ashram, Post Office Shuddha Mahadeva, New Delhi, India is being prepared."

Shri Kapur, who received this telegram, did not take any action though the telegram clearly stated that the aircraft was 'purchased' by Aparna Ashram.

Shri Kapur has stated that he did not attach much importance to the word 'purchased' because he interpreted it to mean 'acquired' and by the word 'acquired' he meant 'acquired without any price'. It, however, needs to be noted that Shri Kapur forwarded Brahamchhari's application to the Ministry of Tourism and Civil Aviation, with a noting that the import of the aircraft does not involve any foreign exchange. He, however, did not make any enquiries even when he came across evidence which could be interpreted as a suggestion to show that the aircraft was 'being purchased'. The contents of this telegram were not brought to the notice of anyone else. Shri Kapur has not given a satisfactory explanation to the Commission in this regard. If only Shri Kapur had passed on the information regarding the 'purchase' of the aircraft, figuring in the telegram, to the notice of the concerned authorities immediately after its receipt in the month of May 1976, Brahamchhari's version of the aircraft being a donation would soon have been exposed.

10.25 Brahamchhari addressed a letter to one Swaraj Paul of London stating that he required some aircraft wires and that "these are to be sent as donation to Aparna Ashram to whom the aircraft belongs". This proves that it was the *modus operandi* of Brahamchhari to import costly airticles from foreign countries camouflaged as gifts or donations.

Information to Enforcement Directorate

10.26 An informer appeared before Shri R. S. Seth, Enforcement Officer in the Zonal Office of the Enforcement Directorate at Delhi on April 28, 1976 and gave information written in Hindi under his signature and also furnished his address. His statement related to two persons, viz. (a) an absconder under the COFEPOSA Act and (b) Brahamchhari (whom he mentioned as Virender Brahamchhari) who, according to the informer, was going to smuggle out of India illegally acquired foreign currency. The Commission is not concerned with the inquiry in the first matter. On the second matter, the information given by the informer was as under :—

- (1) He informed the Enforcement Officer that Brahamchhari had acquired dollars worth Rs. 3.50 lakhs from three shops (whose names and addresses were also given) at Delhi through Shri Virendra Jain.
- (2) Shri Virendra Jain purchased these at Rs. 9.60 per dollar, but at what price these were sold to Brahamchhari was not known to the informer.
- (3) Swamiji was to leave for London within two or three days along with the dollars.
- (4) On behalf of Swamiji, Shri V. K. Jain had also arranged at Bombay for handing over of Rs. 10 lakhs worth of pound sterling to Brahamchhari at London (the name and telephone number of the person through whom this arrangement at Bombay was made, were also given).

Shri Seth recorded his own observations on the statement of the informer and submitted it to his senior officer, Shri A. P. Nanday, Chief Enforcement Officer, who took the file to the then Deputy Director (Shri A. M. Sinha). Shri Sinha did not consider it necessary to meet the informer. He asked Shri Nanday to make certain inquiries from the Reserve Bank and also about the Bombay telephone number. Shri Nanday's enquiries revealed that the Reserve Bank had issued a 'P' Form on April 14, 1976 to Brahamchhari in connection with his intended visit to New York. Shri Nanday also collected information concerning the name and address of the person whose Bombay telephone number had been mentioned by the informer in his note to Shri Seth. The information collected was handed over to Shri Sinha. Thereafter, Shri Sinha does not seem to have taken any further action. He discussed the matter with the Director, Enforcement, Shri S. B. Jain. According to Shri Jain, Shri Sinha mentioned to him over the telephone that some vague allegations were received against Shri Dhirendra Brahamchhari, that he was likely to carry some foreign exchange while in a delegation abroad, that this allegation was not capable of verification and therefore Shri Sinha was of the view that under these circumstances, he did not propose to order any search. Shri Jain agreed with this suggestion of Shri Sinha.

10.27 After this discussion, no action was taken by Shri Sinha. Shri Sinha recorded a note on May 12, 1976 in the file as under :—

"Discussed with D.E. on 28-4-76. No action."

Sd/- A. M. Sinha, 12-5-76."

In the month of May 1977, Shri Jain recorded a long note in the file dealing with the above matter. The relevant portion from Shri Jain's note dated May 21, 1977 reads as follows :—

"I am surprised at the manner of the noting by the Deputy Director. I do recollect that Shri Sinha had mentioned on telephone that some vague allegations had been received against Virender (Dhirender) Brahamchhari, but there was no specific information which could be verified. I had agreed with the Dy. Director that the Enforcement Directorate cannot take action on vague informations. Shri Sinha had, however, not brought to my notice that the informer had given a complaint in writing. Apart from this complaint, some information was given about Roop Kishore Gupta, an absconder, for whom the Enforcement Directorate has been on the look out for a long time. I do not know whether enquiries were made to find out his whereabouts. Some surveillance also should have been kept on V. K. Jain of.....; as also on the owner of telephone No..... at Bombay."

"Shri G. S. Maingi, Dy. Director, Delhi had some-time back, enquired whether I was aware of any information. I told him that Shri A. M. Sinha did casually mention to me on telephone about some vague information, but I had not seen the papers. I had also asked from Shri Sinha whether there was any file or

complaint, in writing, against Virender (Dhirender) Brahamchhari, when Shri Sinha had confirmed that there was no specific complaint, but some vague allegations were received against Virender (Dhirender) Brahamchhari."

10.28 S/Shri Seth and Nanday have stated that they were never asked by Shri Sinha to produce the informer before him. The informer had stayed on in the office of Shri Seth for a considerable length of time after he had furnished the information. According to Shri Seth, the identity of the informer was known to him and it would have been possible to bring him before Shri Sinha even later if he had been asked to do so. Shri Nanday has also testified that he was not asked by Shri Sinha to contact the informer and put him up before Shri Sinha. Shri Sinha's explanation is that he wanted to contact the informer in the afternoon after he had made some enquiries regarding the correctness of the information given by him. However, he has admitted that he did not give specific directions either to Shri Seth or to Shri Nanday to ensure that the informer be asked to appear before him in the evening. He has also not given any cogent reasons as to why he himself did not meet the informer and why he considered the information given by him as vague and unworkable. Shri Jain's defence is that he did not do anything but merely agreed with the suggestion of the Deputy Director and that he acted according to the normal procedure followed in such cases.

10.29 Regarding noting made on May 21, 1977, Shri Jain's explanation is as under :—

"When I saw the complaint and the notes dated 28th April, 1976, recorded by the Enforcement Officer, Shri R. S. Seth and the endorsement by the Deputy Director, Shri A. M. Sinha, dated 12th April, 1976, I was surprised at the wording and manner in which the Deputy Director had endorsed my conversation with him on the telephone."

"Discussed with D.E. on 28-4-1976. No action."

"Such cryptic endorsement, I felt is likely to be construed as direction that I stopped even investigation or verification from the complainant, let alone search or seizure of person or premises, and peremptorily directed that the matter should be treated as closed. I, therefore, recorded an explanatory note on 21st May, 1977 to keep the record straight."

10.30 Notices under rule 5(2)(a) of the Commissions of Inquiry (Central) Rules, 1972 and summons under section 8B of the Commissions of Inquiry Act, 1952 were issued to Shri A. M. Sinha, Ex-Deputy Director and Shri S. B. Jain, ex-Director, Enforcement, Delhi Zone. They filed written statements in response to notices under rule 5(2)(a) and also responded to the summons. Shri Jain's counsel contended that the Commission should have issued summons under section 8B to several other important officials of different Ministries who had each in his own field played a part which had been described by the Commission's counsel as of an extraordinary

nature and motivated by the fear of the influence wielded by Brahamchhari. It may be pointed out that it has not been possible to pin-point the responsibility on any one of the other officers concerned in the transactions involving Brahamchhari. But Shri Jain and Shri Sinha failed to take even the elementary steps and ignored the specific information furnished to them with regard to Brahamchhari's proposed trip to New York. The information supplied a number of details capable of verification; what is more, the informer had given his own name and address and was available for any further questioning and clarification by the senior officers. Yet no serious action was taken either by Shri Jain or by Shri Sinha personally or even through their juniors except getting a preliminary enquiry made about the 'P' form issued to Brahamchhari by the Reserve Bank of India, and concerning the telephone number at Bombay, about which information was furnished by the informer. The verification regarding the 'P' form disclosed that a 'P' form had been issued to Brahamchhari for an intended visit to New York as early as April 14, 1976. This fact coupled with the additional information furnished by the informer should have made these two officers realise that Brahamchhari was on a projected foreign trip in connection with which he might have arranged for some foreign exchange. Viewed in this context, the information of the informer should have been pursued. Surprisingly, one year after this transaction, when there was a change in the political set up, Shri Jain recorded a long note on May 21, 1977 pointing out certain omissions on the part of Shri Sinha in following up the information furnished to him by the informer in April 1976. There is nothing on record to indicate why or how this note came to be written. In the absence of any light on the circumstances in which this note was introduced one year after the file on the subject had been closed, it could be construed only as an attempt by Shri Jain to exonerate himself for his earlier lapse should the subject come up for scrutiny in the new dispensation.

10.31 Counsel for Shri Jain had also contested that the information was received on April 28, 1976; but Brahamchhari had left the country on the evening of April 27, 1976. This could ordinarily not be a valid excuse for not proceeding with action against Brahamchhari in response to the information furnished by the informer, for when the information was received neither of these officers knew that Brahamchhari had left the country.

10.32 Shri Sinha has admitted that he did not take any action as he felt the information to be "unworkable" and he had conveyed his views in the matter to Shri Jain who had similarly agreed with him. He also accepted the fact that he was overawed by the personality of Brahamchhari. The Commission is of the opinion that Shri Sinha has in not proceeding with the enquiries failed to discharge his responsibilities. Shri Jain's plea that he did not want to interfere with the discretion and judgement of Shri Sinha also cannot be accepted. It was stated on his behalf by his counsel that he could not issue instructions to the Deputy Director in matters regarding investigation. This statement does not appear to be factually correct. But even if it is, in this particular

case, considering the person involved and the nature of the illegal transaction alleged against Brahamchari, it was a matter for the judgement and direction of a higher functionary than that of a Deputy Director. It was a fit case for the exercise of Shri Jain's discretion and guidance. He has, however, attempted to shift the onus to the Deputy Director.

10.33 His conduct becomes yet more blameworthy in the light of the subsequent note that he recorded in May, 1977. Shri Jain has made a vain attempt to escape his own share of responsibility by seeking to place it at a junior level. He has made out that he got this note written after the successor to Shri Sinha, Shri Maingi, Deputy Director, Enforcement, had brought to his notice in May, 1977 the note recorded by Shri Sinha on May 12, 1976 about the decision taken on April 28, 1976. The story relating to the circumstances in which this file was reopened as given out by Shri Maingi and Shri Jain before the Commission, does not appear to be convincing. Since Shri Maingi himself was not a party to the decision taken on April 28, 1976, the only person who must have been interested in reopening the file could only be Shri Jain. The Commission has considered the elaborate explanation offered by Shri Jain in this regard and finds it difficult to accept his explanation.

Exemption from Payment of Customs Duty

10.34 Brahamchari not only obtained the CCP expeditiously but also secured an order of exemption from payment of Customs Duty on the import of the aircraft from the Ministry of Finance (Central Board of Excise and Customs). On July 1, 1976, he addressed a letter to the Secretary, Central Board of Excise and Customs, requesting for grant of exemption on the ground that Aparna Ashram was a charitable institution and its main aim was to provide higher training in Yoga to the students from the Universities of the World and to carry fundamental research in the field of Yoga and that the aircraft proposed to be imported with accessories, valued at Rs. 4,50,000 had been received as a donation. Along with this letter, he enclosed a copy of the letter dated May 6, 1976 from Shri B. D. Maule wherein it had been stated that Maule Aircraft Corporation had donated on May 6, 1976, one M-5-235C Aircraft of the total value of \$ 40,585.

10.35 Brahamchari also addressed a letter on July 12, 1976 to Shri Pranab Kumar Mukherjee, Minister for Revenue and Banking, and enclosed a copy of the letter to the Central Board of Excise and Customs for *ad hoc* exemption, and requested Shri Mukherjee to help him in getting the exemption as early as possible. On the same day, he wrote another letter to Shri R. K. Dhawan, the then Additional Private Secretary to Smt. Indira Gandhi, enclosing copies of letters to Shri Pranab Kumar Mukherjee and CBEC and requested Shri Dhawan "to do the needful and oblige". Shri Dhawan sent these papers to Shri Pranab Kumar Mukherjee with a personal note on July 12, 1976 and subsequently all these letters were sent to the Excise and Customs Department by Shri Mukherjee through Shri M. A. Rangaswamy, Member (Customs) of the said CBEC.

10.36 In the section of the CBEC dealing with the subject, a note was recorded that various requirements for the grant of exemption were not fulfilled and therefore exemption could not be granted. This view was endorsed by the Under Secretary, Shri A. K. Sarkar also. The Deputy Secretary, Shri V. K. Gupta, also initially agreed with this view, but on "reconsideration" decided to examine "the case in depth" and referred the request to the Education Ministry for comments. On July 27, 1976 the Education Ministry recorded a note stating that they had no information about the *locus standi* and/or activities of the Aparna Ashram.

10.37 Notings in the file and statements of the witnesses show that Shri Pranab Kumar Mukherjee, before proceeding on tour abroad, had mentioned to Shri Rangaswamy that the request of Brahamchari for the grant of exemption should be dealt with expeditiously. Shri K. Narasimhan in his statement has stated that Shri R. K. Dhawan spoke to him and enquired whether Shri Pranab Kumar Mukherjee had given any directions to him with regard to the representation made by Brahamchari for the grant of exemption and impressed on Shri Narasimhan the urgency in deciding the case as Brahamchari wanted to see the Prime Minister in that connection. Shri Dhawan has, however, in his statement denied any such conversation with Shri Narasimhan.

10.38 The matter was discussed by the Finance Secretary, Shri H. N. Ray, at a meeting where Member (Tariff) Shri K. Narasimhan, Member (Customs) Shri M. A. Rangaswamy and Deputy Secretary Shri V. K. Gupta were present. The Finance Secretary agreed to grant the exemption even though there was no precedent of this type in the past (there were cases where exemptions had been granted in certain cases of charitable institutions for the import of motor cars). At that time, there was also no precise information regarding the quantum of the Duty that would be payable on the import of the aircraft. The Finance Secretary, however, decided that the exemption may be granted and made the following note :—

"The duty to be exempted is stated at (A) prepage to be Rs. 36,000 while the maximum extent of duty is said to be Rs. 2,02,500 on another interpretation. In either case, for the reasons stated by M(T), it may be appropriate to grant an exemption to the Ashram on the importation of the plane which appears to have been donated to the Ashram by a foreign donor. May be shown to MRB for *post-facto* approval.

Sd/-
H. N. Ray 29.7"

10.39 On the same day, Telex message was sent to the Collector, Customs, Bombay, intimating him that an *ad hoc* exemption order had been passed. A formal order was also issued on the same day. But in issuing the exemption order, three conditions, as

suggested by Shri K. Narasimhan, Member (Tariff), as under were imposed :—

- (i) The aircraft will be used for transportation of the students as well as teachers from the plains to Ashram and back;
- (ii) The Yoga training will be imparted free of any charge;
- (iii) The aircraft will not be sold or otherwise disposed of without prior permission of the Government of India and without compliance of such conditions as may be imposed by the Government.

10.40 It appears that there had been undue haste at various levels in processing the application of Brahamchari for the grant of exemption from Customs Duty. In the process, full enquiries regarding the status of the Ashram were not made.

10.41 The following points stand out prominent in connection with this transaction :—

- (i) When the application of Brahamchari came up for consideration before the concerned authorities, there was no evidence that Aparna Ashram was a religious or charitable institution. Unless this was ensured, one of the basic conditions mentioned in Section 25(2) of the Customs Act that public interest is being served by the grant of exemption, cannot be said to have been complied with. The Education Ministry had stated that they had no knowledge about the *locus-standi* of the Ashram. The notings in the file show that the department was aware that till that time, there was no formal notification from the Central Board of Direct Taxes also recognising the Ashram as a charitable institution eligible to receive donation which would attract tax-free treatment in the income of the donors. But the request for exemption was processed on the assumption that the institution was a charitable institution. It has, however, been stated that since the Chief Controller of Imports & Exports had issued the CCP, there was ample justification for the Customs authorities to proceed on the assumption that the authority issuing the CCP has satisfied itself that the organisation is conducting and functioning in a manner beneficial to the community irrespective of distinction of caste or creed.
- (ii) No enquiries were made to ascertain how far the statements regarding imparting instructions in Yoga were true. Shri Narasimhan has stated that he thought of imposing three conditions regarding use of the aircraft in the absence of specific confirmation from any recognized authority about the status of the Aparna Ashram.
- (iii) There was an element of uncertainty even about the correct amount of duty payable for import of the aircraft. The Finance

Secretary, it appears, considered the exemption justified even if the duty was of the order of Rs. 2,02,500. He provided for a variation in the duty within the range of Rs. 36,000 to Rs. 2,02,500.

- (iv) By getting the correspondence relating to the request for exemption forwarded by Shri R. K. Dhawan, Additional Private Secretary to the then Prime Minister, Brahamchari seems to have succeeded in getting his case for exemption of Customs duty expedited.

Landing Facilities for Dharendra Brahamchari's Imported Aircraft at Mantalai and use of the Aircraft

10.42 On August 20, 1976, Brahamchari wrote to the Director General of Civil Aviation (DGCA), New Delhi, informing him that he has acquired a Maule Single Engine Aircraft and that this aircraft will be used for carrying Yoga students (Indian and foreigners) from Delhi to Aparna Ashram, Mantalai, and for this purpose it was proposed to make an airstrip at Mantalai. The Aerodrome Officer who was deputed to inspect the site and give his report, found that work relating to the construction of airstrip at Mantalai was already in progress, and levelling, dressing, cutting and filling up of earth was already complete on a portion measuring 150 metres. A copy of the Inspection Report of the Aerodrome Officer was forwarded to Brahamchari on September 18, 1976 and on the same day, the Air Headquarters was also requested to intimate their views in the matter. The Air Headquarters examined the request and on October 23, 1976, sent the following reply to the DGCA :

"It is regretted that request made by 'Aparna Ashram' to construct a private Airstrip at Mantalai is not (R) not agreed to."

The DGCA informed Brahamchari about the rejection of his request by the Air Headquarters on November 3, 1976.

10.43 On November 27, 1976, Brahamchari made a request to the DGCA to pursue the matter once again with the Air Headquarters. In this letter, he stated that if the matter was referred back to the Air Headquarters, they would accede to his request. The DGCA authorities did not find any fresh grounds on the strength of which the matter could be reconsidered. Therefore, it was decided that the request need not be forwarded to the Air Headquarters. However, no letter was issued to Brahamchari expressing inability of the DGCA to accede to his request, and Shri S. K. Bose, Deputy Director (Planning) in the Office of the DGCA, wrote to the Air Headquarters (Director of Intelligence) on December 20, 1976 for 'review' of the case and forwarded a copy of the letter dated November 27, 1976 from Brahamchari.

10.44 Shri S. K. Bose, Deputy Director (Planning) has stated that he did so on the basis of telephonic instructions from Shri G. R. Kathpalia, Deputy Director-General, Civil Aviation. The relevant

extract from Shri Bose's statement on this matter is :—

"It was a very routine matter and the orders I received on telephone was of the top brass of the Department. He is Number Two in the hierarchy. Being accordingly a routine matter of just forwarding a request for reconsideration, it was discreet on my part not to question and argue the whole thing. I just carried out the orders contrary to what I had decided earlier."

10.45 Shri Kathpalia, Deputy Director General, admitted that it would have been correct to forward the letter to the Air Headquarters. It was only "a question of referring the matter to the Air Headquarters again or sending Brahamchari saying "Sorry, No". Therefore, in his opinion, what the Dy. Director has done, was not wrong but he has further stated that "I don't remember and as the things go I would not have told him to do so".

10.46 The denial of Shri Kathpalia needs to be viewed in the context of certain facts given in his statements before the Commission and which bring out the following information :—

- (i) Shri Kathpalia met Brahamchari four or five times at the Flying Club and he also gave flying instructions to him for 10 minutes.
- (ii) Brahamchari casually mentioned to him that DGCA had rejected his request not even knowing that he (Kathpalia) was associated with the subject.
- (iii) Brahamchari also mentioned to Shri Kathpalia that he would like to make an appeal on the decision of the DGCA.
- (iv) Someone telephoned or came to his office to enquire about Brahamchari's request in this matter. Perhaps he was Capt. Gill or he could be Shri Chopra or Shri Saxena or someone either associated with Maruti or with Brahamchari himself.
- (v) Shri Kathpalia knew that Brahamchari owned a Maule M-5 Aircraft.
- (vi) He knew (not officially) that Brahamchari had enough land and he was in the process of levelling that ground.

10.47 When Brahamchari's request as forwarded by DGCA came to Air-Headquarters for the second time, it was again rejected by the Air Headquarters. On December 29, 1976, DGCA (Shri S. K. Bose) was informed that the Air Headquarters' decision on the subject remains unchanged. Subsequently, it appears that Air Commodore P. P. Singh, Director of Intelligence, re-examined the case and in his note dated December 30, 1976, marked to the Joint Secretary (Air) in the Ministry of Defence, informed him that on re-consideration of the various points, Air Headquarters' decision in the matter remains unchanged. On December 31, 1976, Air Commodore P. P. Singh

communicated the reasons also for not changing the earlier decision. The two reasons given were :—

- (a) The proposed site for the Airstrip is located merely 7 NM from a sensitive Radar Unit.
- (b) Mantalai is less than 15 NM from Udhampur airfield. Keeping in view the topography of the area, there is only one convenient direction of approach to this airfield (there are hills on the other three sides). Following this line of approach, aircraft of the "APARN ASHRAM" will have to fly very close to Udhampur thereby interfering with day-to-day operations from this airfield.

10.48 Subsequently, these decisions were found to have been changed. The circumstances under which Air Commodore P. P. Singh changed his views are contained in his earlier notings rejecting the request of Brahamchari for the landing facilities at Mantalai and one of recommending the request for the grant of facilities through another note which was recorded sometime in January 1977, but was dated December 30, 1976, are as follows :

On December 23, 1976, Brahamchari wrote to Shri Bansi Lal seeking his intervention in the matter personally and getting the approval of the Air Headquarters expedited for landing of aircraft at Mantalai. Shri Bansi Lal entrusted the job to his Joint Secretary, Shri S. K. Misra, who talked to Brahamchari on behalf of the Defence Minister. Thereafter, Shri Misra spoke to Shri Vinay Vyas, Joint Secretary (Air). Shri Vinay Vyas appears to have sent the noting recorded by Air Commodore P. P. Singh dated December 30, 1976 and December 31, 1976 to Shri Misra. These notings were brought to the notice of the Defence Minister, who advised Shri Misra to ascertain from the Air Headquarters the pre-conditions of which Air Force would give the permission for landing of aircraft at Mantalai. Shri Misra conveyed the suggestion of the Defence Minister to Air Commodore P. P. Singh through Shri Vinay Vyas. Air Commodore P. P. Singh informed him that the matter had been considered at a 'high level' and they were sending a revised proposal. In the revised communication to the Joint Secretary (Air), the Air Headquarters has stipulated six conditions subject to which permission for the Airstrip could be granted.

10.49 The Chief of the Air Staff, Air Marshal Moolgavkar has stated that the best solution would have been to reject the request and say "NO"; but "when the Ministry came back twice and this is now the Ministry not the DGCA * * * * * that does give a different light on the whole thing and * * * * * the impression naturally * * * * * we got, and I think correctly, that they were keen for such a step to be granted in which case who were we to say "NO" * * * * *". He has further stated that but for the insistence of the Ministry, this application would not have been granted.

10.50 The evidence before the Commission leads to the conclusion that the initial decision to reject the proposal twice by the Air Headquarters on valid grounds of security and sensitivity of the area was

subsequently changed in favour of granting the permission, though with some conditions attached, at the instance of the then Defence Minister, Shri Bansi Lal.

Use of the Aircraft

10.51 From the log book of the aircraft, it has been noticed that S/Shri Sanjay Gandhi and Rajiv Gandhi have been using the aircraft—Sanjay Gandhi more frequently—for going to various places. The aircraft was used by these persons for local flights also. Examination of the log book has revealed that out of the total 213 flights, 123 flights were local flights and these included 56 flights categorised as instructional/practice flights for the benefit of S/Shri Sanjay Gandhi, Rajiv Gandhi and Brahamchari as under:—

	Flights Undertaken		
	Instructional	Practice	Total
Rajiv Gandhi	8	7	15
Sanjay Gandhi	6	17	23
Dhirendra Brahamchari	14	4	18
			56

10.52 There were very few flights from Mantalai to Delhi and back. Sixty flights have been made to various other places and out of these, eighteen flights were to Rae Bareilly, and most of these flights were in the month of March, 1977 before the Lok Sabha elections. Shri Sanjay Gandhi was present in 73 flights and Rajiv Gandhi in 19 flights out of the total of 213.

10.53 While granting exemption from Customs Duty at the time of the import of the aircraft, the Department of Customs and Central excise had, *inter alia*, imposed two conditions:—

- (i) the aircraft will be used for transportation of the students as well as teachers from plains to Mantalai Ashram and back.
- (ii) The Yoga training will be imparted free of charge.

From the evidence on record, it appears that both these conditions have been violated.

10.54 The aircraft imported by Brahamchari is registered under Category 'A' of Rule 30 of Aircraft Rules 1937 and was issued with a Certificate of Airworthiness in the category of 'Private'. The owner of this aircraft has not been granted a non-schedule operators permit which is an essential requirement for operation of aircraft to carry passengers on hire. Brahamchari seems to have allowed Sanjay Gandhi to use the aircraft and for this he has been billed and it is said that recoveries were being made.

10.55 A letter of request was sent to Brahamchari to assist the Commission in this enquiry on February 9, 1978. Brahamchari did not appear in the proceedings before the Commission at the first stage. Thereafter,
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notice under Rule 5(2)(a) of the Commissions of Inquiry (Central) Rules, 1972 and summons under section 8B of the Commissions of Inquiry Act, 1952 were served on him for the hearings fixed for March 27th and 28th, 1978. Brahamchari has not filed any statement under rule 5(2)(a). He appeared in person pursuant to the summons under section 8B, but refused to take oath and give evidence in regard to the matter for which he was called to submit his version. Therefore, the Commission ordered his prosecutions under section 178 and 179 of the Indian Penal Code in the Court of the Chief Metropolitan Magistrate, Delhi.

10.56 From the evidence it is quite clear that Brahamchari had obtained the Customs Clearance Permit by misrepresenting that the aircraft was a donation, when it was in fact purchased by him. He also made misrepresentations before the officers in the Office of the Chief Controller of Imports and Exports in the matter of increase in the value of the CCP, which he got increased from Rs. 4,00,000 to Rs. 6,14,000 when there was no evidence to indicate that the aircraft and spares of the value of Rs. 6,14,000 were gifted to him.

10.57 He continued to make misrepresentations for claiming exemption from payment of customs duty on the import of the aircraft. One of the important considerations which weighed with the Customs authorities before the grant of exemption from the payment of customs duty was the charitable character of the Ashram. He had declared Aparna Ashram as a charitable institution whose main aim is to provide higher training in Yoga. As it transpires, the declaration made by Brahamchari in this regard, like the other declarations made by him earlier, was untrue. The Income Tax Department, in an order passed on 9-2-1978, has not treated Aparna Ashram as a charitable institution and assessment for the Assessment Year 1974-75 has been made in the status of Association of Persons. Some of the observations made in the Assessment Order are revealing. A few extracts from the directions of the Inspecting Assistant Commissioner of Income Tax under section 144B(4) of the I.T. Act 1961 in this regard are reproduced below:—

"The ITO has reported that a perusal of the books and documents seized by the CBI does not indicate any expenditure whatsoever incurred on payment of salaries of instructors, holding of yoga classes or any other activity in furtherance of the aims and objects of the Ashram. The assessee's representative also has not furnished any evidence in support of his contention that the Ashram was imparting training to a batch of about 50 people every year at Mantalai."

* * * *

"The complex at Mantalai, on which the alleged donations of Rs. 4,16,000 were spent, is a palatial building and is known as 'Tower Palace'. Its construction work is superb and marvellous and it has been lavishly furnished. An idea regarding the nature of the

construction work and the fittings and fixtures etc. can be had from the following description of the building appearing in the valuation report dated 10-4-1974 prepared by Shri Prabhat Chandra, an architect:—

“...The property consists of a unique building named “cave” constructed entirely of reinforced cement concrete and built, like a tree with the floors cantilevered from a central stem having the staircase. It is an ideal retreat...All verandahs, kitchen, bathrooms and staircase have marble floors...Coloured glazed tiles are fixed in all bathrooms except one which has marble even in the walls. 4 bathtubs, 10 telephone showers and coloured fitting throughout have been provided in the bathrooms...Fittings and fixtures throughout are of superior quality and workmanship of a high order by importing all skilled labour from Delhi. ...Cost was no consideration in achieving the best workmanship and finish...”

* * * *

“In the list of alleged donations received in kind, there are a number of luxury items like clothes and crockery, washing machine, cooking range, Japanese crockery and utensils, folding bed with mattresses, movie camera, cassettes, tape-recorder, telescope with stand, electric kettle, sleeping bag, hair drier, vibrator, sound equipment etc. Even in the books of the Ashram, expenses have been debited on the purchase of items like transistors fitted in vehicles, an Atlas Sports Cycle, suit length etc. Thus, the complex is equipped to provide a luxurious living and all sorts of comforts and amenities to the people staying there. It is indeed difficult to understand that such a costly and luxurious complex was meant to impart ‘Yoga’ education and training. In his note referred to above, the ITO has stated that the seized books and documents do not show any evidence of either any yoga disciple or any yoga instructor ever living at Mantalai. On the other hand, there is an instance of the Ashram having charged a sum of Rs. 11,584 from a foreigner, Mr. Gilbert Allen, for his stay in the Ashram on 11-6-1974, 27-8-1974, 26-9-1974, 11-10-1974 and 5-11-1974.

8.13 Looking to the description of the building as given in the Valuation Report of Shri Prabhat Chandra and the lavish way in which the building has been furnished and equipped with all sorts of articles of comforts and luxuries, it appears to me that the building at Mantalai was meant to be a “Holiday Home” for the rich and affluent class of people requiring rest and recreation.”

10.58 Brahamchari has fully exploited his association with the then Prime Minister's house in getting the aircraft imported by misrepresenting it as a gift. He has actively abetted the subversion of established administrative procedures.

10.59 One cannot but be struck by the ugly features disclosed in the handling of the case by the various functionaries. Since the Commission had not issued summons under Section 8B of the Act and notices under 5(2)(a) of the Rules to the officers except to two of the officers of the Enforcement Directorate, no direct comments on individual officers are being made. Even so, it is necessary to place on record that various officers of the Ministries showed extraordinary expedition in the processing of this case. For once, the proverbial red-tapism in the functioning of the bureaucrats was nowhere in evidence. While the expeditious functioning of the Government machinery is a desirable objective, expedition in this case was not at all motivated by considerations of efficiency, but on account of extraneous considerations. It is evident from the statements of witnesses before the Commission that almost all of them were aware of the standing of Brahamchari in relation to the Household of the then Prime Minister. Some of the witnesses frankly admitted that they apprehended harm to them should any one obstruct Brahamchari's proposals and projects. The apparently effortless manner in which Brahamchari was able to compel the officials of Ministry after Ministry stands out as a classic example of how an entire administrative system can be subverted by an errant individual if only he has the right contacts at the right places.

10.60 For Brahamchari, the entire exercise of securing the CCP, the enhancement of the value of the CCP, the Customs exemption, and the grant of landing facilities at Mantalai was effortless. It is improbable that the same facility, understanding and cooperation would have been forthcoming from the concerned Government functionaries to another ordinary citizen in similar circumstances and without the influence and contacts of Brahamchari. Selective application of rules and regulations like selective application of the law, results only in bringing the rules, the law and the administration into discredit, if not contempt. It gives the impression to the general run of the people that rules and laws are intended only for the law abiding citizens and for such of those who wield influence and authority, the rules do not matter and their projects are carried out.

10.61 This case throws into bold relief certain very important administrative issues. The Commission recommends that the Government may examine whether the administrative system and procedures can be secured in future from the onslaughts of individuals like Brahamchari. How is it that statutory provisions regarding the fulfilment of certain prerequisite conditions were completely ignored without even as much as the recording of a single reason by the officials concerned as to the circumstances warranting the deviation from the established administrative norms? While on the one hand, Brahamchari himself did not fail to exploit to the last point his association with important dignitaries of the era, a number

of officers at various levels were willing to give in without even the slightest show of resistance. There have been some very honourable exceptions even amongst officers who did not hesitate to write their views honestly and fearlessly even though it was contrary to the trend of the times. But they were either neutralised or pressurised to give in.

10.62 The Government has undoubtedly at the decision-making level a measure of discretion in each case according to its respective merit. But to protect against misuse of authority at the decision-making levels the corresponding responsibility to set out their reasons in writing in every case where a major or even a minor infraction of the procedures or rules are sought to be made, should be insisted upon. Such notes apart from being informative could also very well be used as guidelines for future decisions.

10.63 In the present case, CCP was issued without bringing on record the certificate of donation in original from the donor of the aircraft intended to be imported. This was in spite of the fact that this is one of the conditions precedent for the grant of the CCP. No one has recorded even a single line as to why and in what circumstances this important requirement was being dispensed with.

10.64 The sanction of the Inter-Departmental Committee for the acceptance of the proposal was also given the go-by though this again is a condition precedent which should have been fulfilled before the issue of the CCP. No reasons were recorded for dispensing with the sanction of the Inter-Departmental Committee, nor are any circumstances suggested which may have been compelling enough to permit the Chief Controller of Imports and Exports to dispense with this formality.

10.65 The value of the CCP originally issued was for a sum of Rs. 4,00,000. This value of the CCP was raised in three successive stages to the final value of Rs. 6,14,000, without a shred of evidence produced by Brahmchari in support of his request for the enhancement of the value of the CCP at any of these three stages. This was in the face of the certificate of donation of aircraft which showed the value of aircraft at American Dollars 40,585 (Rs. 3,70,000 approx.). There is no explanation from any of the witnesses either in the course of their depositions before the Commission or from the files that have come to the notice of the Commission for this unusual and extraordinary procedure which the Commission feels is a downright and unpardonable subversion of all the accepted norms and conventions of sound and healthy administration.

10.66 Though normally the responsibility for every decision taken in the Government rests with the highest functionary to whose level the concerned papers may have been referred, it was a sorry spectacle to see senior and important functionaries trying to shift the responsibility to lower functionaries. The Commission feels that such tendencies, if not clearly identified in the day-to-day working of the Government and suitably provided for, would be a standing invitation to the decision-making levels to stagnate. The Commission feels that the Government must provide for and protect the junior

officers from the shifting of responsibility by the seniors when things go wrong. If oral instructions are to be acted upon, it must conform to the extant instructions on the subject. The Commission understands that the Central Services Conduct Rules as also the All India Services Conduct Rules, and the Manual of Office Procedure provide for dealing with oral instructions. This salutary principle should not be confined only to the officers but should reach the different levels of Ministers up to the highest.

10.67 While withdrawing papers which had been released earlier as a part of an administrative transaction, definite rules and guidelines should be laid down as to how the paper earlier released can be withdrawn or replaced if at all. The circumstances warranting this withdrawal and replacement should form a part of the note in the files. In this connection, the replacement of the notes of Air Commodore P. P. Singh dated December 30, 1976 and December 31, 1976 by another note dated December 30, 1976 is relevant.

10.68 A register relating to opening of the new files maintained by the Deputy Director (Enforcement) of the Delhi Zone was produced before the Commission. The entry relevant to the case relating to the information furnished by the informer to the Enforcement Directorate Officers has been posted at a place, which is sequentially not the right one. There has been some overwriting also with regard to the dates. This has raised certain doubts in the mind of the Commission as to whether at crucial times the records of the Government were being tampered with by interested parties. This is an extremely serious matter which, if not looked into, can lead to a crisis of confidence in the credibility of the Government records.

10.69 The Commission recommends that in dealing with applications for exemption from Customs duty, well-defined guidelines should be laid down to enable the decision-making levels to reach the right and uniform conclusions in every case and to safeguard against abuses. The onus to prove that the institution, on behalf of which exemption is sought, is run in public interest, should be on the applicant himself. In cases where exemption has been given subject to certain conditions, the applicants should be required to furnish evidence periodically that the conditions imposed continue to be conformed to. The conditions on which gifts from foreigners may be received, even by institutions, should be clearly prescribed.

10.70 One of the features of this case which distressed the Commission most, is the manner in which the security considerations of the country were side-stepped to accommodate the demands of Brahmchari. In the Commission's view, this is an extremely serious matter on which the Government must set down its policy unequivocally. In the present case, by granting flight facilities to Brahmchari through a sensitive area and that too, for flying the foreigners, ostensibly in the larger public interest, conditions basic and fundamental to the security of an extremely sensitive area were being compromised. A thing like this should never be allowed to happen again.

CHAPTER XI

Arrests and Detentions in Delhi during Emergency—Issue of Detention Orders under MISA

11.1 1,012 persons were detained under MISA in Delhi during the period of emergency. This included 146 members of banned organisations, 180 persons belonging to different political parties, mainly of the non-CPI Opposition Group and 538 criminals including economic offenders. 51 Public servants were also detained under MISA during this period.

11.2 In the wake of the imposition of emergency on the night between June 25 and 26, large-scale arrests and detentions were ordered by the authorities in Delhi. Shri Sushil Kumar, District Magistrate, Delhi, has stated that a meeting was held at Raj Niwas in the evening of June 25, 1975, and in that meeting the Lt. Governor ordered the detention of political leaders of non-CPI Opposition parties under MISA on that very night. Shri Sushil Kumar objected to the proposal to detain prominent leaders under the MISA on the ground that it would not be possible to issue the detention orders within the limited time. The Inspector General of Police was not willing to arrange for the arrest of prominent leaders under the preventive sections of the Criminal Procedure Code. The Lt. Governor insisted that detentions must be made under the MISA only. Shri Sushil Kumar thereupon collected his Additional District Magistrates at his residence and started preparing the detention orders. He was subjected to considerable pressure from the Lt. Governor on the one hand and Shri R. K. Dhawan, Additional Private Secretary to the Prime Minister, on the other, to expedite the issue of detention orders. The Lt. Governor and Shri R. K. Dhawan started putting pressure on him to issue all the warrants urgently even without waiting for complete information to come from the Police authorities in respect of the persons proposed to be arrested since as they said they wanted all the arrests to be made simultaneously all over the Delhi territory to avoid the possibility of any one of them getting forewarned and evade detention. Shri Sushil Kumar, accompanied by Shri S. L. Arora, ADM (North), then went to the P.M.'s house. He met Shri R. K. Dhawan and explained to him the legal and procedural difficulties involved in the issue of MISA warrants which cause unavoidable delay. He suggested to Shri Dhawan that the best course would be to arrest the Opposition leaders under the preventive sections of the Criminal Procedure Code in the first instance and requested him to speak to the Lt. Governor about this. Shri R. K. Dhawan informed him that the Government had proclaimed emergency and ordered the arrest of the prominent Opposition leaders throughout the country. Shri Dhawan was critical of the delay that had already occurred and told Shri Sushil Kumar that he should hand over the warrants to the Police without any further delay and without insisting on the required formalities. Shri Sushil Kumar has stated that "Shri R. K. Dhawan's manner and tone in which he

kept on insisting about issue of warrants was aggressive and threatening. I certainly got a clear impression that any further resistance or delay on my part in issuing the warrants will be fraught with danger for me personally". In his deposition before the Commission Shri Sushil Kumar has stated that after talking to Shri R. K. Dhawan he came away with the impression that Shri R. K. Dhawan was speaking so very emphatically as he was speaking on behalf of the then Prime Minister. Shri Sushil Kumar was specifically questioned on this point and he stated that Shri R. K. Dhawan was speaking on behalf of the Prime Minister.

11.3 Shri S. L. Arora, who had accompanied Shri Sushil Kumar to the P.M.'s house, has stated that he had found Shri Sushil Kumar quite upset when he came out after meeting Shri Dhawan. Shri Sushil Kumar told him that it had been decided to issue MISA warrants immediately as emergency had been proclaimed.

11.4 Shri Sushil Kumar said that he had issued 67 detention orders on the night between June 25 and 26, 1975. This was done merely on the basis of a list of names of persons required to be detained under MISA furnished by Shri K. S. Bajwa, Supdt. of Police, C.I.D., Delhi Police. Shri Sushil Kumar had no material before him except this list at the time of the issue of detention orders under MISA. This was contrary to Section 3 of the Maintenance of Internal Security Act which requires that the detaining authority must satisfy himself on the basis of the materials placed before him that the detention of the individual is necessary to prevent the individual from acting in the manner set out in Section 3. Shri Sushil Kumar had to have recourse to this procedure which was illegal, because of pressure upon him.

11.5 Shri K. S. Bajwa, SP/CID, Delhi Police has stated that he had furnished a list of the names of 159 political activists to the District Magistrate on the night of June 25, 1975 for issuing detention orders under MISA. This was in pursuance of the directions given to him at 9 p.m. on June 25, 1975, by the Lt. Governor and the Inspector General of Police at Raj Niwas. The materials to prepare the grounds for the detention orders were sent by him to the District Superintendents of Police on the next day. Shri Bajwa's evidence establishes that the detaining authority, i.e. Shri Sushil Kumar, had no material before him at the time of the issue of detention orders and the orders were, therefore, illegal. Shri Bajwa has further stated that he was told by Shri P. S. Bhinder, DIG (Range) on June 26, 1975 that the CID of Delhi Police was being criticised for having supplied a small list of persons for detention whereas

a much larger number of persons had been detained in the neighbouring States. He had then told Shri Bhinder that they were also preparing fresh lists.

11.6 That the directions for detention of the Opposition leaders under MISA on the night between June 25 and 26, 1975, had originated from the Prime Minister herself is also borne out from the statement of Shri Bhawani Mal, Inspector General of Police. He has stated that he was summoned by Shri R. K. Dhawan around midnight between June 25 and 26, 1975. Shri Dhawan was critical of the delay in the arrest of the Opposition leaders and asked Shri Bhawani Mal "whether Delhi Police had developed cold feet in regard to the arrest of Opposition leaders". Shri Bhawani Mal assured him that the arrests would be carried out expeditiously after the warrants were received from the District Magistrate.

11.7 Shri Krishan Chand, Lt. Governor of Delhi, has stated that detentions under MISA were made on the night of June 25, 1975 in pursuance of the decision taken by Smt. Indira Gandhi in the meeting held at her residence early in the evening of June 25, 1975. He said that it was a political decision and the arrests were to be carried out during the course of the night as a follow up action on the promulgation of emergency. It was made clear to him that the leaders were to be detained under MISA as the use of preventive sections of the Criminal Procedure Code was likely to bring the courts in and land the administration into serious difficulties; and that this was again confirmed after Shri Sushil Kumar went and saw Shri Dhawan later in the night. Shri Krishan Chand has further stated that a list of persons proposed to be detained was being prepared in the Prime Minister's house since June 12, 1975 by Shri K. S. Bajwa, SP/CID, Special Branch. Shri Om Mehta, Minister of State in the Ministry of Home Affairs, and Shri R. K. Dhawan, Additional Private Secretary to the Prime Minister, were also associated with it. Names were being added to and dropped from the list and that this was a continuous process. Shri Ram Dhan's name was not there in the beginning but was added later. Shri K. D. Malavya's and Shri B. G. Verghese's names figured in the list at one stage but got deleted later in the final list. Shri Krishan Chand had seen the final list of 30 to 40 names at the PM's house; this included the names of prominent Opposition leaders only and it was decided to arrest them and their followers; the names of the followers were to be selected and furnished by Shri K. S. Bajwa. Shri Krishan Chand has stated that every single name in the list was seen and approved by Smt. Indira Gandhi. Detentions made on the night of June 25-26, 1975, on the basis of this list, were only on the satisfaction of the Prime Minister as Shri Sushil Kumar had no material before him for his subjective satisfaction. Referring to the helplessness of Shri Sushil Kumar who issued the orders on the satisfaction of the Prime Minister without himself ascertaining as to what this satisfaction really was, Shri Krishan Chand has stated that "somebody would be out of his wits to say this to the Prime Minister that I have to be satisfied on grounds". He has said that there was no satisfaction on their part except that these persons were the topmost political leaders.

11.8 The involvement of Smt. Indira Gandhi in detentions of the Opposition leaders made on June 25/26, 1975, is also proved from the note dated June 26, 1975, recorded by Shri G. V. K. Rao, Chief Secretary, Karnataka, in file No. HD-63-SW M-75. According to this note, Shri J. K. Kohli, Chief Secretary, Delhi had contacted Shri Rao on telephone at 7.30 a.m. on June 26, 1975 and requested that S/Shri L. K. Advani, A.B. Vajpayee, S.N. Mishra, Madhu Dandwate, Samar Guha and Subramaniam Swamy, who were then in Bangalore, may be arrested and that this had the concurrence of the Prime Minister. Shri G. V. K. Rao stated before the Commission that when he spoke to Shri S. L. Khurana, Union Home Secretary on telephone to get confirmation on Shri J. K. Kohli's message, Shri S. L. Khurana confirmed what Shri Kohli had conveyed and also told Shri Rao that the instructions conveyed by Shri Kohli had the approval of the Prime Minister. Shri M. L. Chandrasekhar, Commissioner of Police, Bangalore, has stated before the Commission that S/Shri L. K. Advani, A. B. Vajpayee, S. N. Mishra and Madhu Dandwate were detained under MISA on June 26, 1975 and he had issued orders under the directions of I.G.P. Karnataka. He had admitted that grounds for the detention of these leaders were collected from Delhi after the warrants had been issued and executed. Illegality of these detention orders issued on the instructions of the then Prime Minister is, therefore, beyond doubt.

11.9 At the time of the proclamation of emergency, apart from the Lt. Governor, the District Magistrate was the only officer empowered to issue detention order under MISA in the Union Territory of Delhi. Subsequently, the Additional District Magistrates, numbering five in all, were also specially empowered in this behalf vide Delhi Administration's letter No. F.2/69/75/Home (P.II), dated July 3, 1975. This increased the number of detaining authority from one to six besides the Lt. Governor in Delhi. The Maintenance of Internal Security Act itself was amended by inserting section 16A which dispensed with the requirement of communicating the grounds to the person detained for effectively dealing with the emergency and the reference of his case to the Advisory Board. As this amendment came into force on June 29, 1975, i.e. within five days of June 25, the operational effect of the amendment was to do away with the obligation to communicate the grounds of detention of all those who were detained on June 25 and the following days.

11.10 Shri Sushil Kumar has stated that the Lt. Governor had given instructions that whenever any request for detention of any individual came from the Police, the detention orders shall be issued without delay; that he was also told that whatever material was furnished by the Police should be considered adequate for issuing detention orders and "that may be treated as a matter of policy"; that on a complaint from Shri P. S. Bhinder, DIG (Range), that some ADMs were slow in issuing the detention orders, the Lt. Governor and his Secretary Shri Navin Chawla had asked him to expedite the issue of detention orders, and that the Lt. Governor had made it clear that he was going to confirm all

the detention orders and as such the detaining authorities were not required to bother much about the adequacy or veracity of the grounds of detention. Shri Sushil Kumar admitted before the Commission that the procedure followed in Delhi with regard to the detention orders under MISA was not in consonance with the "provisions of the law".

11.11 The evidence of S/Shri P. Ghosh, Ashok Pradhan, S. L. Arora, Virender Singh and Smt. Meenakshi Dutta Ghosh, all Additional District Magistrates and detaining authorities, is unanimous on the point that there was no question of subjective satisfaction by the detaining authorities with regard to the detention orders under MISA in Delhi during emergency. They have said that the proposals received from the Police were to be accepted unquestioningly and they were required to issue the detention orders promptly; and that they were not free agents in these matters and there was no scope for any discretion on their part. S/Shri P. Ghosh, G. C. Srivastava and Smt. Meenakshi Dutta Ghosh have further stated that they were called by Shri Navin Chawla sometime after the Additional District Magistrates had been empowered to issue detention orders and were told to issue as many orders as possible. Shri G. C. Srivastava has stated that he was asked by Shri Navin Chawla to issue as many as 100 to 150 orders per month. Shri Navin Chawla has denied giving instructions to the Additional District Magistrates on the point of number of detentions.

11.12 Shri Ashok Pradhan has stated that instructions had been received to restrict the detention orders to the persons included in the lists supplied by the SP/CID, Special Branch. The detaining authority, therefore, could not make any deviation from or add to such lists and they were reprimanded if there was any delay in the issue of detention orders on the recommendation of the police. Shri S. L. Arora has stated that he never refused to issue detention orders in cases referred to him by the Police. He, however, took the precaution of discussing the doubtful cases with the District Magistrate before issuing the order.

11.13 Shri Virender Singh has stated that he did not verify the grounds of detention as 'this would have amounted to inviting trouble for myself'. He has also mentioned that in the case of Dr. Karunesh Shukla, Reader in Gorakhpur University, he had issued the detention order even without having any territorial jurisdiction over him as these were the directions of the District Magistrate.

11.14 Shri P. Ghosh and Smt. Meenakshi Dutta Ghosh have stated that in a large number of cases, the grounds of detention were furnished to them after the issue and execution of the detention orders and that the grounds of detention were antedated to satisfy the requirement of the Act. Shri P. Ghosh has further stated that Shri Navin Chawla had summoned him along with Shri G. C. Srivastava and told them "to fabricate the grounds" whenever they found the grounds supplied by the Police to be inadequate. After a few days, he was again

summoned by Shri Navin Chawla and was told that the Lt. Governor "would not hesitate to put even senior IAS Officers behind the bars under MISA if he found them lacking in cooperation in the matter of MISA detentions". After this threat from Shri Navin Chawla, Shri Ghosh changed his attitude and started issuing the detention orders without caring for the adequacy of the grounds.

11.15 Shri Navin Chawla has denied that he conveyed any such threat to Shri Ghosh or asked the other ADMs to fabricate the grounds of detention. He has, however, admitted that he had called Shri Ghosh and Shri Srivastava and had spoken to them about the complaint of DIG (Range) that the ADMs were slow in issuing detention orders under MISA. This was done under the direction of the Lt. Governor.

11.16 The evidence of the District Superintendents of Police is unanimous on the point that the list of persons to be detained under MISA used to be supplied by Shri K. S. Bajwa, SP/CID, Special Branch. The flow of such lists continued throughout the emergency. The material for preparing the grounds of detention was also supplied by SP/CID, Special Branch. These lists and the materials furnished for preparing the grounds for detention were treated "as the last word on the subject and could not be questioned". Shri R. S. Sahaye has said that SP/CID, Special Branch, had become the Chief coordinator in the matters of arrests and detentions of political persons during the emergency and any delay on the part of the Superintendents of Police in taking action on the lists supplied by Shri Bajwa used to be frowned upon by DIG/IGP. He has further stated that "Shri Bajwa had an overriding authority over all the District Ss. P. and we naturally thought that we were accountable to him along with DIG(Range) and IGP". S/Shri R. K. Ohri, K. D. Nayyar and R. S. Sahaye, Ss. P. have also stated that they had received directions from Shri P. S. Bhinder, DIG (Range) to use MISA against ordinary criminals, commonly termed as bad characters.

11.17 Shri K. S. Bajwa has stated that he had furnished the names of 616 persons to the District Superintendents of Police for being detained under MISA. These names were contained in the lists which were supplied by him from time to time during the emergency. He contended that this was a legitimate function of the Special Branch.

11.18 Speaking of the position occupied by Shri Bajwa in regard to MISA detentions, Shri Bhawani Mal, IGP, has stated that the CID does perform imported functions in matters like detention of political leaders. In the case of Shri Bajwa, his closeness to the Lt. Governor might have created the impression that he was occupying a pivotal position.

11.19. Shri P. S. Bhinder, DIG (Range), has admitted that he had given the policy decision regarding the use of MISA against desperate criminals and habitual offenders.

11.20 An undesirable feature of detentions in Delhi during the emergency was the misused of the power under the preventive sections of the Criminal Procedure Code such as Sections 108 and 151, initially to secure the presence of the persons who were subsequently detained under MISA. Shri R. K. Ohri, SP (Central), has stated that the decision to use the powers available under Section 108/151 Cr. P. C. as a prelude to action under MISA, was taken on the night of June 25-26, 1975, at a meeting held at the residence of the IGP. Shri K. D. Nayyar, SP, New Delhi and Shri Rajendra Mohan, SP (South) have corroborated Shri Ohri, Shri P. S. Bhinder, DIG (Range) has also confirmed this and has admitted that this had led to registration of false cases to which he had been a party. Shri Bhinder had said that this was within the knowledge of the Inspector General also. Shri A. K. Paitandy, SDM, Punjabi Bagh, has stated that the arrest of Vaid Guru Dutt under section 108/151 Cr. P. C. was a prelude to his subsequent detention under MISA and the question of granting bail in such cases did not arise. Statement of Shri Paitandy shows that the SDMs were getting directions on such matters from the DM/ADMs which amounted to interference in the performance of their judicial duties. Shri B. K. Goswami, Deputy Commissioner, Delhi, has confirmed that false cases under section 108/151 Cr. P.C. were made out against some persons before their detention under MISA.

11.21 Shri Bhawani Mal, IGP, Delhi has denied that any such policy decision was taken on the night of June 25-26, 1975. He however, admits that 34 or 35 persons were ordered to be arrested under preventive provisions of law on that night and that "as those persons were arrested under section 108 Cr. P.C., so I can presume that the charges must have been trumped up". To an enquiry by the Commission whether the IGP was expected to ensure that the Police behaved and acted according to law, he admitted that "it was illegal and I would not try to defend the indefensible". He explained that this was done under the compulsions arising from the repeated instructions from the Government of India to maintain law and order 'at all costs' making full use of the powers of preventive arrest.

11.22 S/Shri R. K. Ohri, K. D. Nayyar, Prakash Singh, Rajendra Mohan and R. S. Sahaye, Superintendents of Police, have stated that they used to get oral or written directions from Shri P. S. Bhinder, DIG (Range) for the arrest of various persons. Invariably, these instructions used to be in the form of orders to "pick up" or "lift" certain persons. The Superintendents of Police were not supplied with any grounds for the arrest of these persons. It was left to them to collect the same from their own records or from the Special Branch.

11.23 Shri K. D. Nayyar, SP, New Delhi and Shri R. S. Sahaye, SP, North, have also stated that they used to get from Shri K. S. Bajwa specific directions for action against certain persons under the preventive sections of law. Shri K. D. Nayyar produced a d.o. letter dated April 13, 1976 from Shri K. S. Bajwa directing the arrest of one Shri Khem Raj

Nayyar s/o Shri Dhan Singh under section 107/151 Cr. P. C. and also saying that "it may kindly be ensured that he may not be released on bail". Sometimes Shri Bajwa would write to the Superintendents of Police to delete certain names from the list of persons sent for arrests. In the case of Shri Ram Saran Das, ex-President of West Shahdara Jan Sangh Mandal, he wrote to Shri Gurcharan Singh, SP(East) on July 16, 1976 to delete the individual's name from the list of persons required to be arrested because Shri Ram Saran Das had resigned from the party and supported the 21 point programme of the Prime Minister.

11.24 Shri K. S. Bajwa has admitted that he used to send directions to the Superintendents of Police for the arrest of certain persons under sections 107/108/151 Cr. P. C. although "no grounds were supplied in these cases". He has further stated that he had written a letter regarding the arrest of Shri Khem Raj Nayyar under section 107/151 Cr. P. C. under the verbal direction of the Lt. Governor. He could not explain under what authority he could write to the District Superintendents of Police to ensure that the persons concerned were not released on bail. He also could not explain the relevance of an individual's support or opposition to the 20 or 21 point programme of the then Prime Minister, to his arrest or detention.

11.25 Shri Bhinder has also admitted to have issued directions for arrest of certain persons and explained that he had done so under the directions of the Lt. Governor without ascertaining whether he had lawful authority to direct the Superintendents of Police to make arrests in this manner.

11.26 Another ugly feature of arrests and detentions in Delhi during emergency concerns the re-arrest of persons released on bail or otherwise by the Courts. Shri P. S. Bhinder, DIG (Range) wrote to Shri Sushil Kumar, District Magistrate, on July 30, 1975 to the effect that "those who are being booked under the provisions of the DIR are being enlarged on bail invariably by the Judicial Magistrates and Sessions Courts. Therefore, the very purpose of arresting the persons whose activities are prejudicial to public order is defeated if they are released in the above stated manner". At the same time, a system was also devised to meet this challenge posed by the Courts. Shri K. S. Bajwa has stated that the DIG (Range) called him on July 23, 1975 and directed him to collect from the Superintendent, Tihar Jail every evening the names of the persons appearing in the Court for the hearing of their bail applications on the following day. Pursuant to these directions of the DIG, the desired information was collected from the Superintendent of Jail every evening and passed on to the District Superintendents of Police who were asked to arrange to oppose their bail and "take suitable executive action", if they were released on bail. What is meant by "suitable executive action" is clear from a secret memo. dated July 24, 1975 from Shri P. S. Bhinder to the Superintendents of Police, Central, South, New Delhi and North Districts, saying "enclosed please find a list of persons

released on bail under DIR. These individuals be re-arrested forthwith and compliance sent".

11.27 Shri K. D. Nayyar, Supdt. of Police, New Delhi, has said that instructions for the re-arrest of persons released on bail were issued during the meetings held by the IGP/DIG(Range). Oral and written instructions were also received from the DIG (Range) a number of times in this regard. A majority of such persons were re-arrested outside the jail gates. He admitted that it amounted to contempt of court.

11.28 Shri R. K. Ohri, Supdt. of Police, Central, has corroborated Shri Nayyar's statement and also said that such instructions were also received from the Supdt. of Police, CID, Special Branch. In one of the meetings with DIG (Range) some officers had talked of grave impropriety of these measures but they were told that the Government wanted them "to act real tough" and if the Judicial Magistrates did not cooperate, some of them would even be transferred.

11.29 Shri S. K. Batra, Jail Superintendent, has also mentioned about the practice of arrest of persons released on bail. He cited the case of one Dr. Ram Lal who was arrested under section 108/151 Cr. P. C. He did not apply for bail for six months because of the fear of re-arrest.

11.30. Shri P. S. Bhinder has also stated that persons released on bail were arrested at jail gates and that this was being done under the directions of the Lt. Governor. Shri Bhawani Mal, IGP, however, says that this had happened behind his back and he did not know of it.

11.31 It also came to the notice of the Commission that some MISA warrants were deliberately kept unexecuted. In fact, directions were issued by Shri K. S. Bajwa and Shri P. S. Bhinder to District Superintendents of Police not to execute certain warrants. Shri R. K. Ohri has stated that in the course of a meeting held in the office of DIG (Range) he was given instructions not to arrest Shri R. S. Joshi, a suspected extremist who was evading a MISA warrant. Shri K. D. Nayyar has stated that he was directed by Shri Bajwa not to arrest Shri N. Vasudevan against whom a MISA warrant was pending execution. Shri Prakash Singh, Supdt. of Police, North, has referred to similar directions in respect of Shri Shiv Narain Goyal. Shri Rajendra Mohan, Supdt. of Police, South, has stated that he was told specifically by Shri P. S. Bhinder not to arrest one B. R. Chopra, a habitual offender and history sheeter against whom a MISA warrant was pending.

11.32 The case of one Shri Abdul Wahab is a glaring example. He was wanted under a MISA warrant pending against him since August 22, 1975. The grounds of detention described him as a "rabid communalist and active promoter of hatred between different communities". He was evading arrest and was detained on December 1, 1975. Shri Bajwa

wrote to Shri A. D. Sapra, Deputy Secretary (Home) on December 5, 1975 recommending the revocation of detention order in respect of Shri Abdul Wahab on the ground that he was found useful to the Administration in the clearance operations around Jama Masjid. The detention order was revoked on the basis of Shri Bajwa's recommendations on December 10, 1975 without consulting the ADM or the SP who were responsible for the issue of a detention order in respect of Shri Abdul Wahab. This case incidentally proves the important position occupied by Shri K. S. Bajwa in matters relating to arrests and detentions. Shri Bajwa has admitted that Shri Abdul Wahab was their "contact man and was useful to them".

11.33 Another example of this practice is found in a letter written by Shri P. S. Bhinder to Shri T. R. Kalia on November 16, 1976 informing him that MISA action against 7 persons shown in the letter had been dropped. Shri Kalia was asked to request the District Magistrate, Delhi, to cancel the warrants in respect of these persons. Record shows that the warrants were accordingly cancelled. In fact, order in respect of one of them, namely, Shri B. R. Chopra, was cancelled much earlier than others, since according to the statement of Shri S. L. Jain, Under Secretary, Shri Navin Chawla spoke to him on telephone and directed that the order must be issued forthwith. This appears to be the only case where the formal approval of the Lt. Governor on file was not taken before issuing the revocation order. It is evident from this that the decision whether an individual should be detained under MISA or not was not left to the detaining authorities appointed under Section 3 of MISA. It was decided by Shri Bhinder or by Shri Navin Chawla or Shri Bajwa. Even when detention orders had been issued, these three officers could effectively intervene even to the extent of cancelling the pending detention orders.

11.34 Section 14 of MISA read with section 21 of the General Clauses Act empowers the detaining authorities to revoke an order issued under MISA by the detaining authority. This power was taken away from the District Magistrate/Additional District Magistrates in Delhi through specific instructions issued from the office of the Lt. Governor under the signature of Shri Navin Chawla on July 4, 1975. The District Magistrate was told that no person arrested under MISA or DIR was to be released without the Lt. Governor's approval. As regards DIR cases, these instructions are absurd since the powers under the DIR lie within the jurisdiction of courts and the Lt. Governor had no say therein. This, however, brings out the casual attitude of the Delhi Administration which did not hesitate to issue arbitrary directions. These instructions had an adverse effect on MISA cases as these took away from the District Magistrate/Additional District Magistrates their discretion to cancel any order even after they thought that the detention of persons concerned was no longer necessary. The effect of these instructions was to ensure that whereas detentions could be ordered liberally, revocation of orders was not to be considered by the detaining authorities at all.

Confirmation, Review and Revocation of Detention Orders

11.35 According to Section 16A of the Maintenance of Internal Security Act the declaration made by an officer regarding the detention of a person has to be reviewed "by the State Government to which such officer is subordinate, within 15 days from the date of making the declaration and such declaration shall cease to have effect unless it is confirmed by the State Government after such a review within the said period of 15 days". The detention orders issued by the District Magistrate and Additional District Magistrates in Delhi were, therefore, required to be confirmed by the Lt. Governor, Delhi within the period of 15 days.

11.36 Smt. S. Chandra, Special Secretary (Home) and Shri T. R. Kalia, Deputy Secretary (Home) have stated that the Lt. Governor had made it clear to them that he would be confirming all the detention orders and they were, therefore, not required to scrutinise the detention orders or point out the insufficiency or vagueness of the grounds of detention. Smt. Chandra has stated that even when she tried to project in her notes some of the requirements of the MISA and the relevant instructions from the Government of India and pointed out the inherent weaknesses of some of the detention orders, she was overruled and the Lt. Governor confirmed these orders. She could not resist the Lt. Governor's orders because she felt that even the Chief Secretary was finding himself helpless in the matter. Shri J. K. Kohli, the Chief Secretary, Delhi, has also stated that the Lt. Governor had assured the officers at the processing level "that he would confirm all the detention orders and assume responsibility for the same. This led to a tendency on the part of the officers at the processing level to forward all the cases to L.G. without any scrutiny".

11.37 Though the Law Department was associated with the processing of detention orders at the time of confirmation and review, no legal scrutiny was, in fact, done. This is clear from the statements of Shri O.P. Sharma, Under Secretary (LA) and Shri Rajni Kant, Secretary (Law and Judicial) and Adviser, MISA. Shri O.P. Sharma has stated that he had in the initial stages carried out proper scrutiny of the detention orders and pointed out the legal defects. This was not liked by the Lt. Governor who overruled him and confirmed the detention orders. Shri O. P. Sharma felt demoralised and gave up the legal scrutiny and started signing the files in token of his having seen them. Shri Rajni Kant has stated that in a majority of cases there were no grounds at all and in others the grounds were flimsy and inadequate. He has summed up the mood of the times by saying that they had no doubt that the Government was determined to order the continued detention of persons whether there were proper and substantial grounds to do so or not. The initial attempts of the Law Department to scrutinise the grounds of detention and give legal advice were discouraged and they were made to realise the "futility of finding faults with detention orders".

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11.38 Smt. Chandra has stated that she had felt alarmed when the detenus started filing writ petitions challenging their detentions. Anticipating trouble from the courts which would examine the grounds of detention, she brought these difficulties to the notice of the Chief Secretary who advised her and the Law Secretary to go and see Shri P. N. Behl, Joint Secretary to the Prime Minister. Shri Behl gave them a patient hearing but nothing fruitful followed. Smt. Chandra has stated that subsequently Shri Navin Chawla called both of them to his room and told Shri Rajni Kant that he had saved him from losing his job as Shri Behl had not appreciated his viewpoint. On the point of legal scrutiny, Shri J. K. Kohli, Chief Secretary, has also stated that "some major legal flaws were brought to the notice of Raj Niwas but Raj Niwas still insisted on the proposals being supported".

11.39 The evidence of Shri J. K. Kohli, Chief Secretary, Smt. S. Chandra, Special Secretary (Home), Shri T. R. Kalia, Deputy Secretary (Home) and Shri Jagmohan, Deputy Secretary to the Lt. Governor, proves beyond doubt the practice of ante-dating the confirmation orders of the Lt. Governor whenever the papers were not received from the detaining authorities in time. Shri Kohli and Smt. Chandra have stated that the Lt. Governor had told them to put up cases received after the expiry of the statutory period of 15 days, showing them as having been received within time by ante-dating the records. Shri Jagmohan, Deputy Secretary to the Lt. Governor, has corroborated their statements and said that the MISA files were not "being diarised"; and this was done to facilitate the ante-dating of confirmation and review orders. He has stated that while sending such cases to the Lt. Governor, the Home Department would indicate the due dates on a separate slip of paper attached in the margin of the file. Since the Act does not provide for any extension of the period of 15 days for the purpose of confirmation, all such orders of detention which were confirmed by the Lt. Governor after the expiry of the period of 15 days by ante-dating the records became void in law. This, in effect, means that the Administration was a willing party to the illegalities.

11.40 The Maintenance of Internal Security Act provides for four-monthly review of each detention order to consider the necessity of continued detention of the detenu. The review of detention orders by the Advisory Board had already been done away with in respect of persons detained in connection with the emergency. The jurisdiction of law courts to entertain petitions for the issue of writs of *habeas corpus* etc. in regard to MISA detentions had also been taken away and the four-monthly review by the State Government was the only safeguard provided in the Act to protect the detenu from *mala fide* detention orders. Shri Sushil Kumar and all the ADMs have stated that the four-monthly review was "a mechanical exercise" and the detaining authorities were not expected to recommend the release of any detenu. Smt. Chandra has also described this review as a "mechanical exercise" and stated that even if detaining authorities had recommended release of a detenu,

the Lt. Governor did not accept such a recommendation and ordered his detention to be continued. Cases of Shri Kulwant Singh Manchanda and Shri Mam Chand have been cited in this connection. Despite the recommendations of the detaining authorities that these persons should be released, the Lt. Governor ordered their continued detention at the time of the four-monthly review. Shri J. K. Kohli has also stated that their understanding of the policy of the Lt. Governor was that once a person had been detained, he was to continue under detention.

11.41 A review committee under the chairmanship of the Lt. Governor, Delhi, and with the Chief Secretary, the Inspector General of Police, the Deputy Commissioner, DIG (Range), Shri Vijay Karan, Joint Deputy Director, Intelligence Bureau, the Special Secretary (Home) and Supdt. of Police (CID), Special Branch, as members, was constituted in accordance with the instructions received from the Government of India in October, 1975. This Committee was to consider the cases of release of MISA detainees. The Government of India asked the Committee to review the cases of all those from whom or on whose behalf representations were received for their release. As per the guidelines given by the Ministry of Home Affairs in their letter, the Committee was to consider the representations on the ground that the detainees concerned had severed their connections with political activities, or they regretted their previous activities and were willing to execute a bond for their good behaviour in future or their initial arrest was on mistaken facts. Smt. Chandra has stated that the Lt. Governor had made Shri K. S. Bajwa the Member-Secretary of this Committee. No formal orders to this effect were, however, issued. All the cases to be considered by the Committee were sent to Shri Bajwa who used to put up his recommendations before the Committee. It is clear from the evidence of Shri Vijay Karan, Joint Deputy Director, I.B. that this Committee used to meet without any formal agenda and no formal proceedings were drawn up. Cases were not considered individually. Smt. Chandra has stated that before the formal meeting of the Committee, Shri Navin Chawla used to call a meeting of the Sub-Committee whose members were Shri K. S. Bajwa, Shri Navin Chawla and Smt. S. Chandra. This Sub-Committee discussed the cases to be recommended to the Review Committee. Discussions were mainly between Shri Bajwa and Shri Navin Chawla and she only furnished the information as asked for on detainees. Shri Sushil Kumar, Chief Secretary, has stated that the Review Committee went largely by the reports from the Supdt. of Police, CID, Special Branch so far as the political detainees were concerned. Shri B.K. Goswami and Shri Vijay Karan have stated that Shri Bajwa and the Lt. Governor used to be the main participants in the deliberations with hardly any participation from other members. Shri B. K. Goswami has also said that "the impression one got was that the decision to release certain persons had already been taken and the meeting was a mere formality". Shri Vijay Karan has stated that he had pointed out in one of the meetings that he should be supplied in advance a list of persons whose cases were to be considered so that he could come prepared for the meeting; but this was not done. Smt. Chandra

has stated that the Review Committee went entirely by what Shri K. S. Bajwa used to say and his recommendations were accepted mechanically by the Committee. The Committee used to meet for an hour or an hour and a half and consider 25—30 cases. She had tried to bring to the notice of the Lt. Governor the directions from the Ministry of Home Affairs regarding the release of certain categories of detainees like textile inspectors, travel agents, corrupt Government servants, etc. but the Lt. Governor would ignore this and tell her that it was his responsibility and she should record on the file that the cases of such persons had been considered but rejected. Shri Bajwa has also admitted that in a majority of cases his recommendations were accepted. Smt. Chandra used to record recommendations of the Committee and pursue the matter with the Ministry of Home Affairs for the release of those persons. On examination, one finds that the main, if not the only, criterion for the recommendations was the severance of an individual's relations from his political party followed by declaration of his support to the 20 point programme of the then Prime Minister. Smt. Chandra and Shri Sushil Kumar have stated that recommendations were based, more or less, on this consideration. The record shows that a special sub-committee to interrogate certain persons who had tendered apology for their past political activities was constituted as a result of a decision taken in one of the meetings of the Committee. This sub-committee included a psychiatrist also. The purpose of this interrogation, conducted in jail, was to ascertain the genuineness of the political conversion of these persons. Smt. Chandra has stated that this special sub-committee was Shri Navin Chawla's idea. Since no rational explanation was given by the concerned witnesses for constituting such a sub-committee, one wonders if this was an attempt at political indoctrination of the opponents of the emergency regime.

11.42 The proceedings also show that some detainees were released after some local Congress leaders like Shri O.P. Behl, Ch. Hira Singh and Shri Dalip Singh etc. stood guarantee for their good behaviour in future. Shri Bajwa has admitted to have consulted these persons in pursuance of the decision taken by the Committee.

11.43 Shri Navin Chawla was not one of the members of the Review Committee, but the evidence of Shri B. K. Goswami, Shri Vijay Karan and Smt. S. Chandra shows that he used to attend these meetings regularly and take part in the deliberations. Smt. Chandra had recorded the proceedings of the meeting of the Review Committee held on November 15/16, 1976, which had recommended the release of 26 detainees. When this file was sent to the Lt. Governor for his approval, it was returned by Shri Navin Chawla who recorded: 'the name of Shri Trilok Chand Tyagi be deleted for the present. This issues with the L.G.'s concurrence'. The file does not appear to have been put up to the Lt. Governor. The Lt. Governor has denied having made any such change in the recommendations of the Review Committee. Thus, the detention of Shri Trilok Chand Tyagi was continued against the recommendations of the Review Committee. Smt. Chandra has stated

that Shri Navin Chawla and Shri Bajwa were at the helm of affairs as far as the MISA detention cases were concerned and whatever they decided had the Lt. Governor's approval. The Lt. Governor had made amply clear to the officials of the Home Department that his Secretary had full authority and the decisions conveyed by the Secretary were his decisions. The Lt. Governor never overruled Shri Navin Chawla and whatever Shri Chawla wanted was done. Shri Sushil Kumar has confirmed the immense confidence of the Lt. Governor that Shri Navin Chawla enjoyed.

11.44 Shri Navin Chawla has admitted that he had attended some meetings of the Screening Committee under the orders of the Lt. Governor to assist him. He has also said that the Screening Committee was a formality and its procedure was perfunctory. Release of detainees was recommended on purely personal considerations of people in position like Shri Om Mehta or the Home Secretary or the Lt. Governor.

11.45 Shri Krishan Chand has admitted that the MISA cases were not scrutinised in detail and he used to confirm the orders on the basis of the Police reports. He had confirmed all the orders except two or three. He said that he was acting in accordance with the policy of the Government of India which was in favour of large scale detentions of the Opposition elements and that he had carried out what he thought were the orders of the Government. He denied having directed the ante-dating of records to facilitate the confirmation of detention orders after the expiry of the statutory period of 15 days. He was working under the directions of Shri Om Mehta who was looking after Delhi and taking personal interest in these matters. Sometimes Shri Navin Chawla and Shri Bhinder would also bring information directly from the P.M.'s house and action was taken. He admitted that in matters of release, the cases were not considered on judicial norms. He admitted that he was instrumental in putting people behind the bars as ultimately all detention orders were confirmed under his authority. He said that he had played a very negative role by acting mechanically in these important matters. He agreed with Smt. Chandra's statement regarding the powers enjoyed by Shri Navin Chawla and Shri K. S. Bajwa in matters of detention and said that though no detention orders were issued as such by these officers, whatever they said was accepted.

Treatment in Jails

11.46 Against the available accommodation for 1273 prisoners, the Central Jail Tihar in Delhi already had 2669 prisoners and under-trials on June 26, 1975. Shri R. N. Sharma, Superintendent, Jail, has stated that 500 political detainees had been admitted to Tihar Jail by June 30, 1975. There was a heavy rush of political detainees in the Tihar jail immediately after the emergency was proclaimed and the jail staff had to double the number of criminal prisoners in each barrack. Shri R. N. Sharma was asked to open a camp jail despite his protest that it was not safe and suitable. After some prisoners managed to escape from the jail on the night of July 12-13, 1975,

the camp jail was closed and the prisoners were accommodated in the workshop shed, which was meant for work during day time. To accommodate some detainees, Ward No. 2, meant for the education of adolescent prisoners, was also used by suspending the education programme. The DIG (Prisons), IG (Prisons) and DM, all knew that the number of prisoners in Tihar jail was much beyond its authorised strength and the admissions were still proceeding apace. The number of inmates of the jail rose to 4250 in March, 1976 when a serious jail break incident occurred and Shri Sharma was suspended. He also stated that Ward No. 17 is very close to an old brick kiln where the entire refuse of the jail is dumped and which is a source of constant stink.

11.47 Shri S. K. Batra who took over as Jail Superintendent from Shri R. N. Sharma in March, 1976 has corroborated Shri R. N. Sharma and said that the average number in Tihar jail during his tenure was around 3500 and had at times gone upto 4200. Though the jail could accommodate 1273 inmates, the water and sewer services were sufficient for 750 persons only. Tihar jail is constructed on a low-lying land and the gradient of storm-water drains is defective inasmuch as it brings the water in, rather than draining it out. The water lines had corroded and were leaking; all the water tanks, W.Cs, pans and cisterns were broken and no major repairs had been carried out during the last 18 years. In order to meet the heavy rush of admissions, the jail used to be kept open till as late as 11.30 p.m. Shri Batra has said that detainees were invariably hand-cuffed while they were taken to hospital or courts. The officials of the Intelligence Bureau, Central Bureau of Investigation and Delhi Police were allowed to freely visit the jail and meet the detainees without any permission from the Jail authorities and that this was being done under the orders of Shri Navin Chawla. Smt. Rukhsana Sultana was also allowed free access to the prisoners arrested in connection with the Turkman Gate incidents. Shri Navin Chawla had directed Shri Batra to allow Smt. Sultana to meet the prisoners freely and had in fact sent her escorted by an officer. Smt. Sultana had met some Muslims arrested in Turkman Gate area and had got some of them released also. Though Shri Navin Chawla had no position in the jail hierarchy, he was exercising extra statutory control in jail matters and sending instructions on all matters including the treatment of particular detainees. Shri Chawla had suggested the construction of some Cells with asbestos roofs to 'bake' certain persons. A proposal to this effect was also processed but given up eventually due to certain technical reasons. As stated by Shri S. K. Batra, Shri Navin Chawla had on one occasion suggested that certain troublesome detainees should be kept with the lunatics. Shri Batra appears to have got out of this direction by keeping the detainees named by Shri Chawla in this context in a separate cell.

11.48 Shri Navin Chawla has admitted that after the jail break in March, 1976, the Lt. Governor had entrusted to him the responsibility of looking after the affairs of the Tihar Jail and that he visited the jail as often as he felt it was necessary to improve

the security measures. He admitted that he had no special qualifications for this kind of job. He admitted to have directed Shri Batra to allow Smt. Sultana to visit the jail and said that this was done under the directions of the Lt. Governor whom Smt. Rukhsana Sultana used to meet frequently during those days. He denied having suggested the construction of some Cells with asbestos sheets as stated by Shri Batra. He also denied having directed Shri S. K. Batra to keep certain detainees with the lunatics. He, however, said that Shri Batra had complained about three detainees who were very troublesome and the Lt. Governor had ordered that they be kept in isolation and he had conveyed the same to Shri Batra.

11.49 Transfer of MISA detainees presents an excess of its own kind. 200 MISA detainees including some prominent Opposition leaders were transferred from Tihar Jail to jails outside Delhi during the emergency. Shri S. K. Batra has stated that the transfer of such persons involved great discomfort to the detainees because of the additional inconvenience and expense it involved to their relatives. He said that such transfers are always considered as penal measures in Jail Administration. Both Shri S. K. Batra and Shri R. N. Sharma have denied having made any proposals for the transfer of the MISA detainees. Shri R. N. Sharma had in fact suggested the transfer of the ordinary prisoners to reduce the congestion in Tihar Jail but it does not seem to have been accepted. Shri S. K. Batra has stated that many of the political detainees who had filed Petitions in the High Courts were transferred from Delhi during the period their petitions were being processed in the High Court. Shri A. D. Sapra, Deputy Secretary (Home) who was also the DIG (Prisons), has stated that the names of the detainees and places of their transfer were decided at "higher level" and the job of the Home Department was only to process the cases. Smt. Chandra, Special Secretary (Home) has stated that some of the transfers were made because of "awkward situations caused by Writs filed by the detainees". The transfers of the detainees were decided by the Lt. Governor who brooked no delay in their implementation. Shri J. K. Kohli, Chief Secretary, has also stated that he was not consulted in matters of transfers of MISA detainees. These decisions were taken by the Lt. Governor and the officials of the Home Department used to get very short notice for making administrative arrangements for the transfer of the detainees concerned. The orders were informally communicated from Raj Niwas over telephone. Shri Kohli has also confirmed that some persons who had filed Writs, were transferred outside Delhi.

11.50 Shri Krishan Chand has denied having made Shri Navin Chawla responsible for Tihar Jail in any manner as he already had a Jail Superintendent and the I.G. (Prisons) to look after the jail. He denied having given any instructions for the isolation of certain detainees, as stated by Shri Navin Chawla. He admitted that he knew that Tihar Jail was overcrowded and this fact was known to everybody in the Government. Discussions were going on to construct another building but no concrete steps were taken. About the transfer of MISA detainees, he said that the conditions in Tihar Jail were not satisfactory

and some detainees were sent to other places where they could lead a more comfortable life.

11.51 Shri Kuldip Nayyar, Smt. Gayatri Devi and Smt. Vijaya Raje Scindia have given a graphic account of the dismal living conditions in Tihar Jail during the emergency. They have pointed out that the jail was choked with people; sanitary arrangements were practically non-existent; there was a general shortage of water; standard of cleanliness was pitifully low; quality of food was poor; medical arrangements were inadequate and their cumulative effect was that the whole atmosphere in the jail was oppressive. Shri Kuldip Nayyar could not understand why a simple item like pillow could not be provided to the detainees under the rules. He has stated that 'dal' was the staple food and vegetables were supplied very rarely; and milk was just sufficient for the morning and evening tea. One could, however, get whatever one wanted by greasing the palms of some of the members of the staff who were always waiting to exploit such opportunities. He had told the Deputy Commissioner that one could understand the decision of the authorities to detain a person but one could not follow why the conditions in jail are deliberately kept so bad. Shri Nayyar was informed by some of the jail officials that they were under orders to make the detainees' life really miserable. Ordinary prisoners enjoyed certain facilities such as being able to walk around their cells which was denied to the detainees. Evidence of Smt. Gayatri Devi also shows that the effect of such living conditions was to wreck the detainees physically and mentally and force them to write humiliating letters of apology which were entertained by the authorities.

11.52 The Commission would like to point out that political detention is to be basically preventive in character and not punitive. This aspect seems to have been conveniently ignored during the emergency.

The manner in which applications for Parole were dealt with

11.53 Section 15 of the Maintenance of Internal Security Act provides for the temporary release of MISA detainees for any specific period with or without conditions. In respect of MISA detainees of Delhi, the power to grant temporary release on parole was vested in the Lt. Governor.

11.54 Shri J. K. Kohli, Chief Secretary, and Smt. S. Chandra, Special Secretary (Home) have stated that the Lt. Governor had given no guidelines for processing the parole cases of MISA detainees in the Home Department. Since no policy on the subject was laid down, officers at the processing levels dealt with parole cases in the light of the Lt. Governor's notings and decisions on individual files and his specific oral instructions. The general policy of the Administration was that the grant of parole was to be rare. The officials of the Home Department were told to have the utmost concern for "security considerations". Parole was to be given in unavoidable cases only and for the shortest possible duration. Illness of a detainee was not considered an adequate ground for the grant of parole by the Lt. Governor

as, according to him, the Delhi Administration could provide much better medical treatment to the detainees than they would have otherwise got. Shri J. K. Kohli has further stated that whereas requests from some detainees were treated rather harshly, there were others who were given parole liberally. Smt. Chandra has stated that in certain cases they used to get instructions on telephone from the Raj Niwas to put up the parole cases of certain detainees recommending their release for a specified period as indicated by Raj Niwas. She has stated that at times they had to put up such cases even without any formal applications from the detainees concerned and without adequate justification for the recommendations they were asked to make. They were also told not to give any indication in their notings that those recommendations were being made under instructions from the Lt. Governor. If they ever made any such noting, the files were sent back to them and they were directed to put up the cases afresh in the desired manner. In cases in which the Lt. Governor was interested initially in granting parole and subsequently in extending it, the Home Department had to ensure that the papers were processed in time and properly lest the Lt. Governor would be annoyed.

11.55 That no uniform policy was followed by Delhi Administration in matters relating to grant of parole to MISA detainees will become clear from the following :

(i) Smt. Kusum Gupta, wife of Shri Kanwar Lal Gupta, a prominent BJS leader, had applied for release of her husband on parole on grounds of the marriage of his nieces and also because of his illness in February 1976. This was rejected by the Lt. Governor. Specific advice from the Ministry of Home Affairs in this regard was also rejected by the Lt. Governor. The Ministry wrote again on March 7, 1976 and requested the Delhi Administration to release Shri K. L. Gupta on parole for 15 days on "purely compassionate grounds". This was also rejected by the Lt. Governor on March 15, 1976. Shri Gupta filed a petition for a writ in the Delhi High Court and the Court advised the Delhi Administration to release Shri Gupta on parole or shift him to home for treatment. The Lt. Governor took it as undue interference by the Court and recorded on the file that such attitude of the High Court will lead to an "unseemly confrontation". Shri C. V. Narasimhan, Joint Secretary, Ministry of Home Affairs, wrote a d.o. letter to Smt. S. Chandra, Special Secretary (Home), Delhi Administration on April 22, 1976, saying that the Home Minister had desired him to advise the Delhi Administration to release Shri Gupta on parole for the period from April 25 to May 3, 1976, on compassionate grounds. The file shows that Shri C. V. Narasimhan had rung up Smt. Chandra on April 26, 1976 and asked her to withhold action on his letter. Smt. Chandra has stated that Shri Navin Chawla had told her that she would be recommending to the Lt. Governor the case of Shri Gupta at her own risk and that he would see that the instructions from the Ministry were withdrawn. Smt. Chandra has stated that she was told by Shri Navin Chawla that Shri K. L. Gupta and Shri Brahmanand Reddy had common interests and that the Home Minister was aiding Shri Gupta in securing parole contrary to the wishes of the

Prime Minister and against the interests of security. Shri K. L. Gupta was ultimately released on parole on June 4, 1976 under the direction of Shri Om Mehta. The parole period was also extended at the instance of Shri Om Mehta upto September 3, 1976. The next extension for one month was ordered by the Ministry under the direction of Shri Brahmanand Reddy. The Lt. Governor discussed the case with Shri Om Mehta and granted 15 days' extension only. Shri Krishan Chand has stated that in the case of Shri K.L. Gupta he was getting conflicting orders from the Ministry of Home Affairs and Shri Om Mehta. He rejected the advice of the Ministry as he learnt from Shri Om Mehta that the Prime Minister did not wish Shri Gupta to be released. He added that the Prime Minister was furious with him when he finally released Shri Gupta and "The hell, I got, only I know".

(ii) Shri R. Prasad, ex-Collector (Customs) was detained in Delhi on July 30, 1976 on account of his Anand-Marg activities and was transferred to Bareilly. Shri Pardeep Prasad, the detainee's son, applied for the grant of parole to his father on medical grounds on July 13, 1976. His application also referred to the illness of detainee's mother who was over 80 and was pining for her son. Though the illness of Shri Prasad was confirmed by the medical report, the Lt. Governor turned down the request for parole on August 21, 1976. The Ministry of Home Affairs, after considering the case at the level of the MMHA and getting clearance from Director, C.B.I. and PM's Secretariat, wrote to Delhi Administration on September 6, 1976, and advised them to release Shri Prasad for two months. The request was again rejected by the Lt. Governor on September 28, 1976. Smt. Dwarka Prasad, detainee's mother, sent another application on November 23, 1976 for the release of her son on medical grounds. The Jail Doctor in his report described Shri Prasad as 'an old risk case' and confirmed that he was an old case of myocardial infraction. Still the Lt. Governor rejected the case on December 27, 1976. Smt. Sarla Prasad, detainee's wife, sent another request for the release of her husband this time on the ground of illness of their son, who had suffered a "severe heart attack" and was admitted in the Intensive Care Unit of the Mool Chand Hospital. It evoked no response from the Administration until she sent a telegram on January 6, 1977 saying that her son was critically ill, when the order itself was revoked. In the context of the earlier attitude of the Lt. Governor, it would appear that his generous gesture in revoking the order of detention itself was more in panic than out of any consideration for the unhappy family.

(iii) Shri Hans Raj Gupta was detained on July 23, 1975. His request for release on parole on medical grounds duly supported by the report of the Jail Doctor was rejected after 45 days by the Lt. Governor who ordered his admission to the All India Institute of Medical Sciences instead. Another application from Shri Gupta's son for parole to his father met with the same fate though Dr. Padmawati had also recommended his temporary release in view of his age and multiple disabilities.

(iv) Shri Ram Dhan, a Congress (R) leader was detained on June 26, 1975. He applied for parole on

October 4, 1976 to join his family at Azamgarh where his eldest brother had suddenly expired, on September 23, 1976. Shri Sushil Kumar, Chief Secretary, recommended the case for grant of parole for one week but it was turned down by the Lt. Governor on October 13, 1976 on the ground that the detenu has "pronounced agitational background and his activities impinge on the security of the State".

(v) Dr. J. K. Sharma, Head of the Department of Philosophy, Hans Raj College, Delhi University who was detained along with Shri Bhim Sen Sachar, had been transferred from Tihar to Ambala Jail. His request for parole on the ground of the death of his father-in-law evoked the generous response from the Delhi Administration granting him four hours parole from 12.00 noon to 4.00 p.m. Needless to say that the detenu could not avail of this facility as he was in Ambala Jail and the death of his father-in-law took place in Delhi. Later when his brother-in-law died at Delhi he had applied for parole which was granted to him for 24 hours from 7.00 a.m. to 7.00 a.m. next day—20 hours more than in the first instance.

(vi) The manner in which the parole application made by the family of Shri T. R. Narula, a detenu, was dealt with makes a poignant reading. Shri Narula fell seriously ill during detention and was shifted to the Hospital. The request of his wife for his parole was not considered. Even when the Jail Superintendent intimated that Shri Narula was not responding to treatment and his son had sent another application for associating the family Doctor with the treatment of Shri Narula in Jail, no action was taken. When Smt. Chandra, Special Secretary (Home) recommended the grant of parole for 15 days to Shri Narula, Shri Krishan Chand turned down the case after recording the following note:

"Since according to Dr. Padmavati the patient is not in any immediate danger of life, we may await a further report in case the detenu's condition deteriorates".

Later when Dr. Padmavati reported that the patient's condition was worse than before, Shri Narula was released on parole on April 2, 1976. He died on April 28, 1976 while on parole.

11.56 While some deserving cases for parole were dealt with by the Administration in a very callous manner, there were other cases in which the Administration was unmistakably indulgent to the detenu. What governed these different considerations in the attitude of the Administration can only be inferred.

(i) The wife of Shri Bishamber Dutt Sharma applied for parole for her husband on the ground of her father's illness which was turned down. When the same request was received later through the Special Assistant to the Minister for Defence Shri Bansi Lal, parole was promptly granted and Shri Bishamber Dutt Sharma remained on parole thereafter until his detention order was revoked on January 21, 1977.

(ii) One Shri Ranjit Singh who was detained on September 4, 1975 was released on parole on September 29, 1975 without even a formal application from

him. He remained on parole till the order was revoked on December 9, 1976. Similarly, in the case of Shri Radha Krishan detained on July 3, 1975, parole was granted even without an application. Shri Radha Krishan remained on parole from November 21, 1975 till his order of detention was revoked on December 30, 1976. Shri Krishan Chand has admitted that the parole cases of Shri Radha Krishan and Shri Ranjit Singh were being dealt with under the directions of Shri Om Mehta who was having negotiations with certain Opposition leaders through the good offices of these two individuals. The Ministry of Home Affairs' file on Shri Ranjit Singh shows that the Intelligence Bureau considered him as "a Prime Minister's security suspect" and was initially against his release.

(iii) Shri Bali Ram Sharma, reportedly "a notorious antique smuggler" was detained under COFE-POSA on December 27, 1975. He was granted a week's parole on June 5, 1976 on account of his wife's illness. When Smt. Chandra put up a proposal for extending the parole for 4 days, it was turned down by the Lt. Governor. But for certain reasons not evident from the records, the Lt. Governor changed his mind and granted two months' extension of parole and thereafter extended it from time to time until the detention order was revoked on March 21, 1977. This was in spite of the fact that the police had objected to the release of this individual as he was a confirmed smuggler. Shri Krishan Chand has said that Shri Yashpal Kapoor had approached Shri Om Mehta in this case and it was for this reason that he had agreed to release Shri Bali Ram Sharma on parole. Shri Navin Chawla has also stated that Shri Yashpal Kapoor had spoken to him regarding Shri B. R. Sharma and he had advised him to talk to the Lt. Governor on the subject. Another reported smuggler by name Shri Ramesh Kumar Rakheja who was detained under COFEPOSA on October 27, 1976 was granted parole for four days from December 30, 1976. Though his request for extension of parole was rejected by the Lt. Governor on January 10, 1977, initially, he was able to get it on January 17, 1977 on a fresh application. Thereafter he remained on parole till his detention order was revoked on March 21, 1977. Shri Brij Mohan Lamba, proprietor of a foreign private firm, who was detained for his involvement in cases of cheating and forgery was released on parole within a week of his detention and without any formal application from him. It appears from the statements of the officers of the Home Department made before the Commission that Shri Lamba was able to secure his parole because of the intervention of Shri Burney, Secretary, Information & Broadcasting.

11.57 Grant of parole was used by the Delhi Administration as an incentive to promote family planning in the Tihar Jail. The sterilisation cases were dealt with by the Administration by writing in pencil in the margin of the file "family planning case" whatever may have been written in the note about the grounds for seeking parole. According to Shri J. K. Kohli and Smt. Chandra, grant of parole as an incentive for sterilisation was a decision taken by Shri Navin Chawla. Shri Navin Chawla has himself said that this was done under the directions of the

Lt. Governor. According to Shri Krishan Chand, Navin Chawla had given an assurance to the detainees to release them on parole if they got themselves sterilised. He, therefore, had no option but to grant them parole when the cases were put up to him.

11.58 The attitude of Delhi Administration was particularly harsh in dealing with the requests from the student detainees for release on parole to enable them to take their University examinations. It has been intimated by the Delhi Administration that 17 student detainees had applied for parole to appear in the examinations. The records show that only one student namely Shri Prabir Purkayastha, a Ph.D. student of Jawaharlal Nehru University could appear in the examination. He could get this facility not because of any leniency on the part of the Administration but because the Delhi High Court had issued specific directions to the Administration to take him to Allahabad for his examination. Though the Ministry of Home Affairs had advised his release on parole, he was only transferred from Delhi to Naini Jail and taken there in handcuffs. He took his M.E. viva voce examination in jail.

11.59 Though Section 16 of the Delhi Detenus (Conditions of Detention) Orders, 1976 governing the conditions of MISA detainees in Delhi provided that "student detenus may be allowed to appear in examination only with the permission of the Administrator", the discretion was always used against the applicants. The policy adopted by the Delhi Administration was to allow the student detainees to take examination only after the University agreed to hold examination in the jail. Some students had filed writ petitions in Delhi High Court challenging the refusal of the Delhi Administration to grant them permission for taking the examinations. It is seen that in one case the Delhi University agreed to open a special centre for such students in Ram Lal Anand College, just a mile from Tihar Jail. Even then, request of the students concerned was turned down and the Delhi High Court had to observe that "it is unfortunate that the Delhi Administration should not go one step forward whereas the University had gone 20 steps forward and it is unfair as the Delhi Administration may land itself in difficulty as the petitioners may say that their detention is not preventive but punitive". Smt. S. Chandra and Shri J. K. Kohli and also Shri Navin Chawla have testified that on the question of grant of parole to the students, the Lt. Governor's mind was totally closed as student detainees were "considered a high security risk". Shri J. K. Kohli has stated that Shri Navin Chawla used to deprecate in very strong language the activities of the students in general and of the student detainees in particular. The officials of the Home Department were given to understand that no student was to be allowed to get out of jail even for the purpose of taking examination. Shri Krishan Chand has admitted that the policy of the Administration was to allow the students to take examination only if the University agreed to hold examination inside the jail. He said that this policy was based on the concern of the then Prime Minister over the activities on the student front.

Attitude of Delhi Administration Towards Ministry of Home Affairs

11.60 Records of the Ministry of Home Affairs reveal that the Ministry was repeatedly pointing out to the Delhi Administration serious flaws in the administration of MISA in Delhi. These observations of the Ministry were based on the consideration of the representations received from or on behalf of some of the detainees. Smt. S. Chandra, Special-Secretary (Home) has stated that in a meeting held in the room of Shri Om Mehta, Minister of State in the Ministry of Home Affairs, on September 9, 1976, the officials of the Delhi Administration were pulled up for misuse of powers under MISA in Delhi. The Union Home Secretary had pointed out that a large number of persons were being detained in Delhi on grounds not within the purview of the MISA and that Delhi Administration was the only Administration which was releasing MISA detainees without making any reference to the Ministry which was required under the instructions issued by the Ministry on October 10, 1975. Smt. Chandra has stated that the observations of the Ministry of Home Affairs regarding the misuse of MISA with regard to certain categories of persons and their advice for grant of parole to some detainees or revocation of certain detention orders used to be invariably rejected by the Lt. Governor. She was constantly bringing to the notice of the Lt. Governor what the officers in the Ministry of Home Affairs were saying about the way the Delhi Administration was using the emergency powers. The Lt. Governor used to ask her not to worry about it as he would take care of the letters from the Ministry of Home Affairs. The officers of the Home Department used to observe that the Lt. Governor always had his way in these matters and the Ministry of Home Affairs ultimately cancelled or withdrew its instructions in such cases. She was told that the officers of the Ministry of Home Affairs were "working at cross purposes with the wishes of the Prime Minister and national security". Under such circumstances the officials of the Home Department had no option but to do what the Lt. Governor desired.

11.61 The evidence of Shri J. K. Kohli, Chief Secretary, also shows that the Lt. Governor had little regard for the Ministry of Home Affairs in matters relating to the administration of MISA. Shri Kohli has stated that the Lt. Governor used to tell them that the officers of the Ministry of Home Affairs were "file-pushers and did not understand the field conditions". The Lt. Governor did not have a high opinion about some "personalities" in the Ministry of Home Affairs and he would occasionally say that "the Home Minister did not have political sense". In cases where the Lt. Governor did not like to agree with the advice from the Home Ministry, the officials of the Home Department found that invariably the Lt. Governor's views prevailed and the Ministry of Home Affairs had to retrace its steps. This led to a tendency on the part of the officers at the processing levels not to hesitate in taking a stand different from the advice of the Ministry of Home Affairs if they thought that this was in accordance with the general policy of the Lt. Governor.

11.62 Shri Sushil Kumar, who succeeded Shri J. K. Kohli as Chief Secretary, has also said that the

advice of the Ministry of Home Affairs for revocation of orders in some cases on the ground that the detentions were not proper, was not accepted by the Lt. Governor. Even after the meeting of September 9, 1976, when the Union Home Secretary had criticised the Delhi Administration very strongly for misuse of MISA ignoring the instructions of the Ministry, there was no change in the policy of the Delhi Administration.

11.63 From the evidence of Smt. S. Chandra, it appears that Shri Navin Chawla enjoyed more powers than would normally be available to a Secretary to the Lt. Governor. She has stated that Shri Navin Chawla was not happy with the Ministry of Home Affairs for criticising the Delhi Administration's handling of the matters relating to MISA. He asked her to send him a note giving the details of the cases where the Delhi Administration had not followed the advice of the Ministry of Home Affairs and acted on its own for which the Ministry of Home Affairs had criticised the Delhi Administration. He wanted to take the matter up at the "higher level". She clarified that when Shri Navin Chawla used the term "higher level", she always got the impression that he meant either the Minister of State in the Ministry of Home Affairs or the PM's house, i.e. the Prime Minister herself or Shri Sanjay Gandhi. She prepared a detailed 'top secret' note as desired by Shri Navin Chawla and endorsed it to him by name seeking directions on the "points on which we are now required to take a policy decision to avoid further objections and confusions". Shri Navin Chawla returned this note after three months simply recording "since been sorted out". Shri Chawla has stated that he had asked for this note because the Lt. Governor had wanted this. The note was put up to the Lt. Governor though the Lt. Governor did not append his signature. He could not satisfactorily explain what the words "since been sorted out" meant. The Lt. Governor has, however, denied having seen this note. The evidence of Smt. Chandra thus indicates that Shri Navin Chawla was capable of taking up the matters at a level even higher than that of the Ministry of Home Affairs. Shri Jagmohan, Deputy Secretary to the Lt. Governor, has also referred to the importance of Shri Navin Chawla by stating that the Lt. Governor would clear important files, particularly those relating to advice or directions from the Ministry of Home Affairs, only after consulting Shri Navin Chawla.

11.64 Repeated directions from the Ministry of Home Affairs for the grant of parole to Shri Kanwar Lal Gupta were rejected by the Lt. Governor. Similar advice in the case of Shri R. Prasad was also turned down. The directions of the Ministry for the release of Shri Prabir Purkayastha, a student of Jawaharlal Nehru University, in July 1976 was not accepted and the Lt. Governor discussed the matter with Shri Om Mehta and persuaded him to drop the case for the time being.

11.65 The case of Smt. Promila Lewis offers a striking example of the scant regard the Lt. Governor had for the instructions from the Ministry of Home Affairs. Smt. Promila Lewis was detained under MISA on July 2, 1975 for her alleged extremist activi-

ties. She was transferred to Ambala Jail, Haryana, immediately after her arrest. Her case was examined in the Ministry of Home Affairs and the Delhi Administration was advised in consultation with the Intelligence Bureau to release her on certain conditions specified in the note of the Ministry. Shri C. V. Narasimhan, Joint Secretary, Ministry of Home Affairs, also telephoned to Shri T. R. Kalia, Deputy Secretary (Home) on May 10, 1976 asking for the compliance of the instructions of the Ministry of Home Affairs so that the Prime Minister could be informed. Despite this, the Lt. Governor rejected the case recording that "I regret I cannot agree to the release unless I have written orders in the name of the PM". This was conveyed to Shri C. V. Narasimhan and the matter was not pursued any further by the Ministry of Home Affairs. Smt. Lewis was transferred from Ambala to Hissar in July 1976 and her request for parole for one month on grounds of illness of her father was also rejected on September 22, 1976. The Ministry of Home Affairs wrote to Delhi Administration on November 23, 1976 advising them to release Smt. Lewis on parole for two months. But the Lt. Governor rejected it on November 30, 1976 on the ground of the detenu's "pronounced agitational and extremist background". Shri Krishan Chand has stated in this connection that the case of Smt. Promila Lewis could not be decided without the approval of the then Prime Minister. Smt. Lewis was responsible for organising an agitation for minimum wages to the farm labourers working in the farm land of Smt. Indira Gandhi and Shri B. K. Nehru in Mehrauli area when Shri Navin Chawla was the ADM of that area. Shri Navin Chawla had told him that the P.M. desired that Smt. Lewis was not be released. He himself had also got it confirmed from the P.M. Shri Jagmohan, Deputy Secretary to the Lt. Governor, has also stated in this connection that after the receipt of instructions from Ministry of Home Affairs for the release of Smt. Lewis, the Lt. Governor had given the file to Shri Navin Chawla. It was only after Shri Navin Chawla returned the file that the Lt. Governor had recorded a note rejecting the advice of the Ministry.

11.66 The callousness with which the case of Shri S. N. Talwar, who was seriously ill, was dealt with by the Lt. Governor is remarkable. Shri Talwar was detained on June 5, 1976 for his alleged acts of cheating through his travel agencies. He became seriously ill and had to be hospitalised. After consideration of his representations, the Ministry of Home Affairs advised the Delhi Administration to revoke his orders. The Lt. Governor approved the proposal for revocation on September 20, 1976 but, later, for reasons not apparent from the file, he changed his mind and a letter was written to the Ministry to the effect that Shri Talwar's case would be considered along with other similar cases. The Ministry of Home Affairs wrote again on October 20, 1976 reiterating their earlier advice for the revocation of detention orders. The Lt. Governor discussed the matter with Shri Om Mehta on November 1, 1976 and Shri Om Mehta also advised him to revoke the orders. The Lt. Governor cleared the case late in the evening of November 6, 1976 but again directed the Home Department the same evening not to serve the order

of revocation. Shri S. N. Talwar died on November 7, 1976. The evidence of Shri Jagmohan, Shri T. R. Kalia and Shri S. K. Batra shows that Shri Talwar's death in custody had greatly upset the Lt. Governor and he wanted his officers to visit the hospital where Shri Talwar had died and do something to show that Shri Talwar had been released before his death. Though Shri Jagmohan and Shri S. K. Batra went to the hospital, they did not do anything on the lines desired by the Lt. Governor as, apart from everything else, the dead could not sign the receipt of the release order. Shri Krishan Chand has stated that Shri S. N. Talwar was one of the travel agents who were detained at the instance of Shri Sanjay Gandhi. He could not act in this case without consulting the P.M.'s house. He could not offer any satisfactory explanation of his conduct in this case. He denied having told his officers to fabricate the records to show that Shri Talwar was released before his death.

11.67 In the case of the detention of one Shri Kulwant Singh Manchanda, the Ministry of Home Affairs observed that the detention was not covered by the provisions of the Act and advised the Delhi Administration to revoke the order. The Lt. Governor took up the matter with Shri Om Mehta, and the issue was closed. Shri Manchanda continued to remain under detention.

11.68 In the case of Shri K. L. Juggi and others detained for their violation of Display of Prices of Articles Order, 1975, the Ministry of Home Affairs strongly criticised the Delhi Administration and asked the Administration to take action against the officers responsible for the misuse of emergency powers and issue instructions to avoid recurrence of such lapses in future. The Lt. Governor apparently felt offended and the Delhi Administration wrote back to the Ministry of Home Affairs defending its stand in the case and informing the Ministry that no action was called for against any officer in this case.

11.69 There was a jail-break in Delhi in March, 1976. The Delhi Administration ordered an inquiry into this incident by an ADM. The Ministry of Home Affairs asked Delhi Administration to entrust this enquiry to a senior and experienced officer and also to delink the functions of IG (Prisons) from those of the Deputy Commissioner and appoint a full-time IG (Prisons). Though the letter was sent under the signature of Shri F. H. Mohsin, Deputy Home Minister, there was no response from the Delhi Administration. When the Delhi Administration wrote back to the Ministry saying that they were not agreeable to entrust the inquiry to a higher level officer as suggested by the Ministry of Home Affairs, the Home Secretary, Shri S. L. Khurana, recorded on the file that "it is becoming almost impossible to transact business with Delhi Administration". Shri F. H. Mohsin, Deputy Home Minister, added that "several times I have found that the Delhi Administration has been acting like a full-fledged State without any check and without heeding to the advice of the Home Ministry. There is no Assembly also to provide a check on the Administration. The fact is that at present, nobody can question the acts and omissions of the Delhi Administration. I am strongly of the

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view that some thinking on this aspect is necessary." When the file was sent to Shri Brahmaananda Reddy, he simply recorded a note requesting Shri Om Mehta to discuss the matter with the Lt. Governor, Delhi, in one of the coordination meetings. Shri Krishan Chand has confirmed that Shri Brahmaananda Reddy had little say in Delhi matters and most of the decisions concerning Delhi Administration were taken by Shri Om Mehta. Some of the orders issued at the instance of the Home Minister were changed after the Lt. Governor took the matter up with Shri Om Mehta who was a junior Minister and was, in fact, not competent to make these changes.

11.70 Shri Krishan Chand has also said that the P.M. had handed over the running of Delhi to Shri Sanjay Gandhi and four-five officers who were close to Shri Gandhi used to receive direct orders from him. He has admitted that whenever some "instructions" were given to him by Shri Navin Chawla, he took them to be emanating from Shri Sanjay Gandhi.

11.71 Notices under rule 5(2)(a) of the Commissions of Inquiry Rules and summonses under section 8B of the Commissions of Inquiry Act were issued to S/Shri Krishan Chand, P.S. Bhinder, Navin Chawla and K. S. Bajwa in the cases relating to the issue of detention orders. Notices under rule 5(2)(a) of the Commissions of Inquiry Rules and summonses under section 8B of the Commissions of Inquiry Act were issued to Shri Krishan Chand and Shri Navin Chawla in cases relating to the confirmation, review and revocation of the detention orders. Notices under rule 5(2)(a) of the Commissions of Inquiry Rules and summonses under section 8B of the Commissions of Inquiry Act were issued to Shri Krishan Chand and Shri Navin Chawla in cases relating to the treatment in jails; and notices under rule 5(2)(a) of the Commissions of Inquiry Rules and summonses under section 8B of the Commissions of Inquiry Act were issued to Shri Krishan Chand, in cases relating to the handling of applications for parole. Regarding the attitude of the Delhi Administration towards the Ministry of Home Affairs, notices under rule 5(2)(a) of the Commissions of Inquiry Rules and summonses under section 8B of the Commissions of Inquiry Act were issued to Shri Krishan Chand and Shri Navin Chawla.

11.72 Shri P. S. Bhinder appeared before the Commission and pleaded for an adjournment of all the cases in which he had been summoned on the plea that the Government has not given him any legal assistance and also because he was pre-occupied with the Sessions trial in a murder case. The Commission was unable to accommodate Shri P. S. Bhinder and declined to adjourn. The Commission had specially fixed a Saturday for hearing the version of Shri P. S. Bhinder in the cases concerning him. This was specially done to accommodate Shri Bhinder as on Saturdays the Sessions Court does not hold sittings. Since Shri Bhinder did not want to participate in the proceedings of the Commission even though he had assisted the Commission at its first stage, the Commission decided to proceed with the cases without any further assistance from Shri Bhinder.

11.73 Shri Krishan Chand appeared before the Commission and gave his version of the case. Shri

Krishan Chand accepted before the Commission his full Constitutional responsibility for all that had happened in Delhi during the time that he was appointed Lt. Governor. His explanation is that he was not a free agent ; that he used to receive conflicting instructions from the Ministry of Home Affairs and the Prime Minister's house; that the officers who were close to the Prime Minister's house and Shri Sanjay Gandhi, particularly Shri Bhinder, Shri Navin Chawla and Shri Bajwa used to receive instructions directly and he came into the picture only to the extent that he was required to fulfil some technical formalities ; that he was acting merely as a communicating agency and there was no occasion for him to exercise his mind on any of the points ; that he could not afford to disobey the orders emanating from the Prime Minister's house as that might well have meant his own detention under the MISA. He acknowledges that in his anxiety to save his own freedom he was prepared to be an instrument for illegal detentions of hundreds of detainees. Shri Krishan Chand has also stated that one of the considerations which weighed with him in rejecting the applications for parole and for revoking the detention orders of the detainees was that the release from custody of these detainees on any account would reinforce the strength of the underground movement which was not in the interest of the security of the State.

11.74 Shri K. S. Bajwa, while giving his version of the case, has largely relied on the fact that it was the responsibility of the Special Branch to furnish the grounds for detention and various other additional items of information asked for by the Government or by any of his colleagues, and there was nothing new in the Special Branch furnishing material for detention as this has been the practice even in the past. He produced a letter relating to the Railway strike in 1974, when he had furnished information to the authorities for enabling them to detain persons concerned under MISA. He also took the line that in most of the cases he was merely carrying out the orders of his DIG, Shri P. S. Bhinder, or his IGP. It may be pointed out that the comparison that Shri Bajwa has made of the circumstances of his role in 1974 with the circumstances of his role during the emergency is not valid. In 1974 he used to furnish material to the authorities concerned from which the authorities used to extract the relevant portion for their use if they thought that the individual could lawfully be dealt with under the MISA. During the emergency, however, Shri Bajwa used to furnish the lists of persons to be detained under MISA along with the material leaving no option whatever with the District authorities either with regard to the fact of detention or with regard to the grounds on which the detention orders were to be made. It is also not correct to say that Shri Bajwa was merely carrying out orders : that is not borne out by the files that came before the Commission. In fact he used to issue orders to the District authorities asking them "to pick up" the persons named in the lists.

11.75 Shri Navin Chawla's version is that as Secretary to the Lt. Governor, he was carrying out the instructions of the Lt. Governor with regard to the various items figuring in the different aspects of the

detention cases. He has denied having threatened his colleagues or spoken rudely to them. He has categorically denied that he ever issued any instruction to the jail authorities to keep a few of the named detainees "with lunatics". He has also denied that he ever issued orders regarding the construction of a few cells with asbestos sheets, to "bake" the detainees. He has also said that because of the immense confidence that the Lt. Governor had reposed in him, he was associated with all the important affairs of the Administration : if in the process of carrying out the orders there have been any lapses, the responsibility in that behalf is of the Lt. Governor.

11.76 It is clear on the evidence that S/Shri P. S. Bhinder, K. S. Bajwa and Navin Chawla exercised enormous powers during the emergency because they had easy access to the then Prime Minister's house. Having acquired that power, they used it without considering whether the exercise was moral or immoral, legal or illegal. The Commission is of the opinion that though the involvement of these officers may vary slightly in degree, their approach to the problems of the period relating to the citizens was authoritarian and callous. Their only anxiety was to preserve and protect their proximity to the seat of power and towards that end they did everything which they thought would lead to their own advancement. They grossly misused their position and abused their powers in cynical disregard of the welfare of the citizens and in the process rendered themselves unfit to hold any public office which demands an attitude of fairplay and consideration for others. It their relish for power they completely subverted the normal channels of command and administrative procedures.

11.77 Shri Krishan Chand has by his various actions and inactions with regard to important and vital matters concerning detentions and allied matters shown himself as incapable of taking the right and timely decisions, or even as much as interested in the proper administration of Delhi of which he was the head. He appears to have abdicated his legitimate functions in favour of an over-ambitious group of officers like S/Shri Bhinder, Bajwa and Navin Chawla with disastrous consequences to the people. He betrayed his trust and committed a serious breach of faith with the citizens of Delhi and failed to administer the affairs of the territory honestly and justly.

11.78 Shri Sushil Kumar has narrated before the Commission the circumstances under which he had to issue the detention orders against the leaders on the night between 25th and 26th. Shri Sushil Kumar was labouring under two serious constraints. On the one hand had been told categorically by Shri R. K. Dhawan that the detentions of the leaders figuring in the list should be an accomplished fact well before the morning of June 26, and this operation should be launched simultaneously to ensure that none of the listed leaders is able to avoid arrest by getting scent of the move of the Government. Shri Sushil Kumar was in no doubt about the source of the order conveyed to him by Shri Dhawan and, therefore, he was in no position to decline to carry out the orders. The other compulsion was that the Police had taken a stand that they would launch out for the arrests of the listed leaders only on the strength of warrants. The Police was not willing

to effect the arrest of the persons in the list under the preventive sections of the Code of Criminal Procedure keeping in view the status of the leaders concerned. Apart from the stand of the Police, Shri Krishan Chand has categorically stated that it had been decided at the Prime Minister's house to detain the listed leaders under the MISA in an effort to forestall any redressal that the individual leaders might seek from the Courts against their arrests. In the circumstances, therefore, Shri Sushil Kumar, in an effort to beat the clock, had also recourse to the issue of a few blank warrants in addition to the warrants that were prepared and issued by him to the Police. Since these detention orders were issued without any satisfaction of the detaining authority, the orders were illegal. Since, however, the orders were issued pursuant to the directions of Smt. Indira Gandhi, responsibility for the illegal detentions must primarily rest on her.

11.79 The Commission did not have the benefit of any assistance from Smt. Gandhi who even when she was summoned under section 8B of the Commissions of Inquiry Act in connection with the case relating to the circumstances leading to the declaration of emergency, declined to take the oath and tender evidence. In the circumstances, therefore, the Commission has to come to the conclusions in the light of the evidence on record and without the benefit of knowing Smt. Indira Gandhi's version of the case, that Smt. Indira Gandhi was responsible for directing the arrest and detention of a number of respected citizens without authority of law, motivated solely by a desire to continue to remain in power.

I. Detention of Shri Mam Chand S/o Shri Malkhan

11.80 Shri Mam Chand, a hawker of newspapers and magazines and the sole bread winner of a family of 10 members, was detained under MISA on July 4, 1975 under the orders of Shri Sushil Kumar, the then District Magistrate, on the grounds that a copy of the magazine 'March of the Nation' allegedly containing prejudicial material was found in his possession. A case under 43(1)(c) DIR was also registered against him on July 1, 1975. Reports from the Special Branch of Delhi Police have shown that 'there is no record on Shri Mam Chand, son of Shri Malkhan Singh'. This clearly proves that he was never noticed for any political activities by the Special Branch. It is seen from the evidence of Shri K. D. Nayyar, the then SP, New Delhi, that Shri Arjan Das, Metropolitan Councillor had complained to Shri P. S. Bhinder, DIG (Range) regarding the sale of prejudicial literature at the Indian Coffee House Book Stall run by Shri Mam Chand. Shri Arjan Das had gone to this shop along with some workers of the Youth Congress who had constituted themselves as a special squad for conducting some kind of checks on book stalls and other places. This squad was reportedly controlled from the P.M.'s house. According to Shri Nayyar, Shri P. S. Bhinder, the then DIG (Range), ordered Shri Nayyar that he should look into the complaint made by Shri Arjan Das. The police party was, therefore, sent to the Coffee House book stall accompanied by Shri Arjan Das and after a thorough checking of the stall only one copy of the magazine 'March of the Nation' was seized. The DIG had desired action against Shri

Mam Chand under DIR and a case under DIR was accordingly registered. Later on, the DIG also ordered action under MISA and Shri Mam Chand was detained accordingly. Shri K. D. Nayyar admitted that he did not try to go through the magazine to ascertain whether it contained anything that could affect the security of the State and frankly stated that he had simply carried out the orders of the DIG (Range).

11.81 Shri K. D. Nayyar also clarified that apart from a copy of this magazine no other prejudicial literature was found in the book stall. Shri Nayyar stated that Shri Arjan Das had also visited his office and had complained to him that the Coffee House book stall was selling prejudicial literature. He added that Shri Arjan Das had accused the police of not being vigilant in checking the prejudicial activities and claimed credit that he and his men had detected this case.

11.82 Shri Sushil Kumar, District Magistrate, Delhi, has stated that as the proposal received from the SP (New Delhi) indicated Shri Mam Chand's involvement in the distribution of prejudicial literature, he issued the detention order in view of the general directions of the Lt. Governor that whenever a request was received from the police there should be no delay in the issue of MISA warrants. He also said that he was informed by Smt. Meenakshi Datta Ghosh, ADM (New Delhi) about the urgency expressed by the SP (New Delhi) in this case. Shri Sushil Kumar admitted that he did not go through the copy of the Magazine 'March of the Nation' seized from the book shop of Shri Mam Chand, to find out as to what was objectionable in it, and which formed the ground for the detention of Shri Mam Chand.

11.83 The Lt. Governor confirmed the detention order on July 15, 1975. The file shows that it was discovered on September 18, 1975 that this detention order suffered from a legal infirmity. Whereas the Act provided that both the detention order under section 3 and declaration under section 16A must be issued simultaneously, the detention order in this case was issued on July 2, 1975 and the declaration on July 11, 1975. The detention order was, therefore, revoked by the Lt. Governor and a fresh detention order on exactly the same grounds was issued by Smt. Meenakshi Datta Ghosh, ADM (New Delhi) on September 21, 1975. This was confirmed by the Lt. Governor on September 27, 1975.

11.84 At the time of the first Four-Monthly Review, Smt. Meenakshi Datta Ghosh, ADM (New Delhi) consulted SP (New Delhi) and recommended the revocation of the order saying that "there was no need for continued detention of the detenu having due regard to the measures necessary for dealing, effectively with the emergency". The Home Department, however, recommended continued detention despite this recommendation and it was confirmed by the Lt. Governor. Shri A. D. Sapra, Deputy Secretary (Home) and Shri J. K. Kohli, Chief Secretary have stated that the case was processed in the Home Department and continued detention was recommended keeping in mind the Lt. Governor's views on the subject. According to their statement

the Home Department officials had to work within the policy frame-work prescribed by the Lt. Governor which meant that once a person is detained he should continue to remain under detention. They both referred to the case of one Shri Kulwant Singh Manchanda dealt with by them only a few days before the case of Mam Chand was processed. Shri Manchanda was detained on the recommendations from Commissioner (Food and Supplies) and at the time of the Four-Monthly Review, even though the Commissioner, Food and Supplies and ADM concerned recommended revocation, the detention was continued. This appears to have resulted in evolution of the general policy of recommending the continued detention in all the cases whether recommended or not by the detaining authorities for continued detention. Shri J. K. Kohli, Chief Secretary frankly admitted that he had not applied his mind to the recommendations of the ADM in this case and endorsed the noting put up by the Deputy Secretary as it was in accordance with the policies of the Lt. Governor.

11.85 Continued detention of Shri Mam Chand was confirmed in all the subsequent Four-Monthly Reviews. He was released only on January 22, 1977 when the Ministry of Home Affairs wrote saying that from their enquiries they had learnt that Shri Mam Chand was detained at the instance of Shri Arjan Das, Metropolitan Councillor and a Congressman of Arjun Nagar whom he had refused to oblige. The Ministry of Home Affairs pointed out that this was a case of gross misuse of MISA and advised the Delhi Administration to revoke the order.

11.86 Shri Krishan Chand has stated that he confirmed the detention order because it related to prejudicial literature and that he went by what was written in the file in this regard. He ordered the continuance of his detention because this is what the Home Department officials had proposed. He said that he did not go through the recommendations of the ADM and based his orders on the last note put up by the Home Department. He said that he agreed with whatever notings were put up to him by the Home Department.

11.87 Shri P. S. Bhinder has denied that he had desired the arrest of Shri Mam Chand under DIR as stated by Shri K. D. Nayyar. He, however, admitted to have received a complaint regarding the sale of prejudicial literature at the shop of Shri Mam Chand and asked Shri K. D. Nayyar to look into it. He said he did not remember to have ordered Shri K. D. Nayyar to take action against Shri Mam Chand under MISA. He said that this must have been taken in accordance with the policy prevailing at that time.

11.88 Notices under Rule 5(2)(a) of the Commissions of Inquiry Rules and summons under section 8B of the Commissions of Inquiry Act were issued to Shri Krishan Chand and Shri Bhinder in this case. Though Shri Bhinder had assisted the Commission at the first stage of the hearing of this case, he pleaded his inability to respond to the Commission's summons on the ground of his pre-occupation with a murder case in which he happens to be an accused. The Commission posted this case for a Saturday to suit

the convenience of Shri Bhinder. Shri Bhinder was present but tendered no defence pleading that he could not get the legal assistance, which he claimed, was due to him and on that he requested for adjournment of the case. The Commission, however, did not think it a justifiable request and hence proceeded with the case. Shri Bhinder was asked to orally state his version in lieu of filing a statement under Rule 5(3) but he said that he had nothing to say. Shri Krishan Chand responded to the summons and presented his version of the case. He took the line that Shri Bhinder and Shri Arjan Das were close to the Prime Minister's house during those days and he could not go against the express wishes of Shri Bhinder. He went to the extent of describing himself as a mere "show-boy" without any powers and said that the actual powers emanated from the Prime Minister's house. He also said that he was guided almost entirely by the material furnished by the police on which were based the grounds of detention. Both Shri Krishan Chand and Shri Bhinder had misused their position and authority in ordering the detention and continuing in detention a helpless and defenceless individual like Shri Mam Chand.

11.89 The circumstances attending the detention of Shri Mam Chand bring out clearly how very casually and cavalierly the Administration went about detaining individuals under the MISA on wholly unsustainable grounds. Shri Mam Chand was almost illiterate and certainly could not read English. The English magazine 'March of the Nation' which formed the basis for his detention was read neither by the Supdt. of Police who recommended detention nor by the District Magistrate who ordered the detention nor by the Lt. Governor who confirmed the detention orders. None of them could even say that the material was prejudicial to the security of the State. There was only one copy of this magazine in the book stall and the police did not come across any other prejudicial literature from that stall. The Government machinery moved merely at the instance of one Shri Arjan Das, an individual who had nothing to do with the application of MISA. Once the DIG was told by Arjan Das, things moved faster and the detention of Shri Mam Chand was an accomplished fact. Thereafter even though the ADM recommended the revocation of the order on the occasion of the first Four-Monthly Review of the detention, it was ignored by the Home Department of the Delhi Administration. At the Lt. Governor's level he did not even care to see whether the detaining authority had made any specific recommendations on the subject. In short, as was pointed out in the course of the hearing of this case, it had almost become a slogan in Delhi at that time: "Once detained always detained". Even the initial detention order suffered from certain infirmities which were subsequently made good. That the Administration could go about so very light-heartedly and irresponsibly in respect of the liberties of innocent individuals is a sad commentary on the manner in which the Administration functioned in those days. In the process a poor and practically illiterate man was detained. The Commission feels that it was an unpardonable act on the part of the Administration to have let a poor and innocent man like Mam Chand, the only bread winner of the family, remain under detention

for 19 long months. The hunger and privation that Mam Chand's wife and his nine children must have gone through during the period can never be adequately compensated.

II. Detention of Dr. Karunesh Shukla, Son of Shri Krishan Deo Shukla

11.90 Dr. Karunesh Shukla, reader in Sanskrit Department in Gorakhpur University, was detained under MISA by the orders of Shri Virendra Singh, the then Additional District Magistrate (South), Delhi, passed on September 14, 1976. The grounds of detention were :

1. In his petition addressed to the Lt. Governor, Delhi, requesting for the release of his brother Kamlesh Shukla, a MISA detenu, on parole, Dr. Shukla had deliberately concealed the facts relating to the involvement of Kamlesh Shukla in a case under the Explosive Substances Act prior to his detention.
2. Dr. Shukla's contention that their mother was ill could not be verified as no one was reportedly residing in the premises occupied by Shri Kamlesh Shukla in Delhi before his detention.

11.91 Dr. Karunesh Shukla had sent an application from Gorakhpur requesting the Lt. Governor, Delhi for the release of his brother on parole. In his petition Dr. Karunesh Shukla had stated that his mother, aged 65, was seriously ill and two applications of his brother for release on parole had brought no results. He contended that his brother was a follower of the late Dr. Ram Manohar Lohia and was a progressive Hindi writer who had all along been supporting the policy of the then Government including the imposition of emergency. He had requested the Lt. Governor to release Shri Kamlesh Shukla on parole so that "his old and ailing mother may see her elder son before her death and that if the said MISA detenu Shri Kamlesh Shukla was not released on parole it is quite possible that the last wish of his ailing mother may remain unfulfilled and the old, shocked lady may expire without seeing the face of her elder son".

11.92 This application was sent to Shri K. S. Bajwa, Supdt. of Police/CID(SB) for enquiry and report. Shri Bajwa sent his parawise comments on the petition *vide* his D.O. letter dated August 13, 1976 addressed to Shri Navin Chawla, Secretary to the Lt. Governor. It is seen from Shri Bajwa's report that Shri Kamlesh Shukla, the applicant's brother, was arrested under section 3/4 of the Explosive Substances Act, 1908 at Police Station Hauz Khas on April 10, 1976, after having been found in possession of a suitcase containing some explosive substances. He was working as editor of 'Pratipaksh' a paper brought out by Shri George Fernandes before his arrest. He was subsequently detained under MISA. Shri K. S. Bajwa wrote that his request for release on parole may be decided on merits keeping in view the above facts on record against Shri Kamlesh Shukla. However, Shri Bajwa made the additional remarks that "the applicant Karunesh Shukla, brother

of Kamlesh Shukla, has deliberately concealed the above facts in his petition addressed to the Lt. Governor, Delhi. The house of the detenu has been found locked and nobody is staying there. The information regarding illness of the mother of the detenu could not be confirmed as no one is residing there at present".

11.93 According to Shri Bajwa, the Lt. Governor had desired to discuss this case with him and after discussion the Lt. Governor passed orders for the detention of Shri Karunesh Shukla under MISA. Shri Bajwa wrote a D.O. letter to Shri B. K. Goswami, the then District Magistrate, Delhi on September 1, 1976 conveying these orders of the Lt. Governor and also giving the material for detention of Shri Karunesh Shukla. The grounds mentioned were the alleged deliberate concealment of facts regarding the involvement of his brother in the case under Explosives Act and the plea regarding the illness of his mother, which remained unverified. Shri Bajwa also gave the address of Shri Karunesh Shukla at Gorakhpur in the same letter.

11.94 Shri B. K. Goswami, Deputy Commissioner, said that he had, apart from receiving the D.O. letter from Shri K. S. Bajwa for the arrest of Shri Karunesh Shukla, received a telephone call from the the Secretary to the then Lt. Governor that Shri Karunesh Shukla be detained under MISA. Shri B. K. Goswami has stated that his first impression after going through the letter of Shri K. S. Bajwa was that no case for detention under MISA was made out on the basis of the grounds given there. He telephoned Shri Bajwa who confirmed that the Lt. Governor had desired detention of Shri Karunesh Shukla. Shri B. K. Goswami took the letter to the Lt. Governor and pleaded with him saying that no case was made out and there were no grounds for the detention of Shri Shukla. The Lt. Governor argued that the deliberate concealment of facts regarding the involvement of his brother in the case under the Explosives Act was sufficient to take action under MISA against Shri Karunesh Shukla. The Lt. Governor rejected the view of Shri B. K. Goswami that action in such a case, if considered necessary, should be taken under the normal law.

11.95 According to the statement of Shri Ashok Pradhan, Additional District Magistrate (Central), Shri B. K. Goswami discussed this case with him on September 9, 1976. On his suggestion the Deputy Commissioner again talked to the Lt. Governor on RAX in his presence and said that since Shri Karunesh Shukla is not available in Delhi, the matter should not be pursued any further. Shri Ashok Pradhan said that the Deputy Commissioner told him that the Lt. Governor was unhappy on this issue and directed that Shri Karunesh Shukla should be got arrested at Gorakhpur and brought over to Delhi. Shri Ashok Pradhan thereafter sent the following wireless to the Supdt. of Police (Gorakhpur) on September 9, 1976.

"Request arrest of Shri Karunesh Shukla s/o Krishna Deo Shukla, r/o 18, Andheria Bagh, Gorakhpur, MISA order shall follow on confirmation."

Shri Karunesh Shukla's arrest at Gorakhpur on September 10, 1976 was confirmed by Supdt. of Police (Gorakhpur) on telephone. According to the statement of Shri Virendra Singh, the then Additional District Magistrate (Central), he issued a detention order against Shri Karunesh Shukla on September 14, 1976 without having any territorial jurisdiction for this detention after his objection in this regard was over-ruled by the Deputy Commissioner and he was instructed to issue the order. A police party was sent to Gorakhpur to bring Shri Karunesh Shukla to Delhi. Shri Shukla was served with the detention orders in Tihar Jail on September 18, 1976.

11.96 Shri Krishan Chand has stated that Shri K. S. Bajwa had discussed the case of Dr. Karunesh Shukla with him and he had ordered his detention under MISA. He has, however, stated that this was suggested by Shri K. S. Bajwa who said that it was a fit case for detention under MISA. Shri Krishan Chand has tried to explain his decision to detain Shri Karunesh Shukla under MISA on the ground that he suspected his involvement in the case under the Explosives Act against his brother which appeared to be connected with the Baroda Dynamite case. Shri Krishan Chand confirmed that he had no material nor was anything to this effect mentioned in the report of Shri Bajwa that could substantiate this suspicion regarding the involvement of Shri Karunesh Shukla in the Baroda Dynamite case. He admitted that he had acted merely on this suspicion and did not even consult the investigating agency that was looking into the case under the Explosives Act to find out whether there was any justifiable reason to suspect Shri Karunesh Shukla's involvement in that case. He also stated that he did not try to ascertain the stage at which the proceedings of the explosives case were at that time. He said he had to act on the suggestion of Shri Bajwa because this was a matter connected with explosives and he could not take any risk.

11.97 It is clear from the deposition of Shri B. K. Goswami that at the time when he pleaded with the Lt. Governor against the detention orders, the Lt. Governor did not tell him anything about this suspicion regarding the involvement of Shri Karunesh Shukla in that case. Shri Krishan Chand admitted that he gave more weight to the suggestions made by Shri Bajwa than to the objections of Shri B. K. Goswami as he thought that the Deputy Commissioner might not be knowing all the facts relating to this case.

11.98 The testimony of Shri K. S. Bajwa shows that the Police had no information regarding the political background of Dr. Karunesh Shukla who was not even a resident of Delhi. Shri Bajwa has admitted that he had dealt with the petition from Dr. Karunesh Shukla for the parole of his brother Kamlesh Shukla and sent his report to Shri Navin Chawla. He has, however, stated that he did not make any proposal for the detention of Dr. Karunesh Shukla and had during his discussion pleaded with the Lt. Governor that there were no grounds for his detention under MISA but the Lt. Governor was adamant

and he had to convey the Lt. Governor's orders to the Deputy Commissioner.

11.99 Notices under Rule 5(2)(a) of the Commissions of Inquiry Rules and summonses under section 8B of the Commissions of Inquiry Act were issued to Shri Krishan Chand and Shri K. S. Bajwa in this case. They were present and availed themselves of the opportunity to put forward their respective versions of the case which have been already referred to.

11.100 Shri Karunesh Shukla was detained under MISA ostensibly on the ground that he had withheld the grounds of detention of his brother in the application that he had made to the Lt. Governor requesting for his brother's release on parole on account of the illness of their mother. It is surprising that Karunesh Shukla should have been detained merely on the ground that he had not incorporated in his parole application information with regard to the grounds of detention of his brother under MISA. In any case this information was already available with the authorities and even if he had not mentioned this information in his parole application, it could not be interpreted to mean that he was seeking to mislead the Government by withholding any material information. Also the withholding of the information of the type that has been alleged against him could not by itself constitute a ground for detention. The denial of this information to the Government would not have been a threat to the public order. The other ground advanced for detaining Karunesh Shukla was that the report of his mother's illness could not be confirmed in Delhi. Merely because the Delhi CID authorities could not confirm the mother's presence in Delhi, they could not come to the conclusion regarding the very fact of the illness of the mother of the applicant. The mother of Karunesh Shukla was ill at Gorakhpur and Shri Bajwa admitted that no efforts were made at Gorakhpur either by the Delhi Authorities or through the Gorakhpur authorities to verify the story of her illness. The grounds advanced for detaining Karunesh Shukla were utterly flimsy and could not support an order of detention under MISA. There is no doubt that this was a misuse of power by the Lt. Governor of Delhi. Shri Krishan Chand, on the advice of Shri Bajwa, Shri Bajwa appears to have been the prime mover in this case of unwarranted detention as should be evident from his initial observation on the application of Karunesh Shukla. He had stated that the applicant had concealed the fact of the grounds of detention of his brother, and this observation was the starting point of this unfortunate episode. The Commission feels that Shri K. S. Bajwa as SP CID apparently wielded enormous powers during the days of the emergency, and often misused them.

11.101 This is one of those cases where the condition precedent to detention under MISA, namely the satisfaction of the detaining authority, was not at all honoured. The Deputy Commissioner, Shri Goswami, had pleaded with the Lt. Governor and requested him not to proceed with his insistence on detaining Shri Karunesh Shukla as the grounds suggested were palpably weak. The Deputy Commis-

sioner and the Additional District Magistrate had also discussed the matter and at the instance of the Additional District Magistrate, the Deputy Commissioner had made yet one more effort to persuade the Lt. Governor not to proceed with the detention of Shri Karunesh Shukla; yet the Lt. Governor merely on the basis of his own personal satisfaction reportedly arrived at on the advice of Shri K. S. Bajwa, SP CID, Delhi Police had told his junior officers to proceed with the detention of the individual. The Additional District Magistrate who eventually detained the individual did not have even the territorial jurisdiction over him. This is yet another case in which the Lt. Governor who was himself competent to issue the detention order, if he was satisfied with the grounds did not issue the detention order and insisted on the Deputy Commissioner/Additional District Magistrate to detain the individual even though neither the Deputy Commissioner nor the Additional District Magistrate was personally satisfied about the grounds.

11.102 Shri Krishan Chand and Shri K. S. Bajwa have both abused their powers and misused their authority in the detention of Dr. Karunesh Shukla on grounds which were not covered by the provisions of the Act. They assisted each other in getting the detention order passed by the detaining authority against his better judgment.

III. Detention of Shri Virendra Kapoor, Son of Shri K. N. Kapoor

11.103 A civic reception to the delegates of the 21st Commonwealth Parliamentary Conference was arranged at Dewan-e-Aam in Red Fort at 7 p.m. on November 1, 1975. Shri Virendra Kapoor, a Reporter of the Financial Express, attended the reception to cover the proceedings. At the conclusion of the function, a group of boys raised slogans and threw leaflets in the air. The police stepped in and promptly arrested these boys. Shri Virendra Kapoor saw that one of the demonstrators was caught by the wrist by a lady, who—he later came to know—was Mrs. Ambika Soni. Shri Virendra Kapoor has stated that he had requested Smt. Soni 'to leave the job of arresting the demonstrators to the Police'. Shri Kapoor has said that on seeing him bandying words with Mrs. Soni, Shri K. S. Bajwa, the then SP (CID) came running to the spot and after speaking to Mrs. Soni briefly ordered the policemen to arrest Shri Kapoor. Shri Virendra Kapoor was led away to the police-van standing at the entrance to the grounds. Shri Kapoor has further stated that Mrs. Soni probably learning that Shri Kapoor was a journalist, went up to him and asked him "Don't you think it was your duty to help me arrest the boy instead of preventing me?" Shri Virendra Kapoor thinking that she wanted an apology from him, told her. "I still maintain it was none of your business when the police are there in large numbers". Shri Virendra Kapoor has stated that Smt. Soni responded to this by saying "O.K. then you go in". Shri Virendra Kapoor was taken to the Kotwali Police Station. Shri Prakash Singh, Supdt. of Police (North) was inclined to let him go especially after the boys who were arrested in connection with this incident swore that Shri Kapoor was not of their group. Shri K. S. Bajwa arrived at the Police

Station in the meantime and after that Shri Kapoor was also arrested under DIR along with others. Shri Virendra Kapoor has stated that he was taken in handcuffs to Tis Hazari Court next day and remanded to judicial custody.

11.104 Shri Sardar Singh, SHO Kotwali, has corroborated the statement of Shri Virendra Kapoor and stated that while overpowering the agitators at the Red Fort he had noticed Shri K. S. Bajwa having an argument with Shri Virendra Kapoor in the presence of Smt. Ambika Soni. He was summoned by Shri Bajwa who directed him to arrest Shri Virendra Kapoor. He had not seen Shri Kapoor taking part in the agitation and had arrested him under the orders of Shri Bajwa. He said that he had brought this to the notice of Shri Prakash Singh, the then SP (North) also and told him that though he had not seen Shri Virendra Kapoor taking part in the agitation, he had arrested him under the orders of Shri K. S. Bajwa. When he had taken Shri Virendra Kapoor and twelve others to the Police Station, Kotwali, Shri Virendra Kapoor had a detailed talk with Shri Prakash Singh. Shri K. S. Bajwa came to the Police Station and when he found the SP, Shri Prakash Singh reluctant to arrest Shri Kapoor, Shri Bajwa talked to someone over the phone from another room and then told Shri Prakash Singh that Shri Kapoor was also to be arrested. Shri Sardar Singh has categorically stated that Shri Prakash Singh was reluctant to arrest Shri Kapoor but Shri Bajwa had insisted on his arrest. After being ordered by Shri Prakash Singh in this regard, he included the name of Shri Kapoor in the list of arrested persons who were produced before the Judicial Magistrate on the next day i.e., November 2, 1975, and remanded to judicial custody.

11.105 Shri Prakash Singh, SP (North) has stated that he was informed by Shri Sardar Singh that Shri Kapoor had not taken part in the incident at the Red Fort. Shri Kapoor had shown him his identity card and he was satisfied that he must have gone to the function on official duty. While Shri Virendra Kapoor was protesting that he was being falsely implicated in the case, Shri K. S. Bajwa arrived at the Police Station and heard the discussion that he was having with Shri Kapoor. Shri Bajwa had a talk on the telephone with someone and then told them to arrest Shri Virendra Kapoor also. According to Shri Prakash Singh, Shri Bajwa told him that Shri Virendra Kapoor had taken part in the incident and the instructions were that he was to be arrested. He confirmed that Shri Virendra Kapoor was arrested at the instance of Shri Bajwa.

11.106 Shri K. S. Bajwa has denied having ordered Shri Sardar Singh to arrest Shri Virendra Kapoor. He has, stated that he had not seen Shri Kapoor shouting slogans or throwing leaflets. He said that he was not present at the spot when the incident took place and was, in fact, having tea in the Guard Room a little away from Dewan-e-Aam, where the reception was held. When he heard the noise, he came out and found Shri Virendra Kapoor being taken by the policemen. Shri Bajwa has admitted that Shri Kapoor was protesting at that time and had also spoken to him. Thereupon, Shri Bajwa admits to have told the

SHO that "Iss ko le jao". As stated by Shri Bajwa, Shri P. S. Bhinder, DIG, who was also present on the spot, had informed the IGP about this incident. He had gone to the Police Station to ascertain the political antecedents of the persons arrested in connection with the incident. According to his own statement, he had found Shri Prakash Singh reluctant to include the name of Shri Virendra Kapoor in the DIR case that was being registered against the agitators. Thereupon, as per Shri Bajwa's statement, he had offered to talk to the Lt. Governor, lest "there might again be a criticism for a journalist being arrested". When he spoke to the Lt. Governor, he was furious and according to Shri Bajwa, he was not prepared to make any distinction in the case of a journalist. Shri Bajwa then told Shri Prakash Singh that the Lt. Governor was not agreeable.

11.107 Smt. Ambika Soni has corroborated the statement of Shri Virendra Kapoor to a considerable extent. She has admitted that she had caught one of the demonstrators by the wrist and Shri Kapoor had protested against this and told her that it was none of her business to stop anyone. Taking Shri Virendra Kapoor for a plain-clothed policeman, she let the boy go. She has stated that a little after that when she was leaving, she found Shri Virendra Kapoor in Police custody outside the Red Fort. According to her testimony, Shri Virendra Kapoor and 'some other journalist probably from the Hindustan Times' publicly accused her for having got Shri Virendra Kapoor arrested. This journalist had also remarked that "emergency was not going to last for ever". She had tried to convince both of them that she had nothing to do with Shri Kapoor's arrest. She has stated that Shri Navin Chawla spoke to her about this incident at the dinner to the delegates at Raj Niwas the same evening and gave her the impression that she had helped them in arresting Shri Virendra Kapoor, a person of strong RSS background wanted since long. Smt. Ambika Soni has said that she had made it clear to Shri Navin Chawla that she had nothing to do with the arrest of Shri Kapoor, adding that "I cannot take credit for what I have not done". She was asked by some Pressmen next morning as to why she had got the Reporter arrested. After learning that there was resentment in the Press Club over her involvement in the arrest of Shri Kapoor and that some journalists had gone to see the Prime Minister, she went to the P.M.'s house. She could not see the Prime Minister as the latter was not free. She, however, spoke to Shri Sanjay Gandhi and after explaining the whole thing to him, came back with a definite impression that the matter was cleared. She happened to meet Shri Bhinder also at the P.M.'s house. Shri Bhinder confirmed jokingly about the general impression going round that the police had arrested Shri Virendra Kapoor because they thought that she wanted this. She told Shri Bhinder also that this was not correct. Smt. Ambika Soni has frankly admitted that the general impression going round at that time was that Shri Kapoor was arrested on her account.

11.108 Shri P. S. Bhinder has said that he was present on the spot at the time of the incident leading to the arrest of Shri Kapoor and Smt. Soni had told

him : "Mr. Bhinder, I have done your job". Shri Navin Chawla has also mentioned that Smt. Soni had played a very valiant role in the incident at the Red Fort and was warmly congratulated at the dinner that evening.

11.109 Shri Virendra Kapoor was released on bail on November 6, 1975. He has stated that he was released on bail after two foreign journalists gave an affidavit to the effect that he was not one of the slogan shouters. Shri Kapoor has stated that "it is indicative of the terror prevailing at that time that no Indian was prepared to give an affidavit stating the circumstances of my arrest although there were many witnesses at the reception".

11.110 Shri Virendra Kapoor has stated that a common friend Shri Satish Datta had arranged his meeting with Smt. Soni at the Imperial Hotel on November 9, to give both of them an opportunity to clear the misunderstanding, but Shri Kapoor decided not to go. This fact has also been corroborated by Smt. Ambika Soni who had waited for 45 minutes at the Imperial Hotel for meeting Shri Kapoor.

11.111 Shri Virendra Kapoor was detained under MISA on November 17, 1975, under the orders issued by Shri P. Ghosh, the then ADM (South) on November 10, 1975. The record shows that the proposal for the detention of Shri Kapoor and other arrested in connection with the incident of November 1, 1975 at Red Fort had originated from Shri Prakash Singh, the then SP (North) on November 3, 1975. Shri Prakash Singh has stated that DIG(R) had ordered that all the persons arrested in connection with the incident at Red Fort on November 1, 1975 were to be detained under MISA and he had informed the SPs concerned demi-officially.

11.112 Shri Rajender Mohan, the then SP (South) has stated that he had received a d.o. letter from Shri Prakash Singh giving the account of the incident at the Red Fort involving Shri Virendra Kapoor. It was stated in the letter that "senior officers had decided to detain them under MISA". Shri Rajender Mohan formulated the grounds of detention and sent the proposal for the detention of Shri Virendra Kapoor. Besides referring to the arrest of Shri Virendra Kapoor at Red Fort on November 1, 1975, the grounds described Shri Virendra Kapoor as an active worker of RSS/BJS who was reported to be indulging in undesirable and subversive activities, holding secret meetings against Government and actively supporting the movement launched by Shri Jayaprakash Narayan. However, the report received by the Commission from the Special Branch regarding the political activities of Shri Kapoor shows that he had never been noticed for RSS/BJS activities before his detention. It thus becomes clear that the only thing the Police had against him at that time was his involvement in the incident at Red Fort.

11.113 Shri P. Ghosh, ADM (South) has stated that he had issued the detention orders under the directions of the District Magistrate without verifying the correctness of the grounds sent by SP (South) and without satisfying himself about the need for Kapoor's detention. He admitted that "these deten-

tions were on the directions of the superior authorities and not on the basis of the subjective satisfaction of the detaining authorities". Shri Ghosh has also said that while giving directions for the detention of Shri Kapoor the District Magistrate had mentioned to him that "this person had incurred the displeasure of Smt. Soni". Shri Sushil Kumar, District Magistrate, Delhi has admitted that he directed Shri Ghosh to pass an order of detention of Shri Virendra Kapoor. He has stated that Shri Navin Chawla had conveyed to him the decision of the Lt. Governor for the detention of the persons who had created disturbance at the Red Fort. Shri Sushil Kumar had also spoken to the Lt. Governor and had got it confirmed that those were his orders. Shri Sushil Kumar could not recollect that he had mentioned the name of Smt. Ambika Soni to Shri Ghosh. He, however, admitted that he had come to know about the involvement of Smt. Soni in this case 2 or 3 days after the incident.

11.114 Shri Navin Chawla has in his statement emphasised the importance of the function at the Red Fort and said that the Lt. Governor was personally instructed by the PM to ensure that no untoward incident occurred which might create a bad impression about the Government in the minds of the visiting foreign dignitaries. The Lt. Governor had, therefore, instructed IGP and DM to take all possible precautions to ensure that all went well. Shri Navin Chawla has said that he may have conveyed to the DM the decision of the Lt. Governor to detain persons arrested at Red Fort under MISA.

11.115 Shri P.S. Bhinder has denied having issued orders to Shri Prakash Singh for the detention of Shri Virendra Kapoor and others under MISA, as stated by Shri Prakash Singh. He has stated in this connection that Shri Bajwa had brought this incident to the notice of the Lt. Governor from the Red Fort itself and it was then and there announced that all those persons were to be arrested under MISA. Shri Krishan Chand has denied to have issued any orders for the detention of these persons under MISA. He said that he did not recollect whether Shri Bajwa had spoken to him about this incident.

11.116 The Lt. Governor confirmed the detention order in respect of Shri Virendra Kapoor on November 21, 1975. He was transferred to Bareilly jail in March 1976. Shri Virendra Kapoor has stated that he was put in solitary confinement and subjected to various humiliations as the jail authorities at Bareilly thought that he had something to do with the jail-break in Tihar. It is seen from the record that the Supdt. Jail Bareilly was instructed by the IG (Prison) U.P. to ensure that the detainees transferred from Delhi were not allowed to mix with others or even among themselves. The transfer of Shri Kapoor from the Delhi jail to Bareilly jail added to the hardships of the family. The request of Smt. Coomi Kapoor made to the Lt. Governor on April 7, 1976 for the release of her husband on parole for three days to enable him to see his father-in-law who was leaving for USA to undergo treatment for cancer, duly supported by a medical certificate was also rejected by the Lt. Governor.

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11.117 On a representation from Shri V.K. Narasimhan, Editor 'Financial Express' the case of Shri Kapoor was examined in the Ministry of Home Affairs and a report was called from the Intelligence Bureau. This report said that Shri Kapoor did not belong to any political party and it appeared that he was arrested because of his protest with the police over the beating of some of the demonstrators at the Red Fort on November 1, 1975. The Ministry advised the Delhi Administration to consider his case for release. The case had been considered by the Screening Committee in May 1976 and it was recommended that his release should be considered after his interrogation in jail, by the Special Branch of the Delhi Police. This interrogation was arranged by Shri Bajwa in the Bareilly jail. He forwarded the interrogation report of his DSP on July 7, 1976 with the remarks that 'Shri Kapoor has not come to our notice on the political front. I personally feel that he has suffered enough for an act which was more impulsive than pre-planned. His case for release for detention under MISA may be favourably considered'. The Ministry of Home Affairs was addressed on October 13, 1976 by the Delhi Administration. Smt. Coomi Kapoor met Shri Navin Chawla during this period and Shri Virendra Kapoor was released on parole on July 29, 1976. The parole was extended thrice and his detention order was finally revoked on November 5, 1976.

11.118 Notices under Rule 5(2)(a) of the Commissions of Inquiry Rules and Summons under Section 8B of the Commissions of Inquiry Act were issued to Shri Krishan Chand, Shri P.S. Bhinder and Shri K.S. Bajwa in this case. Shri P.S. Bhinder, in the first instance, pleaded his inability to respond to the summons on the ground of his pre-occupation with a murder case in which he happens to be involved as an accused. The Commission posted the case to a Saturday (on which the Court of Sessions does not hold sittings), to suit the convenience of Shri P.S. Bhinder. He was present but did not file any statement and tendered no defence. He pleaded that he could not get any legal assistance from the Government, which he claimed, was due to him. He requested that his case be adjourned. The Commission did not consider it a justifiable request and proceeded with the case. It may be added that the Commission had the benefit of assistance of Shri P.S. Bhinder at the time of the hearing in the first stage of the case. The initial arrest of Shri Kapoor was in the presence of Shri Bhinder. He as the DIG should have satisfied himself about the necessity of arresting Shri Kapoor at that time on that day. To that extent he had misused his position and abused his authority.

11.119 Shri Bajwa filed a statement in response to the notice under Rule 5(2)(a) of the Commissions of Inquiry Rules and also led evidence. His defence has been that Shri Virendra Kapoor had already been arrested before Shri Bajwa reached the spot and he was being taken to the Police Station. He has stated that the case under DIR against Shri Kapoor and others had been registered before he—Shri Bajwa—reached the Police Station. He had found Shri Prakash Singh willing to release Shri Virendra Kapoor but was hesitant in view of the Lt. Governor's general

directions not to release any one arrested under DIR without the Lt. Governor's approval. This statement of Shri Bajwa is belied by his own testimony where he says that when he reached the Police Station, he was told by the SP that the case under DIR was being registered. It is clear from the statement of Shri Prakash Singh and Shri Bajwa's own testimony that Shri Prakash Singh was reluctant to include Shri Virendra Kapoor's name in the case under DIR and he did so only after Shri Bajwa came to the Police Station and talked to the Lt. Governor and directed Shri Prakash Singh to arrest Shri Kapoor also. Shri Bajwa in his defence has drawn the attention of the Commission to the FIR, statements of witnesses, seizure memo, SP's special report to his superior officers relating to the DIR case registered in connection with the incident of November 1, 1975. Shri Bajwa contended that since the name of Shri Kapoor figures in all these records as one of the agitators, it is not correct to believe that he was not one of the agitators and was arrested only at his instance. He cross-examined Shri Sardar Singh and confronted him with his earlier statement u/s 161 in the DIR case where he had stated that Shri Kapoor was one of the agitators. Shri Sardar Singh stated with a good deal of visible bitterness that "in those days we had to make stories and in this case also it was a story that Virendra Kapoor was arrested". Pointing out the importance of Shri K. S. Bajwa in matters relating to arrests and detentions in Delhi at that time, Shri Sardar Singh stated "not even SPs, even the District Magistrate or Lt. Governor could not have dared to disobey Shri Bajwa at that time". Shri Bajwa had played an important part in the arrest of Shri Kapoor; ostensibly he had talked to someone in authority (Lt. Governor has denied Bajwa talking to him over the phone) over the phone and obtained a clearance for arresting Shri Kapoor against the better judgment of the S.P. Shri Prakash Singh. He could as well have left the matter to be handled by the District S.P. who was an officer of the same rank and who had his own views in the matter. Bajwa's efforts to take the matter up with someone else in authority is only indicative of his anxiety to frame up Shri Kapoor. He has abused his authority in doing so.

11.120 Shri Krishan Chand responded to the summons and repeated his earlier denial that he had given any directions for the detention of Shri Kapoor. His defence has been that Shri Prakash Singh and Shri Sardar Singh have said that Shri Bajwa had spoken to "somebody" without naming this "somebody". They have not mentioned that Shri Bajwa had spoken to the Lt. Governor. He contended that had Shri Bajwa spoken to him, he would have disclosed to them that the orders were from the Lt. Governor. Shri Krishan Chand's contention is that Shri Bajwa must have spoken to Shri Sanjay Gandhi who was the extra-constitutional authority in Delhi during those days and whose name was not to be disclosed. It is not possible to say Shri Bajwa spoke to the Lt. Governor or Shri Sanjay Gandhi. It cannot, therefore, be said that the initial arrest of Shri Kapoor was pursuant to Shri Krishan Chand's directions. But the later detention under MISA was under his orders. This is only in keeping with the general policy of negligence and lack of interest

that he had displayed in the general run of detentions numbering over one thousand. He has abused his authority and misused his position in this as in several other cases.

11.121 In this case of detention of Shri Virendra Kapoor under MISA, the grounds for detention were that he was an active worker of the RSS/BJS and was reported to be involved in undesirable and subversive activities; yet when the Special Branch of the Delhi Police conducted an interrogation of Shri Kapoor in Bareilly Jail in July 1976, i.e. nearly eight months after the detention, they reported that there was nothing against Shri Kapoor on the political front. The Ministry of Home Affairs had referred the case to the Intelligence Bureau for their report on the political activities of this individual sometime in May 1976. They had also reported that Shri Kapoor did not belong to any political party and that his arrest was motivated because of the protest that he had lodged with the police over the beating of some of the demonstrators at Red Fort on November 1, 1975. It has been established on the basis of the evidence that the arrest of Shri Kapoor was done at the instance of Shri Bajwa immediately after the incident relating to the throwing of the pamphlets at the Red Fort reception given to the foreign dignitaries. This arrest was followed later on by detention under MISA on grounds which were entirely imaginary. The Commission cannot condemn adequately this type of the use of MISA on fabricated grounds. An Administration which is totally impervious to the awareness of the basic norms of liberty and the provisions of law, and a set of functionaries who are willing to do anything at the bidding of their seniors without application of mind and without realising the consequences of their acts, have in them the makings of a totalitarian society. The Commission is of the opinion that the Government must make appropriate provision for fixing responsibility on the persons issuing written or even oral orders for every detention.

IV. Detention of Vaid Guru Dutt

11.122 Vaid Guru Dutt aged 83, eminent Hindi writer and author of about 200 books was arrested under section 108/151 Cr. P.C. at Punjabi Bagh Police Station on November 22, 1976. According to his statement before the Commission he was taken into custody from his residence at about 10 p.m. on November 22, 1976 and produced before the Sub-Divisional Magistrate Punjabi Bagh in the afternoon of November 23, 1976. The police complaint u/s 108 Cr. P.C. was to the effect that Vaid Guru Dutt was found, outside his residence at 10 p.m., criticizing the Government of Smt. Indira Gandhi for invoking emergency, illegally detaining the top opposition leaders and adopting a policy of forced sterilization. The report further said that he was stressing before the gathering (5/6) the need for overthrowing the dictatorial regime of Smt. Gandhi. The complaint cited no public witnesses in support of the allegation.

11.123 Inspector Jarnail Singh the then SHO Punjabi Bagh has stated that he had ordered SI Lakhpat Singh to arrest Shri Guru Dutt u/s 108/151 Cr. P.C. in accordance with the policy decision then

in force that "persons considered for detention under MISA were first arrested under 108/151 and then detained under MISA". Shri Jarnail Singh admitted that he had given no grounds to the Sub Inspector for the arrest of Vaid Guru Dutt u/s 108/151 Cr. P.C. and had left this matter to him. Shri R.K. Ohri the then SP (Central) has corroborated the statement of Shri Jarnail Singh and admitted that he had ordered him to arrest Vaid Guru Dutt u/s 108 Cr. P.C. in view of the policy then prevailing in Delhi, after he learnt from Shri Bajwa that Vaid Guru Dutt was to be detained under MISA and orders to this effect were being issued by the ADM (Central).

11.124 Shri A.K. Paitandy, the then SDM Punjabi Bagh, has stated that he had discussed the case of Vaid Guru Dutt with Shri B.K. Goswami, Deputy Commissioner, Delhi, and had strongly pleaded with him that 'this arrest was rather harsh and the administration would earn a bad name if something wrong to this novelist happened during the period of detention'. Shri B.K. Goswami has stated that sometime in the 3rd week of November he had received a telephone call from the Deputy Secretary to the Lt. Governor saying that the Lt. Governor had desired that Vaid Guru Dutt be detained under MISA because he had written a book sometime in 1973 in which some derogatory references were made against Smt. Indira Gandhi, the then Prime Minister. On receipt of these instructions Shri Goswami sent for a copy of that book and also made enquiries about the activities of Vaid Guru Dutt from the SHO Punjabi Bagh who told him that Vaid Guru Dutt was an old sick man who was not politically active. Shri Goswami being reminded about the detention of Vaid Guru Dutt by Shri Jagmohan, the then Deputy Secretary to Lt. Governor, went to the Lt. Governor and pleaded with him saying that Vaid Guru Dutt had retired from politics sometime ago and it would be wrong to detain him under MISA. The Lt. Governor rebuked him for 'sticking out his neck too much' and snubbed him by saying that 'I did not ask you to examine. I want my orders to be carried out'. Later, when Shri Paitandy brought to him the news of the arrest of Vaid Guru Dutt under Section 108/151 Cr. P.C. and he found Shri Paitandy very upset and sorry for the man, Shri Goswami again rang up the Lt. Governor and pleaded with him to reconsider his orders for the detention of Vaid Guru Dutt; but this also had no effect on the Lt. Governor who told him to carry out the orders. Shri Goswami expressed his helplessness to Shri Paitandy who went back. When Vaid Guru Dutt was produced before him he remanded him to judicial custody as he knew that his arrest was a prelude to his subsequent detention and 'question of granting bail/accepting surety bond did not arise'. Shri Paitandy, referring to his refusal to grant bail to Vaid Guru Dutt has stated before the Commission that 'that was the prevailing practice unfortunately. I am ashamed to admit it but I must admit it'.

11.125 Shri Jagmohan, the then Deputy Secretary to the Lt. Governor has corroborated the statement of Shri B.K. Goswami, and has admitted that he had conveyed to him the orders of the Lt. Governor for the detention of Vaid Guru Dutt. He has stated

that the Ministry of Home Affairs had referred to the Delhi Administration the case regarding the novel "Madhu" written by Vaid Guru Dutt and published sometime in 1973 which contained some derogatory remarks against the then Prime Minister particularly with reference to her election campaign in Rae Bareilly. The Lt. Governor felt annoyed with the officials of the Home Department for their failure to detect such a thing on their own and approved the proposal of the Secretary (Law & Judl.) for action against the Printer and Publisher of the book under DISIR. However, the noting of the Secretary (Law & Judicial) shows that though the matter referred to in the novel "Madhu" did not strictly fall within the definition of the term 'prejudicial report' as defined under the Defence of India Rules, 1971, action under DIR was proposed because by referring to the election of Prime Minister in Rae Bareilly constituency, the author had tried to bring into hatred or contempt the Government of the country established by law. The Secretary (Law & Judicial) also pointed out the inherent weakness of the case that though the book had appeared in 1973, action was proposed to be taken in 1976. The Administration was, therefore, advised to take this fact into consideration before taking decision in the matter. Shri Jagmohan has stated that Shri B.K. Goswami had told him that Vaid Guru Dutt was an eminent writer with no political leanings and his arrest would have adverse repercussions and he had conveyed this to the Lt. Governor. Shri Jagmohan added that Shri B.K. Goswami had again gone to see the Lt. Governor and pleaded with him that there were not sufficient grounds to detain Vaid Guru Dutt but the Lt. Governor did not change his mind.

11.126 Shri Bajwa, the then SP, CID (Special Branch), says that he was informed by Shri Jagmohan that some action against Vaid Guru Dutt was contemplated and he should send to the Deputy Commissioner whatever information he had in his records on the activities of Vaid Guru Dutt. Shri Bajwa prepared a factual note on the activities of Vaid Guru Dutt and sent the same to Shri Goswami demi-officially on November 23, 1976.

11.127 Shri S.L. Arora the then ADM (North) was directed by Shri Goswami to issue the detention orders. Shri Arora has stated that though this matter fell within the jurisdiction of ADM (Central) he was directed to issue the orders as the ADM concerned was on leave, on that day. Shri Arora issued the detention orders on November 24, 1976 and the grounds of detention were taken entirely from the D.O. letter of Shri Bajwa to Shri B.K. Goswami conveying the activities of Vaid Guru Dutt from March, 1950 to December, 1973. The grounds of detention are not only remote in point of time but are also vague and cannot be interpreted to attract the provisions of section 3 of MISA by any stretch of reasoning. It is also surprising that the real cause of detention of Vaid Guru Dutt namely his novel "Madhu" is not at all mentioned in the grounds of detention. Shri Arora has admitted that he did not apply his mind and did not care to see whether the grounds were sufficient or not and issued the orders because he was asked to do so by the Deputy Commissioner. He frankly admitted that he had acted 'entirely mechanically' in this case.

11.128 Shri Krishan Chand has admitted that he directed the Deputy Commissioner Shri B.K. Goswami to detain Vaid Guru Dutt under MISA. He said that his decision was based on the contents of the novel written by Vaid Guru Dutt. He admitted that he had not personally read the objectionable portions of the book and the order was passed on the facts briefly summarised for him in the file. He has stated that he had consulted Shri Om Mehta in this regard, who had told him that this was an agitational approach and some action should be taken against the author of this book. Shri Krishan Chand could not explain the nature of this agitational approach nor could he specify what action was suggested by Shri Om Mehta. He said that there were some books which Government viewed with dislike and he was powerless in the matter. He also admitted that Shri B.K. Goswami had brought to his notice that Vaid Guru Dutt was an eminent writer who had no political leanings. He owned up his responsibility for the detention and said that the ADM and the DM were not to blame in this case. He admitted that his conduct in this case would amount to merely acting "as his master's voice" as he had ordered the detention of Vaid Guru Dutt because Shri Om Mehta told him that this man had the temerity to write something about the then Prime Minister which was not very complimentary. He said that in those days even slogan shouting against the Prime Minister used to invite serious action.

11.129 The detention order in respect of Vaid Guru Dutt was required to be confirmed by the Lt. Governor within 15 days as per provisions of the Act. The order was, however, not confirmed and it was allowed to lapse. Smt. Chandra has stated that she was instructed telephonically by the Lt. Governor or his Secretary to put up the file of detention of Vaid Guru Dutt with the recommendations for the revocation of the orders. Vaid Guru Dutt was released on December 3, 1976.

11.130 A notice under Rule 5(2)(a) of the Commissions of Inquiry Rules and summons under section 8B of the Commissions of Inquiry Act were issued to Shri Krishan Chand in this case. Shri Krishan Chand responded to the summons and gave his version of the case. He took the plea that it was Shri Om Mehta who had brought the book to his notice. After he learnt about the age and poor health of Vaid Guru Dutt he consulted Shri Mehta and sought his approval for not confirming the detention order.

11.131 This was yet another case where the order for detention under MISA came from the Lt. Governor directly and was carried out even though the Deputy Commissioner himself was at no stage convinced about either the need or the justification for the detention.

11.132 The grounds for detention as they were eventually set out do not mention the real reason which had motivated the authorities in favour of detention viz., that his novel "Madhu" published in 1973 contained references allegedly derogatory to the then Prime Minister. This would suggest that the grounds brought on record for detention were a mere formality without relevance to the then state of affairs. The ADM who issued the detention order in effect says

that 'he had acted entirely mechanically' in issuing the detention orders.

11.133 The Commission is of the opinion that Shri Krishan Chand misused his position in ordering the detention of Vaid Guru Dutt. The fact that he saw sense soon enough and allowed the detention order to lapse on account of which Vaid Guru Dutt was released within 11 days of his detention, does not detract from the gravity of the initial order. Vaid. Guru Dutt appeared before the Commission. He is hard of hearing, almost blind and has to be helped even to move about. It is surprising how an individual of this description could have posed a challenge to the security of the State. One cannot understand what motivated Shri Krishan Chand in ordering the arrest of Vaid Guru Dutt. In his anxiety to please the ex-Prime Minister he seems to have over-reacted to a situation which at best should have been ignored. It is the arrest of an old, infirm and respected individual like Vaid Guru Dutt which shakes the faith of the people in the fairness and competence of the Administration.

V. Detention of Shri Prabir Purkayastha

11.134 Shri Prabir Purkayastha, a student of Jawahar Lal Nehru University (JNU) was detained under MISA on September 25, 1975, under the orders passed by Shri P. Ghosh, the then Additional District Magistrate (South) for his alleged active association with Students Federation of India (CPM) and for his alleged prominent role in organising the students strike started by the SFI w.e.f. September 24, 1975 against the JNU Administration and the Government. Records of the Special Branch of the Delhi Police show that Shri Purkayastha had, in a meeting held on August 26, 1975 criticised the Vice-Chancellor for suspending Kum. Ashok Lata Jain and supported the call to fight against the alleged repressive policy of the University authorities. The report also states that in response to the call of the SFI for strike in JNU he was noticed preventing some students from attending classes on September 24, 1975.

11.135 Shri Prabir Purkayastha has stated that he had joined JNU in early September, 1975 for his Ph.D Degree; that he was a participant in the three day boycott of classes in JNU from September 24, 1975 in protest against the expulsion of Kum. Ashok Lata Jain who was an elected member of the Students' Union; that on September 25, 1975, when he was sitting in the lawn outside the School of Languages with three other students Saraswati Menon, Kum. Shakti Kak and Kum. Indrani Majumdar, at about 10 a.m. a black Ambassador car stopped nearby and one of the four occupants of the car asked him whether he was Devi Prasad Tripathi, the President of the Students' Union; that he said that he was not; that despite his protests, he was dragged inside the car after some scuffle and all efforts of his companions to rescue him failed and the car drove off; and that he was taken to R.K. Puram Police Post where he learnt from the SHO that the person driving the car was Shri P.S. Bhinder, the then DIG (R). Kum. Shakti Kak and Kum. Indrani Majumdar, who were eye-witnesses to the incident have corroborated the statement of Shri Purkayastha. Kum. Shakti Kak stated

that it was a black ambassador car No. DLE 5747. This car is found to be the official car of the then Supdt. of Police (South) Shri Rajinder Mohan. According to their statements, the person who first came and asked Shri Prabir Purkayastha, whether he was D.P. Tripathi, was left behind in the campus and was later mobbed by the students who wanted to find out his identity and also to know where and by whom Prabir Purkayastha had been taken. He was rescued by some police officers, who told the students that they would take care of their complaint. This officer was Shri T.R. Anand, Dy. Supdt. of Police. Shri Purkayastha, Kum. Shakti Kak and Kum. Indrani Majumdar have stated that Smt. Maneka Gandhi, wife of Shri Sanjay Gandhi, who was a student of JNU, had gone to the University in the morning of September 25, and was stopped by the students including Shri Devi Prasad Tripathi from attending the classes, and was also asked to join the boycott. She did not attend the class and went away. According to Shri Prabir Purkayastha, his detention and the manner of his arrest could have been the result of this incident relating to Smt. Maneka Gandhi. Kum. Indrani Majumdar has stated that since Smt. Maneka Gandhi had also come in a black car "there was a lot of speculation later on as to whether the car was the same car which had taken Prabir away later on".

11.136 Shri T.R. Anand said that he and Shri Rajendra Mohan, were standing outside the JNU in the morning of September 25, 1975, when Shri P.S. Bhinder came there and made enquiries about the situation and particularly about Shri D.P. Tripathi, President of the Students' Union against whom a MISA warrant was pending execution. Shri Bhinder then decided to arrest Shri D.P. Tripathi himself and though Shri T.R. Anand told him that he did not know Tripathi and could not identify him, Shri Bhinder insisted on Shri Anand accompanying him. Shri Anand stated that he went inside the Campus along with Shri Bhinder and two constables in plain-clothes in motor-car No. DLE 5747 driven by Shri Bhinder himself ; that Shri Bhinder arrested Shri Prabir Purkayastha on the suspicion that the latter was Shri D.P. Tripathi though Shri Prabir Purkayastha said that he was not Tripathi and other students also said so ; that Shri Bhinder was saying that he had to arrest Tripathi under MISA warrant but had taken Prabir Purkayastha into custody "suspecting that he is Tripathi and he is concealing" ; that subsequently Shri Bhinder had told the officers that Smt. Maneka Gandhi, who was stopped from attending the classes on September 25 had gone back to the Prime Minister's house and Shri Bhinder had gone to the JNU under instructions from the Prime Minister's house. Shri Rajinder Mohan has stated that Shri Bhinder had come straight from the PM's house and had entered the University campus saying that he would go and arrest Shri D.P. Tripathi ; that later Shri Bhinder told him that he—Shri Bhinder—had arrested one student who was not D.P. Tripathi but was one of the agitators and he should be detained under MISA ; that it was at that time when he—Rajinder Mohan—came to know the name of the student who was arrested by Shri Bhinder ; that he told Shri Bhinder that the name of Shri Purkayastha did not figure in the list supplied by the CID and he did not have any grounds for detaining

him under MISA ; and that Shri Bhinder still told him that " a decision has been taken and you will get a warrant from the Additional District Magistrate and it has to be executed."

11.137 Shri P. Ghosh, Additional District Magistrate (South) has stated that he had reached the Police Station Hauz Khas in response to the wireless message from the SP (South) and learnt from Shri T.R. Anand and Shri Harpal Singh, Dy.S.P. that a scuffle had taken place involving some police officials and JNU students ; that on his request the Dean of the Students and the Registrar of the JNU came to the Police Station and told him that some police officials had entered the campus and kidnapped a student ; that when he confronted Shri Rajendra Mohan with his version, the latter told him that Shri P.S. Bhinder had gone to the JNU to arrest Shri D.P. Tripathi because Smt. Maneka Gandhi had complained to Shri Sanjay Gandhi about the anti-Government activities in JNU and Sanjay Gandhi had summoned Shri Bhinder and had asked him to take drastic action ; that Shri Bhinder had gone with the intention of arresting Shri D.P. Tripathi but had taken another student into custody in the mistaken belief that the student was Shri Tripathi ; and that when Shri Rajendra Mohan insisted on the issue of MISA warrant against this student he went to the District Magistrate and brought all the facts to his notice and sought orders, but the District Magistrate felt that since the matter involved Shri Sanjay Gandhi, he would consult the Lt. Governor and seek his orders.

11.138 Shri Sushil Kumar has admitted that Shri Ghosh had brought the facts relating to the arrest of Shri Prabir Purkayastha to his notice and had sought his administrative advice. He categorically stated that Shri Ghosh had told him that it was a case of mistaken identity and that Shri Bhinder had acted under instructions from the PM's house, or from Shri Sanjay Gandhi and had arrested Shri Prabir Purkayastha in place of Shri D.P. Tripathi. Shri Sushil Kumar has admitted that since the matter involved the PM's house, he thought it necessary to discuss it with the Lt. Governor before he gave any orders to Shri P. Ghosh. Shri Sushil Kumar has also stated that he had brought the details of the case of Shri Purkayastha to the notice of Lt. Governor and had told him that it was a case of mistaken identity and the police were insisting on the issue of MISA warrant against Shri Prabir Purkayastha. The Lt. Governor told Shri Sushil Kumar that he would let him know as to what was to be done about it. According to Shri Sushil Kumar, the Lt. Governor told him on telephone later in the evening that "the request made by SP (South) to the Additional District Magistrate for the issue of MISA detention order should be complied with". Shri Sushil Kumar has admitted that he directed Shri Ghosh to act accordingly and Shri Ghosh issued the detention order which was served on Shri Prabir Purkayastha late at night. Shri Ghosh received the grounds of detention from the SP (South) after several days but the grounds were pre-dated.

11.139 Shri Rajendra Mohan has corroborated Shri Ghosh by saying that though he got the detention orders on the same day, i.e. September 25, 1975, he prepared the grounds from an unsigned note received

from the Special Branch 4-5 days after this incident. Shri P. Ghosh admitted that though he had no evidence against Shri Prabir Purkayastha and that in fact found the story of the University authorities regarding Shri Purkayastha's innocence credible, he issued the detention orders on the directions of the District Magistrate because "in those days ** the practice was not to issue detention orders on the basis of subjective satisfaction of a Magistrate but to issue them on the directions of our official superiors". Shri Ghosh also admitted that the arrest was not made on the basis of grounds which were a mere formality and the date on which the grounds were signed were also a formality.

11.140 Shri P.S. Bhinder has admitted that he had arrested Shri Prabir Purkayastha from inside the University campus on September, 25 1975. He has admitted that he had gone into the JNU Campus with Dy. SP Shri T.R. Anand and two constables in plain clothes in the motor-car of Shri Rajendra Mohan which he himself was driving. He has said in his defence that the JNU was a centre of agitational activities and sometime either before the arrest of Shri Prabir Purkayastha or after a massive raid was carried out in the JNU and 8 to 10 students were arrested. According to the statement of Shri Bhinder this was done under the directions of the Lt. Governor and he (Lt. Governor) was very happy about it. According to Shri Bhinder three persons still remained to be arrested and Shri D.P. Tripathi and Shri Prabir Purkayastha were among them; that the Lt. Governor wanted these persons also to be arrested and was making daily enquiries in this regard; that he had gone to the JNU in the morning of September 25, 1975 after learning that some students were stopping others from attending classes; that he took Shri T.R. Anand, Dy. SP and two constables and went inside the campus where he found 10 to 15 boys shouting anti-emergency slogans, but he could not say what these slogans were; that these boys were preventing others from attending classes and Shri Prabir Purkayastha appeared to be the leader of the group; that he enquired about his name from another group of students and learnt that it was Prabir Purkayastha; and he remembered that Prabir was one of the three students still wanted, as directed by Lt. Governor and he arrested him. The story of Shri Bhinder does not appear credible.

11.141 Shri Krishan Chand has admitted that Shri Sushil Kumar came to him on September 25, 1975 and told him that he had learnt from Shri Ghosh that under instructions from the PM's house Shri Bhinder had gone to the JNU and had arrested one or two students; but he said that Shri Sushil Kumar did not tell him that it was a case of mistaken identity. Shri Krishan Chand also stated that he found Shri Sushil Kumar puzzled because he did not know on what grounds that student was arrested and that he told Shri Sushil Kumar "I will find out and give you a reply." He also stated that before Shri Sushil Kumar met him Shri Bhinder had seen and had told him that they had found a "goldmine" because he had arrested some students and that the arrests would help the situation in JNU, but Shri Bhinder had given him no details nor had he felt any curiosity himself to ask for any further details, that he did not know that Shri

Bhinder had himself gone to make this arrest nor was he told so by Shri Bhinder, that after discussion with Shri Sushil Kumar he consulted Shri P.S. Bhinder either on the same day or the next day, and later told Shri Sushil Kumar that "if the information is from the PM's house and Mr. Bhinder says that this is correct then it would be a fit case for issue of a MISA warrant"; that he did not know the details of the allegations against this student but Shri Bhinder had told him that they had sufficient material for his detention and that the fact that Shri Bhinder had received the information from the PM's house had certainly influenced him. Shri Krishan Chand maintained that Shri Sushil Kumar had not brought the fact of mistaken identity to his notice and said that "Mr. Bhinder was insisting again and again that we have got the right person".

11.142 It is difficult to believe that Shri Krishan Chand was not informed by Shri Sushil Kumar that it was a case of mistaken identity. Shri Krishan Chand has admitted that he thought that whatever Shri Bhinder said must be accepted. Shri Krishan Chand obviously relied more on what Shri Bhinder said in this matter and ignored the information given by Shri Sushil Kumar on the basis of what Shri Ghosh had told him.

11.143 It is clear from the statements of Shri Prabir Purkayastha, Shakti Kak and Indrani Majumdar the students and Shri T.R. Anand and Shri Rajendra Mohan, the police officials, that Shri Bhinder had arrested Prabir Purkayastha in the mistaken belief that he was Shri D.P. Tripathi and finding it too late to retrace his steps he insisted on the detention of Shri Prabir Purkayastha under MISA and successfully persuaded the Lt. Governor to direct the District Magistrate to arrange for the issue of MISA warrant against Purkayastha.

11.144 Shri Prabir Purkayastha has stated that his request for grant of parole to enable him to take the *viva voce* examination for his ME thesis was refused and only after the Delhi High Court gave directions, he was sent to Naini Jail in handcuffs for taking his examination. Shri Prabir Purkayastha was transferred to Agra Jail after the jail break in Tihar Jail in March 1976 and was put in solitary confinement for about 25 days in Agra Jail as orders to this effect were issued to the Superintendent, Agra Jail, by IG (Prisons), U.P.

11.145 Shri Samar Mukherjee, Member of Parliament, wrote to Shri Om Mehta on October 31, 1975 giving an account of the circumstances of arrest of Shri Prabir Purkayastha and expressed the resentment it had caused amongst the students and the staff members of JNU. A report was called from the IB and it confirmed that Shri Prabir Purkayastha was not an active member of the Students Federation of India and had not come to notice for taking an active part in organising a students' strike in JNU on September 24, 1975.

11.146 The Ministry of Home Affairs wrote to the Delhi Administration on 14-4-1976 giving them the gist of the IB's report and advised them to re-examine

the case for revocation of orders. The Delhi Administration promised to consider the matter in the next four monthly review due in May, 1976 but the continued detention of Shri Purkayastha was again confirmed in this review on May 18, 1976.

11.147 Shri Krishan Chand has stated that when the report from the Ministry was placed before him, he consulted Shri Bhinder who was also a member of the Screening Committee and Shri Bhinder reiterated the earlier stand that Shri Purkayastha was not wrongly detained. The case was again examined at the level of the Home Minister, and the Ministry of Home Affairs wrote to the Delhi Administration on July 9, 1976 to revoke the orders in respect of Shri Prabir Purkayastha. The Lt. Governor did not agree. According to the note in the file of the Delhi Administration, the Lt. Governor discussed the matter with Shri Om Mehta, MMHA, and it was decided to review the case in due course. The detention order was revoked ultimately on September 25, 1976. Shri Krishan Chand has admitted that he did not agree to the release of Shri Purkayastha even after receiving the letter dated July 9, 1976 from the Ministry of Home Affairs, because he was told by Shri Bhinder and other police authorities that Purkayastha's release at that stage "might adversely affect the normal functioning of the University".

11.148 Notices under Rule 5(2)(a) of the Commissions of Inquiry Rules and summons under section 8B of the Commissions of Inquiry Act were issued to Shri Krishan Chand and Shri P.S. Bhinder in this case. Shri Bhinder pleaded his inability to respond to the Commission's summons on the ground of his preoccupation with a murder case in which he happens to be an accused. The Commission even posted this case for a Saturday to suit the convenience of Shri Bhinder. Shri Bhinder was present but tendered no statement of his version contending that he could not get the legal assistance that, he claimed, was due to him, and on that account he requested for adjournment of the case. The Commission, however, did not think it a justifiable request and proceeded with the case. The Commission has already had the benefit of Shri Bhinder's assistance in the first stage of the hearing of the case when he had given a detailed account of his version of the case. Shri Krishan Chand responded to the summons and gave his version of the case which has been referred to earlier in this report.

11.149 There is no denying the fact that Shri Krishan Chand did not at all exercise his independent judgment and went entirely by the version given to him by Shri Bhinder. In the process he misused his powers and abused his authority. Shri Bhinder, it is clear from all accounts, kidnapped Prabir Purkayastha believing him to be Shri D.P. Tripathi. That it was a clear case of mistaken identity is evident on the record. The manner in which Shri Bhinder went about the job discloses his callous attitude. Because he received directions from the Prime Minister's house, he arrested the first male student he came across and even after he was repeatedly told that the student was not D.P. Tripathi against whom a warrant was issued he insisted upon obtaining an

order of detention under MISA and ultimately set up a false story to justify his action. This was a gross abuse of authority. Even when informed that he had arrested a wrong person against whom the police had no evidence of prejudicial activity, he persuaded the authorities to detain and continue to keep Purkayastha in detention seriously aggravating his misconduct. The story of the arrest of Purkayastha by Shri Bhinder, the manner in which the Magistrate issued the detention orders, and the part played by the Lt. Governor illustrate the complete breakdown of the rule of law. The attitude of callous disregard of the rights of an innocent citizen exhibited by Shri Bhinder in arresting Purkayastha and ensuring that he be kept in custody for more than one year, during which Purkayastha was subjected to various forms of ill-treatment, merely with a view to please someone in the Prime Minister's house, is a sad commentary on the state of affairs which prevailed when power was exercised by functionaries who believed that they were not responsible for explaining their actions. The arrogance of untrammelled power, coupled with the spineless attitude disclosed by public servants who were responsible for the administration of the law, contributed to the happening of events which must remain a serious blot on the fair name of any administration.

VI. Use of MISA against Ordinary Criminals

11.150 A large number of ordinary criminals who could be dealt with effectively under the provisions of normal laws were detained under MISA in Delhi during the emergency. This was in defiance of the specific directions of the Ministry of Home Affairs. The Ministry of Home Affairs had on September 10, 1975 sent detailed instructions to all the State Governments and Union Territories clearly defining the scope of MISA. These instructions laid down that only when a person's activities pose a threat to the security of the State or the maintenance of public order or maintenance of supplies and services essential to the community etc. a valid MISA order against him could be issued. To leave no scope for ambiguity, it was clarified that MISA was not to be used against persons accused or suspected of offences like theft or receiving stolen property or cheating or dealing in illicit liquor which do not impinge on security of State or public order. It was further clarified that "detention orders made in the context of emergency should actually relate to the requirements of emergency."

11.151 The case of one Shri Hardev Singh s/o Mohan Singh detained under MISA in September, 1975 for his involvement in a series of offences u/s 379, 379/411 and Excise Act during the period from January 1967 to November 1974 was put up to the Lt. Governor for confirmation of detention orders issued by the Additional District Magistrate after the receipt of these instructions. Shri O. P. Sharma, Under Secretary (Law) examined this case in consultation with the Secretary (Law) and advised the Lt. Governor against confirming the detention orders as the case did not fall within the purview of MISA. He also put up a confidential note setting out his objections to the detention of ordinary criminals

under MISA. He has stated that his views in this note were based on the instructions from the Ministry of Home Affairs and his discussion with Shri C. V. Narasimhan, Joint Secretary in the Ministry of Home Affairs. Smt. S. Chandra, Special Secretary (Home), endorsed this view, and the Lt. Governor was requested not to confirm the order of detention. The Lt. Governor, however, did not accept this advice and confirmed the detention order. The subsequent noting of Shri O. P. Sharma on this file shows that he had removed the confidential note setting out his objections to the detention of Shri Hardev Singh. Shri O. P. Sharma has stated that "my opinion in Hardev Singh's case was, however, expressly overruled by the then LG—thus creating a sort of ruling at the administrative level for dealing with such similar cases of bad character, thieves, gamblers, cheats and such other cases. I was rather forced to remove the confidential note recorded in that case." He has made this point clear by stating that "then I took it as ruling for the disposal of future cases". Smt. S. Chandra has also stated in this connection that "the case of Hardev Singh where LG overruled my suggestion as also MHA's guidelines initiated this policy which we had to follow in all subsequent cases".

11.152 The case of Shri Sain Dass s/o Shri Ramji Das is another useful illustration on this subject. He was detained under MISA under the orders of Shri S. L. Arora, the then Additional District Magistrate (North), passed on September 5, 1975, on account of his involvement in 10 cases under the Gambling Act, Opium Act and Excise Act etc. etc. The detention was confirmed by the Lt. Governor on September 9, 1975. After instructions were received from the Government of India to review the cases of detention of ordinary criminals in the light of these instructions, the case was again put up to the Lt. Governor. Smt. S. Chandra, Special Secretary (Home), drew the Lt. Governor's attention to the instructions received from the Government of India and requested him to revoke the detention order. The Lt. Governor did not accept this advice and ordered the continued detention of Shri Sain Das on November 1, 1975. The case was reviewed in the 4-monthly review and continued detention was again confirmed by the Lt. Governor on February 27, 1976. In the meantime a d.o. letter was received on March 19, 1976 from Shri P. S. Bhinder, Deputy Inspector General (Range), stating that "we find that this criminal is quite old and has also written a letter of apology. It is, therefore, recommended that he may please be released so that he is given a chance to lead a normal life". The Chief Secretary sent the file to the Lt. Governor recommending consideration of the case by the Screening Committee. The Lt. Governor wrote on the file: "we should be guided by what DIG(R) says and agree to his release". The order of detention was revoked on March 24, 1976.

11.153 Shri Krishan Chand has stated that though the Ministry of Home Affairs had sent instructions prohibiting the use of MISA in such cases, the actual policy of the Government was different and he was told by Shri Om Mehta that such persons should also be detained under MISA. He could not explain why he confirmed the detention order in respect of

Shri Sain Dass in the first instance against the advice of his subordinate officers of the Home Department and later readily agreed for release of the detainee when Shri Bhinder recommended the case.

Detention of Juvenile Delinquents

11.154 S/Shri Raja Ram s/o Kewal Ram, Harish Kumar s/o Om Prakash and Inder Paul s/o Ram Narain, all in their teens, were detained under MISA under the orders of Shri S. L. Arora, Additional District Magistrate (North) on July 16, 1976. Grounds of detention mentioned their involvement in a case of burglary at the shop of one Sham Lal on the night of June 30, 1976 when they were caught and Rs.8,000 were recovered from Inder Paul and Harish Kumar. A case under section 457/380 IPC was also registered in PS Lahori Gate. In addition to this, the grounds of detention described these boys as "active criminals of PS Lahori Gate who indulged in acts of violence, intimidation, burglary and other criminal offences". The Lt. Governor confirmed the detention orders on July 24, 1976.

11.155 It is seen from the statement of Sub Inspector Mohinder Paul PS Lahori Gate who had investigated the case that "these boys were not involved in any criminal case before the case of burglary on June 30, 1976". Report received from Shri P. S. Bawa, SP (Crime & Railway), Delhi vide his letter No. 17352/Crime/DA/VI dated November 5, 1977 shows that these persons were not involved in any criminal case anywhere before this incident. These boys could not therefore be considered as active criminals.

11.156 Shri S. L. Arora, Additional District Magistrate (North) has stated that he had issued these detention orders under the specific directions of the District Magistrate. Shri R. S. Sahay, SP (North) who had sent the proposal for detention has stated that it was done in accordance with the policy decision given by Shri P. S. Bhinder, Dy. Inspector General (R), orally to all the Superintendents of Police to use powers under MISA against persons "caught red-handed" in the property offences. When asked specifically whether any record was made of these instructions, Shri Sahay stated that most of the orders during those days used to come to them verbally. Shri Sahay also said that he was not aware at that time that the Ministry of Home Affairs had issued instructions prohibiting the use of MISA in the case of ordinary criminals like thieves, cheats, persons dealing in illicit liquor etc. etc.

11.157 Detention of Shri Raja Ram was examined in the Ministry of Home Affairs on the basis of the representation of his father Shri Kewal Ram. Shri R. L. Misra, Joint Secretary, recorded that "this is yet another case of misuse of MISA by Delhi Admn." File shows that a report from the Intelligence Bureau was also received and this report indicated that the detention in these cases had been made largely to oblige the cloth merchant whose shop Shri Raja Ram and two others had burgled on June 30, 1976. After obtaining approval from the Home Minister a letter was written to the Delhi Adminis-

tration asking them to revoke the detention order and let the normal law operate in these cases. They were specifically requested to take necessary action against those responsible for misuse of emergency powers in this case.

11.158 The Lt. Governor approved the proposal for the revocation of order in respect of Shri Raja Ram on November 5, 1976 and the order was issued on November 9, 1976. However, this ruling of the Ministry of Home Affairs which was applicable to the cases of Inder Paul and Harish Kumar also who were detained along with Shri Raja Ram on the same grounds, was not considered in favour of these two and the continued detention of these boys was confirmed by the Lt. Governor on November 15, 1976. Orders in respect of these boys were revoked on December 17, 1976.

11.159 Shri Krishan Chand could not explain why at the time of agreeing to the proposal for the release of Raja Ram as advised by the Ministry of Home Affairs, he did not pass similar orders in respect of Inder Paul and Harish Kumar. He advanced the plea that their cases were not put up to him. However, the letter from the Ministry of Home Affairs contained in the file of Shri Raja Ram clearly mentions that "it is reported that the detenu is about 13 years old and was detained along with two other boys". Shri Krishan Chand could not give a satisfactory explanation.

11.160 This case apart from showing that the detention orders were confirmed by the Lt. Governor without considering and applying his mind to the adequacy of grounds indicates that a very casual approach was shown by the Lt. Governor in the performance of his very responsible duties. Not infrequently he approved whatever was placed before him for obtaining his orders for confirmation of detention.

11.161 A notice under Rule 5(2)(a) of the Commissions of Inquiry Rules and a Summons under Section 8B of the Commissions of Inquiry Act were issued to Shri Krishan Chand in this case. He responded to the summons and gave his version. He could not offer any satisfactory explanation for the use of MISA by the Delhi Administration in such cases despite instructions from the Ministry of Home Affairs to the contrary. His general defence was that though the Ministry of Home Affairs was sending instructions of this type, he was acting on the directions of the Prime Minister conveyed to him through Shri Om Mehta, MMHA. Whenever there was a difference of opinion in these matters between the Home Minister and the Prime Minister, he acted on the directions of the Prime Minister.

11.162 This is yet another category of cases in which MISA powers were invoked without adequate grounds and in defiance of the categorical instructions of the Ministry of Home Affairs on the subject. Dealing with ordinary criminals through the application of the MISA is a serious evasion of the investigative responsibility by the police. Use of the harsh power under MISA for dealing with the juvenile first offenders for comparatively unimpor-

tant cases and which involve no considerations of the security of the State or larger consideration of public order amounts to misuse of the powers and undoubtedly results in denial of the beneficent provisions of law relating to juvenile delinquents.

VII. Use of MISA Against Violators of Delhi Administration (Display of Prices of Articles) Orders, 1975

11.163 The Bata Shop of Shri Kundan Lal Jaggi S/o Shri Hari Chand Jaggi situated in Chhota Bazar Shahdra was inspected by the Inspector of the Central Enforcement Cell on June 18, 1976. The inspecting staff found 4 pairs of Hawaii Chappals and 2 pairs of straps without price marking on them. Shri K. L. Jaggi has stated that he had tried to explain to the inspecting staff that the entire stock of the shop was duly marked with the prices as per the policy of fixed prices followed by Bata India Ltd. ever since they started their business in India in 1931 and the items found without marking were meant for despatch back to the factory and were not for sale. It seems that this explanation was not accepted and Shri Jaggi was arrested u/s 144(2)(3) of DIR in case FIR No. 193 dated June 18, 1976, and remanded to judicial custody. He was released on bail at 4.30 p.m. on June 21, 1976. According to his affidavit he had then come to know that similar raids were conducted in some other main shops of Bata India Ltd., on June 18, 1976 and 8 persons were arrested under section 144(2)(3) of DIR. His affidavit shows that prior to these arrests the Programme Implementation Committee set up in Delhi had summoned the shop keepers of Bata in May, 1976 and had asked them to sell the company's shoes at discount of 15% and Chappals and Sandals at 10%. The Managers expressed their inability to reduce prices in any manner without instructions from the Company's management.

11.164 Shri K. L. Jaggi was detained under MISA on June 25, 1976. It is seen from the file of the Delhi Administration that 25 shopkeepers including Shri K. L. Jaggi were detained under MISA in June/July, 1976 for violating the Delhi Admn. (Display of Prices on Articles) Order, 1975. It is also seen from the file that only 5 of them were actually found contravening the provisions of the said Order. The shops of the remaining 20 persons were not inspected as they had closed their shops on seeing the enforcement staff. However, they were arrested first under DIR and then detained under MISA on the mere suspicion that they had closed their shops to escape the detection of their violation of the price tag order.

11.165 Shri P. Ghosh the then ADM (South) who issued the detention order in this case has stated that he had acted under the oral instructions of the District Magistrate in this regard. He has admitted that "I was perfectly well aware that the breaches of the price-tagging order cannot by themselves amount to sufficient grounds for detention under MISA". Shri Sushil Kumar the then DM (Delhi) has admitted to have instructed the ADMs to use MISA in such cases as this was the policy of the Lt. Governor and was conveyed to him by the Chief

Secretary. Shri Krishan Chand admitted this and stated that this was done to help the Programme Implementation Committee set up in Delhi under the Chairmanship of Shri H.K.L. Bhagat. This Committee used to go round inspecting shops for price marking on articles and a Special Cell under the Chief Secretary, Delhi was created for this purpose.

11.166 Shri K. L. Jaggi was released on August 11, 1976. It is seen from the file that this decision was taken on the ground that detention for one month was sufficient to deal with such persons.

11.167 The case of Shri K. L. Jaggi was examined in the Ministry of Home Affairs on the receipt of a representation on his behalf. Shri R. L. Misra, Joint Secretary recorded that "this is yet another case of gross-misuse of MISA by the Delhi Admn.". Shri S. L. Khurana, the then Home Secretary, added that "it appears that there is insufficient appreciation amongst the officers in Delhi Admn. about the manner in which the various types of cases should be dealt with". Shri R. L. Misra wrote a d.o. letter to Shri Sushil Kumar, Chief Secretary, Delhi Administration on October 19, 1976 pointing out the irrelevance of MISA in such cases and asking him to look into this case and take appropriate action against those responsible for misuse of MISA. The Delhi Administration were also advised to issue instructions to all concerned to be more careful in the use of emergency powers and ensure that MISA is used strictly for the purpose specified in the Act. It was clearly mentioned that this letter had the approval of the Minister in the Ministry of Home Affairs.

11.168 The Lt. Governor did not agree with this view and under his directions Smt. S. Chandra, Special Secretary (Home) wrote a D.O. letter to

Shri R. L. Misra defending the stand taken by the Delhi Administration in using MISA against the violators of price-tag order and informing him that "no further action in the matter appears to be called for". Shri R. L. Misra on receipt of this letter recorded that the Delhi Administration by rejecting the advice of the Ministry of Home Affairs had shown a lack of respect for the Ministry. Shri S. L. Khurana, Home Secretary, recorded the following note "I admire the tenacity with which JS(IS) is pursuing the matter to bring about a change in the outlook of Delhi Admn. I am, however, not sure if it would lead to any worthwhile results. Finding the responses as very feeble, I, on my part, gave up that idea quite sometime back and that is why I refrained from suggesting in my note at page 3/N that the Delhi Administration should be advised to take appropriate action against those responsible for misuse of MISA".

11.169 Shri Krishan Chand has explained the stand of the Delhi Administration in this case by saying that this was done to put a check on the rise in prices.

11.170 A notice under Rule 5(2)(a) of the Commissions of Inquiry Rules and a Summons under section 8B of the Commissions of Inquiry Act were issued to Shri Krishan Chand in this case. He has said in his defence that he was getting conflicting instructions from the Ministry of Home Affairs and Shri Om Mehta the then MMHA. He has stated that he used to follow whatever Mr. Om Mehta used to tell him.

11.171 Shri Krishan Chand has misused his position and abused his power by invoking emergency powers including MISA in cases which could well have been dealt with effectively under the normal provisions of law.

CHAPTER XII

The Requisitioning of the Vishva Yuvak Kendra, Chanakyapuri, New Delhi, under the D.I.S.I. Act

12.1 The building occupied by the Vishva Yuvak Kendra (International Youth Centre) at the Diplomatic Enclave, Chanakyapuri, New Delhi is owned by the Indian Youth Centres Trust. In 1959, the Executive Committee of the Indian Assembly of Youth decided to establish an international youth centre with a view to providing training in youth work to workers of youth organisations. The Centre was also to serve as an international meeting place for young people from all over the world. From the records produced before the Commission, it appears that the proposal was not only supported by the Ministry of Education, Government of India, which provided a grant of Rs. 6 lakhs towards the cost of the building but also by the Ministry of Works, Housing and Supply which allotted a 2 acre plot of land in the Diplomatic Enclave, New Delhi. The UNESCO supported the project by including it in the International Gift Coupon Schemes. The Konrad Adenauer Foundation of West Germany also extended some financial help to this organisation. A trust was set up in 1961 which subsequently came to be known as the Indian Youth Centres Trust and Shri Ram Krishna Bajaj was appointed Managing Trustee. The building of the Vishva Yuvak Kendra was inaugurated by late Dr. Zakir Hussain, the then President of India on December 22, 1968 and ever since this building has been used for carrying on diverse activities of the Indian Youth Centres Trust enumerated in the Trust Deed.

12.2 Shri Ram Krishna Bajaj has stated that Smt. Indira Gandhi, Prime Minister of India, was keen on altering the composition of Board of Trustees of the Indian Youth Centres Trust right from 1973. As stated by him, on May 22, 1973, Shri V. C. Shukla, Minister of State for Defence Production conveyed to Shri Ram Krishna Bajaj the desire of Smt. Indira Gandhi that the composition of the Board of Trustees of the Indian Youth Centres Trust should be changed. When Shri Bajaj, the Managing Trustee of the Trust, conveyed this suggestion to the Board of Trustees, a discussion was held but the Board of Trustees decided not to accept the suggestion.

12.3 Shri Krishan Chand, Lt. Governor of Delhi, has also testified before the Commission that Smt. Indira Gandhi was very much interested in altering the character of the Indian Youth Centres Trust. Further, as stated by Shri Krishan Chand, Smt. Indira Gandhi desired that the building of the Vishva Yuvak Kendra should be requisitioned as she had been receiving complaints relating to the undesirable activities of foreigners in this building. When he did not act on her suggestion, Smt. Gandhi reminded him two or three times on this subject and when she gave him the last reminder sometime

in June 1975, "she was a little firmer". Shri Krishan Chand then directed the Chief Secretary of the Delhi Administration to take steps to requisition the building of the Vishva Yuvak Kendra. In consequence, the building of the Vishva Yuvak Kendra was requisitioned by the Delhi Administration under Section 23 of the Defence & Internal Security of India Act, on August 30, 1975. After the building was requisitioned, Shri Krishan Chand reported compliance to Smt. Indira Gandhi and informed her that the trustees were willing to consider the question of change in the composition of the Board of Trustees subject to certain conditions. Smt. Indira Gandhi then told Shri Krishan Chand that after change in the composition of the Board of Trustees, he could withdraw the requisition order.

12.4 The story of Shri Krishan Chand, the then Lt. Governor of Delhi, has been corroborated by Shri J. K. Kohli, Chief Secretary, Delhi Administration, who stated that the Lt. Governor had told him that the proposal for the requisition of the Vishva Yuvak Kendra building had been cleared at the highest level and therefore he should put up the proposal in such a manner that it could be approved. Shri Sushil Kumar, Deputy Commissioner, Delhi has also stated that Shri K. S. Bajwa, Supdt. of Police (Special Branch) had told him that a discussion had taken place in the PM's house that the Vishva Yuvak Kendra building was being used for anti-national activities and, therefore, it should be requisitioned by the Delhi Administration. He had further told him that the power to requisition the building under the D.I.S.I. Act vested in the District Magistrate and, therefore, further action should be taken by him. Shri Bajwa handed over to Shri Sushil Kumar a note on the subject and pursuant to the information furnished by Shri Bajwa, Shri Sushil Kumar sent a proposal to the Chief Secretary, Delhi Administration, for requisitioning the Vishva Yuvak Kendra building.

The letter from Deputy Commissioner, Delhi to Shri J. K. Kohli, Chief Secretary, Delhi Administration is reproduced below:—

"TOP SECRET

D.O. No. 1253/PADC/75
Deputy Commissioner
Delhi
August 22, 1975

My dear Shri Kohli,

Please find enclosed copy of a note on the Vishva Yuvak Kendra (International Youth Centre) Circular Road, Chanakyapuri, New

Delhi, handed over by S. P. (Special Branch). It is proposed that this building may be requisitioned by the Delhi Administration under the Defence of India and Internal Security Rules. As you are aware Section 23(1) of the Rules which deals with the requisitioning of immovable property provides "notwithstanding anything contained in any other law for the time being in force, if in the opinion of the Central Government or the State Government it is necessary or expedient so to do in securing the defence of India, civil defence, public safety, maintenance of public order or efficient conduct of military operations, or for maintaining supplies and services essential to the life of the community, that Government may by order in writing requisition any immovable property and may make such further order as appear to that Government to be necessary or expedient in connection with the requisitioning".

With regards,

Yours sincerely,
Sd/-
(Sushil Kumar)"

12.5 The proposal of the Deputy Commissioner was submitted to the Chief Secretary, Delhi Administration on August 27, 1975 and was approved by the Lt. Governor of Delhi on August 28, 1975. In exercise of the powers conferred by Section 23 of the Defence and Internal Security of India Act, 1971, the Delhi Administration requisitioned (*vide* its Order No. F. 23/71/75-Home (P-II) dated August 29, 1975) the building of the Vishva Yuvak Kendra for "securing maintenance of public order and services essential to the life of the community". Reporting compliance on the subject, Shri K. K. Kamra, Officer Incharge (Requisition) sent a Memorandum *vide* No. F.2(276)/75-Reqn./4131 dated September 1/2, 1975 to the Deputy Secretary (Home), Delhi Administration which is reproduced below:—

"With reference to your endst. No. F. 23/71/75-Home(P-II) dated 29-8-75 on the subject noted above, I am to say that the Order No. F. 23/71/75-Home (P-II) dated 29-8-75 was served on Shri P. T. Kuriakose, Director, Vishva Yuvak Kendra, Chanakya-puri, New Delhi on 30-8-75 and the possession of the entire premises (particulars given in the subject) was taken on the same day *i.e.* 30-8-75 from Shri Kuriakose by the Tehsildar, Delhi. All the inmates and other employees have vacated the said premises on 31-8-1975 and the furnitures and other articles found in the premises have been stored in the Conference Hall, which has been sealed. The main gate of the property has been sealed on 31-8-75 and left in the custody of Police Guard provided by the S.H.O. Chanakya-puri, New Delhi."

Since the requisition order covered the entire building, further work of construction in a part of the building was also stopped.

12.6 Shri Ram Krishna Bajaj, the Managing Trustee of the Kendra, has produced copies of letters written by him to Shri Krishan Chand, the then Lt. Governor of Delhi, requesting him to permit the Kendra to resume construction of the teaching block which had been stopped as a sequel to the requisitioning of the building by the Delhi Administration. Shri Bajaj also sent a written complaint to the Minister of Home Affairs on September 4, 1975 complaining against the highhanded manner in which the Kendra building had been requisitioned by the Delhi Administration. He also personally complained about this to Smt. Indira Gandhi, travelling with her from Wardha to Delhi on September 8, 1975. Shri R. K. Bajaj also addressed a letter on this subject to Smt. Indira Gandhi on January 10, 1976. As stated by Shri R. K. Bajaj before the Commission, when he met Shri Krishan Chand in November 1975, the Lt. Governor told him that the derequisitioning of the building could be done fast if Shri Bajaj agreed to reconstitute the Board of Trustees. Shri Krishan Chand also suggested to Shri Bajaj that Smt. Ambica Soni, a Youth Congress Leader, should be inducted into the Board of Trustees. When Shri Bajaj showed his reluctance to consider the name of Smt. Ambica Soni since it would have gone against the non-political character of the Board of Trustees, Shri Krishan Chand advised Shri Bajaj to discuss the possible new names with him and Shri Sriman Narain so that an agreed list could be submitted to the Prime Minister.

12.7 On February 17, 1976 Shri Krishan Chand advised Shri Bajaj that he (Shri Bajaj) and Shri Sanjay Gandhi should agree on a solution as to how the Kendra should be run.

12.8 Shri Bajaj again met the Lt. Governor on April 10, 1976 and informed him that the trustees wanted the Kendra to remain a non-political institution and they might agree to the addition of some persons to the Board provided this did not go against the non-political character of the Trust. On this, the Lt. Governor asked him whether the trustees would be willing to accept the advice of the Prime Minister. Shri Bajaj promised that he would immediately convene a meeting to discuss this suggestion.

12.9 Accordingly, in the meeting of the Board of Trustees held on April 29, 1976, the Trustees decided to seek the advice of the Prime Minister. Shri Bajaj then addressed a letter to Smt. Indira Gandhi on May 1, 1976. The relevant extract from this letter is reproduced below :

"Dear Smt. Indiraji....

Further to my letter of 10th January to you, I have had occasion to meet the Lt. Governor, Delhi. In the light of the discussions I had with him, the Trustees of the Kendra, in their meeting yesterday, reviewed the situation and decided to seek your advice in regard to the activities of the Kendra and the future of the Trust, including the composition of its Board of Trustees, in order to make it more broadbased and to enable it

to fulfil the objects more effectively. The Trustees have also decided to abide by your advice.

On behalf of the Trust, I am therefore writing to request you kindly to spare some time to look into the matter and let us have your valuable advice and guidance. If you so desire, I will be happy to call on you to clarify any further points”.

12.10 While on the one hand Shri Krishan Chand was putting pressure on Shri Bajaj to agree to a change in the composition of the Board of Trustees, Shri V. C. Shukla, on the other hand, also spared no effort to pressurise Shri Bajaj for handing over the management of the Trust to him so that he could run the Kendra building in consultation with Shri Sanjay Gandhi. As testified before the Commission by Shri Bajaj, in response to a telephonic request Shri Bajaj met Shri V. C. Shukla on January 16, 1976 at Delhi when Shri Shukla said that he (Shri Shukla) was not happy with the course of events in regard to the Kendra building and this could be prevented if the control over the Kendra vested in him so that he could run it in consultation with Shri Sanjay Gandhi. Shri Bajaj thereupon sought the advice of Mohamed Yunus, and the latter advised him to co-operate with the Government and abide by the advice given by Shri V. C. Shukla since during the emergency the Government had enough powers to put the trustees behind the bars. Shri Shukla in his testimony before the Commission has denied having made any such suggestion to Shri Ram Krishna Bajaj and in his statement filed before the Commission in response to a notice issued to him under rule 5(2)(a) of the Commissions of Inquiry (Central) Rules, 1972, has accused Shri Bajaj of deposing against him because of political differences. The statement of Shri Ram Krishna Bajaj has been corroborated by Shri Naval H. Tata, Shri S. P. Godrej and Prof. V. V. John, who attended the meeting of the Board of Trustees at Bombay on January 29, 1976 to consider the suggestion of Shri Shukla. Prof. V. V. John has stated in his affidavit that in the meeting of the Board of Trustees held in Bombay on January 29, 1976—

“Mr. Ramakrishna Bajaj told us that he had had talks with Mr. V. C. Shukla, the then Minister and Mr. Mohamed Yunus in order to persuade the Government to derequisition the said building. Mr. Ramakrishna Bajaj told us that he was advised by Mr. Shukla that all the Trustees should resign and leave the matter in the hands of Mr. Sanjay Gandhi. Mr. Bajaj further informed us that he was advised by Mr. Yunus not to antagonise the Government and to accept Mr. Shukla's advice. We were informed by Mr. Bajaj that Mr. Yunus had warned him that if the Trustees offered any resistance, they could be put behind the bars”.

Prof. John has further stated that :

“Mr. Naval Tata who was in the chair in the meeting held on January 29, 1976, strongly

expressed himself against the highhanded way in which the Government had dealt with the Trust. Mr. Naval Tata was of the view that all the Trustees should resign. Mr. Tata informed us that he had talks with Mr. Yashpal Kapur and Mr. Sanjay Gandhi with regard to the derequisitioning of the Vishva Yuvak Kendra building. Mr. Naval Tata told us that Mr. Sanjay Gandhi told him that although at an earlier stage he was interested in the Kendra building and the same was offered to him, however, he was now no longer interested in the said building since the Government had handed over the same to Delhi Tourism Development Corporation.....

“...that I told the Chairman, Mr. Naval Tata that I was not prepared to resign. I further told the Trustees present in the meeting that I could not abdicate the trust reposed in me particularly in the circumstances in which we have been landed by the Government.

“...that I told the Trustees that I had no intention to resign making it easy for any outsider to step in. I further said that the threat of detention in jail could have no effect on me and that people much better than us had already been sent to jail.

“...Mr. Tata left before the meeting was concluded since he had another engagement elsewhere. Mr. Naval Tata said before he left that he was sending in his resignation from the Trust. The other Trustees present including me decided not to resign from the membership of the Board of Trustees”.

12.11 Shri Naval H. Tata has stated that prior to the meeting of the Board of Trustees on January 29, 1976, Shri Tata had spoken to Shri Sanjay Gandhi and Shri Sanjay Gandhi had told him what has already been reported by Prof. V. V. John above.

12.12 The testimony of Shri S. P. Godrej reveals that Shri Godrej met Shri Sanjay Gandhi in the first week of February, 1976 when the latter informed him that he was on the look out for suitable premises ostensibly for the Youth Congress and that he was informed that the premises of the Trust were available. He said that he did not know that they were acquired in that manner.

12.13 Thus the evidence on record leads clearly to the conclusion that the building of the Vishva Yuvak Kendra was requisitioned by the Delhi Administration at the instance of Smt. Indira Gandhi in order to pressurise the management of the Indian Youth Centres Trust to agree to reconstitute the Board of Trustees; that Shri Krishan Chand was acting as a spokesman of Smt. Indira Gandhi in this regard; and that Shri V. C. Shukla was also making determined efforts to acquire a hold over the Vishva Yuvak Kendra with a view to run it in consultation with Shri Sanjay Gandhi.

12.14 The building of the Vishva Yuvak Kendra was requisitioned on August 30, 1975 and the possession of the building was taken forthwith. The order of requisition was served on Shri P. T. Kuriakose on August 30, 1975 and all the inmates of the hostel numbering about 80 were forced to vacate the rooms. Every piece of furniture in the kendra building was brought down to the Conference Hall on the ground floor and after sealing the Hall containing the furniture and the books, the inmates were ejected from the building on August 31, 1975 at 11 a.m. According to Shri Kuriakose, the execution of the order in such a hasty manner caused irreparable loss to the institution. Although the inmates of the building were ejected in great haste, the building was not immediately put to any use by the Delhi Administration. The building remained vacant for some months thereafter and it was later allotted to the Delhi State Industrial Development Corporation (D.S.I.D.C.) on November 29. It may be mentioned that the allotment of the building to the D.S.I.D.C. was unwarranted since the D.S.I.D.C. had nothing to do with the maintenance of public order and services essential to the life of the community, those being the two grounds on which the building had been requisitioned. Explaining the circumstances leading to the allotment of the Kendra building to the D.S.I.D.C., Shri Krishan Chand, the then Lt. Governor of Delhi, has stated in his statement in response to a notice under rule 5(2)(a) of the Commissions of Inquiry (Central) Rules, 1972 that :

"...the officers of the Delhi Small Industry Development Corporation had been complaining to me about lack of accommodation for their activities. This Organisation was doing very useful work for production and distribution of public utility goods which constituted services essential to the life of the community. I was, therefore, thinking of finding a place for them—when the question came up for the requisitioning of the building of the Vishva Yuvak Kendra. Therefore when the decision was being taken to requisition the building of Vishva Yuvak Kendra, I also thought of a valid necessity to provide this building for the said activities of the Delhi Small Industry Development Corporation".

12.15 The reasons given by Shri Krishan Chand are not convincing. First requisitioning a building under the D.I.S.I. Act for maintaining public order and services essential to the life of the community, then keeping it vacant for a few months, and then allotting it to an organisation not connected with maintenance of public order and services essential to the life of the community, were steps not consistent with the provisions of the D.I.S.I. Act. Moreover, it has been provided in Section 23(3) of the D.I.S.I. Act that whenever any property is requisitioned under sub-section (1), the period of such requisition shall not exceed beyond the period for which such property is required for any of the purposes mentioned in that section. Since the Kendra building was not used for the purpose for

which it was requisitioned, it was the duty of the Delhi Administration to return the building to the owner immediately, in compliance with the aforesaid provision.

12.16 In the statement filed in response to the notice under rule 5(2)(a) of the Commissions of Inquiry (Central) Rules, 1972, Shri Krishan Chand has stated that he had to take action for requisitioning the building on the advice of the Prime Minister and has further added that while working as Lt. Governor of Delhi he had been receiving reports from time to time that the Kendra had connections with the C.I.A. Shri Krishan Chand said that he had received a letter dated July, 13, 1975 from Shri Shashi Bhushan, then a Member of the Lok Sabha, alleging that the Kendra was working in collusion with the C.I.A. Shri Krishan Chand did not get any inquiry made into the allegation before deciding to requisition the Kendra building. Shri Shashi Bhushan who appeared before the Commission also could not give any concrete evidence to prove his contention that the Kendra was in any manner connected with the C.I.A. activities.

12.17 The Chief Secretary, Delhi Administration informed Shri K. R. Prabhu, Additional Secretary to the Government of India, Ministry of Home Affairs *vide* his D.O. No. F. 23/71/75-H(P.II) dated April 11, 1977 that "while the building was, according to the requisition order, requisitioned for maintaining public order and services essential to the life of the community, nonetheless the real reason for requisitioning the same was because it was felt that it was being used for purposes prejudicial to the security of State". That plea of the Delhi Administration is untenable due to the following reasons:—

- (a) The note furnished by Shri K. S. Bajwa, which was forwarded by Shri Sushil Kumar to Shri J. K. Kohli says : "There is no information where the Kendra has even now been receiving funds from foreign agency connected with the CIA". The note further adds "the Kendra has come to notice for some links with the Vidhyarthi Parishad, student and youth front of B.J.S. and the R.S.S.S."
- (b) There is nothing on record to suggest that the activities of the Kendra were prejudicial to the security of the State. The documents furnished to the Commission reveal that the Government did not stop the Kendra from continuing its activities after requisitioning the Kendra building, which the Government ought to have done in case the activities of the Kendra were prejudicial to the security of the State.
- (c) In July, 1976 the Government of U.P. took the help of the Kendra in organising training for its district and block youth officers. The Government of India took no steps to stop the inflow of foreign contribution to the Indian Youth Centres Trust. During the Emergency a large number of organisations were debarred from receiving foreign contributions, but the Vishva Yuvak Kendra was

not included in the list of such organisations. It is strange that while on the one hand the Kendra was allowed to continue its activities and to receive financial assistance from foreign countries, it was charged on the other hand with activities prejudicial to the security of the State.

12.18 The evidence on record of the Commission reveals that the building of the Vishva Yuvak Kendra which had been allotted to the Delhi State Industrial Development Corporation on November 29, 1975 was subsequently allotted by Shri Krishan Chand to the National Institute of Social Studies and Research, an organisation sponsored by the All India Congress Committee (A.I.C.C.) for conducting its training classes in Delhi. Shri V. B. Raju, General Secretary, All India Congress Committee, wrote the following letter to Shri Krishan Chand, the then Lt. Governor of Delhi, on May 27, 1976 :

“Dear Shri Krishan Chand,

The National Institute of Social Studies and Research (an organisation sponsored by the All India Congress Committee) proposes to conduct training classes in Delhi. Each time, there will be about 100 trainees. For this purpose, we find that the Vishva Yuvak Kendra located in Chanakyapuri will eminently suit us. We learn that this premises is under the Delhi Administration. I request you to make available this premises for the above purpose for a duration of two months. We are prepared to pay reasonable rent that may be fixed for the use.

With regards,

Yours sincerely,
Sd/-
(V. B. RAJU)”

In response to this letter Shri Krishan Chand passed the following order on May 28, 1976 :

“Shri V. B. Raju, General Secretary, All India Congress Committee, has made a request (copy enclosed) that the premises of Vishva Yuvak Kendra situated at Chanakyapuri may be allotted for a period of two months to the National Institute of Social Studies and Research, an organisation sponsored by the AICC, for conducting its training classes in Delhi. Shri Raju has also mentioned that the Institute is prepared to pay reasonable rent that may be fixed for the use of the premises.

The Vishva Yuvak Kendra comprises two parts—one which was being earlier used as a Youth Hostel and the other which is now under construction as a Teaching Block. In view of the facts stated by the General Secretary, AICC, I am of the view that it would be in public interest that the premises, which was being earlier used as a Youth Hostel, is allotted to the National Institute of Social Studies and Research for a period of two months for conducting its training classes. This may be done accordingly. As regards

rent payable for the use of the premises, it may be determined in consultation with Secretary (PWD).”

12.19 In compliance with this order, the D.S.I.D.C. temporarily handed over the building to the General Secretary, A.I.C.C., on September 17, 1976 after carrying out certain repairs in the building, at the instance of Shri Raju, the General Secretary of the A.I.C.C. The A.I.C.C. remained in occupation of this building from September 17, 1976 to March 26, 1977 when the building of the Vishva Yuvak Kendra was derequisitioned. Explaining the circumstances under which he allotted the building to the A.I.C.C., Shri Krishan Chand has stated in his statement filed before the Commission that since the D.S.I.D.C. was willing to spare a part of the building for temporary use of the A.I.C.C. and the purpose for which the A.I.C.C. was asking for the allotment of the building was in accordance with the objectives of the Vishva Yuvak Kendra, he ordered allotment of the building to the A.I.C.C. It is difficult to agree with the reasoning advanced by Shri Krishan Chand. The building of the Vishva Yuvak Kendra had been requisitioned for maintaining public order and services essential to the life of the community. The Delhi Administration had no competence to use the building for any purpose other than the purpose for which the building had been requisitioned. Shri P. T. Kuriakose, the Director of the Vishva Yuvak Kendra has testified that the Congress Party organised training courses for the party workers in the Vishva Yuvak Kendra and first such course was inaugurated by Smt. Indira Gandhi in September 1976. The evidence on record of the Commission indicate that the A.I.C.C. used the building of the Vishva Yuvak Kendra for training party workers and carrying on election propaganda on the eve of the last Lok Sabha elections. The A.I.C.C. used the building of the Vishva Yuvak Kendra for storing election materials on the eve of the last Lok Sabha elections for despatching the same to different States. Shri Kishan Chand thus allowed the building of the Vishva Yuvak Kendra to be used by a political party for political purposes.

12.20 In view of the disclosures made before the Commission by the various witnesses, the Commission had issued Summons under section 8B of the Commissions of Inquiry Act, 1952 to Smt. Indira Gandhi, Shri Krishan Chand, former Lt. Governor of Delhi, and Shri V. C. Shukla, former Minister of State for Information and Broadcasting. They had also been served with a notice under rule 5(2)(a) of the Commissions of Inquiry (Central) Rules, 1972 to file statements on the subject. While Shri Krishan Chand and Shri V. C. Shukla filed their statements under rule 5(2)(a) of the Commissions of Inquiry (Central) Rules, 1972 and availed of the opportunity to cross-examine the witnesses in compliance with the provisions of section 8B of the Commissions of Inquiry Act, 1952, Smt. Indira Gandhi did not file any statement and refused to testify before the Commission on oath when directed to do so. Action against Smt. Indira Gandhi for refusal to testify before the Commission on oath has been taken separately.

12.21 Shri V. C. Shukla participated in all other stages of the proceedings of the Commission excepting

the last stage which was the argument stage. He filed his statement in response to a notice issued under rule 5(2)(a) of the Commissions of Inquiry (Central) Rules, 1972 and his counsel had also cross-examined the witnesses. On April 13, 1978, when arguments in the case were to be heard, Shri V. C. Shukla pressed for an adjournment on the ground that he was busy in connection with a Sessions trial, even though April 13 happened to be a holiday for the Sessions Court. The Commission did not consider it necessary to grant any further adjournment. Shri Shukla thereupon expressed his inability to participate in the proceedings at this stage.

12.22 In the light of the evidence on record, it is proved that Smt. Indira Gandhi, the then Prime Minister of India, unduly pressurised Shri Krishan Chand, the then Lt. Governor of Delhi, to requisition the Vishva Yuvak Kendra building.

12.23 The Commission is also of the opinion that Shri Krishan Chand misused his power and authority and so also did Shri V. C. Shukla in this case.

II. *Appointment of Shri U. S. Shrivastuv as the Chairman, Delhi Transport Corporation in 1976, etc.*

12.24 The Delhi Transport Corporation, an autonomous body, was set up under the Road Transport Corporation Act, 1950, and for administrative purposes was under the control of the Ministry of Shipping and Transport, Government of India. The top level appointments like Chairman, full-time Chairman and Managing Directors of the Delhi Transport Corporation (DTC) were, since 1974, covered by para 4 of the Resolution of the Ministry of Finance (Bureau of Public Enterprises) dated August 30, 1974, making it mandatory that such appointments shall be made only on the recommendations of the Public Enterprises Selection Board (PESB).

12.25 Shri U. S. Shrivastuv, IAS (UT-1960) was the Director of Transport, Delhi Administration and Member of the DTC Board, on March 1, 1976. On March 2, 1976 Shri Krishan Chand, then Lt. Governor of Delhi, had asked the Minister of State in the Ministry of Shipping and Transport to notify immediately the appointment of Shri U. S. Shrivastuv as Chairman, DTC in place of Shri A. N. Chawla. The Lt. Governor also said that this appointment had been cleared by the Prime Minister. Shri Krishan Chand in his deposition before the Commission stated that during one of his meetings with the then Prime Minister, the question of a successor to Shri Amar Nath Chawla who was then Chairman, DTC came up and—

“so, I said, well, Director of Transport Mr. Shrivastuv is there. You might consider him. She said, yes, he is a very good officer, had been long associated with transport. You say this to the Transport Ministry that we may appoint him.”

Shri Krishan Chand further explained his communication to the Ministry of Transport and Shipping by saying :

“I only communicated this wish of the Prime Minister to the Ministry of Transport.”

The Secretary to the Ministry sent a note on the same day (March 2, 1976) to the Establishment Officer (E.O.) of the Department of Personnel for obtaining the approval of the Appointments Committee of the Cabinet for the appointment. In his note the Secretary gave a background of the DTC and pointed out that :

“It is not clear whether the proposal to appoint Shri U. S. Shrivastuv as Chairman, DTC, is on a permanent footing or only in a temporary basis pending the selection of the competent Chairman and General-Manager in accordance with the usual procedure in consultation with the PESB.”

The Secretary also pointed out that Shri U. S. Shrivastuv was a junior officer only of a Director's rank and that the two representatives of the Government on the DTC Board were of the rank of the Joint Secretary and, therefore, some changes will have to be made in case Shri U. S. Shrivastuv was appointed as Chairman of the DTC.

12.26 On March 3, 1976 the Transport Minister, Shri G. S. Dhillon, after his return from tour, took exception to the procedure adopted and while recording his disapproval on the office copy of the note of the Secretary to the Establishment Officer, he also wrote to the Prime Minister on March 4, 1976, protesting against the procedure adopted *inter alia* stating :

“The Lt. Governor had also stated that the proposal had already been cleared by you. I am surprised at the procedure adopted by the Lt. Governor. I am not aware of the reasons for this kind of urgency. I have been unable to appreciate the manner in which the Lt. Governor mooted this proposal and obtained your clearance as stated by him without even mentioning to me. You know very well that I consult you on all important matters particularly before making formal proposals for sensitive appointments. I wish I was taken into confidence on this matter directly. You are aware of my views on such matters. I feel that the interest of good administration will be best served by following as far as possible correct and proper procedure leaving little scope for any type of criticism. Now that the proposal must have already reached you as the Chairman of the ACC, I request I may be allowed to discuss with you before final orders are passed.”

The Transport Minister again recorded a note on May 15, 1976 for the Prime Minister recalling his discussions with her regarding this post and said :

“I got the impression that the proposal to combine the posts of Chairman and the Chief Executive.

met with PM's approval. We were to consider further the best method of selecting suitable person. I have at present the following names for consideration :—

- (i) Shri U. S. Shrivastuv, IAS (UT-1960) at present Director, Transport, Delhi Administration, Delhi. He is already working in the Delhi Administration and has experience of the department and is readily available here.
- (ii) Shri Ajit Singh, IAS (AP-1956) at present Vice-Chairman and General Manager, Andhra Pradesh State Road Transport Corporation.
- (iii) Dr. P. G. Patankar, Dy. General Manager, BEST.

The Bureau of Public Enterprises may have some more names.

I propose to ask the Public Enterprises Selection Board to consider the available names and send us a panel urgently for further action."

12.27 On the proposal sent to the E.O. by the Ministry, the E.O. recorded a long note on March 2, 1976 itself, pointing out that there was a proposal to revise the scale of the Chairman to the level of Rs. 2500-3000 and that if the intention was to appoint Shri U. S. Shrivastuv on a regular basis, the proposal may present the following difficulties :—

- (i) Shri Shrivastuv is an officer of 1960 year of allotment. At present he is drawing pay in Selection Grade of the IAS. Officers of his seniority are not yet eligible to hold posts at the level of Joint Secretary under the Government of India. He would thus be junior to hold a post which may carry the scale of Rs. 2500-2750 or Rs. 2500-3000;
- (ii) The post of Vice-Chairman is already in the scale of Rs. 2500-2750 and may have to be kept unfilled or filled up at lower level;
- (iii) The post of Addl. General Manager and Financial Adviser presently held by an officer of 1954 year of allotment from the Railways have to be filled by a junior officer;
- (iv) The Board of Directors of the DTC at present have Government of India nominees of the level of Jt. Secretary. Shri Shrivastuv being of the rank of Director only, some changes may have to be made in the Government representatives".

The E.O. also proposed that in case the arrangement was to be a regular one, it would be desirable to combine the post of Chairman with the Managing Director and since the appointment would be in a public sector undertaking it could be given a regular scale—

"If he is finally approved by the Public Enterprises Selection Board for appointment to this post

on long-term basis and Shri Shrivastuv also opts for permanent absorption in the Undertaking".

The Home Minister recorded on the file that he has no objection but Shri Shrivastuv appears to be of only a Director's rank and left it to be decided by the Prime Minister. In the Prime Minister's Secretariat, Shri B. N. Tandon, Jt. Secretary recorded an internal note pointing out that according to EO's note Shri Shrivastuv did not have the requisite seniority to be eligible for the post equivalent to that of Joint Secretary and that his appointment may be made on a combined post of Chairman and Managing Director and that the salary of Shri Shrivastuv may be fixed at Rs. 2500 per month, and further that he may be given a regular scale if he is finally approved by PESB for appointment to this post and he asks for permanent absorption in the undertaking. Joint Secretary further recorded :

"It is understood that Shri Shrivastuv is willing to be absorbed in this undertaking. He should, therefore, be screened by the PESB".

However, in his statement before the Commission, Shri U.S. Shrivastuv denied having ever requested to be absorbed.

The Prime Minister recorded on the internal note on June 3, 1976:

"The Minister spoke to me yesterday and suggested that Shrivastuv be appointed."

and on the ACC file on June 3, 1976 :

"Shri Shrivastuv has had long experience in transport and should therefore be appointed. His pay and conditions may be decided in consultation with the concerned department".

On the other hand, the Transport Minister in the Ministry's file recorded on June 4, 1976 a note saying :

"I discussed this case with Prime Minister on 2-6-1976. She has approved the appointment of Shri U. S. Shrivastuv, IAS (UT-1960) as whole-time Chairman of the DTC. This is to be notified immediately and ACC be informed".

It would be seen that the then Prime Minister had recorded on the internal note on June 3, 1976 that the Minister suggested that Shri Shrivastuv be appointed.

The decision of the ACC to appoint Shri Shrivastuv was taken on the note recorded by the Secretary, Ministry of Shipping and Transport on March 2, 1976 while the appointment was notified on the note recorded by the Transport Minister in the Ministry's file on June 4, 1976. The Notification was issued on June 5, 1976 while the approval of the ACC was actually received in the Ministry on June 8, 1976. It would also be noted that the Secretary to the Ministry, the Transport Minister and the Establishment officer and Joint Secretary in the

Prime Minister's Secretariat had all pointed out the desirability of consulting the PESB which was not done.

12.28 Again when the question of the fixation of the salary of Shri Shrivastuv came, proper procedure was not followed and an arbitrary decision was taken. The Ministry of Shipping and Transport suggested the fixation of say in the scale of Rs. 2500-3000 in Scheduled 'C' post of the public sectors. The Bureau of Public Enterprises in Ministry of Finance, in consultation with the PESB Secretariat, also gave the clearance but suggested consultation with the Establishment Division of the Ministry of Finance in view of the fact that Shri Shrivastuv was a Government servant. The Establishment Division in the Ministry of Finance did not seem to agree with the proposal because Shri Shrivastuv was of 1960 seniority in the IAS and marked it to the Department of Personnel for their comments. The Department of Personnel felt that under the rules it would not be possible to accommodate Shri Shrivastuv in the scale of Rs. 2500-3000 as officers of his seniority were not cleared for the post of Joint Secretary (Rs. 2500-2750) and at best his pay could be fixed at Rs. 2500 only. The issue was referred to the Senior Selection Board (SSB) which consists of five Secretaries to the Government of India presided over by the Cabinet Secretary. The SSB which met on December 27, 1976 decided :

"The Board considered the note and agreed to recommend that Shri Shrivastuv's pay may be fixed at Rs. 2500 until he is adjudged suitable either by the PESB for holding a Schedule 'C' post under the Public Sector or is found suitable to hold a Joint Secretary level post at the Centre. His maximum pay should not, however, exceed Rs. 2750 ^{per m.} in the scale of Rs. 2500-3000 until he opts for permanent absorption in the Public Sector".

The decision of the Board was based on its earlier decision (dated December 1, 1975) that unless an officer asked for permanent absorption in the Public Sector he should get pay as would be admissible to him while on Central deputation. When the decision of the Senior Selection Board was conveyed to the ACC for approval, the Minister of State for Department of Personnel and Administrative Reforms, Minister for Shipping and Transport and the Home Minister agreed with the proposal of the SSB. Shri J. K. Kohli, Jt. Secretary in the Prime Minister's Secretariat, however, recorded in his internal note that the fixation of pay of Shri Shrivastuv in Schedule 'C' post in Public Sector Unit should not be linked with his approval to hold a Joint Secretary level post and that once :

"... He has been adjudged suitable for this post by P.M. herself, the question of the PESB reviewing this position does not arise. It would, therefore, be reasonable to give him the scale of Rs. 2500-3000 from the date of his joining the post. The recommendation for restricting the maximum of his pay at Rs. 2750 until he opts for permanent absorption in the public sector is in keeping

with the normal practice and may be accepted".

Thereafter, the then Prime Minister minuted as follows :—

"Shri Shrivastuv has already been found eminently suitable for the post of Chairman, DTC, in view of his long experience in transport. The question of his suitability to hold JS level post is irrelevant in determining his pay scale in this post. He should, therefore, be given the scale of Rs. 2500-3000 from the date he took over as Chairman, DTC. The maximum of his pay should be restricted at Rs. 2750 until he opts for permanent absorption in the DTC".

It would thus be seen that Shri U. S. Shrivastuv was allowed the pay scale of Rs. 2500-3000 despite the fact that his appointment was neither cleared by the PESB nor was he approved to hold the post of Jt. Secretary level as stipulated by the SSB. In fact, the order of the PM is contradictory, as it says that his suitability to hold Jt. Secretary level post is irrelevant in determining his pay scale in this post, yet at the same time restricts it to Rs. 2750 till he opts for absorption, a stipulation meant only for those who are approved to hold a post of Joint Secretary level.

12.29 In this case the procedure of consulting the PESB in advance for appointment was not adopted though it was pointed out by a number of officials including the Minister of Transport and Shipping himself. In fixation of his pay established practice, as pointed out by the SSB and endorsed by the Union Home Minister and the Minister of Shipping and Transport, was ignored.

12.30 It would be appropriate here to mention that a very large number of DTC buses had been deployed for carrying people from Delhi and outside to the Prime Minister's house for taking part in the rallies organised to express solidarity with Smt. Indira Gandhi from June 12 to 25, 1975. The DTC records reveal that some of the buses were deputed to report to selected government servants presumably for utilisation of these buses for the above mentioned purpose. Sixteen such buses had been deputed on June 12, 1975 to report to the Director, State Transport Authority, Delhi. Shri U. S. Shrivastuv was Director of Transport, Delhi Administration, at that time. In this connection, Shri U. S. Shrivastuv stated before the Commission that as far as he could recall, these buses must have been required by the Chief executive Councillor.

12.31 Having regard to the fact that the case is mostly based on government files, no summons under Section 8B of the Commissions of Inquiry Act, 1952, and notice under rule 5(2)(a) of the Commissions of Inquiry (Central) Rules, 1972, were issued to anyone and, therefore, the Commission has refrained from drawing any adverse inference against any particular individual. This case, however, illustrates how established rules and procedures expected to be followed by the appointing authorities were in fact not observed even though the correct procedure and

the problems that were likely to arise from this appointment were pointed out at different levels.

III. Harassment of the Firm M/s. Pandit Brothers : their arrests and related matters

12.32 M/s. Pandit Brothers of Delhi are a reputed firm carrying on business as distributors of Bombay Dying fabrics in Delhi, Haryana, Punjab, Jammu and Kashmir, and Himachal Pradesh and as dealers in Handloom furnishing fabrics, household linen, etc.

12.33 The firm has four partners—S/Shri R. N. Haksar, K. P. Mushran, Smt. S. Mushran and Smt. Urmila Haksar. Shri R. N. Haksar, aged 84 years, is a well-known figure in social circles and is a founder life member of Bharatiya Kala Kendra. Shri K. P. Mushran, aged 75, retired as a member of the Railway Board. Smt. Urmila Haksar is the wife of Shri P. N. Haksar, former Principal Secretary to the Prime Minister Smt. Indira Gandhi and also a former Deputy Chairman of the Planning Commission. Shri R. N. Haksar and Shri K. P. Mushran are also closely related to Shri P. N. Haksar. Shri P. N. Haksar is Shri R. N. Haksar's brother's son and Smt. Mushran is the sister of Shri P. N. Haksar.

12.34 Shortly after the declaration of emergency in 1975, this firm was chosen by the Delhi authorities for some 'drastic action'. A series of actions were initiated against the firm and according to Shri K. P. Mushran, these incidents, which took place almost simultaneously, were part of a deliberately planned campaign.

12.35 The first action to be initiated against the firm was in the form of a sales tax raid in its Connaught Place shop. The circumstances leading up to this action by the Sales Tax Department in so far as they emerged from the evidence adduced before the Commission are briefly as follows :

Shri Navin Chawla received a message from Shri R. K. Dhawan to the effect that "Shri Sanjay Gandhi had received reports of large scale tax evasion in Connaught Place and that raids should be carried out immediately to detect the evasion". Shri Dhawan had particularly mentioned that the firm M/s. Pandit Brothers "should not be avoided". The Lt. Governor, Shri Krishan Chand, when informed about the message, appeared to be surprised on hearing the name of M/s. Pandit Brothers and immediately rang back Shri Dhawan to confirm the message. Shri Dhawan reportedly informed Shri Krishan Chand that :

"Mr. Sanjay Gandhi was keen that we should put a stop to sales-tax evasion and that raids should be carried out immediately on Connaught Place shops and M/s. Pandit Brothers should not be exempted simply because they were influential people."

Shri Navin Chawla was asked by Shri Krishan Chand to speak to the Chief Secretary and get the checking arranged. Accordingly he spoke to the Chief Secretary the next day. In his examination before the

Commission, Shri Krishan Chand corroborated Shri Navin Chawla's statement to the effect that the message for action against M/s. Pandit Brothers was received from Shri Sanjay Gandhi through Shri Navin Chawla; but he denied that he talked to Shri R. K. Dhawan to confirm the message or had met him in this connection. According to Shri Krishan Chand, doing so "was totally unnecessary".

12.36 Shri Navin Chawla, however, is categorical that Shri Krishan Chand had obtained confirmation of the message from Shri Dhawan and also had gone and seen Shri Sanjay Gandhi. According to Shri Navin Chawla, "M/s. Pandit Bros. was not just an ordinary shop in Delhi, they were influential people and their relationship with Mr. P. N. Haksar is known to everyone in Delhi and it was not a case where the Lt. Governor could proceed, even if he chooses to say so... He would not ever proceed in a matter of this importance without confirming it and doubly confirming it."

12.37 The sales tax raid was conducted by the Enforcement Cell of Delhi Administration. The premises of the firm in Connaught Place were searched at about 5.30 p.m. on July 10, 1975 by a party headed by Shri Ashok Kapur, Officer on Special Duty in charge of the Central Enforcement Cell. Shri R. K. Khanna, Manager of the firm, has stated that the checking party made a hectic search and examination for about two hours and when they could not find anything incriminating as all the account books were up-to-date, they took possession of two subsidiary sales registers, two copies of packing slips and a few copies of indents and two personal table diaries. Shri Ashok Kapur has stated that the result of the checking was shown in the daily report as "minor adverse" and according to him this implied "some very small irregularity".

12.38 Shri Navin Chawla has stated that the results of the checking were brought to the notice of Shri Sanjay Gandhi by him as per directions of Shri Krishan Chand. According to him, Shri Gandhi was dissatisfied with the outcome because he felt that the violation could not have been just of a minor character. It must have been of a major character and it was quite possible, according to Shri Gandhi, that the Inspectors who went on this raid to Pandit Brothers would have colluded. Shri Sanjay Gandhi told Shri Navin Chawla that some drastic action should be taken. Shri Krishan Chand, who used to visit the Prime Minister's residence almost daily during those days, on return from there on that day informed Shri Navin Chawla that he had discussed the subject with Shri Sanjay Gandhi and some drastic action, including arrests of the management of the firm, M/s. Pandit Brothers, had to be taken. The Lt. Governor's mind was perfectly set on this point that some kind of "drastic action, preferably leading to arrest" had to be taken.

12.39 A meeting took place at the Raj Niwas in the evening of July 11, 1975, where they all "explored the possibilities of some drastic action against the firm as desired by the Lt. Governor". At this meeting were present Shri Ashok Kapur, who had headed the raiding party the previous evening, Shri

Virendra Prakash, Commissioner, Sales Tax, Shri Navin Chawla and Shri P. S. Bhinder, DIG, Police (Range). According to Shri Virendra Prakash, that was the only meeting of its kind and it had surprised him. Shri Ashok Kapur has also described this meeting for discussing this raid as "very unusual".

12.40 Shri Virendra Prakash has stated that Shri Krishan Chand addressed him by saying that "as a big case of tax evasion has been detected against M/s. Pandit Brothers, they should be prosecuted and arrested." Shri Virendra Prakash explained that compared to many other cases which were being detected by the Department regularly, this was not a big case and that, at any rate, procedure required that the dealer should be informed about the adverse material collected against him and he had to be given an opportunity for making his representation before any further action could be taken. The stand taken by the Commissioner of Sales Tax did not apparently satisfy the Lt. Governor or his Secretary who insisted that the concerned dealer should be prosecuted and got arrested "as there was *prima facie* evidence of sales tax evasion". According to Shri Navin Chawla, it was felt that if the sales tax case did not afford the necessary excuse for arrest, perhaps the management should be arrested under MISA or DIR and for that the Lt. Governor wanted to consult the DIG, Shri P. S. Bhinder was not willing to go along with the suggestion of the Lt. Governor that the Police should carry out a price tag raid on the firm, nor was he agreeable to register a criminal case against the firm. Shri Navin Chawla has stated that when Shri Krishan Chand returned from the P.M.'s House, it was "quite conclusively decided that an arrest should take place". Shri Krishan Chand had also explored the possibilities of action with the Secretary, Law and Judicial, Shri Rajni Kant, Shri Rajni Kant was of the view that action could not be taken under MISA against M/s. Pandit Brothers.

12.41 As no immediate action by way of arrest seemed feasible on the basis of the sales tax raid, the Lt. Governor considered taking action under the Delhi Essential Articles (Display of Price) Order, 1975, promulgated by the Food and Civil Supplies Department of the Delhi Administration on July 1, 1975. Shri Virendra Prakash has stated that at the end of the discussion extending over about 3 hours, it was decided by Shri Krishan Chand that the Chandni Chowk shop of the firm should be raided the next morning under the overall supervision of Shri S. L. Arora, Additional District Magistrate. Shri Virendra Prakash was directed to provide a number of Sales Tax officials to assist Shri Arora. Shri Ashok Kapur has corroborated Shri Virendra Prakash's statement. He has stated that after leaving Raj Niwas Shri Virendra Prakash told him that another raid would be conducted on M/s. Pandit Brothers at their Chandni Chowk shop on the following day. Shri Krishan Chand has denied having issued any such directions but when asked by the Commission whether Shri Virendra Prakash was telling a falsehood, Shri Krishan Chand replied "No Sir, He is not saying deliberately but perhaps he has confused it".

12.42 That Shri Krishan Chand had decided to get the firm M/s. Pandit Brothers raided again is proved by subsequent events. Shri A.S. Awasthi, Assistant Commissioner, Sales Tax, has stated that on July 11, 1975, late in the evening Shri Ashok Kapur rang him up to say that some officers be sent to the office next morning at about 9 a.m. because some special checking was to be made. He made arrangements to send a message across to some of the officers and received confirmation that the required number of officers would reach the office the next morning. On July 12, 1975, which was a closed day, the sales tax officers reported for duty in the Sales Tax office from where they were directed to report to Shri S.L. Arora in his office at Tis Hazari. They reported to Shri S.L. Arora at 10-10.30 a.m. But for reasons not known to them, they were sent back and told that they would be summoned again when required.

12.43 The price tag raid took place at the Chandni Chowk shop of the firm on July 14, 1975 which was the first working day after the crucial meeting was held at Raj Niwas on the evening of July 11, 1975. The party was led by Shri S.L. Arora, Additional District Magistrate, who was accompanied by the Superintendent of Police (North District), Sub-Divisional Police Officer, Station House Officer and about 20 policemen. Shri S.L. Mathur, Manager of the shop has stated that Shri Arora and the policemen started checking and kept all his sales staff busy, and that—

"For 15 minutes they checked but could not find a single piece without a tag. Suddenly Shri Arora pointed out towards the top shelf of racks where the goods were kept in stacks with price placards on each stack. I told him that these were in accordance with the Gazette Notification. He did not agree and told the police people to pull down all that was in stacks".

According to the Station House Officer Shri Jagdish Singh, there was a discussion between Shri Mathur and the Additional District Magistrate and that Shri Mathur said that the tags on the articles were according to the Rules, but Shri Arora contended that the tag was required on each article. He has also admitted that Shri Arora was shown a printed order by Shri Mathur.

12.44 By the time officials of the Sales Tax Department arrived at the premises, the goods intended to be seized as a result of the check on the price tags had already been wrapped up and an inventory was being made by Shri Sat Prakash, a Sub-Inspector of Police. The SHO Shri Jagdish Singh and the SI Shri Sat Prakash have admitted that the Sales Tax officials reached the shop "sometime later". No untagged item was seen or seized in the presence of the Sales Tax officials. However, as requested by the police officers present, they formally "witnessed" the search. Shri Nathu Singh, Sales Tax Officer, has stated that he was made to sign the Seizure Memo by the police officers who were present there though he was not a witness to the search. The requirement of Criminal Procedure Code regarding independent witnesses for such a search was also ignored in this case.

12.45 The SHO Shri Jagdish Singh has stated that no other price tag raid was made in the jurisdiction of his police station on that day. Sales Tax Inspector Shri Tiwari has also stated that his party did not make any other raid in that area except this. The ADM Shri Arora, however, stated that on that day he went to 6 or 7 other shops, staying at each shop for a minute or two and then going on to the other shops. It is also significant that this was the only occasion when Shri S.L. Arora had participated in a raid of this nature. The inference is inescapable that the Administration wanted to impart to this raid an urgency and an importance which was totally misplaced and uncalled for.

12.46 After the checking, the Manager of the firm Shri Mathur was arrested by the police and a case was registered against the firm for violation of the Delhi Essential Articles (Display of Price) Order, 1975, which was issued by the Delhi Administration on July 1, 1975 in exercise of their powers under sub-rules (2) and (3) of Rule 114 of the DISIR Rules, 1971. It may be noted that there was no definition of "essential articles" in the Notification. However, this order was subsequently amended by a fresh order issued by the Delhi Administration on September 19, 1975, in which the title of the order was changed to Delhi (Display of Prices of Articles) Order, 1975. The articles, which were seized by the police, consisted of bedsheets, towels, bedcovers, pillow-covers etc.

12.47 The matter did not end with the arrest of the Manager Shri Mathur from the Chandni Chowk shop of the firm. The SHO received orders in the afternoon from the SP to arrest the proprietors of the firm, since according to the SP, they were also equally liable for the same offence.

12.48 Shri R. N. Haksar was arrested by the police when he returned from his early morning walk on July 15, 1975. Shri K. P. Mushran, who was ill and was in bed, was also taken from his residence by the police in the morning. Both of them were first taken to the Police Station Lahori Gate where their finger-prints were taken. In the afternoon they were produced before a Metropolitan Magistrate. Bail was granted after considerable argument in respect of Shri Haksar and Shri Mushran for a limited period of 24 hours "on compassionate grounds". Shri Mathur, however, was sent to jail.

12.49 In the evening of the same day Shri V. K. Tyagi, the Director of Public Relations, was called to Raj Niwas and Shri Navin Chawla dictated to him the press release concerning the raid on M/s Pandit Brothers. Shri Tyagi got the facts of the raid confirmed by Shri P. S. Bhinder, who told him that the news item could be released to the press. Shri R. K. Khanna has stated that he was shocked to learn about the news on the television of the arrest of Shri Mushran, Shri Haksar and Shri Mathur by name in 9.45 p.m. news bulletin. This was broadcast in the 9.00 p.m. AIR news bulletin and also on the following day. To him this seemed to be "something very unusual" that the arrests of two respectable citizens should be given so much publicity. While the declaration of emergency was broadcast only for

24 hours, the Pandit Brothers' case was broadcast for 36 hours. Shri S. C. Bhatt, Director of News, A.I.R. has written to the Commission that the story concerning the raid on M/s Pandit Brothers was placed in the pool at 9 a.m. and very likely it was broadcast in the 9 p.m. English bulletin on July 15, 1975 and subsequently in the night pool there were instructions that the news items "should be noticed prominently in all news bulletins but not headlined".

12.50 Shri L. S. Mathur has stated that he was summoned several times to the Police Station and was told by the SHO to suggest to the lady partners of the firm to apply for anticipatory bail as otherwise the police might have to arrest them. Shri K. P. Mushran has corroborated this. Smt. P. N. Haksar and Smt. Mushran declined to accede to the suggestion that they should apply for anticipatory bail and were willing to go to jail, if arrested. Apparently, the matter of arrest of the two ladies was not pursued.

12.51 The harassment of M/s Pandit Brothers did not end with the sales tax and price tag raids. The Income Tax Department was also brought into the picture. A notice was issued to the firm on July 16, 1975 under Section 142(1) of the Income Tax Act, 1961 by the Income Tax Officer Shri R. S. Jawa, calling upon the firm to produce several specific books of accounts and to furnish a large volume of information relevant to the assessment year 1973-74 on July 22, 1975. This in itself appeared to be extraordinary as in the normal course of assessment proceedings, which had been going on in a routine manner since March 1975, the firm had already received a notice dated July 10, 1975 fixing July 22, for further hearing. Shri Mushran has stated that something serious had happened in the first few days of July 1975, which turned the normal proceedings into abnormal proceedings. The party was harassed by the officer and an *ex-parte* order was passed by the Income Tax Officer on July 30, 1975 declaring their taxable income at Rs. 9,33,181 against the returned income of Rs. 4,43,312 and imposing a tax liability of Rs. 2,41,135. The partners were assessed separately on this enhanced income. A notice was also issued to them as to why penalty should not be imposed on them. The party approached the high Court of Delhi but did not get any relief. The Supreme Court admitted their writ petition and the assessment proceedings for the assessment year 1973-74 were taken up afresh. In the fresh assessment the trading results on the basis of which the income had earlier been enhanced were accepted after due verification and the enhanced income was deleted.

12.52 The ITO Shri R. S. Jawa has stated that he was called by his Commissioner Shri J. C. Luther in the first week of July, 1975 and told that there were certain complaints against the assessee. Shri Jawa was directed by Shri Luther, the Commissioner of Income Tax, to make "vigorous and proper investigations before finalising the assessment" and was also told to "take up this case exclusively leaving all other work". He further stated that the Commissioner

had enquired about the progress of the case a number of times; that the Commissioner had been directing him to complete the assessment expeditiously and that a number of additional Inspectors were also placed at his disposal for this purpose. Shri Jawa admitted that he had asked the party to furnish information on as many as 34 items and that it was not possible for them to submit the entire information within two days. When the party moved an application for a stay and adjournment of its assessment proceedings because they were moving the higher authorities to get the case transferred from Shri Jawa, Shri Jawa sought instructions from Shri Luther, the Commissioner, on the subject, who directed him to continue with the proceedings and "finalise the assessment without further delay". The party's request for stay and adjournment was accordingly rejected by Shri Jawa. Shri Jawa has stated that but for the instructions of the Commissioner, he would have given the adjournment and that he had proceeded with the case because of the instructions that he had received from the Commissioner to that effect.

12.53 Shri J. C. Luther, Commissioner of Income Tax, has stated that the raids on M/s Pandit Brothers had come to his notice only after this was reported in the press. He was told by Shri R. K. Dhawan that in view of the allegations and irregularities in sales tax etc., it was presumed that the income-tax assessment would be taken up for scrutiny without delay. Shri Luther has stated that "he treated this advice as instructions coming from the Prime Minister". He has stated that he got the impression that there was information in the PM's Secretariat that some massive tax evasion had taken place and, therefore, "as a corollary of this action the Income Tax Department should not lag behind", and that this was absolutely the only occasion in which he had received such advice from Shri R. K. Dhawan, whom he used to know socially and meet occasionally.

12.54 Shri Dhawan has denied having conveyed any such instruction to Shri Luther. He has stated that in fact he had learnt about the raid on M/s Pandit Brothers for the first time from the Prime Minister herself after Shri D. P. Singh, Member of Parliament, had come to her and informed her about this. Shri Dhawan, however, admitted that Shri Luther had gone to him one day and told him that Shri D. P. Singh and Shri Garg, Advocates, had conveyed to the ITO about the fact of their closeness to the Prime Minister and sought to pressurise him. On that occasion Shri R. K. Dhawan had told Shri Luther to decide the case on merit.

12.55 Citing other instances of harassment, Shri Mushran has stated that in August, 1975, 3 or 4 men came inside their Connaught Place shop and carried out "a search to unearth imported goods". Nothing, however, was found because Pandit Brothers had ceased importing goods from abroad many years ago. At about the same time a person identifying himself as belonging to the Civil Supplies Department walked into the shop while it had been closed for checking and demanded the shop to be opened for checking. Shri Mushran was threatened with arrest of the partners and the Manager. Under threat the

shop had to be opened. However, nothing untoward happened that day.

12.56 On the facts mentioned above, the Commission is called upon to consider whether the search and seizure under the Sales Tax Act, the drastic measures under the Delhi Essential Articles (Display of Price) Order, 1975 and the order under Section 144 passed by the Income Tax Officer, all of these measures were taken by the concerned public servants in the *bonafide* discharge of their duties or whether they were part of a scheme to cause harassment and hardship to certain persons for extraneous reasons. If the motivation was extraneous to the statutes or the Rules under which the public servants had purportedly acted in this case, the question is, who was responsible for such motivation?

12.57 It has been argued that the series of actions mentioned above, which were initiated against the firm M/s Pandit Brothers and its partners, were deliberately planned and that there was some important person behind all this. Shri Krishan Chand has stated before the Commission that "the initiative came from Mr. Sanjay Gandhi". Shri Navin Chawla has also stated that the message for the raid in the Connaught Place shop of the firm had come from Shri Sanjay Gandhi and also that after the raid when he went to discuss the outcome with him, Shri Sanjay Gandhi was dissatisfied with the reported result of the raid and had wanted some "drastic action" to be taken. The fact that the Lt. Governor called a meeting of officers at his residence where, as stated by Shri Navin Chawla, they "all explored the possibilities of some drastic action" against the firm, also indicates that the series of measures that followed were initiated at the instance of some superior authority. M/s Pandit Brothers was not just an ordinary shop; their relationship with Shri P. N. Haksar was well-known. Shri Navin Chawla's statement that it was not a case where the Lt. Governor could proceed even if he chose to do so without "confirming it and doubly confirming it" appears to be correct. It is worth noting that the action against the firm was not confined only to the sales tax and price tag raids mounted by the Delhi Administration. The Income Tax Department was also brought into the picture and the firm was harassed by the Income Tax authorities. The Commissioner of Income Tax has stated that he treated the advice received from Shri R. K. Dhawan as instructions coming from the Prime Minister. All this indicates that the initiative for drastic action against the firm M/s Pandit Bros. had come from someone in the PM's house. Shri Krishan Chand and Shri Navin Chawla have unequivocally stated that this initiative had come from Shri Sanjay Gandhi.

12.58 Shri Navin Chawla has also stated that when he had discussed the outcome of the Sales Tax raid with Shri Sanjay Gandhi, Shri Sanjay Gandhi had said that because Pandit Brothers were influential, they should not be exempted and also that "if a raid was carried out on Pandit Brothers, this would have a salutary effect on the traders in Delhi". Shri Navin Chawla has further said that when the Lt. Governor returned from No. 1, Safdarjung Road, after discussing the subject with Shri Sanjay Gandhi,

the Lt. Governor had "felt that the real motive behind the drastic action was actually to embarrass Mr. P. N. Haksar", and that the Lt. Governor had talked to him about this and to him the inference appeared to be correct and he shared the feelings of the Lt. Governor.

12.59 Shri Krishan Chand has stated that after the arrest of the partners of M/s Pandit Brothers on July 15, 1975, the then Prime Minister rang him up on RAX at about 11 a.m. telling him that Smt. Aruna Asaf Ali had complained to him about the arrests and that he should look into the matter. According to Shri Krishan Chand "she did not express any displeasure or anything". It appeared to Shri Krishan Chand that Smt. Gandhi seemed to know that her son was behind this "because otherwise she would have said, 'What is all this nonsense, you see why have they been arrested. Release them'. Or some such anger she would have shown". He further stated that Smt. Aruna Asaf Ali had told him that there was some kind of family feud over the role of Shri Sanjay Gandhi in Delhi affairs. He understood Smt. Aruna Asaf Ali to mean that a number of persons were complaining to the Prime Minister about this role of Shri Sanjay Gandhi and "Mr. Haksar was also perhaps saying the same thing that Sanjay Gandhi's role was not good for the health of Delhi and the country".

12.60 On the basis of the evidence before the Commission, there can be no doubt that the series of harassments against the firm M/s Pandit Brothers, including the arrests of the Manager and the two partners, were initiated at the instance of Shri Sanjay Gandhi. Shri Krishan Chand was the prime mover in getting the price tag raid organised as a result of which Shri R. N. Haksar and Shri K. P. Mushran, partners of the firm, and also the Manager Shri L.S. Mathur were arrested. Though Shri Krishan Chand has denied having played any part in the price tag checking, the statements of Shri Virendra Prakash, Shri Ashok Kapur and Shri Navin Chawla prove beyond doubt that the price tag raid on the Chandni Chowk shop of M/s Pandit Brothers was ordered by Shri Krishan Chand.

12.61 There are certain striking features in this case. The partners and Manager of M/s Pandit Brothers had to undergo great hardship before they were released on bail. Normally, in a case like the violation of Delhi Essential Articles (Display of Price) Order 1975, which is not at all serious, bail would be granted to the offenders by the officer who effects the arrests. In this particular case the Magistrate to whom the bail petitions were put up, continued hearing the case for one hour and a half and then very reluctantly granted a conditional bail for 24 hours on compassionate grounds to two very aged and respectable gentlemen. After hearing another set of arguments on the following day the bail was finally granted. All this seems to be extraordinary.

12.62 The use of the police force in large numbers for price tag checking is also unusual. A routine job like price-tag checking should normally have

been entrusted to the agency meant for such work. It is not clear under what circumstances the police force was brought in to carry out this job. In fact, the policemen did not even know the assignment for which they had been called. The SHO Shri Jagdish Singh has stated that they were asked by the ADM to go to Chandni Chowk shop of Pandit Brothers and they did not know whether a raid was to be conducted or what else was to be done. They followed the ADM to the shop and started checking the goods for price tag as per directions of Shri Arora. No complaint had been received at the Police Station before the proceedings were started. The SI Shri Sat Prakash has also stated that he did not keep two members of public present before preparing the Panchnama as required by law because he was not aware of what he was expected to do. It appears that the Administration employed the police for a purpose which did not fall within their legitimate sphere of duties and for which they were not equipped. Such misuse of the police force by the Administration should be a matter for concern.

12.63 The procedure adopted by the Income Tax authorities in dealing with the assessment case of M/s Pandit Brothers must also cause concern. As has been noticed, an *ex-parte* assessment under Section 144 of the Income Tax Act, 1961 was passed in this case under circumstances which give rise to a strong suspicion that apart from the fact that it was done in undue haste, it was part of a concerted effort to harass the party. This was an assessment which would have been barred on March 31, 1977. But the ITO issued several notices to the party setting forth the requirements which were admittedly impossible of compliance within the time allowed. Thereafter on the plea of failure of the party to comply, the *ex-parte* assessment was passed. In his testimony before the Commission the ITO Shri R. S. Jawa admitted that it was not possible to collect and submit the entire information within the time given to the assessee. Shri Jawa has also stated that pressure was on him to dispose of the case and also that but for the instructions of the Commissioner Shri J. C. Luther, he would have given the firm the adjournment asked for. He has explained that he was called by the Commissioner and repeatedly told orally to dispose of this case after making vigorous investigations.

12.64 The association of Commissioner of Income Tax with this case following his visit to Shri R. K. Dhawan in the Prime Minister's house is also disconcerting. Since no summons under Section 8B of the Commissions of Inquiry Act or notice under rule 5(2)(a) of the Commissions of Inquiry (Central) Rules were issued to Shri Luther, the Commission refrains from making any observations on Shri Luther. Yet the Commission is constrained to suggest to the Government that it must lay down certain rules regarding the chain of command through which alone orders from above should be communicated to the officers in the field. If the process of short-circuiting the chain of command is not frowned upon, the system would be exposed to the machinations of unscrupulous operators willing to jump levels in their anxiety to get close to the seat of power.

12.65 In this case a notice under rule 5(2)(a) of the Commissions of Inquiry (Central) Rules and summons under Section 8B of the Commissions of Inquiry Act were issued to Shri Krishan Chand, the Lt. Governor and Shri Sanjay Gandhi. Shri Krishan Chand availed of the opportunity and presented his version of the case. According to Shri Krishan Chand, the decision to launch the Sales Tax and Price Tag raids against M/s. Pandit Brothers was a sequel to the orders that emanated from Shri Sanjay Gandhi. Even so he had a direct responsibility which he failed to discharge. He allowed himself to be used as a willing tool to subserve the designs of Shri Sanjay Gandhi.

12.66 In reply to the notice under rule 5(2)(a) Shri Sanjay Gandhi made a statement questioning the procedure adopted by the Commission for conducting the inquiry. On the subject-matter of the case relating to him, he did not furnish any information.

12.67 On April 8, when Shri Sanjay Gandhi appeared before the Commission, he raised certain technical objections regarding the service of notice. The Commission accepted his plea and directed that a fresh notice be issued under rule 5(2)(a) of the Commissions of Inquiry (Central) Rules and fixed April 22, 1978 for his appearance and compliance with the requirements of the notice.

12.68 Though he appeared on April 22 before the Commission, he raised certain objections regarding the procedure adopted by the Commission and also took the plea that he was preoccupied with his trial in the Court of Sessions, Delhi in a criminal case under Sections 120B, 409, 435 and 201 I.P.C. and requested the Commission to adjourn the proceedings pending the completion of the Sessions trial. The Commission declined to accede to this request. He then contended

that he was being denied the protection of Article 20(3) of the Constitution. The Commission rejected the contention observing that Shri Sanjay Gandhi was not accused of any offence. He then submitted a fresh application contending that he was denied the protection of Articles 14 and 21 of the Constitution. That application was also rejected.

12.69 The Commission then directed him to take oath and give his version on the evidence, but he declined to do so. A complaint under sections 178 and 179 I.P.C. has, therefore, been forwarded to the Chief Metropolitan Magistrate, Delhi, against him.

12.70 In the absence of any relevant information or explanation furnished by Shri Sanjay Gandhi with regard to the evidence of witnesses who have been examined, the Commission is constrained to proceed on the evidence on record and on the assumption that he is unable to give any explanation in regard to the conduct attributed to him.

12.71 Shri Sanjay Gandhi who wielded such enormous power during the emergency did not confine his activities only to the operation of demolition of houses, shops and industrial buildings. He took a hand even in getting some persons whom either he did not like or who had thwarted him, arrested and detained. In the present case the evidence brought on record clearly points to him as the source and the motivator of all the harassments that followed the action against Pandit Brothers. On the direct responsibility of Shri Sanjay Gandhi for the harassment that was meted out to Pandit Brothers, the Commission feels no doubt. It has, however, not been possible for the Commission to establish the exact motive which promoted him to indulge in these grossly unwarranted and unlawful actions, because Shri Sanjay Gandhi has on the pretence of claiming legal and constitutional protection of his rights chosen not even to attempt to explain the evidence against him.

CHAPTER XIII

I. Demolitions in General

13.1 After the declaration of the emergency, demolition operations carried out by the DDA, MCD and NDMC received a spurt. The general policy of caution and concern for the people affected by demolitions gave place to a measure of reckless speed in clearing and cleaning up the areas earmarked without a corresponding concern for the people whose houses were demolished. Alternative arrangements to resettle them were not simultaneously made with the same speed.

13.2 Prior to the declaration of emergency, the policy of the Government, according to Shri B. S. Dass, formerly Commissioner of the MCD, was that no clearance operations would be taken up without the Prime Minister's personal permission. Moreover, nobody was to be shifted unless some arrangements for his rehabilitation was already made.

13.3 According to Shri S. C. Chhabra, former President of the NDMC, the problem was not only one of removal of Jhuggi-Jhonpris, but of pandering to Sanjay Gandhi's desire to emerge as a "big power". The only possible forum where he could attract attention and become a political leader was, according to Shri Chhabra, in the field of clearance of public encroachments. Giving an example Shri Chhabra said that when the Talkatora Gardens Improvement Scheme was taken up by the NDMC, to keep the lawns green, he had sealed off the garden. A passage had been left open on one side for the people, who had to go across the park. According to Shri Chhabra, Shri Sanjay Gandhi had visited the scene and had insisted that the whole "seal" should be broken. Shri Chhabra said that after some initial resistance, he had yielded as he felt that if "Sanjay Gandhi, son of the Prime Minister, wants to put the whole garden on fire, I should not resist, at that time". According to Shri Chhabra, he was sent for in the middle of the same night by the Prime Minister; and was severely reprimanded.

13.4 According to Shri Chhabra, in April 1971, it had been decided to clear encroachments of some recently constructed jhuggis in the Chanakyapuri area. He said that before the clearance started, the Lt. Governor, Shri A. N. Jha and the Minister for Works and Housing, Shri I. K. Gujral were both consulted and their approval was obtained for the proposed action. Shri Chhabra says that Shri R. K. Dhawan and Shri Sanjay Gandhi requested and pressed the Lt. Governor to stop these demolitions, and that the Lt. Governor had resisted the pressure and did not agree. Shri Chhabra further said that Smt. Indira Gandhi, who was at that time in Simla, spoke to the Lt. Governor and reportedly expressed her annoyance over the demolition operations. Subsequently, Shri Chhabra proceeded on long leave

and according to him false cases were concocted against him by the CBI. Even though an attempt was made to frame false charges, nothing could be proved against his integrity.

13.5 The episode attracted considerable public notice and the press made some comments on it. Thus, Shri Ramesh Thapar writing in the Economic and Political Weekly of May, 1971 said :

"The jhuggis, which were demolished, were brand new. The invasion of squatters was organised by politicians and experienced saboteurs, the former with their eye on the local elections and the latter to make some quick money from the squatters, assuring them that everything could be fixed with the Prime Minister 'through Sanjay'. It has been known for some time that the Prime Minister's son having been inducted into the Delhi political scene, is being used as a spokesman by all manner of persons who, it is alleged, are professional violators of municipal laws and regulations."

Similarly, the periodical 'Point of View' dated May 1, 1971, also commented—

"Is it a larger question? How did all this happen? What is the *locus standi* of Mr. Sanjay Gandhi? What are his *bona fides*? What is his public commitment? Whom does he represent? What are his prerogatives? How has he earned such influence—a senior official transferred for having been officially responsible for the enforcement of a duly authorised decision of a Government over which his mother presides?"

"How has he earned the power to try to have the writ of the Government of the land annulled?"

"Normally, it is criminal breach of law to interrupt Government officials in the discharge of their official functions. How dare Mr. Sanjay Gandhi try to hinder the NDMC from implementing an official decision? Why was he not apprehended for the breach of public law? What immunities as a son of the Prime Minister does he enjoy as to get away with this situation?"

"It used to happen in medieval ages. The sons and relatives of the kings and emperors went about violating the law of the land with impunity. Has India reverted to those dark ages after the massive victory of the Congress in mid-term poll?"

13.6 After the declaration of emergency, there was a sharp increase in the tempo of demolitions.

Comparative figures for the pre-emergency and emergency period can be seen in the table below :

Period	Structures Demolished by :			
	DDA	MCD	NDMC	Total
A. Pre-emergency Period:				
(1) 1973	50	320	5	375
(2) 1974	680	354	25	1059
(3) 1975 (up to June)	190	149	27	366
TOTAL	920	823	57	1800
B. During emergency:				
(1) 1975	35767	4689	796	41252
(2) 1976	94652	4013	408	99073
(3) 1977 (up to 23-3-77)	7545	96	—	7641
(4) Year unspecified but during emergency	—	1962	177	2139
TOTAL	137964	10760	1381	150105

13.7 Who ordered that demolition operations should be stepped up in Delhi is not clear. Shri K. Raghuramiah, who was the Minister for Works and Housing says that he was not aware of any decision taken by his Ministry to undertake demolition operations on such a large scale in Delhi. He said that he did not have any direct personal knowledge nor did any one tell him that more than 1,50,000 structures were demolished in Delhi. The first time he came to know of the extent and nature of the demolition was when the case summary was read out in the Commission. He further said that Shri Jagmohan appeared to be visiting the Prime Minister's house and probably obtaining directions from there.

13.8 According to Shri Krishan Chand, former Lt. Governor of Delhi, after the declaration of emergency these programmes received a great fillip because the persons affected could not mobilise public leaders and secure protection from the courts. The people were afraid because they realised that the administration will not hesitate to use force in implementing its programmes.

13.9 Shri Krishan Chand further said that a competitive spirit had developed between the DDA, MCD and NDMC for clearance of slums and unauthorised constructions. Procedures and human considerations were relegated to the background. He said that he had reasons to believe that these officials drew inspiration from the Prime Minister's house. They used to mention to him sometimes that a particular project had been directed for execution from the Prime Minister's house or was cleared from 'above'.

13.10 Shri Jagmohan has denied the allegation that he never kept the Lt. Governor and the Minister informed or that he used to by-pass them. According to him he used to brief the Minister regularly about what the DDA was doing in Delhi. Particularly when there were Parliamentary Questions, he used to personally brief the Minister not only about that question but also for the supplementary questions connected with it. He said that whenever there was a Parliamentary Question, he was called at 9 a.m.

to the Parliament House by the Minister and he would give every information to the Minister. He said that Shri Raghuramiah had praised him and the work he was doing in national and international forums also. In view of this Shri Jagmohan said that it would be wrong for Shri Raghuramiah to pretend ignorance about the activities of the DDA during the emergency.

13.11 As the pace of demolition stepped up in Delhi, a number of complaints started pouring in. A meeting was held by the Prime Minister, first with the Members of Parliament and subsequently of officials of the Delhi Administration, sometime in July-August, 1975. Shri Raghuramiah, who was then Minister for Works and Housing said that he was not invited to this meeting nor to the meeting of the officers that was held by the Prime Minister after this meeting, and he was not even aware if such meetings were ever held. According to Smt. Joshi a meeting was held at the PM's residence, which the local MPs., Executive Councillors and office bearers of the Delhi Pradesh Congress Committee attended, and that at this meeting she had told the Prime Minister about the manner in which the demolition and resettlement programmes were being implemented by the local authorities and expressed her unhappiness over this. She said that most of the other MPs., Executive Councillors and office bearers of the Pradesh Congress Committee present at this meeting including Shri H.K.L. Bhagat had expressed happiness over the demolition operations and had said that the people were happy about it. She said that neither the Prime Minister nor Shri Sanjay Gandhi, who was also present at this meeting, said anything.

13.12 According to Shri Krishan Chand, who attended the meeting of the officials held immediately after the meeting with the MPs., Smt. Indira Gandhi had said that although the MPs. were critical of the Municipal action, this work was good and should be pursued vigorously, Shri Krishan Chand confirmed that Shri Sanjay Gandhi also attended this meeting. No minutes of this meeting were kept.

13.13 Shri Bhawani Mal while confirming what Shri Krishan Chand had said added that Smt. Indira Gandhi had cautioned that displaced persons should be provided with basic civic amenities at the places of resettlement.

13.14 Shri B. R. Tamta, former Municipal Commissioner said that there was a drastic change in the manner of functioning of the Commissioner of Municipal Corporation of Delhi after the declaration of emergency. He said that Shri Navin Chawla, Secretary to the Lt. Governor called him and told him that the Lt. Governor wanted him to function under the over-all supervision and control of Shri Sanjay Gandhi and seek his orders. Shri R. K. Dhawan, Additional PS to the Prime Minister also used to ask Shri Tamta to come to the Prime Minister's house and on reaching there he would direct him to Shri Sanjay Gandhi. He said that Shri Sanjay Gandhi confronted him with the complaints he had received

and issued verbal orders, and insisted upon compliance of these orders by a specific date and time. Shri Tamta further added that Shri Sanjay Gandhi directed him to bring files of the Municipal Corporation in the same manner that Shri Jagmohan used to bring the DDA files. Shri Tamta said that he was often threatened with dire consequences of suspension and dismissal if he did not comply with the orders of Shri Sanjay Gandhi. According to Shri Tamta, Shri Sanjay Gandhi had become the *de facto* ruler of the Municipal Corporation and in the day to day working Shri Gandhi had to be consulted first before orders could be passed. Shri Sanjay Gandhi also took a hand in the postings and transfers of the Municipal officials.

13.15 Shri Navin Chawla stated that it was common knowledge in Delhi that senior officers of the Delhi Administration, DDA, MCD, etc. regularly visited the Prime Minister's House, that it was a fact that soon after the emergency was declared, Shri Sanjay Gandhi assumed an important role in the affairs of the Delhi Administration; and that the Lt. Governor Shri Krishan Chand had directed him to go to the Prime Minister's House to discuss various matters with Shri Sanjay Gandhi, Shri R. K. Dhawan, etc.

13.16 According to Shri Ashok Pradhan, ADM (Central), it was generally understood that clearance operations were decided upon in the Prime Minister's House and handed down to the Administration for implementation. Shri Pradhan, however, was not clear whether these decisions were taken by the Prime Minister herself or by her son Shri Sanjay Gandhi.

13.17 Shri Sanjay Gandhi, who had been issued an invitation to come and assist this Commission in this case on December 16, 1977, did not respond to this invitation.

13.18 Smt. Subhadra Joshi told the Commission that the implementation of the demolition programmes caused considerable human sufferings. For example, when the hawkers in the Chandni Chowk area were to be shifted to Gandhi Ground, Smt. Joshi said that she had met Shri Tamta and told him that the hawkers should be first intimated about the rehabilitation programme. Shri Tamta told her that he had orders to clean the city quickly and unless the hawkers were thrown out immediately the DDA would not allot them alternative sites. Smt. Joshi said that she had pointed out to Shri Tamta that the hawkers had been shifted to Gandhi Ground without preparing the area in advance which was water logged and they did not have protection against sun and rain.

13.19 Smt. Joshi said that she had told Shri Tamta that public leaders could play a role in this drive by explaining the programmes to the people and getting their cooperation and to do this, she told Shri Tamta that the programme of shifting should be intimated in advance, Shri Tamta, according to Smt. Joshi, asked her to leave Delhi till such time as the drive lasted as he had to make Delhi a beautiful and modern city. He also told her that he himself was unaware of many of these programmes because they were planned by his juniors.

13.20 When Smt. Joshi saw the unhelpful attitude of Shri Tamta, she met the Lt. Governor. He, however, expressed to her his helplessness and told her that Shri Tamta did not listen to him. Consequently, Smt. Joshi said that she met Shri Om Mehta, the Minister of State in the Ministry of Home Affairs. While blaming the officers and the Lt. Governor he told her that the Lt. Governor should sort out the matter.

13.21 Smt. Joshi said that after that she met the Prime Minister on a few occasions and apprised her of the difficulties faced by the people as well as Shri Tamta's attitude. The Prime Minister took some notes but did not react to her complaints.

13.22 As even after the meeting in the Prime Minister's House, the demolition drive continued unabated and she continued to receive complaints, Smt. Joshi wrote two letters to Smt. Indira Gandhi. These letters read as follows :

प्रिय इन्दिरा जी,

यकीन नहीं आता कि आपको मालूम हो और आप कार्रवाई न करें।

I. 1. पब्लिक हाइड्रेन्ट्स सब काट दिये गये हैं। मजदूर पल्लेदार, रिक्शावाले—सब तरह के लोग प्यासे मर रहे हैं। क्या यह लोग किसी का दरवाजा खटखटा कर पानी मांग सकते हैं?

लोगों के घोड़े और गाय बैल भी प्यासे परेशान हैं।

2. छोटी कोठरियों में रहने वाले नल लगवा ही नहीं सकते। एक-एक कमरे में दस-दस आदमी रहते हैं।

3. गलियों में नाली धोने के लिए भिस्ती को भी कोई जगह नहीं। इन सब बातों को भी सुनने को भी कोई जगह नहीं।

II. 1. चान्दनी चौक के बड़े बाजार में रिक्शा बन्द कर दी गयी हैं। आस-पास से आने वाली रिक्शा को सड़क के दूसरी ओर जाने को मीलों का चक्कर लगाना होगा।

2. उन जगह के लोगों के लिए सवारी नहीं। बूढ़े, बीमार या दूसरे भी साधन-विहीन हो गये हैं।

3. रिक्शा वालों को रोजगार और लोगों को सवारी-विहीन कर दिया गया है।

III. 1. सारे शहर में फ्लश लगे इससे अच्छी बात क्या हो सकती है, परन्तु किरायेदार के पास कोई साधन नहीं।

2. टंकी में पानी पहुंचने का प्रेशर Pressure नहीं।

3. सीवर Sewer की चौड़ाई काफी नहीं। पहले ही Blocked बन्द रहते हैं।

क्या इन सब कामों का बेहतर तरीका नहीं हो सकता? लोग आपकी नीतियों की सराहना

में दीवाने हो रहे हैं। आपने रिपब्लिकनरी ताकतों को दबा दिया, दबाये रखना ही ठीक है। गरीब लोग हमारे साथ हैं। उन्हें साथ ही रहना है। लगता है कोई सेबोटैज कर रहा है। इसीलिए एक बार और आपके पास फरियाद पहुंचा रही हूँ।

हर काम में Human Touch की गैरहाजिरी हो गई है। सरकार को एमरेंजेंसी को 'सरकार विरोधी' अक्सर मार्शल ला का रूप दे रहे हैं।

मैं सोचती हूँ कुछ भी हो मेरा कर्तव्य है आपके सामने सब रखती हूँ।

तहकीकात होनी चाहिए यह अमानुषिक काम किये किसने और क्यों।

आपकी,
हस्ता./-
सुभद्रा।

Dear Indiraji

It is unbelievable that you might be aware of things and yet you would not take action :—

- I. (1) All public hydrants have been disconnected. The labour, Rickshaw-pullers and all kind of people are dying of thirst. Can these people knock at somebody's door to ask for water?
Even horses, cows and bullocks, of people, are suffering for lack of water.
- (2) People living in small tenements cannot afford to have water connections in them. About ten people are living in single room.
- (3) There is no space even for the water carriers to clean the drains in the lanes. There is even nobody to listen to all these things.
- II. (1) Rickshaw have been prohibited from plying in the big bazar of Chandni Chowk. Rickshaw coming from nearby areas have to take a detour of miles just to cross over to other side of the road.
- (2) There is no conveyance available for the people living in those areas. Ailing, old and others have become resourceless in this respect. Rickshaw-pullers have been rendered jobless and the people have no means of conveyance. There cannot be anything better than a flush system all over the city, but it is beyond the means of the tenants.
- (2) There is not enough pressure for the water to reach the overhead water tanks.
- (3) Sewers are not wide enough. They were already choked. Cannot there be better methods of doing these things? People are becoming ecstatic praising your policies. You have suppressed the reactionary forces, and rightly so. Poor people are with us and they should continue to be so. It appears someone is sabotaging the whole thing.

That is why, once more, I am appealing to you. There is lack of human touch in every action. Opponents of the Government are projecting the Government and the Emergency as a Martial Law regime.

2. I think, come what may, it is my duty to bring to your notice all the developments.

3. It should be investigated as to who committed these inhuman acts and why?

Sd/-
SUBHADRA

प्रिय इन्दिरा जी,

बहुत अर्से से समय मांगा था अपने Organisation और Conference के बारे में कुछ बतलाने को कुछ पूछने को।

फिर बहुत कुछ हो गया। आपके पास समय नहीं शायद जानने नहीं चाहती क्या हुआ। आश्चर्य है।

जो जामा मस्जिद, तुर्कमान गेट में हुआ उसका वर्णन करना कठिन है। कोई पुरानी या भविष्य की कल्पना उसे बता नहीं सकती और यह सब कितना गैर-जरूरी था।

आपने दिल्ली को और दिल्ली के मुसलमानों को, जिनके घर-घर पर हमने पहरे दिये और आपने उन्हें विश्वास दिलाया—चन्द अफसरों और चन्द को सौंप दिया है जिनकी नीयत और Sanity में—यदि आप सब कुछ जानें तो आप खुद ही संदेह करने लगेंगी।

एक हिन्दु पुलिस अफसर का ब्यान है—जब हमारे आदमियों को पता लगा यह मुस्लिम मोहल्ला है तो जिस Brutality पर उतर आये—मुझे खुद दौड़-दौड़ कर उनसे मर्दानों, औरतों और बच्चों को छुड़वाना पड़ा।

डी० डी० ए० के लोग, अस्पताल के लोग, पुलिस के लोग, मजिस्ट्रेट इत्यादि तक उन तमाम कार्यवाहियों से चकित, दुखी और नाराज हैं जनता का अन्दाजा आप लगाइये।

लोग यू० पी०, बिहार, राजस्थान भाग गये हैं। वहां क्या कह सुन रहे होंगे। यह खबरें अखबारों से जोकि सैन्सड हैं—ज्यादा भयंकर होंगी। विदेशी प्रेस मुस्लिम देशों को खासकर क्या कहेगा।

कल सुना है सराय खलील की बारी है वहां पंडित जी की और आपकी विशेष कृपा रही है।

जमील लायू—मशहूर कांग्रेस कार्यकर्ता और शायर जेल में डाल दिया गया है। यहाँ पर और हर घर में घरेलू धंघा है। स्कीम वहीं पर घर बनाने की हो। दिल्ली के नये कर्णधार न मालूम क्या करने वाले हैं।

यहां आधा-आधा एरिया बिना उजाड़े बन सकता है यदि उजाड़ने में आपके अफसरों को कोई Sadist pleasure न लेना हो ।

आप यहां के लोगों को खुद ही पहचानती हैं ।

आप कुछ करेंगी आशा कम होने लगी है फिर भी आवाज देना मेरा कर्तव्य है और दिल की आवाज है और आशा से दिखते रहना इन्सान की स्वाभाविक प्रवृत्ति है । इसलिए ये पत्र ज्यादा लिख दिया । ऊंचे लोग ऊंचा सुनते हैं ।

आपकी,
हस्ताक्षर/-
सुभद्रा ।

Dear Indiraji,

Since long I have been seeking some time to apprise you and ask you something regarding the matters relating to our organisation and conference.

Since then much has happened. You have no time. Probably you do not want to know what has happened. It is surprising.

It is difficult to describe what happened in Jama Masjid and Turkman Gate. No imagination can relate it to any instance in the past or future; and how unnecessarily was all this ?

You have entrusted Delhi and the Musalmans of Delhi, whose houses we guarded and who had been assured by you—to few officers and few others whose intentions and sanity you yourself would start doubting if you knew the whole thing.

One Hindu Police officer has stated that when his men came to know that it was a Muslim locality they acted with such brutality, that I had personally to run around and save men, women and children from them.

Even the DDA employees, the hospital employees, the Policemen, Magistrates etc. are stunned, sad and angry about all these actions; you may well imagine about the public.

People have fled to U.P., Bihar and Rajasthan. What all they must be relating and saying there? Their version would be more ghastly than what would be appearing in the newspapers, which are censored. What will the foreign press tell the Muslim countries in particular?

Tomorrow, it is heard, is the turn of Sarai Khalil. Panditji and you have been specially kind to that area.

Jamil Layu—famous Congress worker and poet has been thrown in jail. Here and in every house, there is a cottage industry. The scheme should aim at building the houses here itself. It is not know what the new authorities of Delhi are going to do. Here

the area can be built half at a time without indulging in any demolition, provided your officers are not to derive any 'sadist pleasure' in demolitions.

You personally know the people of this area.

The hope that you will do something has started fading, yet it is my duty to give a call and it is a call from the heart and to remain hopeful is a natural human instinct. That is why I have written so much in this letter. People in high places tend to be hard of hearing.

Yours
Sd/-
SUBHADRA

13.23 Smt. Joshi says that when she brought the grievances to the notice of the Prime Minister, after some time the Prime Minister stopped granting her interviews. As the complaints continued coming and the people were harassed, she said that she was removed from the chairmanship of the Minorities Department of the AICC on the ground that she was inciting the minorities.

13.24 According to Shri Krishan Chand, the people who were shifted, were unhappy because they had been forcibly shifted. He said that the areas, where this programme was initially undertaken by the MCD were the strong holds of the opposition parties, particularly the Jan Sangh.

13.25 Shri Navin Chawla stated that there were instructions that no demolition should be undertaken without the prior approval of the Lt. Governor, but during the emergency these were disregarded. Even religious structures, for the demolition of which prior approval of Lt. Governor was required, were not spared. According to Shri R. K. Ohri, intimations about the demolition programmes were not always received with sufficient notice from DDA/MCD. The full details regarding its extent and timings, etc. were not given as the MCD/DDA did not want the programme to leak out to the affected persons. According to Shri Ohri, there was a general impression that areas, which were the strong holds of Bharatiya Jan Sangh and RSS and where opposition parties had courted arrests in protest against the emergency were earmarked for demolition first. He said that the authorities had then switched their attention to Muslim areas like Jama Masjid perhaps because they wanted to avoid an impression that Muslims were being given a preferential treatment.

13.26 According to Shri Inder Mohan, there were two outstanding problems which affected the life of the residents of the Jama Masjid area. One regarding the residential decongestion and the other concerning the shops and market around and alongside Jama Masjid. He said that as regards the market and shops around the mosque a solution in the form of the Paiwalam scheme was mooted by the late Maulana Abdul Kalam Azad, approved by the late Pandit Jawaharlal Nehru and formally accepted by the Government of India and the Delhi Administration. According to this scheme, the shopkeepers were

to be given alternative sites in the nearby maidan known as Paiwalan. About 150 shops were to have been constructed on the three corners of the Jama Masjid and the height of the shops would not have been allowed to rise beyond the height of the mehrabs of the mosque. According to him, the scheme would have served two purposes; Jama Masjid would have been beautified in the real sense and the lives of the human beings would have remained beautiful. Some of the junk and other shops would have been easily shifted to Gatta Colony and the Ghatta Masjid.

13.27 According to Shri Inder Mohan, this scheme, though never formally shelved, was never implemented. This was probably because the ruling circles had begun to think that a concentration of Muslims in a particular pocket of Delhi should not be allowed. Shri Inder Mohan said that Shri Mohd. Yunus, Special Envoy of the Prime Minister had told him that "all these Muslims who are supporting the Imam should be dragged and thrown out of the city". He said that during the emergency Shri Jagmohan's pet phrase was that no second Pakistan could be permitted to exist.

13.28 Shri Inder Mohan further stated that the first demolition operation that took place in Jama Masjid was that of Kalan Mahal on July 19, 1975; this had created panic in the area. When news regarding demolitions in other parts of the city began circulating in Jama Masjid area, a memorandum was prepared by the shopkeepers that the Paiwalan scheme should be implemented. This memorandum was meant for the Prime Minister.

13.29 Shri Inder Mohan says that he sought an appointment with the Prime Minister to present the memorandum. He met Shri N. K. Seshan, the Private Secretary of the P.M., who told him that instead of seeking an appointment with the P.M., he should meet Shri Sanjay Gandhi who was dealing with all matters concerning Delhi. Accordingly he met Shri Sanjay Gandhi. Shri Inder Mohan says that Shri Sanjay Gandhi felt that any discussion on the scheme was irrelevant and told him that in case the shopkeepers gave him Rs. 1.80 crores which was the estimated cost of construction, he would have no objection to having the market constructed even if the shopkeepers subsequently refused to shift there.

13.30 Shri Siraj Piracha, a social worker, said that on August 23, 1975, 96 *khokhas* were removed from Jama Masjid without giving any notice. Though promises were given that these people would be given alternative sites, no such accommodation was given to them. A few days later Shri Siraj Piracha spoke to Shri Sanjay Gandhi about the grievances of these shopkeepers. According to Shri Siraj Piracha, Shri Sanjay Gandhi was adamant that the shopkeepers should be shifted. When Shri Piracha drew the attention of Shri Sanjay Gandhi towards the Paiwalan scheme, Shri Sanjay Gandhi told him that to implement this scheme a sum of Rs. 2 crores would be needed; if the shopkeepers were willing to pay this sum he would have no objection to the implementation of the scheme. Shri Piracha met the Late President Shri Fakhruddin Ali Ahmed in October 1975 and complained to him about the demolition

operations in that area and about his discussions with Shri Sanjay Gandhi. The President told him that he had spoken to the Prime Minister and she had given an assurance that the shopkeepers in Jama Masjid will not be shifted till the Paiwalan scheme was implemented.

13.31 In spite of these assurances, according to Shri Piracha, on November 22, 1975, the shops in Jama Masjid area including those belonging to the Waqf Board were demolished by the Corporation and the DDA.

13.32 Smt. Joshi says that one day Shri Tamta informed her that he desired to meet her. She met Shri Tamta in his office. He told her that he was doing his best to resettle the affected persons and assured her that no one would be shifted till he was given suitable accommodation. Smt. Joshi said that a few days after this meeting some pavement hawkers of Jama Masjid area told her that they were being shifted. They said that the whole area was surrounded by the police and that they would be shifted the next day. Smt. Joshi then went to the house of the Zonal Assistant Commissioner, MCD, concerned who told her that the entire scheme of beautification of Jama Masjid area was to be implemented by the DDA and that the MCD was not concerned with it. Smt. Joshi then met Shri Jagmohan who pleaded ignorance about any programme to shift the pavement hawkers but also told her that he had fixed alternative sites for the junk dealers in Mayapuri. Smt. Joshi said that next morning on reaching the Jama Masjid area pursuant to frantic telephone messages asking her to reach Jama Masjid immediately, she found a large contingent of police force present and a number of trucks were being loaded with the goods of the shopkeepers, which they were removing, apprehending immediate demolition of their shops. Smt. Joshi says that the SDM and the SHO had expressed their annoyance about the manner in which the MCD and DDA officials were behaving with the shopkeepers, while they were trying to shift their goods and save them from loss. Smt. Joshi wrote a letter to the Lt. Governor and the Prime Minister protesting against the manner in which the whole thing was done in spite of the assurances given by the senior officers of the MCD and DDA. She said that she received no reply from the Lt. Governor and she staged a 'dharna' outside the Corporation Office. She was persuaded by Shri H. K. L. Bhagat, Minister of State for Works and Housing and Shri Aziz Imam, General Secretary of the AICC to give up the idea of 'dharna' and they promised her that such things will not happen in future. According to Smt. Joshi in spite of this the demolition continued unabated and virtually in the same manner as before.

13.33 According to Smt. Joshi, shortly after the shifting of the pavement hawkers some of the shopkeepers of Jama Masjid informed her that they had been called by the CID officers and had been told to prepare themselves for shifting. She said that she met Shri Shah Nawaz Khan, Minister in charge of Waqf affairs and informed him that as the shopkeepers were to be resettled in Paiwalan, they should not be shifted to some other place in the interval, and that

the shopkeepers should be shifted only after the shopping complex at Paiwalan had been constructed. Shri Khan agreed with her but could not succeed in getting the demolition and resettlement programme suspended. She said that she met the President of India in this connection and he had assured her also that the shopkeepers will not be shifted till the Paiwalan scheme was implemented. According to Smt. Joshi, she was certain that he must have spoken to the Prime Minister before giving this assurance, but in spite of this assurance the demolition operation was carried out without giving proper alternative sites to the affected shopkeepers. She said that on the day of demolition she tried to get in touch with the President but he was away and she left a message with his Secretary. After some time the Secretary rang back and told her that his efforts to get in touch with the officers concerned with the demolition, including the Lt. Governor, had not succeeded, and that it was unfortunate that demolitions were being carried out in spite of assurances given to the contrary and quoted the instance of the demolition of a mosque in R. K. Puram, which was carried out in spite of protests.

13.34 Shri Krishan Chand told the Commission that Shri B. R. Tamta had mentioned to him about the clearance operations in Jama Masjid but had at no time obtained formal orders from him.

13.35 Shri Ashok Pradhan said that some of the shops were gutted in the February 1975 disturbances in the Jama Masjid area. Some financial assistance was given to the shopkeepers concerned by the Administration towards their rehabilitation, that it was a fact that the shops were reconstructed and the MCD did not stop the same; that the general feeling at that time was that these reconstructions need not be objected to in view of the situation then prevailing in that area; that in August 1975 when the question of demolition of shops came up, he had suggested to Shri Tamta and Shri Jagmohan that even though they may infringe municipal by-laws the shopkeepers should not be put to hardship a second time, but his suggestion was overruled.

13.36 Shri Pradhan further said that he felt that the shops on the western side of the mosque were part of the original building; that he had seen a map of the Jama Masjid area as it existed in 1892-93 and from that it was clear that certain structures existed even at that time, that he had opposed the demolition of these structures because this would affect the structural strength of the Jama Masjid, and he had brought this fact to the notice of Shri Jagmohan who had merely told him that it could be decided later on; that initially the programme was to clear only the shops around Jama Masjid and give alternate allotments to the shopkeepers in the Meena Bazar, but the operation was later extended by demolishing two school buildings belonging to the MCD; that he had raised this point regarding the demolition of the school buildings with the MCD officials but "the reply given to me was... that we are demolishing our own buildings, because they are the MCD school buildings. Instead we are constructing new buildings"; that no new school buildings were constructed but the schools were accommodated in tents near the

Harehara Maidan; that he had heard from Shri Ohri that Shri Sanjay Gandhi had visited the Jama Masjid area and taken a round, and that the traffic plan had been discussed in the Prime Minister's House by the then Supdt. of Police (Traffic) Shri Nikhil Kumar.

13.37 Shri Nikhil Kumar, SP (Traffic) confirmed that he had shown the traffic plans of the Jama Masjid area to Shri Sanjay Gandhi sometime in November 1975. Subsequently he had taken the sketch to the Prime Minister's House and given it to Shri Sanjay Gandhi. He said that he had done this on the orders of Shri P. S. Bhinder, DIG (Range).

13.38 Shri Ohri said that the removal of junk shops around Jama Masjid was in pursuance of the beautification plans drawn up by the DDA. He said 10-12 companies of DAP and CRPF were deployed and at one stage tear gas was used on a limited scale to disperse the crowds; that while the clearance operations were going on, Shri Tamta and Shri Jagmohan had gone round the area; that a day or two after the operations, Shri Sanjay Gandhi also visited the area accompanied by Shri Tamta; and four or five days later he again visited the area, this time accompanied by Shri P. S. Bhinder.

13.39 Shri B. R. Tamta told the Commission that the Jama Masjid operations were a joint operation in the sense that the MCD was assisting the DDA; that he had been directed by Shri Sanjay Gandhi to assist the DDA in this operation, but he did not make any record of this directive of Shri Sanjay Gandhi since he had been told that no record of Shri Sanjay Gandhi's directives should be kept.

13.40 According to Shri S. Shafi, the Additional Town Planner of the Town and Country Planning Organisation, the DDA plan which was actually implemented in the Jama Masjid area was not in conformity with the scheme which had been earlier conceived under the directions of the Ministry. He said that he had objected to the implementation of the scheme because constructing 100 shops in the open space as envisaged by DDA was inappropriate. According to him, it would have created congestion, insanitation and ugliness: it only provided an expedient solution but "expediency should not govern urban design of such an important area". He also said that he had objected that the scheme would spoil the land use and significantly undermine the environment.

13.41 According to Shri Shafi any basic change in the Master Plan could not be made unless and until the due processes of law had been gone through and according to him these due processes had not been followed in making the changes against which he had protested. He said that since the land use had not been changed by following due processes of law, the 350 shops in front of the mosque were still illegal.

13.42 He said that even though he was a member of the DDA, the meetings of the DDA during the emergency were not held regularly. The agenda was circulated only the night before the meeting and in a meeting lasting for about 25 to 30 minutes,

about 100 items used to be disposed of. Since no meaningful discussion of any project could be held at this meeting he had, therefore, written a letter protesting about the Jama Masjid scheme to Shri Bhagwan Sahai along with a copy to the Vice-Chairman, DDA and to the Prime Minister's Secretariat. He said that almost all professional people had objected to the implementation of the scheme conceived by the DDA.

13.43 Shri Jagmohan says that he had talked to the junk shopkeepers in the Jama Masjid area and he had told them that they were having a "re-development" project and if they moved by a certain date he would give them concessions; that it would be in their overall interest to cooperate; that it was his intention to help them and when he persuaded them they went willingly; that the President Shri Fakhruddin Ali Ahmed had also called him and after he (Jagmohan) had explained to him the whole background of the Jama Masjid project, the President had appreciated it; Jagmohan had got the impression that the President had not been correctly informed by the deputationists who had gone to meet him.

13.44 Shri Jagmohan further stated that the DDA was not concerned with the removal of the shops and that it had only resettled the shopkeepers by providing them alternative accommodation. According to him the shops were removed by the Municipal Corporation. He said that Shri Tamta had spoken to him over the telephone and he had agreed to give alternative accommodation to the shopkeepers.

13.45 The following letter written by Shri Jagmohan to Shri R. K. Dhawan, Additional PS to Prime Minister was read before the Commission:—

"The position in brief is that the DDA is trying to redevelop and improve the Jama Masjid Complex. Our project has the following four components:

- (a) clearance of junk shops on the eastern stretch of Jama Masjid Area and development of land between Jama Masjid and Subhash Park as a terrace garden;
- (b) shifting of kabaris and old motor parts dealers to the newly developed colony of the DDA in Mayapuri;
- (c) removal of squatters from the Urdu Bazar area and construction of 72 shops at the basement level for resettlement purposes; and
- (d) clearance of shopkeepers from the stairs of Jama Masjid and their resettlement in a nearby area known as Paiwalan Dufferin Hospital Building."

13.46 According to Shri Jagmohan when he wrote this letter he had meant that though the project was of the Municipal Corporation, the main responsibility for development in Delhi was that of the DDA and therefore, he had supplied this information to

Shri Dhawan. The DDA had only given alternative plots and the Corporation was responsible for the demolitions/clearance operations in this area.

13.47 Shri R. K. Ohri said that the law and order was never considered when these programmes were implemented; that Shri Bhinder had told him that it was no use maintaining law and order if nationally accepted programmes such as slum clearance could not be implemented; that DIG (Range) and the Deputy Commissioner had made known the policy of the administration to give full protective cover to official and non-official agencies involved in various socio-economic programmes like slum clearance, that the aim was that this programme should be implemented without difficulty and quickly. He said that demolition operations could not be carried out without police bandobast. It was known that there was large scale resentment in the city against the demolitions and as the police knew, that there was likelihood of trouble, it had to ensure that there was no breakdown of law and order. Sometime requisitions were received from DDA and MCD for the police force and on other occasions force was deployed according to the nature of the situation by the SP himself. According to Shri Ohri, they were seldom given any indication about the nature and extent of the demolitions.

13.48 Shri Ohri said that only those persons were arrested who were alleged to be instigating other people to create disorder because they were considered to be the leaders of those groups of people in that locality. The information about their names etc., was given by SP (CID), DIG (Range) and sometimes by the District Magistrate. He said that instructions were conveyed only over the telephone or during meetings. These were generally conveyed sometime late in the night or early morning.

13.49 Shri Ashok Pradhan while confirming what Shri Ohri had said, stated that police protection provided to these operations led to a feeling that the police was on the side of the programmes. According to him, their advice was not well received by the DDA and other agencies.

13.50 Shri Bhawanimal, IGP Delhi told the Commission that the Government had sanctioned a separate police staff headed by a DSP to assist in the demolition operations. He said that the task of the police was to protect the DDA and MCD personnel and to ensure maintenance of law and order. The deployment of the police force on these demolition duties blurred the image of the police in the public mind because the programme was unpopular. He said that the deployment of force implied that there was an amount of coercion involved in these operations and that large scale deployment had the effect of silencing the people's rightful resistance to the demolition operations.

13.51 Regarding arrests Shri Bhawanimal said that the local police was receiving instructions from the DIG (Range) and the SP (Special Branch) about certain category of persons to be arrested. He said he had come to know about it but he did not

know about the details which would be a matter of record. He said that he had not given such orders and this procedure did not have his blessings.

13.52 An impression had been created that Shri Sanjay Gandhi was actively associated with the demolition programmes in Delhi. This impression gains support from what Shri Tamta had stated before the Commission about the daily morning visits to Shri Sanjay Gandhi by S/Shri Tamta, Jagmohan and others, with the relevant municipal records. Instructions were also given by both officials and non-officials to the affected people to approach Shri Sanjay Gandhi when the demolition programme in any particular area was about to be taken up or was under way. The affected people took deputations to Shri Sanjay Gandhi to seek his assistance in several cases. Shri Sanjay Gandhi used to meet these deputations and deal with them in his own peculiar ways.

13.53 It appears that in their hurry to implement the demolition programme, neither the DDA nor the MCD took the precaution in a number of cases of following even the basic minimum procedures laid down in the Delhi Development Act, Delhi Municipal Corporation Act and other relevant laws. Some of the features of the demolitions are:—

- (i) It was necessary that in every case of demolition, proper notice was required by law to be issued. But it was found that in practice no notices were issued before the buildings were demolished.
- (ii) In case of private property proposed to be acquired and taken possession of, in a number of cases land was occupied before even the proceedings for acquisition were commenced or before the date on which, under the Land Acquisition Act, possession could be taken.
- (iii) The Delhi Master Plan provided for certain land uses. In case of any change of the land use, the Union Government had to be consulted. But in a number of cases land use prescribed under the Delhi Master Plan was changed without the concurrence or permission of the Union Government.
- (iv) To ensure that the affected people do not approach the law courts for redress, or political leaders, demolitions were carried out without advance intimation. This largely left the owners of the property without any avenue of redress from the courts even in cases where the demolitions were in law absolutely unjustified. However, in some cases, when the affected people anticipated the move of the authorities and obtained orders staying demolitions from the competent Courts, either the stay orders were not respected and demolitions were carried out or persons who approached the law courts were arrested under section 108 Cr.P.C. on fabricated evidence or threatened with arrest under MISA and compelled to withdraw the proceedings initiated by them.

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- (v) A squad of the Police was permanently attached to the DDA, ostensibly for providing protection to the DDA officials who used to go on demolition programmes to different areas. Even when the actions were illegal and arbitrary, the Police unit attached to the DDA remained present, with the concerned officials to intimidate and overawe the aggrieved citizens. More often than not, the squad was supplemented by large contingents of both armed and unarmed police from nearby Police Stations and the Line with the object of intimidating and terrorising the aggrieved citizens and to prevent them from offering resistance to the demolitions. Frequent use of large contingents of the Police for demolition purposes affected the image of the Police in the eyes of the public.
- (vi) When there was public criticism against unauthorised demolitions or some affected people had taken the matter to the Court, attempts seem to have been made to fabricate the records or to pre-date orders in an effort to establish that notices were actually issued and served mostly by affixation even when such notices had not been issued.
- (vii) The demolition operations were carried out like a blitzkrieg in utter disregard of the human problems involved. Alternative accommodation sometimes was provided, but more often only open plots of land were allotted. These plots were so small that no construction suitable for residential purposes could be made. Very few built-up quarters were allotted to the affected persons considering the large number that had to be provided.
- (viii) Within and around Delhi a large number of people had got themselves settled after the partition of the country in 1947. Large sections were refugees from Pakistan who were trying to make a living from small trades and businesses; some of them were also low-paid Government servants. A large number of persons whose residences were demolished, were making a living by performing some services for the residents living in the nearby areas. They belonged mostly to the class of masons, milkmen, domestic servants, watchmen, etc., a necessary part of the urban set up of Delhi and provided the much needed private service to a large number of middle-class and affluent residents. When alternative sites were given to the persons whose houses were demolished at places far away from their place of work, they had to incur extra expenditure in addition to undergoing additional inconveniences for reaching their site of work.
- (ix) In the matter of allotment of alternative accommodation, a 25 sq. yards of plot was given irrespective of the area earlier occupied by the concerned people and which might have been demolished. Normal price was

charged for this plot of land which was not given as a matter of compensation for the land or building which the affected person had owned. Under the rules when any private property had to be demolished even under the authority of law, compensation had to be paid. But in many cases no compensations were offered or paid.

- (x) The Commission visited some of the areas of rehabilitation and found that even the basic amenities were wanting, and the houses had been constructed back to back in such a manner that there was no ventilation or even passage between two houses. The rehabilitation areas in some cases presented a picture of hasty planning and indifferent execution.

13.54 It has not been possible for the Commission to go into every individual case of demolition in Delhi. It had, therefore, taken up for hearing cases of demolition generally spread over certain specific areas. On the basis of the hearings conducted by the Commission it is established that the demolitions undertaken in Delhi during the emergency did not conform to the established legal and administrative requirements before the demolitions could be undertaken; because of the large number of requests of individuals affected by the demolition, each wanting his case to be heard by the Commission, the Commission had given an assurance generally in the Court that regardless of the fact whether or not the Commission hears a particular case, the recommendations made by the Commission will embrace all the affected persons and that the Commission will recommend that cases of all the affected persons be considered on merits individually by the Government through appropriate channels. The Commission recommends that the Government may take special steps to redress the grievances of the affected citizens on a priority basis.

II. Demolition in Bhagat Singh Market

13.55 The Government of India had constructed the Bhagat Singh Market, New Delhi, as a rehabilitation project for refugees from Pakistan. This market falls within the jurisdiction of the New Delhi Municipal Committee. The Government had sold the shops in Bhagat Singh Market, New Delhi on the land under brick-built structures measuring 385 sq. feet each, which also included the verandahs; two-third of the cost of the land was charged from the lessees of the shops on the ground floor and one-third of the cost was charged from the lessees on the first floor.

13.56 Demolitions in Bhagat Singh Market were carried out in the months of November-December, 1975 and March-April, 1976. The first demolition was conducted by the New Delhi Municipal Committee (NDMC) on November 15, 1975. All the unauthorised constructions existing at the rear of the shops were removed. The *barsati* of flat No. 15/F belonging to Shri S. P. Dua was also demolished. Shri Dua has stated that this terrace construction was regularised by the NDMC and was also approved by the Government of India. He had been paying

housetax separately for the *barsati* since 1962. Shri Dua had kept this *barsati* locked up as he was in Hyderabad at the relevant time. According to Shri Dua, the staff of the NDMC demolished the terrace construction after breaking open three locks. No notice was served on him. The valuables lying in the *barsati* were looted either by the staff of the NDMC or others as they were left absolutely unguarded by the demolition staff. Shri Dua had cited S/Shri Chitakara and Khosla as the eye-witnesses of the demolition of his *barsati*, by the NDMC. Shri K. S. Bhatti, who was examined in this matter had, however, stated that Shri Dua's *barsati* was demolished along with the demolition of the coverings of the verandahs etc., in February/March, 1976.

13.57 The NDMC have denied that the demolition of Shri Dua's *barsati* was done by its Officers. Shri V. N. Vasudeva, Chief Architect, NDMC, in his reply on July 15, 1976 to Shri S. P. Dua has stated:—

“... and so far as the removal of *Barsati* of Flat No. 15/F, Bhagat Singh Market is concerned, it has been revealed through a detailed inquiry that the same was removed by the occupants of the flats....”

It has not been possible to establish the circumstances in which the '*barsati*' of Shri Dua was demolished and who ordered its demolition.

13.58 The NDMC had again issued a public notice on December 21, 1975 calling upon the shopkeepers of the various markets in the NDMC area to remove within seven days the coverings of the verandahs of their shops. This period was extended by seven days and the shopkeepers were asked to pay a penal fee of Re. 1 per foot of the encroached area. In default of compliance the NDMC threatened to remove the encroachments at the cost of the shopkeepers. No action was taken on this notice.

13.59 On February 12, 1976, the NDMC, issued a notice under section 171(4) of the Punjab Municipal Act, 1911, notifying its intention to declare verandahs in front of the shops in Bhagat Singh Market as public street and inviting objections, if any, within one month. Even before the expiry of one month, the demolition staff of the NDMC tried to demolish the verandahs on February 23, 1976. Their attempt was successfully resisted by the shopkeepers and this apparently annoyed Shri V. S. Ailawadi, Member-Secretary, NDMC. He visited the market later the same day and personally warned the shopkeepers that if they did not demolish the coverings of their verandahs, their electricity and water supplies would be disconnected. Shri Kundan Singh, one of the shopkeepers, had filed a complaint at Police Station, Mandir Marg on February 23, 1976 that the NDMC staff had come to the market and had illegally attempted to demolish the structures.

13.60 One Shri Ram Rattan Popli wrote a letter on February 24, 1976 to Shri Om Mehta, the Minister of State in the Ministry of Home Affairs,

with copies to Shri H. K. L. Bhagat, Minister of State for Works and Housing and Smt. Vidya Behn Shah, President of the NDMC. In his letter Shri Popli had written that NDMC officials accompanied by policemen had come to Bhagat Singh Market on February 23, 1976 and had asked the shopkeepers to vacate the front portions of their shops within an hour. Later on Shri Ailawadi arrived and repeated this order.

13.61 Over a hundred shopkeepers and residents of Bhagat Singh Market addressed letters to the President of the New Delhi Municipal Committee and the Secretary, NDMC on February 27/28, 1976 in which they alleged that Shri Ailawadi had visited Bhagat Singh Market on February 23, 1976 and had instructed his staff that in case the owners did not demolish their shops, water and electricity connections should be cut off.

13.62 On February 27/28, 1976, telegrams were sent by the shopkeepers to the Lt. Governor, Delhi and the President, New Delhi Municipal Committee that the Municipal Committee had again threatened them on February 27 that if they did not demolish their shops, drastic steps would be taken.

13.63 On March 24, 1976 a final notice was displayed in the market declaring verandahs in front of shops as public street under section 171(4) of the Punjab Municipal Act. According to the shopkeepers, on March 25 and 26, the New Delhi Municipal Committee staff demolished the coverings of the verandahs and entered upon the private property of the shopkeepers without their consent. Coverings of the verandahs of the shops, in respect of which stay orders had been obtained, were not demolished.

13.64 S/Shri Balbir Singh and Kundan Singh, shopkeepers, narrated the manner in which the verandahs of the shops were demolished by the New Delhi Municipal Committee. The stocks, fixtures and furniture of the occupants of the shops were thrown out of the shops. Telephone and electricity connections were cut. The whole market was encircled by the police when the demolitions were being carried out. Shri Kundan Singh produced some photographs taken of the demolition operations. S/Shri Balbir Singh and K. S. Bhatti have confirmed that Shri Ailawadi had visited Bhagat Singh Market on March 25 and 26 while the demolition operation was proceeding.

13.65 S/Shri A. P. Gupta, Assistant Engineer, New Delhi Municipal Committee, S. P. Goel, Junior Engineer, New Delhi Municipal Committee and C. S. Asnani, Junior Engineer, New Delhi Municipal Committee confirmed that they along with their labour and trucks had gone to the Town Hall and from there under the directions of the higher officers had gone to the Bhagat Singh Market and had started the demolition of the partition-walls and *barsaties* on the first floor. Demolitions started on March 25, 1976 were continued on March 26, 1976. Shri Gupta says that he had seen Shri V. S. Ailawadi in Bhagat Singh Market on March 25, 1976. Shri Ailawadi took a round of the market

and enquired about the progress of the work. On March 26, 1976, Shri Goel also saw Shri Ailawadi in the market accompanied by other senior officers. The fact that the demolition was at the instance of the New Delhi Municipal Committee and was not voluntary is proved by the presence of a large number of policemen and the labour employed by the New Delhi Municipal Committee.

13.66 The log-book of truck No. DLL-1690 of the New Delhi Municipal Committee contains entries that this truck carried labour force to Bhagat Singh Market on March 25, 1976 and on March 26th, 27th, 28th and 29th, 1976, it was taken to Bhagat Singh Market to clear the debris. According to an entry in the log-book dated March 27, 1976 this truck was sent to transport the New Delhi Municipal Committee labour to Kicharipur after completing their overtime work of demolitions in the Bhagat Singh Market.

13.67 The overtime bill of Sub-Division A. E. III(N) of the New Delhi Municipal Committee shows that 16 *beldars* and 3 masons were on overtime duty on March 25, 1976 from 6 p.m. to 10 p.m. for "removal of partition walls and unauthorised structures in Bhagat Singh Market shops and private flats". Shri S. L. Mullick, Municipal Engineer, while forwarding this bill to the New Delhi Municipal Committee Finance Department noted: "It was desired by the Member-Secretary that demolition including removal of *malba* be completed simultaneously by scheduled date to reduce the scope of occupants obtaining stay orders and removing inconvenience to users of market roads. Hence engagement of labour on overtime basis".

13.68 The Police Control Room's Diary No. 39 dated March 25, 1976 at 7.40 p.m. contains entries that Shri Jagdish Chander, Inspector, Enforcement, New Delhi Municipal Committee had informed the Control Room that "he came at Bhagat Singh Market, Gole Market for demolition. There is danger of quarrel with them. Police may be sent."

13.69 On April 17, 1976 the staff of the New Delhi Municipal Committee was again sent to the Bhagat Singh Market to remove encroachments. Owners of three of the shops—S/Shri Chander Prakash, Satpal Chadha and Inderjeet Gupta—were arrested by the Police on April 17, 1976. These shopkeepers had obtained stay orders from the Court against the demolition of the partition walls of the verandahs on March 25, 1976. Criminal cases under section 186, 332 and 353 IPC were registered against them and are now reported to be pending. Allegedly the shopkeepers were released on bail only when they promised to withdraw their writ-petitions. This was done by them on April 19, 1976 and the coverings of their verandahs were demolished on April 20, 1976.

13.70 Shri V. P. Chetal, Chief Engineer, New Delhi Municipal Committee, denied having visited the market on March 25th and 26th. He said that he did not know of the demolition in the Bhagat

Singh Market till he read about it in the newspaper in April, 1977. However, Shri Chetal had signed the overtime bill for the labour which was employed in Bhagat Singh Market for demolition on March 25, 1976. S/Shri Gupta, Goel and Asnani have stated that Shri Chetal had taken them to Bhagat Singh Market and was present at the time of the demolition. Shri Chetal's testimony before the Commission cannot therefore be relied upon.

13.71 Shri B. S. Sehgal, Enforcement Officer, New Delhi Municipal Committee also said that he did not know about the demolitions and that he was not present at the site on either of the days in March. He says that he came to know about the demolition only in the evening of March 26, 1976 from his Sub-Inspector, Shri Anand, and that he was told that this was a voluntary demolition. He felt that because of the notice under section 171(4) of the Punjab Municipal Act declaring the verandahs as part of public street, the shopkeepers had voluntarily demolished their verandahs. S/Shri Gupta, Goel and Asnani, Engineers, have testified that Shri Sehgal was present at the site when demolitions were carried out. The Enforcement staff is normally responsible for removing encroachments and carrying out demolitions for the New Delhi Municipal Committee and it is improbable that Shri Sehgal was unaware of demolitions in Bhagat Singh Market. Shri Sehgal's testimony before the Commission also cannot be relied upon and appears to be incorrect.

13.72 Smt. Vidya Behn Shah, President of the New Delhi Municipal Committee, said that she had been told that the demolitions in the Bhagat Singh Market were voluntary. She, however, did not recollect that she had seen the complaints received on February 27 and 28, 1976 from the various shopkeepers about the incident of February 23, 1976; nor whether any inquiry had been instituted into them. She admitted that she had not tried to ascertain for herself as to what had been done. It is strange that no attempts were made to enquire into the large number of complaints against Shri Ailawadi, a number of which had been received in the office of the President, NDMC.

13.73 Shri V. S. Ailawadi, Member-Secretary of the NDMC has stated that the demolitions of the verandahs were voluntarily carried out by the shopkeepers of all the markets in the New Delhi Municipal Committee area, and that he was informed by the shopkeepers themselves that they had voluntarily carried out the demolitions; that he was not present at the site on any day when the demolition in this market had been done; that he was not aware of the arrest of some of the shopkeepers on April 17, 1976; that the Police and the Municipal Staff were not present in the market at the time when the shopkeepers were voluntarily clearing the verandahs; and that he was also not aware of the demolition of the *barsati* of Shri S. P. Dua.

13.74 Shri Ailawadi, in response to the notice under Rule 5(2)(a) of the Commissions of Inquiry (Central) Rules, 1972 has denied that he visited

Bhagat Singh Market on February 23, 1976 and threatened the shopkeepers that their electricity and telephone connections would be disconnected. He said that he never advised the shopkeepers to withdraw their writ petitions, and denied the allegations made by S/Shri Balbir Singh and Kundan Singh. He has further contended that no allegation was made regarding the part played by him in the writ petitions by the shopkeepers, and the allegations against him before the Commission were an afterthought. According to him, he was not personally responsible for any demolition matters because the powers of the Committee under sections 172(2) and 173 were delegated to the Enforcement Branch of the New Delhi Municipal Committee. Shri K. R. Anand, Sub-Inspector, Enforcement Branch, New Delhi Municipal Committee was delegated the powers under section 173(2) by the Committee on November 24, 1972 (Annexure 5 of Shri Ailawadi's reply). In this reply, Shri Ailawadi had reiterated that as the matter relating to the demolition in Bhagat Singh Market was pending before the Delhi High Court, the Commission should not take up the case for further hearing. However, it was seen from the enclosures attached by Shri Ailawadi to his reply that the High Court had not been called upon to adjudicate upon the validity of the demolition. The objection of Shri Ailawadi was, therefore, rejected.

13.75 In the enquiry under section 8B of the Commissions of Inquiry Act, Shri Ailawadi contested that the note of Shri Mullick, Municipal Engineer, on the over-time bill was not written pursuant to his instructions to Shri Mullick, and that he, as Member-Secretary normally would not be in touch with him. This does not appear to be correct. In the over-time register there are at least four other instances when similar notes have been recorded by Shri Mullick.

13.76 Shri Ailawadi had seen the complaints which had been received from the shopkeepers on February 24, 27 and 28, 1976 in which some allegations had been made against him also. On one of the complaints he had endorsed that these allegations were absurd. It does not appear from the record whether he ever brought these allegations to the notice of the President or other Members of the New Delhi Municipal Committee in writing or otherwise.

13.77 Shri Ailawadi says that complaints against him were made at the instance of Shri Kundan Singh, a shopkeeper of Bhagat Singh Market who according to Shri Ailawadi was a cantankerous man. Shri Ailawadi, however, could not explain how Shri Kundan Singh could have induced over a hundred shopkeepers and flat owners to make such allegations against him.

13.78 Shri Ailawadi has also admitted that S/Shri Gupta and Goel who had testified that he was present in Bhagat Singh Market on 25th and 26th respectively did not have any enmity against him.

13.79 The evidence before the Commission establishes that the New Delhi Municipal Committee was actively involved in the demolitions on March

25 and 26, 1976 in Bhagat Singh Market. Shri Ailawadi's contention that the demolitions were purely voluntary cannot be accepted. The incident of February 23, 1976 when Shri Ailawadi visited Bhagat Singh Market and threatened the shopkeepers indicates Shri Ailawadi's continuing interest in the demolition and proves his involvement. Shri Ailawadi was also seen on the spot on March 25, 1976 and March 26, 1976 by two members of his own staff and also by two of the shopkeepers. It, therefore, appears from the documentary and oral evidence that the New Delhi Municipal Committee had carried out demolitions in Bhagat Singh Market and that this was done under the supervision of its Member-Secretary, Shri Ailawadi.

13.80 After the verandahs had been declared as a public street under section 171(4) of the Punjab Municipal Act, the Committee could not proceed to remove encroachments or to demolish any structures unless the proper procedure laid down in section 172(1) of the Punjab Municipal Act was followed.

13.81 Section 172(1) empowers the New Delhi Municipal Committee to levy a fine of Rs. 50 on any person who makes encroachments on or under any street without the written permission of the Committee. Sub-section (2) of section 172 requires the Committee to give a notice to the owners/occupiers to remove their movable/immovable encroachments within a specified time not exceeding six weeks. The proviso to this sub-section limits the scope of the power of the Committee. Under the Proviso, no encroachment or over-hanging structure can be required to be removed or altered without payment of reasonable compensation, if more than three years have elapsed since the completion of the encroachment.

13.82 Most of the partition-walls in the verandahs of the market were old. The New Delhi Municipal Committee could not demolish these partitions without paying reasonable compensation and without giving proper notice to the shop-owners even after that area was declared as a public street. No such notices were given to them. On the contrary, the demolitions by the New Delhi Municipal Committee were started within 24 hours of its notice under section 171(4), declaring the verandahs as public street. No compensation was paid. The action of the New Delhi Municipal Committee was, therefore, illegal and without any authority of law. Shri Ailawadi had exceeded his powers and misused his authority in demolishing the shops in the Bhagat Singh Market without observing the provisions of the law on the subject.

III. Demolition in Sultanpur Mazra—Forcible occupation of land in village Sultanpur Mazra and Phoot Kalan

13.83 Sultanpur Mazra is a village located on the periphery of Delhi. On April 20, and May 4, 1976 the Delhi Development Authority forcibly occupied 2808 Bighas of land in village Sultanpur Mazra and Phoot Kalan. This land had not been declared a

"development area" under section 12 of the Delhi Development Authority Act, and in the Delhi Master Plan the land use was agricultural green. Again the land acquisition proceedings were initiated at the time this land was occupied by the DDA.

13.84 Shri Ranbir Singh, the Executive Officer of the DDA initially took the plea that he had met Chowdhary Bharat Singh, the representative of the villagers and that they had agreed to part with the land. Shri Ranbir Singh, however, admitted that he had only complied with the orders of Shri Jagmohan who had entrusted him with the task of procuring the lands for the resettlement scheme. He said that Shri Jagmohan had met the villagers, who had been brought by Chowdhary Bharat Singh and he had undertaken that fair compensation would be paid when the land was acquired. He also tried to justify the taking over of the land under section 17 of the Land Acquisition Act. But the notification for taking possession under the urgency clause was issued on August 28, 1976. In his reply to the notice under Rule 5(2)(a) of the Commissions of Inquiry (Central) Rules, 1972, Shri Ranbir Singh said that he had been deputed by Shri Jagmohan to consult the concerned persons which he had done. Shri Ranbir Singh admitted that the land was occupied on April 20, 1976 and May 4, 1976 and that the notification under sections 4, 6 and 17 of the Land Acquisition Act, was issued only on August 20, 1976. The compensation and interest thereon was, it is said, paid from the date of taking over the possession of the land on April 20, 1976 and May 4, 1976 respectively.

13.85 Shri Jagmohan has said that he had requested Shri Ranbir Singh to negotiate with the villagers so that they would give permission to the DDA, to develop this area, and that it would be in their interest if electricity and other amenities were provided to the villagers. He said that Chowdhary Bharat Singh had been informed by him in writing that after the acquisition of the land, compensation would be paid. Shri Jagmohan insisted that the villagers were willing to give the land and that the DDA only took the land from them for development purposes. He admitted, however, that no documents were taken by the DDA from the villagers transferring the land to DDA. In his reply to the notice under Rule 5(2)(a) of the Commissions of Inquiry (Central) Rules, Shri Jagmohan has reiterated this position. He has also denied that the villagers had agreed to part with their land only because there was an Emergency.

13.86 Chowdhary Bharat Singh during his examination by the Commission, said that he had taken four-five landowners out of 200 odd landowners of the village to Shri Jagmohan. They had agreed to give the land to the DDA in return for fair compensation. Chowdhary Bharat Singh said that they had requested the DDA to first take acquired land in other areas for developing these resettlement colonies. Chowdhary Bharat Singh further stated that with the bulldozers already at the site, they had tried to come to some arrangements with the DDA, as they knew that if they did not part with the land,

the bulldozers would be used. He said that there was no pressure from the DDA, but also said that no one gives his land willingly.

13.87 From the notings in the file, it is observed that Chowdhary Bharat Singh, Member Metropolitan Council, Delhi, wrote to Chowdhary Hira Singh, Deputy Chairman, Programme Implementation Committee, on April, 24, 1976, (i.e. four days after the DDA had occupied the land) in which he *inter alia* stated that the DDA was developing the land in Sultanpur Mazra village, for constructing the resettlement colony; that this land had not even been acquired by the Government and yet was being developed by the DDA; that he had requested that the DDA authorities should be asked not to develop this land for JJ colonies; and that in case the DDA wanted to have this land, they should first acquire it and compensation should be paid to the landowners. This letter was seen by the Vice-Chairman, Shri Jagmohan also.

13.88 Shri Jagmohan wrote back to Chowdhary Bharat Singh on April 29, 1976 (the DDA had already occupied the land on 20-4-76) stating *inter alia* that fair compensation will be given under the relevant provisions of the Land Acquisition Act. Shri Jagmohan had also requested that Chowdhary Bharat Singh and the villagers should cooperate with the authorities for the development of the area.

13.89 On April 30, 1976, Chowdhary Bharat Singh wrote to the Minister of State for Works & Housing, Shri H. K. L. Bhagat. In this letter he reiterated that even though the DDA had not acquired the village land they had started levelling it and developing it as a residential area. During this development they had damaged standing crops, vegetables and had not paid any compensation to anyone. This letter was sent to Shri Jagmohan.

13.90 On May 7, 1976 Chowdhary Bharat Singh wrote to Shri Jagmohan (three days after the remaining portion of the land was occupied) that when the land was acquired some of the villagers should also be considered for allotment of plots.

13.91 A letter from Shri H. R. Malhotra, Executive Engineer II, to the Executive Officer (Lands) DDA, on April 27, 1976 and seen by Shri Ranbir Singh on May 3, 1976, *inter alia* states that "when the staff started the demarcation work, the residents of village Sultanpuri did not allow them to proceed with the work and put physical resistance on the plea that compensation of land had not been paid to them". This letter further states that this work was undertaken on the orders of the Vice-Chairman, Shri Jagmohan.

13.92 From the letter of Shri Malhotra and the correspondence with Chowdhary Bharat Singh it is clear that the land had been occupied and the development work on it started by the DDA before it was acquired and that the villagers had protested against unlawful occupation of their lands.

13.93 The contention of Shri Ranbir Singh and Shri Jagmohan that the villagers were willing to part with the land through the intercession of Chowdhary Bharat Singh does not appear to be correct. There is no evidence to show that Chowdhary Bharat Singh had been authorised by all the villagers or even a representative body of the villagers to negotiate with the DDA on their behalf.

13.94 A note of Shri Ranbir Singh on the file dated May 11, 1976 which was seen by Shri Jagmohan states that "the development work had already been started on the understanding given to the owners of land about the acquisition of their lands. Draft notification has been prepared for 2808 Bighas and 18 Biswas of the Sultanpuri Mazra and village Phoot Kalan". Pursuant to this note, Shri Jagmohan wrote to the Special Secretary (Land and Building Department) on May 12, 1976 for acquisition of 2808 Bighas and 18 Biswas of land in village Sultanpur Mazra and Phoot Kalan.

13.95 Chowdhary Daleep Singh, Member of Parliament for the area, wrote to Smt. Indira Gandhi on May 14, 1976 complaining that the DDA had taken possession of the most fertile land in villages Kirari and Phoot Kalan forcibly without going through the acquisition proceedings and without paying any compensation. He further stated that the land was being cleared with bulldozers. On May 17, 1976, 150 villagers of Phoot Kalan complained to Smt. Indira Gandhi about the forcible occupation of their land. This complaint and the letter of Chowdhary Daleep Singh were both sent to Shri Jagmohan. They indicated that even after the so-called agreement had been arrived at with Chowdhary Bharat Singh, the villagers had not reconciled themselves to the occupation of their land by the DDA.

13.96 From the evidence on record it is clear that the land was occupied by the DDA in spite of the protests of the villagers. The so-called consent of the villagers obtained through the intercession of Chowdhary Bharat Singh also appears to have been taken after the DDA had already occupied the land, and when the villagers had no option but to try and secure the best possible terms from the DDA. At the time the land was occupied, even a proposal for the issue of notification under the Land Acquisition Act had not been sent. This proposal was only sent on May 12, 1976. The notification under sections 4, 6 and 17 of the Land Acquisition Act were only issued on August 20, 1976. For a period of four months the DDA was in illegal and forcible occupation of this land. The Commission, however, notes that since compensation was offered from the date of occupation and accepted by the villagers, this case taken by itself may not have merited serious notice but for the other circumstances like the demolition operations that took place in that area.

Demolition and Forcible Occupation of Land :

13.97 In village Sultanpur Mazra, two colonies, Shyam Park and Friends Enclave, had been constructed on 517 Bighas and 19 Biswas of land. From

the evidence of the residents of that area it appears that these were substantial structures built involving large investments. For these structures permission had not been obtained.

13.98 On September 3, 1976, 326 semi-pucca residential/commercial structures were demolished in these colonies without any notice. Treating these structures as jhuggies the occupants were allotted 25 sq. yds. plots for residential purposes and 12½ sq. yds. for commercial purposes.

13.99 Shri K. C. Sharma, a resident of village Sultanpur told the Commission that he had built a house in 1971 in Sultanpur village. In April 1976, he was told by Shri Satya Prakash and a few others that he should demolish his house and that he would be given an alternative plot of 25 sq. yds. A few days later on May 4, 1976, demolition slips were distributed. Thereafter he along with a few other persons from the village met Smt. Indira Gandhi. She directed them to Shri H. K. L. Bhagat, Minister of State for Works and Housing. Shri Bhagat gave them an assurance that their buildings would not be demolished. In spite of this assurance on December 4, 1976, the DDA staff including Shri Ranbir Singh, Shri Jagmohan and Shri Satya Prakash, came to the village and with the help of a large posse of police, demolished the structures illegally and gave the occupants only 25 sq. yds., plot in return. His original plot measured 100 sq. yds., and he had spent a large amount on the construction of his house.

13.100 Shri Yashpal Mehta, another resident of village Sultanpur Mazra said that he purchased a free-hold plot in Friends Enclave, Sultanpur Mazra in 1971. On May 29, 1976 Shri Ranbir Singh of the DDA came to the colony and started forcibly giving demolition slips even though he was not willing to sell or give away part of his land. In return the DDA gave him a 25 sq. yds. plot. Subsequently they went in a deputation to Smt. Indira Gandhi. She gave them an assurance that their lands would not be taken and sent them to Shri H. K. L. Bhagat. Shri Bhagat told them that he had ordered the DDA not to demolish their houses. However, in spite of this assurance on December 4, 1976 the DDA along with a posse of policemen, demolished their houses with bulldozers. Those who resisted were beaten up by the police. The DDA officials also pressurised them not to take their case to the courts or to higher authorities. Under this pressure they were forced to accept 25 sq. yds. plots, when their original plots measured 100 sq. yds. He also said that Shri Ranbir Singh had told him that there was an emergency and if he protested too much he would be imprisoned.

13.101 Smt. Sharda Behan said that she had constructed the house in village Sultanpur Mazra after selling her own jewellery and that of her daughters-in-law. She said that her house was forcibly demolished and the land taken over by the DDA, when she had gone to see the film 'Roti, Kapda aur Makan'. The DDA was acting under Shri Ranbir Singh's orders. In return she was given a plot of 25 sq. yds., for herself and her family consisting of seven sons and their wives.

13.102 In his reply to the notice under Rule 5(2)(a) of the Commissions of Inquiry (Central) Rules, Shri Jagmohan has said that there was a Government decision taken in 1967 that resettlement colonies could be set up in the agricultural green belt. He said this decision was taken on the recommendations of a Study Group which consisted of some Members of the Parliament. He said that the colonies of Nangloi and Heatsal were set up in the agricultural green belt on the basis of this decision. He admitted that there was no individual decision regarding village Sultanpur Mazra but a general decision was taken that all resettlement colonies should be set up in the periphery of the city and that Sultanpuri resettlement colony was only an extension of Nangloi colony. Shri Jagmohan's attention was drawn to the letter from the Ministry of Works and Housing which *inter alia* stated that "no decision of the Ministry could be considered to legally permit the DDA to built resettlement colonies in green areas without change of Master Plan land use. The previous Vice-Chairman, DDA had raised the point with the Ministry which had been questioned by the Ministry". Shri Jagmohan gave no satisfactory reply as to why the Ministry's ruling was ignored.

13.103 Shri Jagmohan further said that the construction in this area was unauthorised and they were liable to be demolished and that it was in the interest of the residents of the area to secure allotment in the resettlement colony. He has denied that any force or coercion was used by the DDA staff.

13.104 Shri Ranbir Singh was also served with a notice under Rule 5(2)(a) of the Commissions of Inquiry (Central) Rules. In his reply to this notice he has also said that the shifting of the residents was voluntary and that no bulldozer was deployed for the purpose.

13.105 The third person in this case, Shri Satya Prakash, Executive Officer, DDA who was also served with a notice under Rule 5(2)(a) of the Commissions of Inquiry (Central) Rules, has stated that at no stage was he associated with the clearance programme of Sultanpur Mazra. This appears to be correct as neither documentary nor oral evidence has linked Shri Satya Prakash with this demolition.

13.106 From the statements of witnesses, which have not been challenged by Shri Jagmohan or Shri Ranbir Singh, it is apparent that force was used in removing the residents and demolishing their houses. A contingent of police was present and bulldozers were used.

13.107 Construction of houses in this area was not sanctioned, but as the area had not been declared a 'development area', under section 12 of the DDA Act, the DDA could not demolish these houses. Only the local authority was competent to demolish them, which in this case was the Municipal Corporation of Delhi. Even after the structures were demolished the DDA had no legal right to occupy the land on which these buildings were constructed as they had not been notified for acquisition under section 4

of the Land Acquisition Act at the time they were occupied. They were notified only on March 2, 1977, a long time after the demolitions had taken place. Thus, the action of S/Shri Jagmohan and Ranbir Singh was illegal.

IV. Demolition in Serai Peepalthala and Jahangirpur Bhulswa

13.108 In village Serai Peepalthala, land measuring 776 Bighas and 3 Biswas had been notified for acquisition under section 4 of the Land Acquisition Act of 1894. A declaration under section 6 of this Act was issued on December 31, 1966. An award in respect of only 730 Bighas and 16 Biswas was made on March 23, 1973 and no award for the remaining 45 Bighas 7 Biswas had been announced at the time the land was occupied by the DDA.

13.109 In village Jahangirpur Bhulswa land measuring 2916 Bighas and 13 Biswas was notified under section 4 of the Land Acquisition Act on August 29, 1967. As the declaration under section 6 was not made within the statutory period of 3 years laid down in the Land Acquisition Act, the notification lapsed. *De novo* acquisition proceedings were initiated only on March 23, 1977.

13.110 This area had been declared a development area under section 12 of the Delhi Development Act. 1790 structures in this area were unauthorised and no approval of the competent authority had been obtained regarding the lay-out/building plans before they were constructed.

13.111 The letter of Shri Gokul Chand, the Pradhan of Gram Panchayat Sabha, Jahangirpur Bhulswa, dated December 15, 1977 was read out in the Commission. This letter stated that standing crops, wells, tubewells, etc. were demolished by DDA bulldozers which carried placards "deaf and dumb".

13.112 Shri Phool Singh Sharma, another resident of the village stated that under the threat of action under MISA and pressure of the police they allowed the DDA to demolish their houses on May 2, 1976. He said that no notice was given for the demolition nor was it a voluntary demolition. He said that the operation was supervised by S/Shri Ranbir Singh and Satya Prakash. Bulldozers were used for demolishing of the houses.

13.113 Shri O. P. Khanna, said that they did not have any intimation about the proposed demolition, and also produced before the Commission a no objection certificate issued by the DDA in 1973 for construction of his house. He told the Commission that a number of other persons also possessed no objection certificates and proper sale deeds regarding the ownership of the land.

13.114 Shri Bhim Singh while corroborating Shri Gokul Chand stated they could not take any remedial action because of the threat of the police.

13.115 Shri Satya Prakash said that the decision to demolish the colony was taken by Shri Jagmohan. He said that a decision had been taken by Shri

Jagmohan that the residents should be taken by surprise so that they would not resist or obstruct the demolition operation. About 4 to 5 hundred persons were taken by surprise. Shri Satya Prakash added that Shri Ranbir Singh had told him that the occupied structures were voluntarily demolished only when the owners accepted the alternative sites.

13.116 In reply to the notice under Rule 5(2)(a) of the Commissions of Inquiry (Central) Rules, Shri Satya Prakash has stated that he was associated with the clearance in this area only on May 2, 1976 when vacant, incomplete and unsubstantial structures, boundary-walls etc., were demolished. The clearance programme was undertaken under the orders of the Vice-Chairman, by the Executive Officer (DA) *i.e.* Shri S. M. Dua. He said that as Executive Officer (Demolition) he was responsible for rendering only the operational assistance.

13.117 Shri Ranbir Singh corroborated Shri Satya Prakash and said that the demolition operation was carried out in a surprise move. He said that the demolition was under the charge of Shri S. M. Dua. He admitted that no survey was done prior to May 1976 but added that only those premises were demolished which were voluntarily vacated by the owners and no occupied house was demolished.

13.118 In his statement under Rule 5(2)(a) of the Commissions of Inquiry (Central) Rules, Shri Ranbir Singh has only reiterated what he had stated earlier before the Commission except insofar as it concerned the presence of the police. At the first stage of hearing Shri Ranbir Singh had said that the police force was present in sufficient strength, whereas in his statement under Rule 5(2)(a) he has said that no police force was deployed.

13.119 Shri Jagmohan during his examination by the Commission said that the DDA had taken possession of only those houses of which the owners agreed to take alternative sites and that only unoccupied houses were demolished; but he admitted that nothing was taken in writing from the owners who had voluntarily vacated the premises. He said that the bulldozers had not been brought in for demolition but only for resettlement. He denied that he had taken a decision that the villagers should be taken by surprise. He admitted that no notification under the Land Acquisition Act had been issued regarding Bhulswa Jahangirpur lands and said that taking possession of the land was a mistake. He was also not aware that the award for the whole area in Serai Peepalthala had not been announced. He agreed with the Commission that under the Land Acquisition Act, possession could not be taken unless an award was made.

13.120 In his reply to the notice served on him under Rule 5(2)(a) of the Commissions of Inquiry (Central) Rules, Shri Jagmohan said that this operation was conducted by the Executive Officer (Development Area) under the Delhi Development Authority Act. The Executive Officer acts in a quasi-judicial capacity and the Vice-Chairman had no legal authority to interfere. Shri Jagmohan added that a survey was

carried out in May, 1976 for distribution of demolition/allotment slips and the residents had been told that it would be in their interest to secure alternative allotment from the DDA, since their houses were unauthorised and liable to be demolished. He said after distribution of the demolition/allotment slips the allottees moved to the allotted sites according to their own convenience and no demolition squad was sent. Shri Jagmohan admitted that the DDA, included some of the land in its development scheme which had not been acquired but as soon as the mistake came to light action to get the land notified for acquisition by Delhi Administration was taken.

13.121 The contention of S/Shri Satya Prakash, Ranbir Singh and Jagmohan that the whole operation was carried out with the willing consent of the villagers does not appear to be correct. Shri Mahadev Singh, a witness produced by Shri Ranbir Singh has stated that the entire operation had been carried out willingly by the villagers and the DDA had been very considerate towards them. He denied that any force or coercion was used on them. He stated that the people of this colony had passed a resolution asking the DDA to allot them alternative accommodation and demolish their houses. From a perusal of the resident's association register produced by Shri Mahadev Singh, it appears that an urgent and emergent meeting of the association was held after the DDA demolition squad had arrived on the scene and had started demolition operation. The association passed a resolution that they should give a list of old residents of the area to Shri Ranbir Singh for alternative allotment. This resolution itself indicates that the residents passed it only when they saw that if they did not take alternative accommodation they would not only lose their own homes but would get nothing in return.

13.122 A note dated May 21, 1976 recorded by Shri M. S. Telang, Chief Engineer, DDA, refers to discussion which the Executive Engineer and Superintending Engineer had with Shri Ranbir Singh, EO(NL). This note *inter alia* reads as follows :—

“... Another 100—125 acres is covered by the standing crops and, therefore, is not available for further development. On Sunday the 16th, EE-HD 8/SE(H)I had contacted EO (NL) for getting this land vacated, but were informed that the same cannot be done without adequate police force.”

The Engineer Member, DDA, saw this note and called Shri Ranbir Singh for discussion. Shri Ranbir Singh on July 6, 1976 minuted on this note that “This has been discussed and settled”.

13.123 Another note of Shri Ranbir Singh dated May 11, 1976 which was also seen by Shri Jagmohan *inter alia* reads :—

“... After the demolition operation on 2nd May, 1976 a large number of persons are daily visiting our office to know the fate of their houses”.

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It is not mentioned in the note that these demolitions were carried out by the residents voluntarily. If they were voluntary, the persons visiting the DDA would not have been concerned about “the fate of their houses”.

13.124 The fact that the villagers were taken by surprise indicates that the operations were carried out by the DDA without obtaining the willingness of the people. Moreover, if the statements of S/Shri Satya Prakash and Ranbir Singh that the buildings were unoccupied are correct then the question of surprising any one does not arise. Both S/Shri Satya Prakash and Ranbir Singh say that Shri Jagmohan's orders were to take the villagers by surprise. Apparently such orders were issued to ensure that there was no resistance or obstruction to the DDA's staff when they were demolishing the buildings and also apparently to ensure that the affected persons did not have time to approach the Courts of Law or political leaders.

13.125 These constructions were unauthorised but even to clear unauthorised structures the DDA had to follow the procedure laid down under section 30(1) of the Delhi Development Authority Act. Section 30(1) of this Act reads as follows :—

“Where any development has been commenced or is being carried on or has been completed in contravention of the Master Plan or zonal development plan or without the permission, approval or sanction referred to in section 12 or in contravention of any conditions subject to which such permission, approval or sanction has been granted—

- (i) in relation to a development area, any officer of the Authority empowered in it in this behalf;
- (ii) in relation to any other area within the local limits of a local authority, the competent authority thereof,

may in addition to any prosecution that may be instituted under this Act, make an order directing that such development shall be removed by demolition, filling or otherwise by the owner thereof or by the person at whose instance the development has been commenced or is being carried out or has been completed, within such period (not being less than five days and more than fifteen days from the date on which a copy of the order of removal, with a brief statement of the reasons therefor, has been delivered to the owner or that person) as may be specified in the order and on his failure to comply with the order, the officer of the Authority or, as the case may be, the competent authority may remove or cause to be removed the development and the expenses of such removal shall be recovered from the owner or the person at whose instance the development was commenced or was being carried out or was completed as arrears of land revenue :

“Provided that no such order shall be made unless the owner or the person concerned has been given a reasonable opportunity to show cause why the order should not be made.”

13.126 The provisions of the Act have admittedly not been complied with, but according to S/Shri Jagmohan, Satya Prakash and Ranbir Singh, the entire operation was voluntary, and no compliance was necessary. That plea cannot be accepted as correct.

13.127 The buildings were illegally demolished and land forcibly occupied in May, June and November, 1976 and February, 1977. In Serai Peepalthala, 45 Bighas and 7 Biswas of land were not acquired till March, 1977 and in village Jahangirpur Bhulswa 2916 Bighas and 13 Biswas were not acquired till March 22, 1977. Therefore, the forcible occupation of this land was illegal. Shri Jagmohan had admitted that there was no notification under section 4 of the Land Acquisition Act regarding Jahangirpur Bhulswa and that a mistake had been committed. He has also not aware that the award under the Land Acquisition Act for the whole area in Serai Peepalthala had not been declared. He admitted that no acquisition could be made under the Land Acquisition Act unless an award was announced. He said that he had given approval for demolition on the assumption that the land had already been acquired.

13.128 The evidence on record shows that Shri Satya Prakash and Shri Ranbir Singh were working under the orders of Shri Jagmohan. Shri Jagmohan has owned up the entire responsibility for the action of his subordinates. Shri Jagmohan has misused his position and abused his authority in ordering the illegal occupation of the land in village Jahangirpur Bhulswa and village Serai Peepalthala without proper proceedings under the Land Acquisition Act and also in ordering the demolition of structures in these villages without going through the procedure laid down in the Delhi Development Act.

V. Demolition of Arya Samaj Temple

13.129 The Arya Samaj Society commenced construction of a temple in Green Park Arjun Nagar area in September, 1973. According to Shri Harish Chander Thapar, President of the Arya Samaj, the land was donated to the Society by one Shri Chandgi Ram. Shri Balram Arya, Secretary of the Arya Samaj Society produced before the Commission a copy of the Patwari's record showing ownership of the land by the Arya Samaj Society. This building had the appearance and insignia of a temple; the word 'OM' was written on the front of the building, there was also a sign board with 'Arya Samaj' inscribed therein. The building was used for worship according to Arya Samaj rites and ceremonies, and a number of Arya Samaj functions were held daily. There were also massive celebrations of festivals like Janmashtami, etc., in the building. The building was demolished on September 25, 1975 by the demolition staff of the DDA when a large contingent of police was kept present. According to Shri Balram Arya all the records regarding the sanction for the construction of the building were destroyed during the demolition operations. He has stated that they were not given any notice regarding the demolition and all the office records of the temple were destroyed during the demolition with the help of bull-dozers.

13.130 Both Shri S. M. Dua, Executive Officer, DDA and Shri Jagmohan, Vice-Chairman DDA have admitted that this temple was demolished by the DDA. According to Shri Jagmohan the area had been declared a 'development area' and the action taken by the Executive Officer (Development) was under the Delhi Development Act. He said that no building plan was sanctioned in respect of the construction of the building as was statutorily required, and the Vice-Chairman had no legal authority to interfere with the discretion of the Executive Officer as the Executive Officer acted in a quasi-judicial capacity.

13.131 Shri S. M. Dua, the Executive Officer of DDA, has said that Vice-Chairman, DDA, Shri Jagmohan had come to Arjun Nagar on September 25, 1975 and had given instructions to Shri Satya Prakash and Shri Ranbir Singh for the demolition of this temple; but Shri Jagmohan had advised that the demolition should be done only after calling the SDM concerned. The SDM came to the spot and then the temple was cordoned off by the police and demolished with the aid of bull-dozers. At the time of the demolition non-one was present inside the temple but a large crowd had assembled on the roof tops of the adjoining houses.

13.132 The area was a development area : but under Section 30 of the Delhi Development Act, notices had to be given to the owners of the premises before the building could be demolished. The notices purported to have been given to the Arya Samaj Society have all the appearance of fabricated documents. Shri Chander Bhan, Process server of the DDA, told the Commission that no notice to be served on the Arya Samaj Society was ever given to him. He never went to the site of the temple and he filled in a report in the office itself to the effect that the notice had been served by affixing. He said that this was done by him at the instance of his Section Officer, Shri Verma and the Executive Officer, Shri S. M. Dua. He said previously also in the Sadar Bazar area such fabricated reports used to be got filled up by him.

13.133 Shri Verma, Section Officer of the DDA, said that he had gone to the site on the day of the demolition. The building had a flag and a board outside giving it the appearance of an Arya Samaj building. The building was bulldozed and though he never went inside the building, Shri S. M. Dua told him to make entries in the diary that the building consisted of one hall, some rooms etc. He said that he was pressurised into writing this report by Shri Dua, who had told him on the day of the demolition (25-9-1975) that he would have to prepare a file about the demolition of this temple. Shri Verma said that he was not present when notices were alleged to have been served on the temple authorities by affixation and that he had not signed any acknowledgment of such service. He said that he was made to falsify the records under pressure and he had had no choice in the matter.

13.134 In his statement, in response to the notice under Rule 5(2)(a) of the Commissions of Inquiry (Central) Rules, Shri S. M. Dua has denied that he

ever asked Shri Verma and Shri Chander Bhan to fabricate such notices, and said that he had no possible motive for this purpose. He said that he was neither the appointing authority nor did he have control over Shri Verma and Shri Chander Bhan which would have enabled him to force them to write such false reports. He said that Shri Verma had tried to pass the blame on to him in order to save himself from a charge of negligence of duty. He also said that there was departmental rivalry between the employees on deputation and the regular employees of the DDA and that the DDA's regular employees were, therefore, trying to put the blame on the employees on deputation for all the irregularities.

13.135 According to Shri Balram Arya, the offices of the temple were open throughout the day and if any one had come with the notice, the notice would have been duly received. He said that no notice was sent to the Arya Samaj Society by registered post. In fact the Samaj did not receive any notice. A perusal of the notice shows that it is addressed to the "owner of the building in the eastern part of Arjun Nagar". The vagueness of the address lends substance to the story of Shri Verma that he had never visited the site and that the notices were prepared in the office. If a genuine notice had been issued, the address would have been correctly given.

13.136 The Lt. Governor had issued standing instructions that if any place of worship was to be demolished, prior permission of the Lt. Governor must be obtained. According to Shri Jagmohan, this was a "fake structure" and no sanction of the Lt. Governor was required. He said that he did not try to ascertain whether this building was owned by the Arya Samaj Society. He said that he had been told by the officer in-charge that this was not really a temple but had only the "colour of a temple". He said that if this was "an authentic or real temple", then the sanction of the Lt. Governor would have been taken but as this was a "fake temple" no such sanction was required.

13.137 Shri Jagmohan admitted that even though according to him this was a 'false temple', when a deputation from the Arya Samaj Society led by a Member of Parliament, Shri Ram Gopal Shalwale, came to him and complained to him that this building had been demolished and that it was a temple, he offered them an alternative site at concessional rates. He said that any registered society would have been given such land for building a place of worship.

13.138 To a question from the Commission as to why the Society was given an alternative plot at concessional rates, he said that he was trying to settle the matter quickly. He did not ask for a report in writing from the officer concerned nor did he make any inquiry. In his reply to the notice under Rule 5(2)(a) of the Commissions of Inquiry Rules he said that the action was taken by the Executive Officer (Development Area) under the DDA Act and since this was a quasi-judicial act, the Vice-Chairman had no authority to interfere. He added that the structure was unauthorised and was in the alignment of an important road.

13.139 Even though this was a development area under the Delhi Development Act, notices under Section 30(1) of the Delhi Development Act of 1957 were required to be given.

13.140 No such notice was served on the owners of the building and instead notices were got fabricated and were falsely shown as having been served as is evident from the record. According to the statements of Shri Chander Bhan, the Process Server and Shri V. M. Verma, Section Officer, this fabrication was done at the instance of Shri S. M. Dua, Executive Officer.

13.141 The plea taken by Shri Dua that Shri Verma and Shri Chander Bhan have given false statements in order to blame him for their own negligence and also due to departmental rivalry, does not appear to be convincing. Shri Verma and Shri Chander Bhan have implicated themselves, but there is no reason to think that they did so for the reasons mentioned by Shri Dua. The contents of the notice clearly indicate that such a notice could not have been served.

13.142 Before a temple could be demolished the sanction of the Lt. Governor had to be obtained. In this case this was admittedly not done as according to Shri Jagmohan the building was not a "real temple". From the documents, newspaper reports and photographs produced before the Commission by Shri Balram Arya, Secretary and Shri Harish Chander Thapar, President of the Arya Samaj Society, there can be no doubt that the building demolished was an Arya Samaj temple building which was regularly used as a place of worship and for various ceremonies, functions and rituals of the Arya Samaj according to their special rites. Shri Dua, in his statement, has also stated that this was a temple and that it was demolished under the orders of Shri Jagmohan.

13.143 Shri Jagmohan has stated that he did not know of the demolition of the building till the time a deputation led by Shri Ram Gopal Shalwale, M.P. and other members of the Arya Samaj Society came to see him. This deputation had originally met the Prime Minister. She had referred them to Shri Jagmohan through Shri R. K. Dhawan, Additional Private Secretary. Shri Dhawan had spoken to Shri Jagmohan to meet the deputation. When they came to his office the deputationists claimed that a temple building had been demolished. Shri Jagmohan called the officer-in-charge who told him that it was an unauthorised construction. Shri Jagmohan says that it was not his "intention to enter into arguments whether it was an Arya Samaj real building or not. Their point was this : I said all right if it was, if your need is there. I will give you at the appropriate place....;" To a question from the Commission whether he would have allotted an alternative accommodation to any person who claimed that his temple building was demolished. Shri Jagmohan said that "because temple was of that nature and their problems were there. I said we would immediately settle this case". By allotting an alternative site to the Arya Samaj promptly Shri Jagmohan appears to have attempted to cover up his earlier high-handed

action in ordering the demolition of the temple building.

13.144 Shri Jagmohan and Shri S. M. Dua were served with notices under rule 5(2)(a) of the Rules and summons under Section 8B of the Act. They have given their statements and had also responded to the summons. Apart from the argumentative submissions attempting to shift the blame, nothing is ever suggested which displaces the effect of testimony of witnesses examined before the Commission. Shri Jagmohan had visited the Arjun Nagar area shortly before the demolitions and had seen the Arya Samaj building. He says that he himself is a follower of the Arya Samaj. It is, therefore, difficult to accept in the face of evidence of witnesses which has not been challenged, his plea that the building was a "fake temple". His anxiety to "settle the matter" when the complaint relating to the demolition of the temple building was referred to him by the Prime Minister, by giving "alternative accommodation" for a temple, at concessional rate, is clearly indicative of his desire to cover up the incident as best as he could. The Commission is of the opinion that Shri Jagmohan has abused his position and misused his powers in ordering the demolition of a building used as a place of worship. Shri Dua had carried out the orders and seems to have played a part in fabricating records. His denial in this regard is not acceptable.

VI. Demolition in Turkman Gate Area

13.145 The Turkman Gate area, where the demolitions took place from April 12, 1976 onwards, formed part of the Delhi-Ajmeri Gate Scheme of improvement. This scheme was formulated in 1926 and was given concrete shape in 1938-39. It was approved by the Government for implementation in 1946. Due to several complicating factors, implementation of the scheme was stalled; a number of properties in the area covered by the scheme could not be acquired, there was always the problem of resettlement of the residents displaced from this area. To ease the problems of resettlement, the Municipal Corporation of Delhi had formulated a scheme to be implemented in seven phases for shifting the residents of the locality to the nearby Mata Sundri Road Complex. After the slum clearance work was transferred to the DDA from the Municipal Corporation of Delhi in February, 1974, the DDA itself carried out the peaceful and voluntary shifting of the residents of Basti Narnaul area, who were covered by the first phase of the D.A.G. Scheme. This was achieved in December, 1974 and in normal course the second phase should have been taken up thereafter.

13.146 On April 7, 1976, Shri Jagmohan wrote to the DIG (Range), Shri P. S. Bhinder, informing him that the DDA would be taking up the demolition work in the walled city and adjoining areas from April 11, 1976 and he requested for police assistance. In this letter Shri Jagmohan said that Shri H. K. Lal, Deputy Commissioner (Slums), would be in overall charge of the demolition. The extent and nature of the demolition was kept vague in this letter. A copy of this letter was also marked to the Secretary

to the Lt. Governor, Delhi. From the evidence on record it appears that this letter was not put up for perusal of the Lt. Governor, Shri Krishan Chand, by his Secretary, Shri Navin Chawla.

13.147 The Superintendent of Police (Central Distt.) Shri R. K. Ohri, informed Shri Jagmohan by a letter dated April 9, 1976 that in view of the prior commitment of the police force with the 'Geeton Bhari Sham' programme, the dates for the proposed demolition programme should be put off. The demolition programme was then postponed by two days and the demolition squad arrived at Turkman Gate on April 13, 1976.

13.148 On April 13-14, the DDA commenced the demolition operations clearing the Dujana House transit camp and shifting the 80 families living there. The transit camp was in a dilapidated condition and there was no opposition or resistance to its demolition. From April 15, 1976 onwards the area of demolitions steadily expanded. It appears that even the DDA officers on the spot were given no indication of the extent of the demolition programme. As the area of demolition speedily increased there was considerable panic and resentment amongst the residents and this culminated in the riot in the Turkman Gate area resulting in the death of at least six persons due to Police firing.

13.149 Shri Rajesh Sharma, Executive Councillor, Delhi Metropolitan Council came to know on April 15, 1976 that the demolitions had gone beyond the transit camp. On reaching the spot he found senior officers of the DDA Slums Department along with a large police force. He spoke to Shri H. K. Lal who was present and enquired from him the details of the programme. Shri Lal told him that he had no maps and was not prepared to tell him his plans. In fact, Shri Lal went so far as to tell Shri Sharma to mind his own business. Shri Sharma along with 20 persons of the area then went to Shri Radha Raman, Chief Executive Councillor and Mir Mustaq Ahmed but to his surprise they had no knowledge of what was happening. Later in the evening he met Shri H.K.L. Bhagat, Minister of State for Works and Housing, who also seemed to have no knowledge of this operation. According to Shri Sharma it was not a voluntary operation because it was against the declared policy of the Government to displace residents and throw them out without providing in advance alternative accommodation in a suitable locality and that every one was opposed to it.

13.150 Chowdhary Kayamuddin, one of the local leaders of the community, opined that further demolitions were carried out on April 14, 1976 because the DDA wanted to have a road built in the area. He had protested against this further demolition because no notice had been issued. But he was threatened and told that he should keep "quite" as otherwise he would be in serious trouble as there was the Emergency.

13.151 Shri Ashok Pradhan, ADM (Central) said that the letter addressed by the Vice Chairman,

DDA to the DIG (Range) did not specify the exact area to be cleared. He had been told on April 12, 1976 by Shri Kewal Mallick, Dy SP, Demolition Squad that the area to be cleared was a transit camp on the west of Turkman Gate which was occupied by some 80 families. Accordingly, Shri Pradhan instructed the SDM, Darya Ganj to be present in the area. Shri Pradhan said that he had tried to ascertain from the DDA the exact area that they intended to clear during this operation. A map of the area marked in red ink showing the area that the DDA proposed to demolish was shown to Shri Pradhan by Shri H. K. Lal. According to Shri Pradhan, when he went round the area he found that it was much larger than that indicated on the map.

13.152 Shri R. K. Ohri, SP (Central) came to know only on April 19, 1976 that the demolition operations had proceeded far beyond the limit which the DDA had earlier set out in the programme. The DDA officials told him that it had been decided that they had the right to demolish the additional area because the structures were unauthorised.

13.153 Shri Krishan Chand, Lt. Governor, Delhi also came to know only on April 19, 1976 that houses in Turkman Gate area were being demolished and that there was a riot because of these demolitions. He had then directed the Vice Chairman, DDA and the Deputy Commissioner and Chief Secretary that there should be no further demolitions. His order, however, could not come into force "because apparently Mr. Sanjay Gandhi came and he started giving direct directions as was the case". Shri Krishan Chand said that he was completely ignored because some of the officers had direct access to the Prime Minister's house. According to Shri Krishan Chand, officials of the DDA had prepared a proposal for constructing a multi-storeyed commercial complex at the site which had been cleared during the operations in April, 1976 in the Turkman Gate area. He had no option but to forward this proposal to the Ministry of Works and Housing as he had a feeling that this proposal had the approval of Shri Sanjay Gandhi and the Prime Minister's house. He said that he did not know if any assurance had been given to the evictees of the Turkman Gate or adjoining slum areas. According to Shri Krishan Chand, the proposal to construct the multi-storeyed commercial project at that time violated the provisions of the Master Plan.

13.154 Shri H. D. Birdi, Tehsildar (Slums), DDA was asked by Shri H. K. Lal to report for duty in the Turkman Gate area on April 13, 1976. Only after reaching the spot did he come to know that the Dujana House transit camp was to be demolished. No bulldozers were used on that day, nor was any indication given on that day that further demolitions would take place. On April 14, 1976 when Shri Birdi reached the spot again he found that some of the engineers of the DDA were present and were discussing the extent of the operation. They had a map on which new limits were marked out. A

bulldozer was brought to the site on the 14th of April. Operations continued in this manner till April 17th. Many people represented to Shri Birdi that their properties were private properties and these should not be demolished. According to Shri Birdi, the people continued to be resentful and this operation was not a voluntary operation of the residents.

13.155 Shri Birdi said that after the firing on April 19, 1976 the demolition was speeded up under the cover of curfew. Flood lights were installed and more bulldozers were pressed into service. The decision to resume demolitions was taken at the highest level and no effort was made by anyone to stop it. According to Shri Birdi, throughout the period Shri H. K. Lal was present and knew about the demolitions.

13.156 Shri D. C. Jain, Assistant Commissioner (Slums) told the Commission that Shri Jagmohan had taken the officers of DDA to Turkman Gate on April 7, 1976 and had shown them the area. At that time they had had no discussions with the residents of the area. As the demolitions had continued some of the people had protested against the short notice. Shri Jain confirmed that no written or oral notice was issued to the residents; they were simply told to vacate the houses. Shri Jain had told Shri H. K. Lal that there were some private properties but Shri Lal paid no heed to that. He was not aware of the extent of the demolition operations to be undertaken in advance and he used to come to know about it only on the morning of each day. The line on the map which depicted the area meant for demolition kept on shifting day by day indicating those areas. According to him Shri H. K. Lal was incharge of the operations and had remained present on the spot throughout the demolition operations.

13.157 That there were many private properties in this area has been confirmed by a number of witnesses. Shri Zahiruddin, resident of House No. 3339, Shri Ramjani, resident of House No. 3319, Shri Ibrahim, owner of House No. 3301 to 3304, Smt. Anaro, House No. 3387, Shri Zahrudin and Shri Bashir Ahmad, owner of property No. 3299, have all said that they owned houses in the area for which they had paid tax to the Municipal Corporation and held House Tax receipts. Shri Ibrahim further told the Commission that he had shown his property documents to Shri D. C. Jain who told him that only the houses from numbers 5 to 12 would be demolished and that the house of Shri Ibrahim would be safe. Later on, however, a large contingent of police had come and Shri Ibrahim's house was also demolished. Subsequently at the Police Station he was forced to write a letter stating that he had demolished his house voluntarily. No notice had been given to him. Shri Zahiruddin also said that they had been assured by the DDA officials that the private houses will not be demolished, but on the day of the riot he was arrested and his house was demolished.

13.158 According to Shri Rajesh Sharma; a number of properties demolished were private properties and he gave the house numbers of a few of

them. According to him, the owners of these properties were not compensated and they had been pressurised to give in writing that they had themselves voluntarily demolished their houses.

13.159 From the details furnished by the DDA itself in its letter dated September 28, 1977 to the Fact Finding Committee appointed by the Delhi Administration, it is seen that properties mentioned above and bearing numbers 3299, 3301, 3302, 3304 and 3319 were not acquired. No Award files of the properties bearing numbers 3339, 3277 and 3387 and of other houses are available in the office of the DDA.

13.160 Shri S. C. Gupte, who was the Chief Architect of the Delhi Improvement Trust from 1946 to 1956 told the Commission that the Delhi-Ajmeri Gate Scheme did not envisage the acquisition of all the properties falling within the limits of the scheme. Many properties were excluded from the operation of the acquisition proceedings and were subject to levy of betterment charges. The properties to be acquired had been specifically shown in the proposed plan of the erstwhile Delhi-Ajmeri Gate Scheme. The plan was shown to Shri Gupte and he pointed out to the Commission the properties scheduled for acquisition and those which were excluded from acquisition proceedings.

13.161 A note on the file by Shri Kashmiri Lal, Tehsildar (Slums) shows that there were some private properties in the area and that this fact was brought to the notice of Shri H. K. Lal, Deputy Commissioner (Slums) by Shri D. C. Jain. The note of Shri Kashmiri Lal and the endorsement on it by Shri D. C. Jain and Shri H. K. Lal are reproduced below:—

“The clearance operation was undertaken on 13-4-1976 at 8 A.M.

This area contained a large number of properties which were required under the Delhi-Ajmeri Gate Scheme and were also transferred from the Ministry of Rehabilitation. A total of 133 properties have been demolished and it excludes 80 transit camps which also stand demolished.

The following properties are out of the transferred properties list (acquired). This fact was also brought to the notice of the DC (S):

2631—34	3269	3338	3368
2655—59	3272	3341	3369
3159	3273	3344	3370
3191	3274	3345	3371
3222	3283	3346	3372
3225	3284	3347	3373
3227	3285	3348	3374
3239	3286	3350	3388
3240	3287	3353	3395
3251	3289	3354	3397
3252	3290	3355	3351
3254	3291	3357	1920/LX
			MCD
3258	3294	3358	3340
3260	3295	3359	3342

3261	3305	3360
3262	3310	3362
3263	3312	3363
3264	3333	3364
3265	3335	3366
3266	3337	3367

The following properties did not figure in the list of acquired properties. The owners/occupants were asked to adduce necessary evidence but they could not show any proof except in the case of four properties. It was, therefore, presumed that these were also the Government properties and were existing adjacent nearby or around our properties. These have also been demolished under orders of the DC (S) at site:

2810	3279	3315	3332	3385
3182	3280	3316	3336	3386
3246	3281	3317	3339	3387
3247	3282	3318	3375	3389
3248	3292	3319	3376	3390
3253	3293	3320	3377	3392
3255	3296	3321	3378	3393
3257	3299	3325	3379	
3267	3300	3327	3380	
3268	3301	3328	3381	
3271	3302	3329	3382	
3276	3313	3330	3383	
3278	3314	3331	3384	

“It may kindly seen for information please.

Sd/-

Kashmiri Lal”
Tehsildar (S)
21-4-76

“AC (HQ)

DC(S)

“The matter has already been discussed by DC(S) with V. C. who has desired that out of the second list as produced above, if someone comes out with evidence to show that particular property belongs to him we may pay him due compensation as per provisions contained in Slum Areas (Improvement and Clearance) Act.

Sd/-

D. C. Jain”
22.4

“DC(S)

“May kindly peruse the above report of the Teh (S) and AC (P).

“2. I had already been feeling intrigued about the haphazard pattern in which the properties had allegedly been acquired for the DAG Redevelopment Scheme by the erstwhile DIT, the DDA and the MCD from 1549 onwards through land Acquisition proceedings and transfer from the evacuee properties pools.

“3. A perusal of the properties contained in list No. 2 makes me feel that they are probably those which though acquired under the scheme of large scale acquisition of properties by the erstwhile DIT and not been entered in the property registers of the Department concerned nor was their formal

possession taken for reasons which need not be gone into at this stage. Moreover, quite a few of them can be those properties which were left vacant consequent upon the migration of their original owners to Pakistan in the wake of partition in 1947 and had been occupied by their relations, friends or residents of the areas who had been able to manipulate the things and keep them out of the evacuee properties pool.

4. Since out of the 133 properties which have been demolished by us, 59 fall in this category, it might be desirable to institute a proper survey of the remaining properties in the area to verify the ownership rights of their present occupants lest they might start staking their claims thereon on the grounds of adverse possession.

5. Needless to say, it is likely to become a very sensitive issue especially in the present context of the situation and the surveyors, if the proposal is agreed to, would have to be provided with due police escorts. Alternatively we can issue a notification in the papers asking the claimants to furnish their proof of ownership in view of the circumstances mentioned in the above paras.

Sd/-

H. K. Lal

DC (S)

28-4-76"

Commissioner (Slums)

This note clearly shows that it was brought to the notice of Shri H. K. Lal that some of the properties were private properties, and that the records of the DDA itself were so incomplete that before undertaking this programme the DDA should have exercised more care and caution by carrying out a survey of the area and ensured that all legal procedures had been followed in respect of the properties to be demolished and the DDA authorities were satisfied that the properties were acquired properties in respect of which awards were made and compensation was paid to the owners. It is surprising that Shri Lal ordered the demolition of some of the properties even after it was brought to his notice that some of them were private properties. This fact was brought to the notice of Shri Jagmohan also as is mentioned in Shri D. C. Jain's note.

13.162 The DDA had sent a statement to the Fact Finding Committee clarifying the position of various properties in the area. Even according to this statement at least 29 private unacquired properties were demolished. Award files were not available for numerous other properties which were stated to have been acquired as per the registers of the DDA/LAC/DIT.

13.163 If the fact mentioned in the notes above were incorrect, Shri H. K. Lal should have made a note to that effect and reprimanded his subordinates for carrying out demolitions without due care. The tenor of Shri H. K. Lal's note on the

contrary suggests that he was interested in carrying out the demolitions in disregard of the claims made. His stand taken before the Commission that his subordinates should have been more careful is, therefore, not maintainable.

13.164 Even before the riots were brought under control on 19-4-76 Shri P. S. Bhinder, DIG (Range) sent a message to Shri Jagmohan asking him to send bulldozers for the resumption of the demolition operations. The fact that Shri Bhinder had sent a message has been corroborated by Shri I. J. Verma, DIG (Admn.), Delhi Police. Shri D. C. Jain, Assistant Commissioner (Slums), DDA said that when Shri Jagmohan came to Turkman Gate area at 4.30 p.m. on April 19, 1976, Shri Bhinder told him to send more bulldozers to the spot. Shri Jagmohan has confirmed that he received this message on the police wireless though he could not recollect whether this message was from Shri Bhinder or someone else. The riots were brought under control by 5 p.m. on April 19, 1976 and at about 6 p.m. the same day floodlights were installed, more bulldozers were brought on the scene and the entire area was cleared. These clearance operations continued up till April 27, 1976 during which period the whole area was placed under curfew.

13.165 Shri H. K. Lal during his preliminary examination by the Commission had said that the land had been acquired under the Slum Clearance Act and that the DDA had the right to demolish these properties for developmental purposes. This contention of Shri H. K. Lal does not appear to be correct. Some of the properties had been acquired by the erstwhile Delhi Improvement Trust under the Land Acquisition Act. Section 13 of the Slums Clearance Act states that land in a slum area or clearance area has to be "acquired under this Act", i.e. under the Slum Areas Improvement and Clearance Act. This has evidently not been done. Even if the contention of Shri Lal is accepted, under sections 7 and 10 of the Slum Areas Improvement and Clearance Act, notice of demolition has to be given to the occupants of these buildings which has not been done for the expression "occupant" included persons in actual occupation even or a tenant or licensee *vide* section 2(1) of the Slum Clearance Act.

13.166 Shri H. K. Lal was issued a notice under rule 5(2)(a) of the Commissions of Inquiry (Central) Rules and a summons under Section 8B of the Commissions of Inquiry Act. In his reply he has said that he was only supervising the operations which were being carried out by the Tehsildar and the Assistant Commissioner. He took the plea that as this area had been notified as a slum under section 3 of the Slum Areas Improvement and Clearance Act, under section 13 of the Act the competent authority was fully empowered to take action for the demolition and no other Act or law was applicable in that area. Regarding notice he said that adequate notice had been received by the

affected persons, as could be ascertained from the date of issue of allotment slips which were taken voluntarily by the affected persons from the staff of the DDA Slum Department from April 13, 1976 onwards. As regards private property he said that it was the duty of the field staff to look into the claims of the owners, if any, and put them upto him for orders but no such claim was put up.

13.167 Shri Jagmohan was issued a notice under rule 5(2)(a) of the Commissions of Inquiry (Central) Rules and summons under section 8B of the Commissions of Inquiry Act. Shri Jagmohan has contended that the residents were willing to shift voluntarily. This, however, is not borne out

by the facts. There was resistance to the demolition operations and this led to riots on April 19, 1976. If it was a voluntary programme there would have been no necessity for the extensive police arrangements for giving cover to the demolition squad. Further it can be seen from the statement which has been supplied by the DDA that the pace of demolition actually was stepped up from the evening of April 19, 1976 onwards when even the protests of the residents of the locality had been muted by extensive use of police force and they could not protest against the demolition operation due to the imposition of curfew. This statement is reproduced below :—

Date on which demolition operations were undertaken	No. of bldgs. affected. Res/Com/ Indus.	No. of families/ persons affected	Whether the operations were done by manual labour or bulldozers	No. of labour employed if by manual labour	No. of bulldozers applied, if any	
(1)	(2)	(3)	(4)	(5)	(6)	
13-4-76	Pucca. Resdl. Resdl. Jhuggis	80 Res. 80 Com. 4 Ind. Units	764	Both manual labour and bulldozers	36	1
14-4-76	Jhuggis & unauthorised structures	79		38	1	
	Pucca houses	26				
15-4-76	Pucca houses	6		37	1	
16-4-76	Resdl.	27				
	Commr.	6		35	1	
17-4-76	Pucca houses	76		38	1	
18-4-76	—	—		—	1	
19-4-76	Pucca houses	51		38	6 bulldozers 1 motor grader	
20-4-76	Pucca houses	163		40	6 bulldozers 1 motor grader	
21-4-76	Pucca houses	210		42	5 bulldozers 1 motor grader	
22-4-76	—	—		—	5 bulldozers 1 motor grader	
23-4-76	—	—		—	6 bulldozers 1 motor grader	
24-4-76	Pucca houses	33		40	7 bulldozers 1 motor grader	
25-4-76	—	—		—	7 bulldozers 1 motor grader	
26-4-76	—	—		—	7 bulldozers 1 motor grader	
27-4-76	—	—		—	5 bulldozers	

From this statement it can be seen that till April 18, 1976, 384 residential structures were demolished in this area and only one bulldozer was used. From April 19, 1976, to April 24, 1976, 457 pucca structures were demolished and on an average 6 bulldozers and one motorgrader was used.

13.168 Shri Jagmohan's contention that he had kept the Lt. Governor, Shri Krishan Chand, in the picture, does not appear to be correct. Shri Krishan Chand has denied this. The circumstances in which the file, on which Shri Jagmohan is purported to have taken the permission of the Lt. Governor for starting the demolition operations in Turkman Gate area was prepared, also raise great

doubts about the reliability of the contents of this file. Both Shri Kashmiri Lal and Shri D. C. Jain whose notes were the basis on which further action had been taken on the file have stated that this file was prepared not in April, 1976 but towards the end of February, 1977 in the office of Shri Jagmohan. Shri Jagmohan and Shri Lal have however, denied this case. The Commission has seen the report of the handwriting expert on this file. On the basis of this evidence the Commission feels that this file cannot be relied upon.

13.169 Shri Jagmohan in his reply to the notice served on him under Rule 5(2)(a) of the Commissions of Inquiry (Central) Rules has stated that

the environmental condition of life in this slum were sub-human; the clearance-cum-resettlement operation was taken up in accordance with the policy and thinking of the Government on the subject, which had been enunciated at the meeting held by the Prime Minister in July/August, 1975. He said that the occupants of the properties in question were given liberal treatment and a large number of incentives and inducements were provided with a view to induce them to voluntarily shift in the public interest. He admitted that there was some lack of clarity in respect of the property registers due to long neglect and pendency of the case but said that there was no private building involved in the demolition and no proof was given by any one in support of any claim of ownership. He denied all the allegations that had been made in regard to this clearance and stated that it was a simple slum clearance-cum-resettlement scheme duly approved by the competent authorities and executed with due regard to the changed circumstances and added that there was absolutely no wilful demolition.

13.170 During the second stage of hearing Shri Jagmohan took the plea that this operation was carried out with the consent of the people affected and it was purely voluntary.

13.171 From a perusal of the evidence it appears that no notices of any kind, whether under Section 30 of the Delhi Development Act or under Section 7 or 10 of the Slum Areas Improvement and Clearance Act were given. The concurrence of the Administrator, in this case, the Lt. Governor, before declaring this as a clearance area, as required under Section 9 of the Slum Areas Improvement and Clearance Act was also not taken. The contention of Shri Jagmohan and Shri Lal that no proof of ownership was produced by the residents cannot also be accepted in justification. It was for the DDA to take all due care and caution that in the area which was being cleared there were no private properties—it was not for the owners of the property to satisfy the DDA but for the DDA to satisfy itself before starting the demolition operations.

13.172 It is clear that Shri Jagmohan informed his subordinate officers about the proposed demolition operations in Turkman Gate only on April 7, 1976. These officers were not given sufficient time to go through the records and survey the area by making enquiries from the residents about the status of their property. Shri Jagmohan's further suggestion that it was for the field officers to complete the legal proceedings in respect of this operation is not tenable as apart from Shri H. K. Lal none of the field officers of the DDA knew the extent of the area to be cleared and hence could not go through all the legal formalities.

13.173 Proper procedures laid down under the Act had not been followed in this case and even administrative action like carrying out a survey of S/9/HA/78—14.

the area, checking of records etc. was not done before embarking on this operation. The evidence of the residents of the area proves that there was no element of voluntariness involved in this operation and the area was cleared by coercion and force. This is supported by the presence of a large police contingent which was kept in attendance throughout. Shri H. K. Lal and Shri Jagmohan have shown scant respect for the rights of others and have misused their authority on a massive scale. In the process they were the cause of considerable human misery which could well have been avoided. The demolition in so far as they concerned the un-acquired and private properties were done without observing the processes of law as laid down.

13.174 Shri Bhinder's action in requisitioning bulldozers to the Turkman Gate area even before the riots were brought under control, is an indication of the extreme and indecent hurry in carrying out this programme. The riots were put down harshly and additional bulldozers were pressed into service so that the operations could be resumed and completed without interruption and objections, from the people. Shri Bhinder was served with a notice under Rule 5(2)(a) of the Commissions of Inquiry (Central) Rules and summons under section 8B of the Act. Though he appeared before the Commission, he declined to furnish his defence on the plea that he was busy with his trial in a murder case and he asked for postponement of the proceedings, which the Commission declined to grant. He had appeared before the Commission in the first stage and given his version of the case. In the light of the evidence adduced, the Commission feels that Shri Bhinder by calling for bulldozers to be brought in hot on the heels of the Riot and the Police firing showed great callousness to the miseries of the people of the area. He has, therefore, abused his authority and misused his powers.

VII. Demolition in Village Samalkha

13.175 Village Samalkha is on the Delhi-Gurgaon road in South-West Delhi. The area all along the road was fully built up. All the structures on the eastern side of the Delhi-Gurgaon road from village Samalkha upto Kapashera on Delhi-Haryana border were demolished on December 31, 1975. A portion of the old village site was also cleared.

13.176 The first proposal to demolish the houses/shops constructed opposite the village site of Samalkha was made in the month of November, 1975. Shri Tamta, Commissioner, MCD advised Shri O. P. Gupta, the then Zonal Assistant Commissioner (R) to take immediate steps in this direction. According to Shri Gupta, these demolitions were perhaps desired by Shri Sanjay Gandhi, who used to pass through that area daily during his visit to Maruti Factory. Shri Gupta had pointed out to Shri Tamta that the demolitions could be carried out only after following the prescribed legal procedure. Shri Tamta was annoyed at his attitude. Shri O. P. Gupta was, therefore, compelled to proceed on leave for two months. Shri Gupta was asked by Shri Tamta to extend his leave by another

month as Shri Sanjay Gandhi was very much annoyed with the performance of Shri Gupta. Although Shri O. P. Gupta was allowed to join after the expiry of 3 weeks of the extended leave period, he was not given any duties for 6 weeks. Shri Gupta was later reverted to a lower post.

13.177 Shri S. S. Mann was posted as Zonal Assistant Commissioner (Rural) in the place of Shri O. P. Gupta on December 1, 1975. He was summoned by Shri Tamta to his office on December 27, 1975. Shri Tamta took him along with the engineers of the Corporation to the villages of Samalkha and Kapashera. Shri Tamta asked Shri Mann to make a note of all the structures on the left hand side of the road in these two villages. He told him that these structures should be demolished by December 31, 1975. Shri V. P. Gupta, Zonal Engineer (Building), one of the officers present, pointed out that only a few of these constructions were registered as unauthorised in the Municipal records. This objection was brushed aside by Shri Tamta. Shri Tamta told them that these demolitions should be carried out irrespective of whether they were registered as unauthorised or not, because the orders had come from higher authorities. Shri Tamta had also advised him to engage a bulldozer for completing the task by the due date.

13.178 Shri Mann contacted the Police authorities for necessary law and order arrangement. The power supply of these houses and shops were got disconnected. After mobilising a large labour force and other staff, he supervised the demolition of all these structures on December 31, 1975. No survey of these houses and shops was made. Shri Mann was accordingly not in a position to state the precise number of houses he had demolished. Shri Mann says that he took this step of demolition of houses/shops about which there were no records with him because he was afraid that much more serious consequences than mere suspension or dismissal would follow in any effort by him to delay the demolition. Shri Mann was also conscious of the treatment meted out to his senior colleague Shri Gupta for his unwillingness to obey the illegal orders of the Commissioner.

13.179 Shri Mann sent a written note to Shri Tamta on January 1, 1976 reporting compliance with his verbal orders regarding demolitions in both these villages. Shri Tamta saw this note on January 2, 1976 and minuted on this note: "Seen Good". On a note dated February 5, 1976 put up by the Zonal Engineer (Building), Municipal Corporation of Delhi, Shri Tamta approved on February 10, 1976 the expenditure of Rs. 736,25, as hire charges of the bulldozer used for these demolitions.

13.180 Shri Tamta has stated that Shri Sanjay Gandhi had asked him, before leaving Delhi on December 26 or 25, 1975, to demolish all the structures before he returned. Shri Tamta said that Shri Sanjay Gandhi had asked him earlier also to demolish these structures and he was furious at the

slow speed of demolition in this area. Shri Tamta admitted that the demolition of these buildings was illegal and he knew that it "was all wrong", and that Shri Mann, ZAC had acted under pressure when he had carried out the demolitions.

13.181 S/Shri Hari Singh Sharma, Inder Dev Sharma, K. B. Gulhati and Kanwar Lal, residents of the village Samalkha, have narrated the ruthless manner in which they were evicted from their houses which were immediately demolished. They said that they were paying Municipal taxes and had electricity connections supplied by the local authorities and that even a notice was not served upon them about the proposed demolitions.

13.182 On June 22, 1976, the Municipal Corporation of Delhi forcibly occupied the land of the villagers in this area. S/Shri Thandi ram and Khajan Singh, farmers, have stated that senior officers of the MCD had come to the village and had demarcated the area. The MCD staff took possession of the lands forcibly and damaged the standing crops. Bulldozer was used to level the field. Those who objected were threatened with detention under MISA. The land was occupied even before the proceedings under the Land Acquisition Act had started.

13.183 Shri Tamta was served with notices under rule 5(2)(a) of the Commissions of Inquiry (Central) Rules, 1972 and section 8B of the Commissions of Inquiry Act, 1952. Shri Tamta did not file a written statement in response to the notice under rule 5(2)(a). In his oral submission on April 1, 1978 he said that he had nothing further to add. He also did not desire to examine any witnesses nor to cross-examine any witness previously examined.

13.184 From the evidence it appears that the Municipal Corporation of Delhi not only demolished the structures but also took possession of the private lands in village Samalkha without any legal authority. The Municipal Corporation rented out the land, so acquired, to some of the shop-keepers. The legal procedure laid down in Section 343 of the DMC Act was also not followed for carrying out the demolitions in the village. Shri O. P. Gupta who had tried to follow the legal procedure and objected to taking action without complying with the law on the subject was harassed and forced to go on leave. Subsequently he was accommodated in a junior post. The fact of demolition and its illegalities have been admittedly done under the orders of Shri B. R. Tamta.

13.185 Shri Tamta said that whatever had been done, was under the orders of Shri Sanjay Gandhi and in the apprehension that if orders of Shri Sanjay Gandhi were not carried out he may have been subjected to any punitive step including detention under MISA. While it is possible that Shri Tamta acted because of the compelling circumstances, he cannot on that account be absolved of his responsibility. He had misused his powers and abused his authority.

VIII. Demolitions in village Kapas Hera

13.186 Kapas Hera is a village situated on the Delhi-Gurgaon Road near the Delhi-Haryana border about 2 KMs from the Maruti Complex. Demolitions on a large scale were carried out in this village on September 4, 17 and 18 and December 31, 1975. The demolitions in September were jointly conducted by the staff of the Municipal Corporation of Delhi and the Delhi Development Authority, while demolitions on December 31, 1975 were carried out by the Municipal Corporation alone. These demolitions were allegedly carried out at the instance of Shri Sanjay Gandhi who apparently found these structures an eye-sore, and as he had to slow down his vehicle while passing through this village *en route* to the Maruti factory. He allegedly wanted the factory owners of the village Kapas Hera to shift to the Maruti complex. These demolitions were illegal because they were unauthorised and the procedures prescribed by law were not followed either by the DDA or by the MCD.

Demolitions on September 4, 1975

13.187 According to the details given in the demolition diary of the DDA on September 4, 1975; 14 boundary walls, 17 commercial structures and 11 pucca rooms were demolished. This demolition slip was signed by Shri C. M. Vij, Engineer, MCD. According to Shri Vij he had gone to the DDA office at the instance of his Deputy Commissioner, Shri J. N. Singh to give assistance to the DDA in the demolitions that were proposed to be carried out on September 4, 1975. Shri Vij had met Shri Yash, an Executive Officer of the DDA, who took him to Shri Jagmohan, Vice-Chairman, DDA. Shri Jagmohan gave the details of the demolitions to Shri Vij. As Shri Vij was not familiar with the area, Shri Ranbir Singh who had already seen the site was directed to accompany and guide the demolition operation. Shri Vij along with S/Shri Yash, Ranbir Singh and some police officers of the Demolition Squad of the DDA went to village Kapas Hera and carried out the demolitions. After the demolitions were over Shri Vij was asked to sign the demolition slip by the officials of the DDA. Initially Shri Vij expressed his reluctance but he was surrounded by the officials of the DDA and the police officers and was pressurised into signing the slip. On return from Kapas Hera, Shri Vij and the officers of the DDA apprised Shri Jagmohan about these demolitions. Later on Shri Vij informed Shri J. N. Singh, Deputy Commissioner, MCD and Shri B. Dayal, Superintending Engineer, MCD also. According to Shri Vij he was the only person from the MCD, who had accompanied the "demolition party". He had no prior knowledge of these operations nor had he enquired about their legality from Shri Jagmohan. He had only given technical advice at the site so that the labour carrying out the demolition would not face any danger. Shri Vij corroborated his statement by the entries he had made in his personal diary of September 4, 1975.

13.188 Shri Mohinder Singh Yadav, Secretary Emergency Sufferers Association of village Kapas Hera stated that the labour force of the MCD and the DDA under the supervision of S/Shri Ranbir Singh, Executive Officer, DDA and Shri Vij of the MCD had demolished 37 houses in village Kapas Hera on September 4, 1975. The demolitions commenced at 1 p.m. and ended at 5 p.m. and no opportunity was given to the villagers even to remove their household effects. Some of the buildings were only partially demolished.

13.189 Col. Ram Singh Yadav, Education Minister, Haryana and a resident of village Kapas Hera stated that he had shown the tax receipts of the shopkeepers of the area to the officers at the site on September 4, 1975. He said that one shop had been demolished even though Shri Ranbir Singh had advised against its demolition. Shri Ram Kishan and Shri Pyare Lal had said that Shri Ranbir Singh had told them that he was "blind and deaf". Shri Hardwari Lal stated that Shri Ranbir Singh had a bundle of files with him and was pointing out the houses to the labourers which were to be demolished.

13.190 Regarding the demolition on September 4, 1975 Shri Ranbir Singh stated that he had requested the engineer of the MCD to restrict the demolition to the new structures only. The new colony which was coming up in this area was unauthorised because village Kapas Hera fell within the agricultural green belt of the Master Plan. Shri Ranbir Singh said that he had personal knowledge of the area and that is why he could distinguish the new structures from the old. He had only got those premises demolished which were pointed out by the MCD engineer to him.

13.191 Shri Jagmohan stated that Shri Vij had not met him on September 4, 1975. He had only sent his staff at the request of either Shri B. R. Tamta, Commissioner or some other officer of the MCD, to help them in their demolition operations and to provide alternative accommodation to the evictees.

Demolitions on 17th and 18th September, 1975

13.192 On September 17, 1975, 34 shops and factories were demolished and on September 18 one industrial structure was demolished.

13.193 Shri Ratti Ram had a lathe workshop in village Kapas Hera since 1972. His workshop was demolished either on 17th or 18th or 19th September, 1975 without any notice by the DDA. He did not know the exact date as he was in Delhi at that time to purchase some material and it was only when he had returned to Kapas Hera he had found his workshop demolished. As a result of this demolition he had incurred a loss of Rs. 30,000. His land had not been acquired by the MCD or by the DDA.

13.194 Shri Sat Prakash Gupta, Proprietor, Delhi Paper Product said that after getting permission from the Director of Industries, he had

constructed his factory in village Kapas Hera and had shifted there in February 1975. On September 17, 1975, without prior notice the DDA staff bulldozed and demolished his factory and he was not even allowed to take out the finished products. They had been surrounded by police officers while the DDA completely demolished his factory. He suffered a loss of over Rs. 4 lakhs in this demolition. On September 18, 1975 he obtained a stay order from the Delhi High Court so that he could remove his machinery, raw material and finished goods. However, he was forced to withdraw the case under threat of arrest under MISA which was given by an officer of the DDA, Smt. Agya Rajinder Singh. Smt. Agya Rajinder Singh has, however, denied giving such a threat.

13.195 Shri S. K. Bhutani, Proprietor, Nu Foam Rubber Industry had constructed his factory after getting a no objection certificate from the licensing department of the MCD. Power connection of 20 KV was also given by the MCD and his application for a licence was pending with the Director of Industries. He had purchased the land and constructed the factory structure in 1974. Part of this factory was demolished on September 17, 1975 and the remaining portion on September 18. On September 18, while the demolition was going on, Shri Bhutani obtained a stay order from a court of law. This was shown to Shri Satya Prakash, Executive Officer at about 1 p.m. on the same day; but Shri Satya Prakash had replied that "it is not worth the paper its printed on". Shri Bhutani said that his factory was demolished by the DDA staff and Shri Jagmohan had visited the site on September 18, 1975 at about 6 p.m. He had warned all the four factory owners of this area to remove their goods, machinery etc. within 24 hours failing which they would "face dire consequences". As the owners had complained that they had no other place to shift to, Shri Jagmohan allotted Shri Bhutani an alternative site at the rate of Rs. 165 per sq. yd., which was accepted by him under protest. According to Shri Bhutani, Shri Jagmohan had issued a statement in the 'Hindustan Times' on September 21, 1975 which was also broadcast over Delhi Doordarshan the same evening that the DDA had demolished the four factories in village Kapas Hera and that no factory would be permitted within the Lal Dora of the village as they polluted the atmosphere.

13.196 Shri Bhutani denied that any notice under Section 343 of the Delhi Municipal Corporation Act was served upon him. He said the question of any notice being served by affixation also did not arise as the factory worked round-the-clock and some workers were always present at the site. He said that he had not replied to any notice issued by the MCD since he had not received any notice.

13.197 Two files have been received from the MCD relating to the Nu Foam Rubber Factory. File No. 2422/B/UC/RZ/73— which contains only three papers—revealed that a show-cause notice under Section 343/344 was served by affixation on

December 26, 1973. No follow-up action was taken on this notice, and this file was closed on April 1, 1976 because according to a note on this file "the U/A construction which was booked and show-cause notice was issued is lying found demolished". It may be noted that Shri Bhutani has stated that he had purchased the land for the factory in 1974 and constructed the factory the same year. In these circumstances how a notice could have been served on Nu Foam Rubber Factory in December 1973 has not been explained by the MCD. The other file No. 3521/B/UC/RZ/74 shows that a show-cause notice under Section 343/344 of the D.M.C. Act and a demolition order under Section 343 of the D.M.C. Act were served by affixation on June 28, 1974 and July 28, 1975 respectively. In the MCD file, however, the original of these documents are not available nor is any reply of Shri Bhutani which is alleged by the MCD to have been sent by him in response to the notice available. Under these circumstances it appears that Shri Bhutani has stated the correct facts and that the records of the MCD are not reliable or correct.

13.198 Shri O. P. Gupta, Zonal Assistant Commissioner, MCD said that he had gone to the office of Shri Jagmohan on September 8, 1975. Shri Jagmohan had a plan of the proposed demolition with him. On this plan Shri Jagmohan indicated to Shri Gupta the sites which were to be demolished. This included the house of Col. Ram Singh Yadav, some factories, shops and a temple. A few days later Shri B. R. Tamta, Commissioner, MCD, directed Shri Gupta to go to Shri Jagmohan along with Shri P. N. Vinayak, Zonal Engineer (Buildings) MCD to discuss the demolition operation near Kapas Hera. S/Shri Gupta and Vinayak met Shri Jagmohan at his office on or about September 15, 1975 along with the MCD records. Shri Ranbir Singh, Executive Officer, DDA was also present at this meeting. Shri Gupta said that he had told Shri Jagmohan that he would only demolish those buildings which were registered with the MCD as unauthorised. Thereupon Shri Jagmohan suggested a joint operation in which the Corporation would demolish only those buildings which were unauthorised according to their records and the DDA would demolish the rest.

13.199 Shri Vinayak has corroborated the statement of Shri Gupta about this meeting and has said that the MCD staff demolished about 10 to 12 unauthorised structures at Kapas Hera on September 17, 1975; that he had not given any direction to the DDA staff regarding these demolitions and that he had signed the demolition slip and written a note regarding the demolition of 34 shops only because Shri Ranbir Singh and other officers of the DDA and its Demolition Squad had insisted upon it.

13.200 Shri Ranbir Singh said that he had come to know about the second phase of the demolition in Kapas Hera only on the morning of September 17. He said that on September 17 and 18, 1975, S/Shri Vinayak and O. P. Gupta and the

labour staff of the MCD were also present at the site. According to Shri Ranbir Singh he had only collected applications from the affected persons for the allotment of the alternative accommodation. Amongst the DDA officials Shri Ranbir Singh said that Shri Satya Prakash, Executive Officer (Demolition) coordinated the work relating to the demolition on these two days and had assigned the duties to the staff. He said that no stay orders of the court were shown by Shri Bhutani to Shri Satya Prakash on September 18, 1975 but admitted that Shri Bhutani had protested to the Corporation staff that the operation was unauthorised and that the MCD had no right to demolish his factory.

13.201 Shri Satya Prakash said that the demolitions in Kapas Hera were carried out by the MCD and that he along with the demolition staff were present only to give assistance. In support of his contention Shri Satya Prakash produced his letter dated September 17, 1975 to Shri O. P. Gupta in which it was mentioned: "Please refer to the discussion you had with the Vice-Chairman, DDA. The services of the Demolition Squad have been placed at the disposal of the MCD from 17th to 19th September, 1975 for carrying out demolition of unauthorised structures on Gurgaon Road near Kapas Hera". Shri Satya Prakash had also denied that any stay order was shown to him by Shri Bhutani.

13.202 Shri Satya Prakash denial regarding the stay order shown to him by Shri Bhutani is not tenable. Shri Bhutani would not have obtained the stay order if he had no intention of deriving any benefit from it. Moreover, Shri Ranbir Singh has said that Shri Bhutani had protested that the demolition of his factory was illegal though Shri Ranbir Singh has tried to say that Shri Bhutani was protesting to the MCD. This corroborates Shri Bhutani to the extent that he had protested. No enmity has been suggested between him and Shri Satya Prakash and therefore it is not understood why Shri Bhutani should give false testimony. This can only be explained on the hypothesis that Shri Bhutani had an argument with Shri Satya Prakash at the site. Shri Satya Prakash's story that Shri Bhutani's factory had been demolished before the stay order was obtained at about 1 p.m. is not correct in view of the daily diary of the demolition squad and the demolition slip dated September 18, 1975. The daily diary shows that the demolition squad returned from the site at about 6 p.m., the demolition slip shows that one industrial structure was demolished at Kapas Hera on September 18, 1975 and no other structure including boundary walls was demolished on that day; Shri Satya Prakash also has admitted that the demolition of Shri Bhutani's factory continued on September 18.

13.203 Shri Jagmohan has said that he had been introduced to Shri O. P. Gupta and Shri Vinayak by his Special Assistant. He said that since no survey was done by the DDA, the question of his having any map of that area did not arise.

13.204 Besides Shri B. R. Tamta and Shri Sanjay Gandhi, S/Shri Ranbir Singh, Satya Prakash and Jagmohan of the DDA were also served with notices under Rule 5(2)(a) of the Commissions of Inquiry (Central) Rules and summons under section 8B of the Commissions of Inquiry Act.

13.205 Shri Ranbir Singh has said that he had gone to village Kapas Hera on all the three days in compliance with the oral orders of Shri Jagmohan to lend assistance to the staff of the MCD in the demolition operations and to allot alternative accommodation to the affected persons; that he had not tried to ascertain whether the MCD had any authority to demolish these structures, because their own officials were always present on the spot, and that the staff of the DDA had only pulled down those houses which were pointed out to them by the MCD officials and the demolition diary on all the three days was signed by the engineers of the MCD. This plea of Shri Ranbir Singh that only MCD officials had signed the demolition slip is not correct as on September 18, 1975 one of these slips was signed by Shri Ranbir Singh, Tehsildar of the DDA for the demolition of one commercial structure. Moreover Shri Vinayak has noted on the demolition slips which he has signed that these demolition operations were jointly carried out by the MCD along with the DDA. In his reply to the notice under Rule 5(2)(a) Shri Ranbir Singh has denied the allegations made against him by S/Shri Ram Kishan, Piare Lal, Col. Yadav and has reiterated his earlier statement that the DDA demolition squad had only assisted the MCD.

13.206 Shri Satya Prakash has also said that he had gone for the demolition operations on September 17 and 18 on oral instructions from Shri Jagmohan. His staff had been placed at the disposal of the MCD and he had only gone there to control the labour. In his reply to the notice under rule 5(2)(a) Shri Satya Prakash has reiterated the testimony that he had given earlier. He has further said that in his note dated September 19, 1975 sent to Shri Jagmohan, he had written that the services of the demolition squad had been lent to the MCD on the 17th, 18th of September.

13.207 Shri Jagmohan has said that he had lent the assistance of the demolition squad of the DDA on a request on the telephone from Shri B. R. Tamta. This was done pursuant to a decision taken at a meeting held under the Chairmanship of the Lt. Governor in April 1972 which permitted the DDA to lend the demolition squad to any local authority which required it. He said that he had not made any inquiries about the nature of the structures to be demolished but he had been given an impression that the factory owners were willing to shift to alternative places and, therefore, accommodation had to be provided to them. Shri Jagmohan said that he had visited the village sometime around September 17 or 18, 1975, to allot alternative accommodation to the affected persons, and that this was done on humanitarian grounds even

though it was not in the DDA area. In his reply to the notice under rule 5(2)(a), Shri Jagmohan has denied the allegations made against him by the witnesses S/Shri Mool Chand, Ratti Ram, B. R. Tamta, O. P. Gupta and Col. R. S. Yadav, and has reaffirmed his earlier version.

13.208 This area was not a development area under the DDA and the DDA had, therefore, no legal authority to demolish any structures here. The contention of the DDA that they were only assisting the MCD is not correct. Virtually all the witnesses who were present generally have stated that it was the DDA which had demolished the structures and had named the DDA officials S/Shri Ranbir Singh and Satya Prakash as being responsible for the demolition. The stay orders which were obtained have also been against the DDA. This has also been confirmed by the note of Shri Satya Prakash dated September 19, 1975 addressed to the Vice-Chairman, DDA, which *inter alia* states "most of the shopkeepers have brought stay orders against the DDA". Shri Jagmohan had also visited the site as has been stated by a number of witnesses. If the DDA had merely lent assistance to the MCD there was no reason for a senior officer like Shri Jagmohan to have visited village Kapas Hera to see the demolition of a few unauthorised structures when the MCD Commissioner, Shri Tamta, who was said to be responsible for the demolition, had not visited the site. Whereas only one or two officials of the MCD were present at the site at the time of the demolitions on September 4, 17 and 18, 1975, a number of senior officers of the DDA were present at the site on those days.

13.209 The continuing interest of the DDA in village Kapas Hera can be seen from the file No. F. 40(4)/75/OC/DDA where details of land measuring 935 Bighas and 6 Biswas in village Kapas Hera have been given and for which the DDA had moved the Delhi Administration for acquisition as early as July, 1975. This file also shows that a survey of the area had been carried out by the DDA officials and this area had also been inspected by Shri Jagmohan before the proposal for acquisition was sent to the Delhi Administration. A map of this area was also prepared and was available in the office of the DDA.

13.210 On another file of the DDA bearing the title "Unauthorised Factories and Structures on Gurgaon-Brijwasan Road which were pulled down by the DDA to lay a Road", some undertakings given by the residents of Kapas Hera that they would clear the malba within a day or two of the demolition are available. According to Shri Ranbir Singh, he had taken these undertakings from the MCD staff who had obtained them from the villagers. Why such undertakings should have been taken and put on its own record by the DDA when it had nothing to do with this operation has not been explained by Shri Ranbir Singh or anyone from the DDA.

Demolition of the House of Lt. Col. Ram Singh Yadav

13.211 Lt. Col. Ram Singh Yadav, a retired Army Officer, said that he was served with a notice by the MCD on September 20, 1975 calling upon him to show-cause why his house in the village of Kapas Hera should not be demolished. He replied to the show-cause notice on September 23, 1975 stating that the house was constructed before the enactment of the DMC Act. Moreover, the municipality itself had granted permission to him on February 15, 1973 for carrying out renovations and repairs of his house. This explanation of Shri Yadav was not found satisfactory by the Zonal Engineer and therefore he passed a demolition order on October 4, 1975. Shri Yadav thereupon applied for and obtained a stay order from a competent Court and the stay order was duly served. In spite of the stay order, the officers of the Municipal Corporation continued to harass him and the members of his family. He was told that the orders for demolition had directly emanated from Shri Sanjay Gandhi. Therefore, he met Shri Sanjay Gandhi in the first week of October, 1975, at 1, Safdarjung Road. Shri Gandhi's attitude was overbearing and insulting and he passed contemptuous remarks about the judiciary. Thereupon Shri Yadav met the Prime Minister alongwith other office bearers of the Indian Ex-Services League. Shrimati Gandhi told Shri R. K. Dhawan to see that Col. Yadav's house was not demolished. However, after 3 or 4 days he was called by Shri Sanjay Gandhi to the latter's residence and told to demolish the front portion of his house. He told Shri Gandhi that the Prime Minister had agreed that no part of his house need be demolished. Shri Gandhi was, however, adamant and gave him the choice of demolishing half of the house himself or in the alternative the Corporation would demolish the entire house. Col. Yadav thereupon agreed to demolish the front portion of his house. The front portion of the house comprising one verandah, one large room and toilet was accordingly demolished. Shri Sanjay Gandhi who was closely following the progress of the demolition during his daily visits to the Maruti Factory was still not satisfied and asked him to further demolish the barsati and the water tank located on the terrace of the house. Col. Yadav accordingly complied with this also. The MCD allowed Col. Yadav to retain the remaining portion of his farm-house till such time as the area was not required for any scheme of the local authorities, only after Col. Yadav had given an undertaking that he would demolish his own farm-house, on three months notice, if so required by the MCD.

13.212 Shri O. P. Gupta, ZAC, MCD has stated that Col. Yadav's house which was on the rear of the petrol pump in Kapas Hera was a special target for demolition in the plan shown to him by Shri Jagmohan during their meetings. Shri Vinayak had told him that Col. Yadav's house was not demolished on September 17, 1975 because he had threatened to open fire, if anybody touched his

building. Shri B. R. Tamta had called him in his office after about two-three days and expressed his displeasure that Shri Yadav's house was not demolished. Shri Gupta with great difficulty persuaded Shri Tamta to follow the legal course. Accordingly, a notice under section 343 of the DMC Act was issued and after considering Shri Yadav's reply an order for demolition was passed. When Col. Yadav obtained a stay order from the court, Shri Tamta was annoyed at the course of events which had delayed the demolition of this house. Shri Tamta, therefore, suspended the ZE (Buildings), Shri Vinayak and his Junior Engineer.

13.213 Shri P. N. Vinayak has stated that he did not follow the oral orders of Shri O. P. Gupta and Shri B. R. Tamta to demolish the house of Shri Yadav. He had followed the legal procedure. Shri Vinayak along with his Junior Engineer was suspended because of the delay in the demolition of the house as Col. Yadav had in the meantime obtained a stay order from the court. Shri Tamta had made a suggestion that the records should be fabricated to show that Shri Yadav's house was already booked as an unauthorised construction.

13.214 Shri B. R. Tamta admitted that action against Shri Yadav's property was taken on the orders of Shri Sanjay Gandhi. He had to take disciplinary action against his own officers as he was pressurised by Shri Sanjay Gandhi.

Demolition on December 31, 1975

13.215 The third phase of demolitions in Kapas Hera was on December 31, 1975. All the structures on the left side of the Delhi-Gurgaon Road from village Samalkha upto Kapas Hera were demolished by the MCD with the help of a bulldozer which carried a Plaque marked "I am deaf and blind." The portions of the buildings which had not been demolished on September 4, were also removed. These demolitions were carried out under the supervision of Shri S. S. Mann, ZAC (Rural). Shri Mann had stated that no survey was carried out in the village before the demolitions and that this was done on Shri Tamta's order.

13.216 Shri B. R. Tamta has stated that the demolitions were carried out on the express directions of Shri Sanjay Gandhi. Shri Gandhi wanted this area to be cleared of all the structures.

13.217 S/Shri Mahinder Singh Yadav, Ram Kishan, Payare Lal, Ganga Dutta, Phool Chand, Jagdish Chand have narrated how these demolitions were carried out in the most callous manner. They were neither given any notice nor any time to remove their belongings before the operations.

13.218 Shri B. R. Tamta was served with a notice under Rule 5(2)(a) of the Commissions of Inquiry Rules and Summons under Section 8B of the Commissions of Inquiry Act. He did not give any written statement but argued his case before the Commission. He has owned up his responsibility for the illegal demolition. He has, however,

stated that Shri Jagmohan and Shri Sanjay Gandhi had a greater degree of responsibility.

Shri Sanjay Gandhi's involvement

13.219 Shri B. R. Tamta, Commissioner, MCD said that demolitions in Kapas Hera were carried out on the instructions of Shri Sanjay Gandhi. He said that after he had attended a few meetings in No. 1, Safdarjung Road he got the impression that Shri Sanjay Gandhi was to coordinate all the demolition work in the Union Territory of Delhi. Shri Sanjay Gandhi used to interfere in the day to day working of the Corporation and according to Shri Tamta he had been humiliated by Shri Gandhi on a number of occasions. At the behest of Shri Sanjay Gandhi he had lent the assistance of the Corporation staff to the DDA for the Kapas Hera operations.

13.220 A number of witnesses have confirmed Shri Gandhi's interest in the Kapas Hera demolition operations. The case of Col. Ram Singh Yadav has been mentioned above but besides him other residents and factory owners of village Kapas Hera have testified to this effect. Shri Ram Kishan has said that Shri Sanjay Gandhi had to slow down his vehicle when he passed through the village Kapas Hera. This had annoyed Shri Sanjay Gandhi. Shri Ram Kishan's dogs were killed by the MCD staff so that they would not cross the road at the time when Shri Sanjay Gandhi was passing. Officers of the MCD used to guard the highway so that the villagers, cattle etc. would not cross the road at this time. Shri Ram Kishan said that he along with some other residents of Kapas Hera had met Shri Sanjay Gandhi in his factory to protest against these demolitions. Shri Gandhi had abused them and had called Kapas Hera a village of scoundrels. Shri Gandhi had also told the villagers that he wanted to clear 1000 yards of land on either side of the road. The testimony of Shri Ram Kishan has been corroborated by S/Shri Pyare Lal, Ganga Dutt and Jagdish Prasad.

13.221 According to Shri Bhutani, Shri K. N. Sharma, Deputy Commissioner. MCD had told him that the only person who could save his factory from demolition was Shri Sanjay Gandhi as it was upon his directions that the demolitions were going on. Shri Bhutani had met Shri Sanjay Gandhi on September 21, 1975. Shri Gandhi had told him that he could be given accommodation at the Maruti Complex. According to Shri S. P. Gupta of Delhi Paper Products, Shri Sanjay Gandhi did not like these factories to be located at village Kapas Hera because his own Maruti Complex was deserted. Shri Gupta has said that industry was coming up in Kapas Hera but the Maruti Complex was deserted because of shortage of power in Haryana.

13.222 Shri O. P. Gupta said that Shri B. R. Tamta had told him that the demolition operations near Kapas Hera had been ordered by Shri Sanjay Gandhi. Shri S. S. Mann has corroborated that these demolitions were done under the orders of Shri Sanjay Gandhi.

13.223 The very fact that the villagers went in deputation to Shri Sanjay Gandhi; that Col. Yadav and Shri Bhutani also met him indicates that there was a widespread impression that Shri Sanjay Gandhi was concerned with the demolitions. Moreover, the evidence of the witnesses regarding the behaviour of Shri Sanjay Gandhi towards them also discloses that he took keen interest in the demolitions in village Kapas Hera.

13.224 It is evident from the record that S/Shri Jagmohan, B. R. Tamta, Ranbir Singh and Satya Prakash were all responsible for the demolitions in varying degrees. They had all abused their authority and misused their powers in going about the demolitions in the manner in which they did, without observing the requirements of law and procedures.

13.225 Shri Sanjay Gandhi was served with a notice under Rule 5(2) (a) of the Commissions of Inquiry (Central) Rules, 1972 and summons under Section 8B of the Commissions of Inquiry Act. In reply to the notice under Rule 5(2) (a) he made a statement questioning the procedure adopted by the Commission for conducting the inquiry. On the subject-matter of the cases relating to him, he did not furnish any information.

13.226 On April 8, 1978 when he appeared before the Commission, he raised certain technical objections regarding the service of notice. The Commission accepted his plea and directed that a fresh notice be issued under Rule 5(2) (a) of the Commissions of Inquiry Rules and fixed April 22, 1978 for his appearance and compliance with the requirements of the notice.

13.227 Though he appeared on April 22, before the Commission, he raised certain objections regarding the procedure adopted by the Commission and also took the plea that he was pre-occupied with his trials in the Court of Sessions, Delhi in a criminal case under Sections 120B, 409, 435 and 201 IPC and requested the Commission to adjourn the proceedings pending the completion of the Sessions trial.

The Commission declined to accede to this request. He then contended that he was being denied the protection of Article 20(3) of the Constitution. The Commission rejected the contention observing that Mr. Sanjay Gandhi was not accused of any offence. He then submitted a fresh application contending that he was denied the protection of Article 14 and 21 of the Constitution. That application was also rejected.

13.228 The Commission then directed him to take oath and give his version on the evidence, but he declined to do so. A complaint under Sections 178 and 179 IPC has, therefore, been forwarded to the Chief Metropolitan Magistrate, Delhi, against him.

13.229 In the absence of any relevant information or explanation furnished by Shri Sanjay Gandhi with regard to the evidence of witnesses, who have been examined, the Commission is constrained to proceed on the evidence on record and on the assumption that he is unable to give any explanation in regard to the conduct attributed to him.

13.230 The Commission is of the opinion that Shri Sanjay Gandhi was responsible for initiating the entire demolition operations in this village. In the absence of any information from Shri Sanjay Gandhi, the Commission is of the opinion that the demolitions were undertaken at his instance and motivated by considerations that have been alleged against him. In so far as the demolitions were illegal, he has to take his share of the responsibility for the same.

IX. Demolitions in Arjun Nagar

13.231 Arjun Nagar was a middle class housing colony constructed in the south of Delhi by private individuals in the area of village Humayunpur. A large area falling within the village Humayunpur was notified under sections 4 and 6 of the Land Acquisition Act, and Awards under section 11 of the same Act were announced at different times. The Award-wise details of the various acquisition is given in the table below :—

Award No.	1155	1115-A	1170	1170A	1662	13/71-72
Date of announcement of Award	19-6-61	8-9-74	4-8-61	8-11-63	15-1-64	28-8-71
Date of notification u/s 4	3-9-57	3-9-57	3-9-57	3-9-57	3-9-57	29-8-66
Date of notification u/s 6	10-1-61	10-1-61	7-4-61	7-4-61	20-2-62	5-5-67
Area of land acquired (Bighas-Biswas)	351-18	0-4½	116-19	0-12	23-18	3-1
Area of the land possession of which was handed over to the DDA in Sept-Oct, 1975 & Jan 6, 1976 by the Delhi Admn (Bighas-Biswas)	49-04	0-4½	20-13	0-12	10-16	2-7

13.232 Till the date of declaration of emergency possession of only a part of the acquired land had been taken. Possession of about 17-18 acres of acquired land was physically taken between September, 1975 and January, 1976 after the demolitions of structures there. During this period 2 to 5 acres of land in the 'development area' was also

cleared by the DDA, ostensibly under section 30 of the Delhi Development Act. About 1100 to 1200 pucca and semi-pucca structures were demolished.

13.233 The exact area of the land cleared and the number of structures demolished cannot be stated with certainty for want of all the records.

The Commission has reached its conclusion on the basis of the available records and the statements of the affected persons made before it and has not relied on the report of the Fact Finding Committee appointed by the Government of India on May 25, 1977.

13.234 The Arjun Nagar colony was unauthorised and was built in a development area. Its regularisation according to current practice was under consideration of the DDA. The DDA *vide* its Resolution No. 55 dated February 8, 1965 approved the lay-out plans. Sewer lines were laid and water mains were provided to the residents in 1970-71. The DDA was also negotiating with the residents for the levy and recovery of a betterment fee. It has been alleged that demolitions were carried out without the issue of any notice under the relevant Act and in violation of the assurances given to the residents of the area that this colony was to be regularised.

13.235 Shri Rattan Chand Joshi, resident of 33-C, Arjun Nagar said that without prior notice a part of his wife's house was demolished with the help of a bulldozer on October 10 and 11, 1975 by the DDA. While the demolition was going on, the bulldozer got stuck under the debris and was damaged and remained out of order for six days. During this respite, Smt. Joshi obtained a stay order from a competent court on October 17, 1975 which was served on the DDA on October 18, 1975. In spite of this stay order, the remaining portion of Smt. Joshi's house was demolished on November 4, 1975. Aggrieved by the arbitrary action of the DDA, Smt. Joshi, owner of this house, filed contempt proceedings against S/Shri Jagmohan, Vice-Chairman, DDA, Ranbir Singh and Satya Prakash, Executive Officers of the DDA in the High Court. Pressure was put on Shri Joshi to withdraw the contempt case and when he refused to oblige he was arrested on fabricated charges under section 108 Cr. P.C. Lt. Col. Naresh Chander, brother-in-law of Shri Joshi has corroborated the statement. The police officers have also admitted having arrested him on false charges.

13.236 A notice under section 30 of the Delhi Development Act in the name of Shri R. D. Joshi was it is claimed, served by affixation on September 22, 1971 at 33-C, Arjun Nagar. There is, however, no proof on record that it was so affixed. The notice was not affixed in the presence of any member of the public who was a resident of the area; it was only reportedly witnessed by a Section Officer of the DDA, whose name is not mentioned. This house belonged to Smt. Ram Dulari, wife of Shri R. C. Joshi. It is, therefore, apparent that the notice was not served on the owner of the house. An *ex parte* order under section 30(1) of the Delhi Development Act was passed on September 24, 1971. The office copy of the intimation of the said order addressed to Shri R. D. Joshi, builder/owner of 33-C, Arjun Nagar dated December 18, 1971 is on record. However, it is not clear from this file whether the order of the Executive Officer, DDA was served on the owner/builder of 33-C, S/9 HA/78-15

Arjun Nagar. But in no event could a notice addressed to Shri R. D. Joshi be a valid notice as regards the real builder/owner of the house namely Smt. Joshi.

13.237 Shri Chajju Ram Sharma stated that the demolitions were started by the DDA on or about September 22, 1975. Even in cases where stay orders were issued by competent courts, houses were demolished. The houses belonging to his wife and sons, Nos. 32-A, 32-B, 233-G and 233-B were demolished without notices. The land on which these houses were built had not been acquired by the Land Acquisition Collector. The acquisition proceedings were started only on February 27, 1976 after the demolitions were over. These proceedings were subsequently quashed by the Delhi High Court on January 24, 1978. Shri Sharma was arrested a number of times. He was pressurised to withdraw the stay order and to refrain from giving evidence against the DDA officials in the contempt case filed by Smt. Joshi against them.

13.238 A perusal of DDA's file No. F. 4(53)/72 (Building Section) shows that a notice under section 30(1) of the Delhi Development Act, 1957 was served on the builder/owner of House No. 65-A (New No. 233-B) by affixation. Smt. Devki Devi, wife of Shri C. R. Sharma and owner of this house *vide* her reply dated July 13, 1962 had objected to these proceedings. She pointed out that the house was constructed in 1956 and that she was paying the house tax to the Corporation since then. It appears that an *ex parte* order under section 30(1) of the Delhi Development Act was passed by the Executive Officer requiring the demolition of the premises. The order of demolition is, however, not on the record. Smt. Devki Devi filed an appeal under section 30(2) of the Delhi Development Act before the Chairman, DDA, raising many objections against the order of the Executive Officer, on June 26, 1963. The application of Smt. Devki Devi was rejected. It appears from the record that appeal/application of Smt. Devki Devi was not processed according to law. Sub-section 2 of Section 30 requires that the Chairman may after hearing the parties to the appeal either allow or dismiss the appeal or may reverse or vary any part of the order. On the record there is no evidence of a hearing before the Chairman.

13.239 Major Khatri said that the houses belonging to his two sons were demolished by the DDA without any notice. To prevent the demolition of the houses in the colony, Major Khatri had approached Shri Arjun Das, a Municipal Councillor of the area and reportedly close to Shri Sanjay Gandhi. Shri Arjun Das took him to the Prime Minister's residence on September 24, 1975. Soon thereafter Shri Jagmohan also reached the place and then the three of them went to Arjun Nagar. During the ensuing discussion Shri Jagmohan examined the documents which were produced before him and gave an assurance that no pucca houses would be demolished. In spite of Shri Jagmohan's assurance, the demolitions started again in October, 1975. Maj. Khatri met Shri Jagmohan at his office.

Shri Jagmohan then told him that he knew that Maj. Khatri had suffered a lot but his house could not be spared. Shri Jagmohan agreed to give him some time for removing his belongings. But Shri Satya Prakash, who was incharge at the spot, told him that either he should take out his luggage immediately or it would be buried under the debris. Major Khatri was also threatened with dire consequences by Shri Ranbir Singh and Shri Satya Prakash for giving evidence against them in the contempt case filed by Smt. Joshi.

13.240 A perusal of file No. F D8.E(58)/71, Part I of the Building Section of the DDA shows that a notice under section 30 of the Delhi Development Act was received by Maj. R. S. Khatri on March 6, 1972 in respect of house No. 233. Maj. Khatri noted on the back of the office copy of the notice that "the rooms at 233, Arjun Nagar were constructed in 1958 by the previous owners. No construction has been carried out by the present owner, Shri Ravinder Khatri." However, an *ex parte* order was passed by the Executive Officer (Building) on March 22, 1972. A note dated June 23, 1972 conveying the orders of the Executive Officer was served by affixing the order. No proof of the service of the order is on record. This has also not been served in the presence of a resident of the locality but has been witnessed by a Section Officer of the DDA, whose name is not mentioned. The report of the Process Server says that a notice in the name of "Shri R. S. Kohli" was pasted. A note of Shri S. M. Dua, Executive Officer (DA) dated November 29, 1976 is also available on record in which it is mentioned that a sum of Rs. 9,950 was spent for the demolition of house No. A-233 and that recovery proceedings for the demolition charges had been initiated.

13.241 A show-cause notice and an order under section 30(1) of the Delhi Development Act were issued on July 22, 1971 and August 26, 1971 respectively in respect of house No. A-233. The notice and the order were served by affixation.

13.242 Shri Ranbir Singh has stated that the house of Maj. Khatri was demolished at the behest of the Land Acquisition Collector and that the DDA only took possession of the vacant land from the Delhi Administration. It is not clear as to how the DDA issued notices under section 30 of the Delhi Development Act in respect of the two houses of Maj. Khatri when according to Shri Ranbir Singh the DDA was only assisting the Land Acquisition Collector. It is also not clear as to how the demolition charges could be recovered by the DDA from Maj. Khatri when the demolitions, according to the DDA, were done by the Land Acquisition Collector.

13.243 Shri P. D. Sharma, resident of house No. 240/1, Arjun Nagar said that his house was demolished on October 18, 1975 without notice. Acquisition proceedings for the land on which these houses were located were initiated in January or February, 1976. Shri Sharma said that S/Shri Ranbir Singh and Satya Prakash were present at

the site and Shri Jagmohan was in the Deer Park near Arjun Nagar. When Shri P. D. Sharma had reminded Shri Jagmohan about the assurance given to him and requested him to refrain from this illegal act, Shri Jagmohan had threatened him with arrest under MISA. According to Shri P. D. Sharma a large contingent of police was present at the site and Shri Satya Prakash did not allow him time to remove his valuables and goods.

13.244 Shri Trilochan Singh, resident of house No. G.243/5, said that his house was demolished in spite of the fact that he had obtained a permanent injunction against the DDA in a civil suit. Scant respect was shown to the stay order shown to the DDA officials. Shri Trilochan Singh said that neither any notice was given to him about the demolition by the DDA nor had the Land Acquisition Collector issued any notification in respect of his property.

13.245 Shri Kanshi Ram, a physically handicapped resident of Arjun Nagar said that his shop was demolished on September 25, 1975 and his house on October 10, 1975 even though no notification had been issued under the Land Acquisition Act nor any notice was issued under the Delhi Development Act.

13.246 Mahant Atma Ram told the Commission that his Shiv Mandir in Yusuf Sarai along with the well, adjoining shops and houses which were more than a hundred years old, were demolished on November 27, 1975 by the DDA with the help of a bulldozer. Notification under section 4 of the Land Acquisition Act had not been issued. According to the Mahant S/Shri Jagmohan, Arjun Das and Ranbir Singh had visited his temple and told him that the decision to demolish his property had been taken by S/Shri Sanjay Gandhi and Shri H.K.L. Bhagat, Minister of State for Works and Housing. He could not approach a court of law because of the threat of police action and arrest under MISA.

13.247 Shri S. R. Saxena said that sometime in the month of September, 1975, he attended a meeting in the office of Shri Jagmohan which was also attended by S/Shri Ranbir Singh, S. M. Dua, Yash Pal, Satya Prakash, all Executive Officers and some other officials of the DDA. At this meeting Shri Jagmohan had told them that demolitions had to be started in Arjun Nagar and completed the same evening so that affected persons could not approach a court of law to obtain stay orders. Shri Saxena had raised some doubts about the procedures and validity of such demolitions and also of the ownership of the land. Shri Jagmohan then took him to his ante-chamber and told him that this was a prestigious demolition and that the decision had been taken at "the highest level". Accordingly, Shri Saxena alongwith the other officers went to Arjun Nagar and carried out the demolitions.

13.248 Shri Saxena has said that a few days later another meeting was held in the room of Shri Jagmohan which was attended by, among others, S/Shri Ranbir Singh, S. M. Dua and Yash Pal. This meeting was held to file a reply to a notice

issued by the court to the DDA in the case of Shri Joshi, who had obtained a stay order. According to Shri Saxena, a suggestion to ante-date the record was made at the meeting either by Shri Dua or by Shri Ranbir Singh. Shri Saxena had strongly protested and had declined to be a party to such an illegal act. Shri Jagmohan thereupon dismissed the meeting and said that Shri Dua would deal with the case.

13.249 S/Shri Kewal Mullick, Dy. SP, Demolition Squad and Sahdeo Singh have both denied attending any meeting at which Shri Saxena was present in Shri Jagmohan's room and where the Arjun Nagar demolitions were discussed. This fact has also been denied by S/Shri Ranbir Singh, Satya Prakash and Jagmohan.

13.250 Shri Ranbir Singh has stated that land measuring 13 Bighas 7 Biswas and 10 Bighas 5 Biswas was cleared under section 30 of the Delhi Development Act before the land was actually acquired by the Land Acquisition Collector. He had written to the Delhi Administration regarding the acquisition of these areas on October 25, 1975. As regards the land acquired by the Land Acquisition Collector during the months of September-October, 1975 and January 1976, Shri Ranbir Singh has stated that his job was confined only to taking over possession of the land so acquired. He was not concerned with the demolition of any of the houses. According to him, the demolitions were carried out under the provisions of the Delhi Development Act. The Delhi Administration was approached to acquire the land only after the structures had been demolished. During further examination by the Commission, Shri Ranbir Singh contended that it was for the Land Acquisition Collector to explain whether he was competent to take possession of the land or not. Shri Ranbir Singh said that he was present at the site only to supervise the demolition staff who had attended the site on the orders of the Vice Chairman. Shri Ranbir Singh also denied that he had ever exerted any pressure on Smt. Joshi to withdraw the legal proceedings against him and other officers of the DDA.

13.251 Shri Ranbir Singh was served with notice under Rule 5(2) (a) of the Commissions of Inquiry (Central) Rules. In his reply he has stated that vacant possession of the land was handed over to the DDA by the Delhi Administration. The demolition squad of the DDA was sent to the Land Acquisition Collector, Delhi Administration for taking possession of the unauthorised structures on this land. He said his job at the site was to take delivery of the vacant land from the Land Acquisition Collector and Delhi Administration and to allot alternative plots to the persons who were dispossessed. Regarding the unacquired land, Shri Ranbir Singh stated that he had nothing to do with the demolitions in the area and his job was only to allot houses to such persons whose residences were demolished under section 30 of the Delhi Development Act by the Executive Officers concerned. Shri Ranbir Singh has denied the allegations made by S/Shri Joshi, C. R. Sharma, Khatri, P. D. Sharma, Trilochan Singh and Mahant Atma Ram.

13.252 Shri Satya Prakash has said that the orders for demolition of houses in Arjun Nagar were issued by Shri Jagmohan after a meeting was held in his room. He said that no one had raised any objection at this meeting; that the demolition squad had been loaned to the Land Acquisition Collector and the houses were demolished under the orders of this officer; that structures on a part of the area were demolished in exercise of the powers under section 30 of the Delhi Development Act under the direction of the Executive Officer concerned, and that since this officer had not raised any objection at the meeting called by Shri Jagmohan, Shri Satya Prakash assumed that the operation was legal. He has denied that any stay orders from a competent court were produced or shown to him or that he had threatened anybody to withdraw the contempt proceedings which had been filed against him by Smt. Joshi.

13.253 Shri Satya Prakash was served with a notice under rule 5(2) (a) of the Commissions of Inquiry (Central) Rules. In his reply to the notice Shri Satya Prakash has reiterated what he had earlier stated before the Commission and said that his job was confined to making arrangements for demolitions and for rendering operational assistance to such Executive Officers who were entrusted with this job by the Vice Chairman. He has denied the allegations made by S/Shri Joshi, C. R. Sharma and Major Khatri against him.

13.254 According to Shri Jagmohan, 12 acres of land were taken over by the Land Acquisition Collector and in the remaining two acres of land which was a development area, structures were demolished in exercise of the powers under section 30 of the Delhi Development Act. Shri Jagmohan did not accept responsibility for the individual cases and said that it was for the officers concerned to ensure that the legal formalities had been completed. He had only taken an overall view of the situation and had given necessary directions to his subordinate officers. Shri Jagmohan has said that Shri Saxena had never raised any objection nor had he taken Shri Saxena to his ante-chamber and spoken to him about pre-dating the record. He admitted that he had gone to the site of the demolitions to "sort out the problems in connection with alternative allotments". He corroborated Maj. Khatri's statement and said that he had visited the site and had met the residents and had looked into their grievances. Shri Jagmohan was not certain whether any written assistance for the demolition squad was asked for by the Land Acquisition Collector. He had also found that in a few cases proper notices under section 30 of the Delhi Development Act had been issued.

13.255 Shri Jagmohan was served with a notice under Rule 5(2) (a) of the Commissions of Inquiry (Central) Rules. In his reply to the notice he has reiterated his earlier testimony and has further said that Lt. Governor, Delhi had been apprised about the slum-clearance-cum-resettlement programme.

13.256 Shri H. N. Sharma, the Land Acquisition Collector for the area falling under Award Nos. 1155, 1155-A, 1170, 1170-A and 1662 has said that he had not requisitioned the demolition squad of the DDA nor had he given any order for the demolition of buildings in Arjun Nagar area. He said that a decision was taken at "a higher level" and that he had no knowledge about it. He was personally not present when the demolitions were proceeding and he had no knowledge of what had happened when his Naib-Tehsildar was at the spot. His Naib-Tehsildar was not a magistrate. Once or twice he had been to the site and at that time the proceedings were going on peacefully. This version of Shri Sharma does not appear to be correct in view of the testimony of a large number of witnesses who have stated that they had protested against the demolitions which were carried out in the presence of a large posse of policemen. In view of the fact that there was impediment and obstruction put up by the affected people, the DDA could have lent their demolition squad to the Land Acquisition Collector, only if possession was sought to be obtained under section 47 of the Land Acquisition Act.

13.257 Section 47 of the Land Acquisition Act, reads as follows :—

"If the Collector is opposed or impeded in taking possession under this Act or any land, he shall, if a Magistrate, enforce the surrender of the land to himself, and, if not a Magistrate, he shall apply to a Magistrate or (within the towns of Calcutta, Madras and Bombay) to the Commissioner of Police, and such Magistrate or Commissioner (as the case may be) shall enforce the surrender of the land to the collector."

Section 47 requires that if the Land Acquisition Collector is opposed or impeded he can enforce the surrender of the land to himself if he is a Magistrate; if not he must apply to a Magistrate who shall enforce the surrender of the land to the Collector. This procedure had not been followed because admittedly the Naib-Tehsildar was not a Magistrate and there is clear evidence of opposition to the taking of possession of the land and that Naib-Tehsildar had not approached any Magistrate to enforce the surrender of this land to the Collector.

13.258 As no requisition was made by Shri Sharma for the DDA demolition squad, the statements of S/Shri Ranbir Singh, Satya Prakash and Jagmohan that they merely lent their assistance to the Collector does not appear to be correct. Without this requisition under section 47 of the Land Acquisition Act the demolitions carried out by the DDA appear to be illegal.

13.259 Only in one case, that is, relating to Award No. 13/71-72, the Land Acquisition Collector Shri Gaumat had asked the DDA for the services of its demolition squad for taking possession in this area.

13.260 The fact that it was not the Land Acquisition Collector but the DDA who was interested in demolition and that it was only to complete necessary formalities that they had asked the Collector to be present is supported by a note dated September 20, 1975 recorded by Shri Ranbir Singh. This note reads as follows :—

"The matter regarding development of left over area in Safdarjang residential scheme and construction of 80 feet wide road leading to Kamal Cinema was discussed with the V. C. He has desired that encroachment from acquired land should be cleared on 23-9-1975 and development work should be resumed immediately.

"Letter placed below to L & B Department may be issued."

13.261 The letter dated September 20, 1975 from Shri Ranbir Singh to Assistant Housing Commissioner(s), Land & Building, Delhi Administration, Delhi in pursuance to this note *inter alia* reads :—

"I am directed to say that it has been decided to take over possession of land acquired through Award No. 1155, 1155 Supplementary, 1170, 13/71-72 and 2121 of village Humayunpur on 23-9-1975 which was earlier left from possession proceedings on account of being built up with the help of demolition squad. You are requested to kindly issue necessary instructions to the LAC to reach Vikas Bhavan alongwith the staff at 10 a.m. from where we will proceed to the site. Alternative accommodation to the evictees will be provided under Jhuggis-Jhonpris Scheme.

"This may kindly be treated as most urgent."

13.262 It can be seen that neither the note nor the letter makes any mention of the fact that demolitions in this area were carried out at the request of the Land Acquisition Collector. From this letter it appears that the decision to take over possession of the land was that of the DDA. The senior officers of the DDA cannot escape their responsibility for taking the law in their own hands and pretending that it was the LAC who took possession.

13.263 Regarding the land which was cleared u/s 30 of the Delhi Development Act the stand taken by S/Shri Jagmohan, Ranbir Singh and Satya Prakash that the Executive Officer (Development Area) and Executive Officer (Building) who were in charge of the operation and were responsible for any irregularities committed appears to be an afterthought. From the evidence produced before the Commission it is clear that the decision to conduct the operation in this area was taken on September 20, 1975. This fact was within the knowledge of at least two officers—Shri Jagmohan and Shri Ranbir Singh of the DDA. The other Executive Officers of the DDA came to know about this decision only when a meeting was called by Shri

Jagmohan to finalise the demolition programme of this area in his room. The question of responsibility of the concerned Executive Officer, therefore, does not arise because the decision to demolish had already been taken and the area had to be cleared in the shortest possible time. S/Shri Ranbir Singh and Satya Prakash had also admitted that the decision to carry out the operation in Arjun Nagar had been taken at the level of Shri Jagmohan. It is clear from the evidence of the various witnesses appearing before the Commission that S/Shri Ranbir Singh and Satya Prakash were acting independently of other Executive Officers. In fact, according to the evidence before the Commission, they appear to be the most active members of the demolition team. Shri Jagmohan, according to his own admission, was present on various occasions to sort out the various complaints of the unfortunate residents of that area.

13.264 The DDA had served notices under section 30 of the Delhi Development Act on the residents of Arjun Nagar and had even passed orders for demolition in these cases. Files pertaining to 35 such cases were made available for scrutiny. Besides these a few files were reported to be with the courts in connection with the court cases.

13.265 The scrutiny of these files reveals that a number of notices were issued to the "owners/builders of" the houses. No name of the owners were mentioned in the show-cause notices/orders. In some cases even the exact house numbers were not given in the notice. Almost all the notices were, it is claimed, served by affixing of which there appears to be no definite evidence. No efforts were made by the DDA to serve them by registered post. Orders of detention were passed in a majority of these cases *ex parte*. It is, therefore, clear that the so called actions under section 30 of the Delhi Development Act taken by the DDA suffer from grave infirmities.

13.266 After the demolitions were carried out in Arjun Nagar some of the affected persons were allotted flats in DDA colonies. Amongst them, members of the family of Shri Arjun Das, who was a member of the Delhi Metropolitan Council, figure prominently. Shri Arjun Das's family were allotted 13 flats in the choicest DDA colonies in lieu of their two rented houses which were demolished in Arjun Nagar.

13.267 The rules framed for the allotment of flats by the DDA provide that persons who have applied for flats and have paid the initial deposit are entitled to flats in their turn. According to Shri Jagmohan, a departure from the rules could be made on "compassionate and humanitarian grounds".

13.268 Shri Ranbir Singh admitted that he had allotted the flats to the members of Shri Arjun Das's family on the oral representations of Shri Arjun Das. He stated that Shri Arjun Das was a powerful man and it "was difficult to say no to him". He would have allotted even a hundred flats to Shri

Arjun Das had he so desired. He further stated that no fixed policy was being followed by the DDA in regard to allotment of pucca tenements, MIG, LIG and Janata Houses to the evictees. No basic precautions like scrutiny of ration cards etc. were taken before the allotment of the flats to the family of Shri Arjun Das.

13.269 Shri Arjun Das was requested to assist the Commission in the first stage of hearing but he did not appear before it.

13.270 Shri Satya Prakash also stated that pressure was brought to bear on them by Shri Arjun Das for the allotment of houses to his family. It is seen from the record that a note was sent by S/Shri Satya Prakash and Ranbir Singh to Shri Jagmohan with a list of more than 140 persons to whom alternative flats were allotted, after the operations in this area. This list contained the names of the members of the family of Shri Arjun Das. Shri Ranbir Singh had also separately discussed the matter relating to allotment with Shri Jagmohan. Shri Jagmohan approved the allotment to these persons. In his statement before the Commission Shri Jagmohan admitted that this file was put up to him but he stated that he was not aware of the names of the members of the family of Shri Arjun Das. This does not appear to be convincing. This is because if S/Shri Ranbir Singh and Satya Prakash were pressurised by Shri Arjun Das for the allotment of these flats, then in the normal course, they would have brought this fact to the notice of Shri Jagmohan. It does not appear possible that S/Shri Ranbir Singh and Satya Prakash could have allotted as many as 13 flats without consulting Shri Jagmohan. It is also seen from a note dated December 5, 1975 recorded by Shri Jagmohan that he had issued orders for deleting the names of the applicants from the allotment lists of these persons who had given legal notice to the DDA. He had also approved the cancellation of the allotment of persons who had filed Court Suits/served legal notices against the DDA. Shri Jagmohan had ordered that the flats allotted to such persons should be got vacated with the help of demolition squad of the DDA.

Notices under Rule 5(2)(a) of the Commissions of Inquiry (Central) Rules and summonses under section 8B of the Commissions of Inquiry Act were issued to S/Shri Jagmohan, Satya Prakash and Ranbir Singh. They had availed of the opportunities to put forward their version of this case. Their submissions on the case have been taken into account. Some of the demolitions done by the DDA in the Arjun Nagar area were illegal. S/Shri Jagmohan, Satya Prakash and Ranbir Singh have all participated each in his respective field and contributed to the illegal demolitions.

X. Demolition in Karol Bagh

13.271 Ghaffar Khan Market in Karol Bagh was set up by the Rehabilitation Ministry to rehabilitate refugees from Pakistan after the partition of India in 1947. The Municipal Corporation of Delhi had given permission for constructing Takhats

and Chajjas on public streets and by-lanes. The shopkeepers had also made certain permanent extensions to their shops on their own land and for this permission had been given by the Corporation from time to time. On August 7, 1975 the shopkeepers of Ghaffar Market were informed through loud-speakers that they should remove their Takhats and Chajjas and projections immediately. The shopkeepers have alleged that this was done at the instance of Shri Sanjay Gandhi as according to them, Shri Sanjay Gandhi considered them to be supporters of Jan Sangh and had not voted for the Congress Party during the previous Elections. They also alleged that the demolitions had taken place without any notice.

13.272 Shri Kasturi Lal Anand, President of the Ghaffar Market Beopar Mandal, told the Commission that during the 1971 Elections he had supported the Jan Sangh Party. On declaration of Emergency the Zonal Assistant Commissioner of the Municipal Corporation, Delhi, Karol Bagh Zone started harassing them. The shopkeepers were afraid and they met the Chairman of the Metropolitan Council who gave them an assurance that their grievances would be looked into. Shri Anand said that announcements were made over the loud-speakers in Karol Bagh on August 7, 1975 that projections, etc., built by the shopkeepers should be demolished immediately, otherwise the Corporation would do it themselves. Shri Kasturi Lal Anand produced before the Commission documents to show that the Corporation had given permission for construction of these projections. Shri Anand also produced photographs of the demolitions. These photographs show that shops constructed of brick and mortar with shutters were pulled down with the help of crane and trucks. The demolition went far beyond the chajjas and projections which according to the MCD was the aim of the programme. Articles for sale in these shops were scattered indiscriminately. The demolitions continued on the 11th of August, 1975 also.

13.273 Shri Anand said that Shri Sanjay Gandhi visited Karol Bagh on August 8, 1975 with Shri B. R. Tamta, and told the shopkeepers that they were "pro-Jan Sangh" and that they would be completely ruined. When Shri Sanjay Gandhi came to Karol Bagh they met him at the Bata Shoe Shop and they showed him their documents. Shri Sanjay Gandhi flung them aside contemptuously. According to Shri Kasturi Lal Anand, Shri Sanjay Gandhi again visited the market on the night of August 8/9, 1975 with Shri Tamta. They were told that the Inspector General of Police and Lt. Governor would be informed that all those who had obtained stay orders would be arrested and forced to withdraw the stay orders. They again met Shri Sanjay Gandhi on August 9, 1975 at about 2 p.m. at his residence No. 1 Safdarjung Road. During this meeting Shri Sanjay Gandhi is reported to have behaved rudely with them and to have used abusive language. He again threatened to ruin them because they were supporters of Jan Sangh. He thereafter directed that their shops should be demolished.

13.274 Shri Parduman Singh Batra, Shri Subhash Chander Chadha and Shri Sri Ram have corroborated the statement of Shri Kasturi Lal Anand. S/Shri Chadha and Sri Ram had obtained stay orders against the demolition of their shops from the Court. They were arrested under sections 108 and 151 Cr. PC and no bail was granted to them. While they were in police custody their shops were demolished on August 10, 1975. Ten days later they were released.

13.275 Shri Tamta admitted that while encroachments in Karol Bagh were being removed he had accompanied Shri Sanjay Gandhi to that area. Some of the shopkeepers had complained to him about the injustice that was being done to them. Shri Gandhi got down from his vehicle and went to the nearby Bata Shoe Shop where he examined some of the documents. After examining them, Shri Sanjay Gandhi told the shopkeepers that those papers did not provide adequate grounds for stopping demolitions. Shri Tamta denied that he visited the area again on 8th/9th night August, 1975, with Shri Sanjay Gandhi. Shri Tamta told the Commission that these demolitions were done on the basis of oral notice. He, however, could not point out to the Commission the provisions of the Delhi Municipal Corporation Act which provided for serving of oral notice. Shri Tamta was then allowed time by the Commission to quote the law under which he could act on an oral notice. Shri Tamta thereafter stated that no notice was required for removing encroachments under section 322 of the Delhi Municipal Corporation Act. When it was pointed out to him that this Section only applied to stalls, chairs, benches, boxes etc. he said Section 343 of the DMC Act was meant to cover unauthorised construction. It was again pointed out to him that Section 343 required a notice to be given. Shri Tamta appeared to be vague about the law under which the demolition operation was undertaken by the MCD in this market. Ultimately he stated that the power of demolition had been delegated to the Zonal Assistant Commissioner of the Corporation.

13.276 Shri Ram Singh, Zonal Assistant Commissioner, Karol Bagh Zone, MCD admitted that he had no authority to demolish the structures in Ghaffar Market as no proper notices were given, and that he had acted under pressure and with the approval and orders of the Commissioner, MCD, who had told him that these were the orders from the Prime Minister's house. Regarding the file of the Ghaffar Market (Karol Bagh) demolition, Shri Ram Singh said that the file on the subject was not traceable and that there was no system of maintaining an index of files in the Corporation. He also said that there was no proper procedure for opening and maintenance of files relating to demolition. He also admitted that no survey of the area was done by the Inspector in-charge before the demolition operations were started.

13.277 Shri S. S. Mann, who is currently Zonal Assistant Commissioner of Karol Bagh Zone also confirmed that the Corporation did not have a

system of indexing the files, nor was there any proper procedure for maintenance and recording of the files. Shri D. C. Mishra, presently Deputy Commissioner, MCD, corroborated Shri Mann to the extent that the files were not maintained properly in the MCD. However, according to Shri Tamta the MCD maintained files as per the prescribed procedure in their head office.

13.278 The Commission notes with regret that the file relating to the Karol Bagh (Ghaffar Market) demolitions was not produced before it by the officers of the Municipal Corporation of Delhi. The plea is that the file could not be traced. Apparently proper office procedures are not being followed in the Corporation. The Commission cannot conclude with certainty whether the relevant file existed at all and, if so, whether it has only been misplaced or has been done away with.

13.279 From the evidence it appears that notices required under the DMC Act for removal of encroachments, immovable structures etc. were not issued to the shopkeepers. Those who sought to protest against this arbitrary action, by obtaining stay orders from courts were arrested on false charges under section 108/151 Cr. PC.

13.280 Shri Sanjay Gandhi's interest in the demolition operations is evident from his visit to the area and from his meeting with the shopkeepers both in the market and later at his house. The behaviour and attitude of Shri Sanjay Gandhi towards the affected shopkeepers was one of rudeness and arrogance. Shri Tamta appears to have willingly lent himself to doing whatever illegal acts Shri Sanjay Gandhi wanted him to do.

13.281 Shri Tamta and Shri Sanjay Gandhi were served with notices under Rule 5(2)(a) of the Commissions of Inquiry Rules and summons under section 8B of the Commissions of Inquiry Act. Shri Tamta did not file any statement. He appeared before the Commission and had stated that his statement which he had given earlier should be treated as his explanation for whatever had happened in Karol Bagh.

13.282 Shri Sanjay Gandhi was served with a notice under Rule 5(2)(a) of the Commissions of Inquiry (Central) Rules, 1972 and summons under section 8B of the Commissions of Inquiry Act. In reply to the notice under Rule 5(2)(a) he made a statement questioning the procedure adopted by the Commission for conducting the inquiry. On the subject-matter of the cases relating to him, he did not furnish any information.

13.283 On April 8th when he appeared before the Commission, he raised certain technical objections regarding the service of notice. The Commission accepted his plea and directed that a fresh notice be issued under Rule 5(2)(a) of the Commissions of Inquiry Rules and fixed April 22, 1978 for his appearance and compliance with the requirements of the notice.

13.284 Though he appeared on April 22 before the Commission, he raised certain objections regarding the procedure adopted by the Commission and also took the plea that he was pre-occupied with his trials in the Court of Sessions, Delhi in a criminal case under Sections 120B, 409, 435 and 201 IPC, and requested the Commission to adjourn the proceedings pending the completion of the Sessions trial. The Commission declined to accede to this request. He then contended that he was being denied the protection of Article 20(3) of the Constitution. The Commission rejected the contention observing that Shri Sanjay Gandhi was not accused of any offence. He then submitted a fresh application contending that he was denied the protection of Articles 14 and 21 of the Constitution. That application was also rejected.

13.285 The Commission then directed him to take oath and give his version on the evidence, but he declined to do so. A complaint under sections 178 and 179 IPC has, therefore, been forwarded to the Chief Metropolitan Magistrate, Delhi, against him.

13.286 In the absence of any relevant information or explanation furnished by Shri Sanjay Gandhi with regard to the evidence of witnesses, who have been examined, the Commission is constrained to proceed on the evidence on record and on the assumption that he is unable to give any explanation in regard to the conduct attributed to him.

13.287 The demolitions in Karol Bagh were done at the instance of Shri Sanjay Gandhi. On the basis of evidence on record, it appears that among other considerations, the political affiliation of the shopkeepers to a party opposed to the Congress was one of the deciding factors which impelled Shri Sanjay Gandhi to order the demolition of the structures in Karol Bagh. As usual, Shri B. R. Tamta was only too willing to carry out the orders of Shri Sanjay Gandhi. It has been established that the demolitions were illegal, the responsibility for which must rest entirely with Shri Sanjay Gandhi and Shri B. R. Tamta.

XI. Demolitions in Andheria Mor

13.288 Andheria Mor is a village on the Mehrauli-Chattarpur Road and is on the way to the farm house belonging to Shrimati Indira Gandhi at Mehrauli. On October 28, and November 1, 1975, 70 shops, a few residential structures and farm houses were demolished under an order dated October 27, 1975 of Shri B. R. Tamta, Commissioner, MCD. These structures were demolished without notice and without compliance of the provisions of the Delhi Municipal Corporation Act, 1957. It was alleged that the shops etc. were demolished at the instance of Shri Sanjay Gandhi, who used to pass along that road on his way to his mother's farm house and he felt annoyed with the obstruction to the flow of automobile traffic on the road and because of which he had to slow down his vehicle.

13.289 According to Shri Kanwar Sain Sharma, a resident of Andheria Mor, some time in October 1975 his truck No. DLC 2732 was parked in front of his building in Andheria Mor to pick up some labour. At that time Shri Sanjay Gandhi was passing that way *en route* to his farm. The road being narrow and because of on-coming traffic and the parking of the truck belonging to Shri Sharma, Shri Gandhi had to stop his vehicle. He made enquiries from the truck driver about the owner of the vehicle and left the place in an angry mood. Thereafter the only thing that Shri Kanwar Sain Sharma knew on October 27, 1975 was that the Corporation was demolishing houses in that area. He obtained a stay order from the Sub-Judge, Delhi on October 30, 1975 and showed it to the Corporation official in-charge of the demolition but they did not pay any heed to the stay order. According to Shri Kanwar Sain Sharma the site where his house and his shop were originally situated was at a distance from the road even after it was made into a double-lane road.

13.290 Shri Jasbir Singh, an ex-Serviceman of the Indian Air Force, told the Commission that he had a tyre re-soling plant at Andheria Mor in which he had invested his entire Provident Fund and his other savings and supplemented this by taking loans from the banks. He said that the day the market was demolished was Tuesday, and many of the people were not present at the time of demolition. By the time he came to know of the demolition and reached Andheria Mor, he saw that everything except a few shops were already demolished. After the demolition was over, the villagers went in a deputation to Chowdhary Hira Singh and the Programme Implementation Committee. They got no relief either from Chowdhary Hira Singh or from the Programme Implementation Committee but both used to evade the issue by sending them to Shri Jagmohan or to Shri Tamta. After this they met a number of other prominent people including the Lt. Governor, Shri Krishan Chand and the Works and Housing Minister, Shri H. K. L. Bhagat. Ultimately, they went to see Shri Arjan Dass. He told them that since this market belonged to the Jan Sangh people he could not do anything about it and advised them that they should go to Shri Sanjay Gandhi and talk to him about it.

13.291 Shri Goverdhan Das and Shri Jagdish Chander, both corroborated the story about demolition operation and also told the Commission that they were in the deputation which had gone to see Shri Sanjay Gandhi on the advice of Shri Arjan Das. When they met Shri Sanjay Gandhi they told him that they had their shops in that area for a very long time and that these had been demolished without issuing notices and without giving them an opportunity to remove their goods. They requested him to give them alternative accommodation. Shri Sanjay Gandhi got very angry and told them that they were recent squatters on the land and when the shopkeepers showed him proof of their long-standing tenancy, he told them that such proof could be got fabricated for Rs. 5 each. He told

them that they were Jan Sanghis and that they would not get any alternative accommodation and asked them to leave the place.

13.292 Shri O. P. Gupta, who was the Zonal Assistant Commissioner (Rural) of the Corporation told the Commission that he had been asked by Shri Tamta, sometime in August-September 1975 to demolish shops and other structures in Andheria Mor as Shri Sanjay Gandhi and other members of the family used to pass that way *en route* to the farm house of Smt. Indira Gandhi. He had pointed out to the Commissioner that as these structures were very old and existed on private land these demolitions could not be carried out without following the prescribed procedure of issuing notices, etc. Shri Tamta then told him to survey the structures and to take further action. While this process was going on Shri Tamta rang him up on October 26, 1975 and told him that he would face serious consequences if these buildings were not demolished within three days and that if he was afraid of taking action Shri Tamta said that he would be prepared to pass the necessary orders. Accordingly, Shri Gupta asked Shri Sunder Lal, his Junior Engineer, to put up the following note for obtaining the orders of Shri Tamta :—

“There are about seventy shops and few residential houses which appear to be very old as per site enquiry on Mehrauli-Chattarpur Road. Notices have not been issued to these shops and houses.

Submitted for further orders and information please.

Sd/-
(Sunder Lal)
27-10-1975.

ZAC

As ordered by Commissioner the above structures on Andheria Mor have to be demolished without notice. This may please be confirmed, so that action against these may be taken tomorrow.

Sd/-
(Z. A. C.) (Rural)
27-10-1975

Cm

May be demolished as they are un-authorised and are in the way of right.

Sd/-
(B. R. Tamta)
27-10-1975”

13.293 Shri Gupta admitted that the demolition was not lawful and it was not permitted under the Delhi Municipal Corporation Act. He said that Shri Tamta had been pressurising him to demolish

these structures without giving notices and he had told Shri Tamta that this action was quite illegal. Shri Gupta continued resisting him till ultimately Shri Tamta issued written orders. Shri Gupta said that the shopkeepers were taken completely by surprise and that there was absolutely no opposition to the demolition.

13.294 Shri Tamta admitted that the clearance in the Chattarpur area was done to satisfy the "whims of Shri Sanjay Gandhi". He said that during the morning briefings Shri Sanjay Gandhi always complained about the encroachments in Andheria Mor. He was willing to take orders from Shri Sanjay Gandhi because during that time he was more than a Minister and for Shri Tamta "he was the entire Government because his words were law and he could do anything with anybody".

13.295 According to Shri Tamta, Shri Sanjay Gandhi had complained about the alleged encroachments in Andheria Mor and he had asked the ZAC to remove them. On or about October 25-26, Shri Sanjay Gandhi had become furious with him as the encroachments had not till then been removed. When Shri Tamta pointed out to him that these were old buildings and could not be removed, Shri Sanjay Gandhi had said "this should be done by this evening today otherwise I will take serious action against you". According to Shri Tamta if he had not obeyed the orders of Shri Sanjay Gandhi in this matter Shri Sanjay Gandhi "could have done anything—physical violence, personal liberty, MISA was a thing very current and his words were the law".

13.296 He had called the ZAC and told him that these were Shri Sanjay Gandhi's instructions and for the survival of both of them it was necessary to execute the scheme. Shri Tamta admitted that he never tried to find out whether the buildings which were demolished were authorised or unauthorised. He also admitted that notices were not given as required under the law and further said that it was a wholly illegal operation. He admitted that he had realised that he had caused considerable loss to these unfortunate people by demolishing their houses and that great injustice had been done to them. In mitigation of his action, he said that in the atmosphere prevailing at that time nobody could disobey the orders of Shri Sanjay Gandhi.

13.297 Shri Tamta was served with notice under Rule 5(2)(a) of the Commissions of Inquiry (Central) Rules, 1972, and summons under section 8B of the Commissions of Inquiry Act, 1952. Shri Tamta did not file a written statement as required under Rule 5(2)(a) but in his oral submission before the Commission on April 1, 1978, he said that he had nothing further to add to the testimony that he had already given before the Commission at the first stage of hearings, nor did he desire to cross-examine any of the witnesses.

13.298 Action for demolition in Andheria Mor could have been taken by the Corporation only under Section 343(1) of the Delhi Municipal Corporation Act. Admittedly the procedure laid down S/9 HA/78—16

in this section has not been carried out. There is no other law under which the Corporation could have demolished the structures in Andheria Mor. The fact of demolition and its illegality has been admitted by Shri Tamta and the only plea he has taken is that this was done on the instructions of Shri Sanjay Gandhi. This by itself cannot absolve him of his responsibility. He had abused his authority and misused his powers.

13.299 Shri Sanjay Gandhi was served with a notice under Rule 5(2)(a) of the Commissions of Inquiry (Central) Rules, 1972 and summons under section 8B of the Commissions of Inquiry Act. In reply to the notice under Rule 5(2)(a) he made a statement questioning the procedure adopted by the Commission for conducting the inquiry. On the subject-matter of the cases relating to him, he did not furnish any information.

13.300 On April 8th when he appeared before the Commission, he raised certain technical objections regarding the service of notice. The Commission accepted his plea and directed that a fresh notice be issued under Rule 5(2)(a) of the Commissions of Inquiry Rules and fixed April 22, 1978 for his appearance and compliance with the requirements of the notice.

13.301 Though he appeared on April 22 before the Commission, he raised certain objections regarding the procedure adopted by the Commission and also took the plea that he was pre-occupied with his trials in the Court of Sessions, Delhi in a criminal case under sections 120B, 409, 435 and 201 IPC, and requested the Commission to adjourn the proceedings pending the completion of the Sessions trial. The Commission declined to accede to this request. He then contended that he was being denied the protection of Article 20(3) of the Constitution. The Commission rejected the contention observing that Shri Sanjay Gandhi was not accused of any offence. He then submitted a fresh application contending that he was denied the protection of Articles 14 and 21 of the Constitution. That application was also rejected.

13.302 The Commission then directed him to take oath and give his version on the evidence, but he declined to do so. A complaint under section 178 and 179 IPC has, therefore, been forwarded to the Chief Metropolitan Magistrate, Delhi, against him.

13.303 In the absence of any relevant information or explanation furnished by Shri Sanjay Gandhi with regard to the evidence of witnesses, who have been examined, the Commission is constrained to proceed on the evidence on record and on the assumption that he is unable to give any explanation in regard to the conduct attributed to him.

13.304 The Commission is of the opinion that demolition operations, which took place in Andheria Mor were carried out at the instance and under the direction of Shri Sanjay Gandhi. In the opinion

of the Commission, Shri Sanjay Gandhi was responsible for ordering the properties of the villagers of Andheria Mor to be demolished; and the order was without authority of law.

XII. Conclusions

13.305 In connection with the demolition and resettlement operations undertaken by the Delhi Development Authority in 1975/1976. Shri Melville de Mellow, interviewed Shri Jagmohan and which was telecast on the Delhi TV feature programme "Perspective" on December 31, 1976. The relevant question and answer are as follows:—

"Question : Now can you point out some particular single factor that has brought up this because in the earlier days the rate you will admit was much slower. Could you point out to that single factor that brought this tremendous dimension of spurt about it.

Answer : Yes. One single factor that has helped in the expeditious completion of this project is the keen interest Mr. Sanjay Gandhi took in this. It is because of his decisiveness, initiative and drive that all this has come about in a short time and then there is a climate of discipline that has been created by emergency and the coordination and the direction which was imparted by the Lt. Governor to various agencies functioning in Delhi. So all these factors combined have helped in bringing about this expeditious completion of project. In fact there is no parallel of this in the world to resettle seven lakhs people—I mean twice the size of the Amritsar population in a short period of eight months and provide them all the amenities which are necessary for human existence. This is something which is tremendous."

13.306 Shri Tamta and Shri Jagmohan, in their anxiety to please Shri Sanjay Gandhi who brooked no delay and who only wanted to get things done without caring for the legal or administrative formalities, went about their allotted tasks with a degree of ruthlessness and single-minded devotion which have brought in their wake untold misery on the affected people and serious legal complications. The Commission has before it a number of cases of demolitions in several localities, in which the normal and established legal processes were not complied with. Not only that Shri Jagmohan and Shri Tamta failed to comply with the basic requirements of law, it has also very vividly been brought on record that the Delhi Development Authority indulged in falsification and fabrication of records. Very often the demolitions were undertaken for considerations which were political and not infrequently whimsical. One aspect of the demolition operations in Delhi which caused the Commission great concern was the allegation made against the authorities that demolitions in certain areas were undertaken to bring about parity in human suffering between communities.

13.307 Though the Lt. Governor was the head of the Administration and was also the Chairman of the Delhi Development Authority, he appears to have been completely ignored by these functionaries who, for all their actions took orders directly from Shri Sanjay Gandhi. The demolitions of places of worship specifically required the prior orders of the Lt. Governor. The requirement was completely ignored when the DDA demolished the Arya Samaj temple. The lament of the Lt. Governor, Shri Krishan Chand, that nobody consulted him or listened to him and that they used to take orders directly from Shri Sanjay Gandhi has been heard by the Commission with a feeling of disgust, for he admitted that he turned a deaf ear, and a blind eye to every conceivable piece of illegality and impropriety.

13.308 Shri Tamta, as the Commissioner of the Municipal Corporation of Delhi, while doing all the irregular and illegal things, had at least the honesty to admit that he had done wrong things and that was because of the compulsions under which he was working. The compulsions pointed out by him particularly with regard to the pressure on him by Shri Sanjay Gandhi appear to have been real. This by itself cannot be considered any extenuation for his conduct. Shri Tamta was a party to the race with Shri Jagmohan for gaining the favour of Shri Sanjay Gandhi. On his own admission, however, he was left far behind in the race by Shri Jagmohan. In the process of gaining the favour of Shri Sanjay Gandhi, Shri Tamta thought nothing of humiliating Shri O. P. Gupta, Shri Vinayak and others of his Department who would not go along with Shri Tamta in the illegal demolitions. In the opinion of the Commission, Shri B. R. Tamta has also abused his authority and misused his powers.

13.309 Shri Jagmohan cannot escape his direct responsibility for all that had happened and for all the illegalities committed. He has grossly misused his position and abused his authority. All this he was able to do by very skillfully manoeuvring and by confusing the issues with the people who were in authority. The problems that he was handling were complicated : and he was in a hurry to get his projects through; in carrying out his projects he neither observed the law and the rules, nor was he interested in acquainting his seniors in the Administration or in the Ministry with the legal and administrative requirements of the projects that he had undertaken to put through. Shri Jagmohan, during the emergency, became a law unto himself and went about doing the biddings of Shri Sanjay Gandhi without care or concern for the miseries of the people affected thereby.

13.310 The manner in which the demolitions were carried out in Delhi during the emergency is an unrelieved story of illegality, callousness and of sickening sycophancy by the senior officers to play to the whims and fancies of Shri Sanjay Gandhi. The Commission is of the view that Shri Sanjay Gandhi has actually aided and abetted the illegal demolitions undertaken by the Delhi Development Authority and the Municipal Corporation

of Delhi. In the absence of any information furnished by Shri Sanjay Gandhi regarding his version of the cases, the Commission has no alternative but to accept the evidence on record that he was the prime mover in a majority of the illegal demolition operations that took place in Delhi.

13.311 From the evidence before the Commission regarding the nature and extent of demolitions that took place in Delhi during the emergency, the Commission has reached the conclusion that the prime mover for most of these demolitions was Shri Sanjay Gandhi. Shri Jagmohan and Shri Tamta apparently were acting on the directions and at the behest of Shri Sanjay Gandhi who had his own ideas about slum clearance, beautification of the city and the resettlement of the displaced persons. Shri Sanjay Gandhi held no responsible position in the administrative set up of Delhi. It is surprising that he should have wielded such enormous powers without being accountable to any one. Some of the important functionaries in the Delhi Administration who, among others, included Shri B. R. Tamta and Shri Jagmohan used to converge on No. 1 Safdarjang Road, every day in the morning and conferred with Shri Sanjay Gandhi and took orders from him regarding the administrative and operational aspects of their respective departments. The Commission cannot think of a situation similar to this one, in which an individual who held no position in the administrative or constitutional set up of Delhi or for that matter of any other place, functioned with such authority, ruthlessness and effectiveness without the slightest claim to that position except that he was the son of the then Prime Minister of India. Apparently he had no sense of res-

ponsibility and could not be called upon to account to anybody for his actions and behaviour. In the view of the Commission, not all the excesses that were committed during the emergency all over the country would surpass this one single excess in terms of the tragedy it involved and all it meant for the country in the context of its utter illegality and unconstitutionality. Here was a young man who literally amused himself with demolishing residential, commercial and industrial buildings, in localities after localities without having the slightest realisation of the miseries that he was heaping on the helpless population who had no recourse by way of any administrative avenue for redress of grievances or even to the courts which were successfully side-tracked by the devious means. In the view of the Commission the manner in which Shri Sanjay Gandhi functioned in the public affairs of Delhi in particular is the single greatest act of excess committed during the period of emergency for which there is no parallel nor any justification for such assumption of authority or power in the history of independent India. While the other acts of the excesses may have been in the nature of acts committed by functionaries having some shadow of authority acting in excess of their powers, here was a case of an individual wielding unlimited powers in a dictatorial manner without even the slightest right to it. If this country is to be rendered safe for future generations, the people owe it to themselves to ensure that an irresponsible and unconstitutional centre of power like the one which revolved round Shri Sanjay Gandhi during the emergency is not allowed to come up ever again in any form or shape or under any guise.

CHAPTER XIV

Turkman Gate Firing—Commencement of Demolitions

14.1 On April 7, 1976 Shri Jagmohan, Vice-Chairman, Delhi Development Authority (DDA), wrote to Shri P. S. Bhinder, DIG (Range) informing him that clearance operations in the walled city would commence on Saturday, April 11, 1976. On April 9, 1976, the Dy. Supdt. of Police-in-Charge of the Demolition Squad also wrote to Shri R. K. Ohri, Supdt. of Police, Central District, that the clearance and resettlement programme of the DDA would commence on April 11, 1976 and that the area to be cleared was the transit camp located to the West of Turkman Gate on the main Asaf Ali Road. This clearance project was postponed to April 13, 1976. Since the local thana expressed no misgivings about the operations, Shri Ohri and Shri Ashok Pradhan, Additional District Magistrate, thought that deployment of two platoons of police to supervise the clearance operations would be adequate. One Sub-Divisional Magistrate Shri G. Srivastava was instructed by Shri Ashok Pradhan to be present in the Turkman Gate area at the time of the projected clearance and keep liaison with DDA officials and to be in touch with the developments.

14.2 On April 15, 1976, Shri Sanjay Gandhi accompanied by officials of Delhi Development Authority (DDA), Municipal Corporation of Delhi (MCD) and Police visited the Fazal-e-Ilahi Mosque area (near the Turkman Gate) on his way to Dujana House, which housed a family planning camp. Some persons from the locality met him at the Mosque and apprised him of their problems. Shri Gandhi left the place after a few minutes displeased with the reception given to him.

14.3 Between April 13 and 17, 1976, the DDA staff did not encounter much difficulty in carrying out the demolitions. According to Shri Gobind Ram Bhatia, ASI-in-Charge of Police Post, Turkman Gate, a few persons, whose houses had been demolished, were complaining that there had been high-handedness on the part of the authorities and that the people had been made to move to distant areas. In an effort to save their houses, the local people had met a number of political leaders. The local SHO, ADM (Central), SP (Central) and the staff of CID (Special Branch) were visiting the scene of demolitions and were in touch with the developments.

14.4 Shri Rajesh Sharma, Executive Councillor, said that he came to know on April 15, 1976 that DDA officials were demolishing structures beyond the transit camps, that there was great resentment against the Administration in the entire area between

Ajmeri Gate and Delhi Gate; nobody felt safe and there was great panic as the demolitions continued till the incidents of April 19, 1976; and that he had talked to Shri H. K. Lal, who was on the spot and asked him about his plans and requested him to show him the map so that he could know the extent to which the demolitions were likely to go. Shri Lal told him that he had no map and he was not prepared to tell Shri Sharma about his plans.

14.5 Tension started mounting in the locality from April 15, 1976. According to Shri Ashok Pradhan, ADM, Shri Krishan Chand, Lt. Governor had inaugurated a family planning camp at Dujana House on April 15, 1976 which was also attended by Shri Sanjay Gandhi. Shri Ohri said that he had expressed his apprehension that the family planning camp might cause resentment amongst the public which in turn might be exploited by those affected by the demolition in Turkman Gate area. According to Shri Sushil Kumar, from the reports received by him, it appeared that rumours about family planning activities had led to tension in the locality. The Lt. Governor Shri Krishan Chand also did not know if there had been any tension in the vicinity of Dujana House on account of the family planning drive.

14.6 On April 16, 1976, near Phatak Teliyan in Turkman Gate area, a woman constable was dragged into a house by some miscreants and a CRPF Constable was injured while rescuing her. The Sub-Divisional Magistrate (SDM), Darya Ganj, with the help of the police force brought the situation under control without resorting to force.

14.7 Shri K. S. Bajwa, Supdt. of Police, CID (Special Branch) has said that between April 13 and 18, 1976, the Special Branch did not receive any report of tension generated by the demolition operations in this area, though they had come to know that the demolition had created its usual tensions. Shri Bajwa further stated that no reports had been received by him to the effect that the affected people of Turkman Gate locality were approaching political leaders or administrative authorities to get the demolition operations in the area stopped.

14.8 According to Shri Jagmohan, tension in Turkman Gate area on April 19, 1976 was entirely due to the intensive Family Planning Programme in Dujana House. He said that the DDA had carried out hundreds of clearance-cum-resettlement programmes before and during the emergency and there was no disturbance anywhere and it was only the extraneous factor of Family Planning that had caused the trouble in the Turkman Gate area.

14.9 The events, which took place on April 19, 1976, were described by a number of witnesses. The Commission deems it necessary to set out in detail the evidence of the witnesses in regard to the various incidents, which took place on that date. It may be observed that though there is broad acceptance that various incidents took place, but the evidence in regard thereto is discrepant in details. Attempts have not infrequently been made by witnesses to deny their involvement, direct or indirect, and shift the responsibility upon others. Even the written record contradicts the position, which is the common version of the witnesses. It is found, therefore, necessary to set out in detail the evidence of witnesses and the contents of the documents with a view to ensure that as far as possible, the report of the Commission reflects the state of evidence.

Events on April 19, 1976, till 1.30 p.m.

14.10 Shri Zahir-ud-din, resident of Turkman Gate stated that on April 19, 1976, a crowd of women and children assembled : till 1 p.m. no one heard their grievances. The Police then cordoned off the area and told the crowd to disperse, and started arresting the women. When the crowd resisted arrests, the police fired tear gas shells and resorted to lathi charge.

14.11 Shri Bashir Ahmed stated that a crowd had assembled to protest to the DDA against the demolitions. When they raised objections to the demolition of more areas, at about 1.30 p.m. the police hit a woman with a lathi, which started the riot.

14.12 Shri Jamaluddin stated that Smt. Subhadra Joshi, M.P., had told the residents of the locality that she would go to the site of the demolitions with Shri H. K. L. Bhagat, Minister for Works and Housing. The crowd waited for Smt. Joshi till the time of the afternoon prayers, i.e. 1 p.m., but she did not turn up. A number of persons started going to the Fazal-e-Ilahi Mosque for prayers and some of the women and children, who had assembled on the spot, were moving about. Seeing the movement in the crowd, the police suspected some disturbance and resorted to a lathi charge. The crowd, thereupon, ran towards the houses which had been demolished. Some persons came from the Kali Masjid side and started throwing stones at the police. The police then fired tear gas shells towards the crowd. This was at about 1.30 p.m.

14.13 Shri Jaha-ud-din, Manager, Standard Screw Factory said that he saw a peaceful procession taken out by the people at about 11 a.m. on April 19, 1976 to demonstrate against the demolitions by the DDA and that till 1 p.m. the situation was peaceful.

14.14 Shri R. Tiwari, SDPO, Kamla Market and Shri Avinash Chander, SDPO, Original Road under orders from Shri Ohri, reached the Turkman Gate area around mid-day. They found a crowd of about 300 persons including some women sitting on the debris of the demolished houses in front of Fazal-e-Ilahi Mosque. The two officers requested

the crowd to disperse as an order under section 144 Cr. P. C. was in force, but they said that they would not move unless the DDA stopped the demolitions. At about the time of the afternoon prayers, the crowd near the Mosque swelled to about 2,000. At about 1.30 p.m. two processions came towards the Mosque; one from the side of the Delite Cinema and the other from a by-lane. According to Shri Tiwari and Shri Avinash Chander, the crowd coming from the Delite Cinema side, without provocation, started throwing stones at the police; and it was chased away. Shri Ohri while corroborating Shri Tiwari and Shri Avinash Chander, said that the crowd had been provoked by the speeches of the Imam of Jama Masjid and Shri Kamayuddin, a local leader. He opined that the situation could have been saved if the DDA staff had gone back.

14.15 According to Shri A. K. Paitandy, Sub-Divisional Magistrate, Punjabi Bagh, the crowd, about 1,000 strong, was agitated on account of the demolitions, the setting up of the family planning camp and the intemperate speeches of local leaders. The crowd did not listen to his requests to disperse, because they felt that the moment they left the site, the DDA would resume demolitions. He himself did not attempt to contact the Vice Chairman, DDA, to obtain an assurance that the demolitions will not be continued; nor did he request the Additional District Magistrate or District Magistrate to make any such effort. At about 1.30 p.m. a crowd of about 100 to 150 persons, mostly youngsters, came from the side of the Delite Cinema and started showering stones on the police. Shri Paitandy had pushed them back without resorting to force. In the meantime, the main crowd in front of the Fazal-e-Ilahi Mosque became rowdy and started throwing stones at the police. Shri Paitandy, gave warning to the crowd and resorted to the use of tear gas, but because of the adverse direction of the wind, the tear gas proved ineffective. Thereupon, he ordered a cane charge.

14.16 According to Shri Govind Ram Bhatia, ASI, Police Post, Turkman Gate, in the morning of April 19, 1976, a crowd of 500 to 700 including women and children assembled near the demolition site, and asked the DDA officers to suspend the demolition operations, while they contacted the senior officers of the DDA and some political leaders in an effort to stop further demolitions. The crowd was swelling, but it was peaceful. Some leaders like Shri Kayamuddin delivered speeches protesting against the demolitions and after each such speech, slogans were shouted. At about 1.30 p.m. when the crowd had increased to about 5,000, Shri Paitandy declared the assembly as unlawful and asked them to disperse. After that, he asked the police to make a lathi charge upon the crowd. There was excitement and the crowd started throwing stones. The police, therefore, had to explode tear gas shells.

14.17 According to a report dated April 19, 1976 of the Intelligence Bureau, the "slum clearance operations in Phatak Teliyan, Turkman Gate had contributed to the restiveness amongst local Muslims. Some interested elements alleged that the structure on private lands could not be demolished

without due process of law and the affected persons must offer resistance to the demolition operations. Accordingly, at about 1000 hrs. on April 19, 1976, when the clearance operations started, a large crowd gathered at the "spot and offered resistance to the demolition operations. The police used tear gas to disperse them but the crowd became violent and indulged in throwing soda-water bottles etc." According to Shri Ashok Pradhan, ADM (Central), Shri Paitandy, Shri Ohri and Shri N. C. Ray, SDM, Kamla Market, the DDA had suspended demolitions sometime between 10 a.m. and 11 a.m. The Intelligence Bureau report would, therefore, seem to indicate that the crowd had succeeded in halting the demolitions temporarily and was waiting for its leaders to arrive at the spot, so that the demolition operations could be stopped.

14.18 According to a number of witnesses, after Shri Paitandy ordered the lathi charge, the crowd retreated and re-assembled at the site of the demolitions and took refuge in the half-demolished houses and piles of rubble from where they started intensive brickbattling on the police. Tear gas was ordered to be fired but as the direction of the wind was not favourable, it did not have any effect on the crowd. According to Shri Jamaluddin, at about 1.30 p.m. a number of persons took shelter in his workshop, while some people came from behind Kali Masjid and went to Turkman Gate throwing stones at the police force, the police occupied that portion of the site, which had been demolished and the crowd was pushed back towards the houses, which were still standing.

14.19 In the meantime, Shri Ohri asked for further re-inforcements of CRPF and DAP which started arriving from 1.30 p.m. onwards.

14.20 Shri Ashok Pradhan, ADM (Central) says that when he reached the scene, heavy stone-throwing was going on from the Delite Cinema side up to Godrej Building on Asaf Ali Road. The intensive brickbattling was at its height near Police Post Turkman Gate and opposite Fazal-e-Ilahi Mosque where the demolitions had taken place.

Arrival of senior officers at the scene

14.21 Shri A. K. Paitandy and Shri R. K. Ohri were at the scene since about mid-day. On receiving a message at about 1.30 p.m. that the situation in the Turkman Gate area was out of control, Shri Ashok Pradhan rushed to the scene and reached it at about 2 p.m.

14.22 Shri Sushil Kumar, the District Magistrate, received a message at about 2.30 p.m. from Shri Pradhan that the crowd had swelled and had started throwing stones at the police; that arrival of re-inforcements had had no effect; that the crowd near the Turkman Gate was about 4,000 strong and that there was stone-throwing and arson near Turkman Gate. Shri Sushil Kumar reached the spot about three quarters of an hour after this report was received by him.

14.23 According to Shri Bhinder, at 2 p.m., he had received a message that the situation in Turkman Gate was under control and shortly thereafter Shri Bhawani Mal directed him on telephone to proceed to the scene as the situation had worsened. Shri Bhawani Mal has denied having had any such conversation with Shri Bhinder. Shri Bhinder reached the area before Shri Sushil Kumar, sometime after 2 p.m. This fact has been confirmed by other witnesses.

14.24 Shri Bhawani Mal sent senior officers, one after the other, to the scene of the trouble but he himself did not proceed to the locality, because, according to him, he had to keep the Lt. Governor and Home Secretary informed of the developments and had to be in touch with senior officers of the Delhi Administration and the Government of India; and had to strengthen the forces on the spot by arranging reinforcements and other resources like tear-smoke and the police force in the area near the riot affected areas had also to be re-deployed according to the demands of the situation. Shri Bhawani Mal admitted that from the various reports he was receiving, the situation was serious. He had considered whether he should proceed to the site, but ultimately he decided to stay on at the headquarters as he had already sent senior officers to the spot. As it was a developing situation he had to depute additional forces. According to Shri Bhawani Mal one of the findings of the inquiry committee which had enquired into the Sadar Bazar disturbances of 1974 was that senior officers, should remain free to take an over-all view of the situation and, therefore, he stayed on at the headquarters.

Deployment of Police Force

14.25 The Delhi Police, in their reply to the fact finding committee, have said that the following force was deployed in the area on that date :—

- (1) 8 Companies (the break-up of this force has not been indicated).
- (2) 12 Head-Constables, 35 Constables of Tear gas Squad.
- (3) 1 Company of BSF.

In addition, there was a Demolition Squad of the Delhi Development Authority.

14.26 According to the CRPF, six full companies of CRPF were deployed; in addition, two platoons of 21 Battalion and 1 platoon of 22 Battalion were also deployed. Two Companies were stationed at Police Station Darya Ganj as reserve. The CRPF have stated that in addition to their force, 8 companies and 2 platoons of Delhi Armed Police (DAP), were also on duty in that area.

14.27 According to Shri B. K. Mishra, Commandant, DAP, the records of the DAP Control Room show that 13 companies and one constable were deputed for duty. This included four companies of CRPF. According to Shri Mishra, the force deployed on that day was not correctly reflected in the DAP records; and that it was his impression that at least eighteen to twenty companies

were deployed on that day. Written record was not kept, according to him, as the companies were being despatched in a hurry. In reply to a question by the Commission, he said that normal procedure was not followed.

Firing near Police Post Turkman Gate

14.28 A large crowd had assembled in the lane adjacent to Police Post Turkman Gate. According to Shri G. S. Mandher, DIG (Security), a message had come on the wireless that the police had fired some revolver shots in the air at 2 p.m. to deal with the mob. These shots were probably fired at Police Post Turkman Gate which was surrounded at about 1.50 p.m. by two big crowds one coming from Phatak Teliyan side and another from the Delite Cinema side. According to Shri R. K. Ohri, two or three shots were fired from a revolver in the air by Shri R. K. Sharma, Dy. SP, when there was an intensive attack on the police force.

14.29 Shri Avinash Chander, SDPO, Original Road, confirmed that just before the arrival of Shri Ashok Pradhan (i.e. about 2 p.m.) a big crowd suddenly came out from Phatak Teliyan and Kamra Bangesh area and surrounded the police post. They attempted to set the police post building on fire but Shri R. K. Sharma, SDPO, Shahdara, who was in-charge of the situation managed to control the crowd.

14.30 Shri R. K. Sharma, however, said that he had not seen any revolver firing though he could not rule out the possibility of some one firing a revolver as reports of shots fired were heard in all directions. Shri Sharma confirmed that he had ordered Constable Mata Din of the CRPF to fire six rounds at intervals of 20—25 minutes though he did not remember whether the firing was before the imposition of curfew or afterwards. He said that he had ordered firing towards the mob because the police contingent was surrounded and the mob seemed to be determined to go to the extent of capturing the police post, and that he had used in the circumstances the minimum force.

14.31 Constable Mata Din of the CRPF, who carried out the firing orders of Shri R. K. Sharma said that at about 2.30 p.m. the crowd started throwing stones at his section which was near Police Post Turkman Gate. Shri R. K. Sharma asked the crowd to disperse and when they did not heed his warning he first ordered a cane-charge and then ordered exploding of tear gas shells. This had no effect and thereupon Shri Sharma gave an order in writing for firing six rounds. Firing was under the control of Shri Sharma : one round was fired at the feet of the riotous mob and five rounds were fired in the air. Even this firing had no effect on the mob and thereupon a Sub-Inspector of the Delhi Police, who was present at the spot advanced a few feet and fired two or three rounds from his pistol. According to Constable Mata Din when he opened fire, curfew had not been imposed. He had opened fire at 2.30 p.m., and the curfew was imposed at

4.30 p.m. After the unidentified Sub-Inspector had opened fire, a Commandant of the Delhi Armed Police took a platoon of the DAP and sent another platoon of CRPF and DAP into the by-lanes. The job of the CRPF was to arrest the persons whom the DAP "would flush out" from the houses. He heard the report of one round being fired when Delhi Police personnel were inside the lanes.

14.32 Shri A. K. Singh, Commandant, 1st Battalion, DAP, has confirmed that at 2.04 p.m. a message had been flashed to the Control Room by SP (Central) stating that when the public attacked the force, four to five rounds had been fired from a revolver in the area. Shortly afterwards he was asked by the Inspector General of Police to proceed to Turkman Gate area. On reaching the Turkman Gate area at about 2.30 p.m., he came to know that only a few minutes earlier the CRPF had opened fire near Police Post Trukman Gate in the lane leading from Turkman Gate to Jama Masjid. When Shri A. K. Singh met Shri R. K. Sharma near Turkman Gate, shortly after 5 p.m., Shri Sharma told him that there was firing by the CRPF at about 2.30 p.m., under his orders.

Situation after 1.30 p.m. on Asaf Ali Road

14.33 On the main Asaf Ali Road stone throwing had been intensified, acid bottles etc., were also being thrown on the police. According to Shri Ashok Pradhan, stone throwing from house-tops, lanes and bye-lanes on the main Asaf Ali Road was continuous and remained unabated. Efforts to reach the rioters by approaching them from behind the walls of the houses were frustrated.

14.34 Shri K. S. Bajwa was present at the scene at about 2.15 p.m., and at that time 5 to 6 companies of the police force had been deployed to confront a crowd of 500—600 persons, which was gradually increasing. The crowd was about 50 to 60 yards away and assembled in groups mostly on roof-tops and was not coming forward. Some stones were thrown by members of the crowd. A few persons were emerging from the Galis and the police chased them away.

14.35 Shri Bajwa said that he was going at about 3.45 p.m. to the IGP with a draft message on the situation to be sent to the Prime Minister : and that then he came to hear that one man had been injured or had died as a result of one or two rounds fired by the police. He remembered that curfew had been imposed immediately after the firing by the police. Shri Rajesh Sharma also said that the firing occurred before the imposition of the curfew.

14.36 Shri I. J. Verma, DIG, who was sent to Turkman Gate area by Shri Bhawani Mal, IGP at about 2.25 p.m., saw some brickbats lying on the road and that crowds had assembled at a distance of 70 to 80 yards from the Turkman Gate area, but during 15—20 minutes he was there, Shri Verma did not see anyone throwing brickbats towards the Police.

Incidents at Fazal-e-Ilahi Mosque

14.37 According to Shri R. K. Ohri at about 4 p.m., a small group of rioters dragged a CRPF Sub-Inspector and two Constables (one of the CRPF and the other of Delhi Police) into the Fazal-e-Ilahi Mosque and stabbed them. The verandah of the Mosque was then forced open by the police and the injured policemen were rescued. As the condition of the Sub-Inspector and the Constable was serious they were rushed to the hospital. Shri A. K. Paitandy has substantially confirmed the story. He has also said that a Magistrate had accompanied the rescue party but did not know who it was. Shri Ashok Pradhan had seen some commotion near the Mosque and had seen some injured policemen being brought out. Shri Sushil Kumar said that he had seen at about 4 to 4.30 p.m., near the Mosque a policeman bleeding profusely.

14.38 Sub-Inspector P. R. Chaube, the CRPF Sub-Inspector, who was alleged to have been stabbed inside the Mosque at about 2 to 2.30 p.m., has said that when he was going to get written orders from Shri Ohri for the lathi-charge, he found a big crowd on the other side of the Mosque and that someone from the crowd threw a knife at him, and he fell down; that he was taken to the hospital where he remained for 10 days. Sub-Inspector Chaube denied that he was dragged inside the Mosque; he stated that he was injured outside the Mosque.

14.39 Shri Bhinder in his statement said that the crowd inside the Mosque was hostile and that a bearded Muslim who was openly shouting slogans threw a sharp-edged dagger at the police party.

14.40 Constable Bhoom Singh, the CRPF Constable alleged to have been injured inside the Mosque, said that his platoon had been detailed for duty at 3.45 p.m. to the Turkman Gate area; that at that time heavy stone throwing was going on; that while he was alighting from the truck which had brought them for duty he was hit on the head, and he fell down: that he had not been dragged into the Mosque and that what had been stated in FIR No. 197 of Police Station Kamla Market about him was incorrect. The FIR relating to the events of the day that members of the two Central Reserve Police personnel were injured by the mob in the Mosque is, therefore, untrue.

14.41 In the wireless log book of SP (Central), Delhi, there is an entry at 3.15 p.m. on April 19, 1976 that one Sub-Inspector and one Constable were wounded by a knife and had been kept inside the Mosque.

14.42 FIR No. 197 which was recorded on this case gives the time of the incident as 3.45 p.m. This case is pending in the court.

14.43 According to a report sent by the Commandant, 21 Battalion, CRPF, to the Deputy Director, Directorate General, CRPF, on April 20, 1976,

Sub-Inspector Chaube received knife injury when he was chasing miscreants, who were entering the Fazal-e-Ilahi Mosque on the road towards the Ramlila Grounds.

Imposition of Curfew

14.44 According to Shri Sushil Kumar, curfew was promulgated because the authorities wanted to bring the situation under control immediately and before dark. Announcement of the curfew order was made by Shri Ashok Pradhan through the public announcement system fitted on a police vehicle. The decision to impose the curfew was taken by all the officers present and it was hoped that by its promulgation, the crowd would leave the area immediately.

14.45 There is considerable discrepancy in the evidence of witnesses regarding the exact time when the curfew was imposed, as the following table indicates :—

1. Special Branch	3 p.m.
2. Shri N. C. Ray	3.15 p.m.
3. Shri Paitandy	3.15 p.m.
4. Shri Bhinder	3 to 3.30 p.m.
5. Shri R. K. Ohri	3.45 p.m.
6. Shri Sushil Kumar	4 p.m.
7. Joint report of SP (Central) and ADM (Central)	4 p.m.

14.46 At about 2.13 p.m., the IGP sent a message to the DIG (Range) suggesting that curfew be imposed. According to DIG (Range) the Deputy Commissioner was also present and heard this message and it was decided after mutual consultation that curfew be imposed. According to DIG (Range) this happened sometime around 3 p.m.

14.47 Shri Bhawani Mal, IG, Police, Delhi, says that he apprised the Lt. Governor of the situation at Turkman Gate at about 2.16 p.m. on April 19, 1976. The Lt. Governor had suggested that he should advise the Deputy Commissioner and other police officers to consider imposition of curfew. Shri Bhawani Mal, accordingly, flashed this message at 2.37 p.m., but does not exactly know when his suggestion was complied with.

14.48 There are some discrepancies in the evidence of the various officers regarding the manner of enforcing the curfew.

14.49 Shri Sushil Kumar has said that it was considered necessary to warn the crowd that force including firing would be resorted to if they persisted in brickbating in defiance of the curfew. Shri Pradhan has confirmed that he announced over the PA system fitted in his vehicle that curfew had been promulgated in the area and that if the mob did not disperse within 10 minutes, all possible measures including firing would be resorted to, to disperse the mob.

14.50 Shri Bhinder and Shri Ohri both said that when it was decided to impose curfew it had been decided that police should open fire to disperse the crowd.

14.51 Shri Paitandy, SDM, has said that it was decided to tell the public that all possible steps would be taken to enforce curfew but there was no specific discussion about resorting to firing. He said that even while announcing curfew neither he nor Shri Pradhan made a specific mention that firing would be resorted to if curfew was violated. Shri N. C. Ray has corroborated Shri A. K. Paitandy.

14.52 Evidence about the number of parties formed after the imposition of curfew to go in to the lanes to clear the area of rioters is discrepant. Shri Sushil Kumar and Shri Pradhan do not mention the number of parties and the names of officers, who led them. According to Shri Sushil Kumar one of the parties was accompanied by ADM (Central) and another by DIG. He has, however, not specified who the DIG was.

14.53 According to Shri Paitandy there was a group, which was under the command of DIG (Range), another group heading in the same direction led by Shri N. C. Ray, a third group led by Shri Pradhan and Shri Ohri and a fourth group led by Shri A. K. Singh. Shri S. K. Kain and Shri R. K. Sharma, were trying to control the situation near Turkman Gate.

14.54 Shri N. C. Ray does not know how many groups were formed and who were the officers in them.

14.55 There is also no evidence that Shri R. K. Sharma was directed to lead any specific party. He was on continuous duty near Police Post Turkman Gate from 1 p.m. onwards and no one apprised him about the decision regarding the formation of police parties said to have been constituted by Shri Sushil Kumar.

14.56 The joint report prepared by Shri Ashok Pradhan and Shri Ohri makes no mention about the formation of any police parties to lead different groups. According to this report, as the rioters were not dispersing after the promulgation of curfew and sometime had passed, a few rounds had been fired which led to the retreat of the rioters. Thereupon, the police force advanced and took up positions in the semi-demolished house-tops and a company was led into the by-lanes behind the Turkman Gate, from where heavy stone-throwing was continuing.

14.57 FIR No. 189 lodged at 5.45 p.m. on April 19, 1976, also does not mention the formation of police parties. According to the FIR, the mob was warned that if it did not disperse, it would be fired upon. When it failed to have any impact on the rioters, a few rounds were fired and with the help of extra force the demonstrators were encircled.

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14.58 Though two Magistrates, Shri Paitandy and Shri N. C. Ray were also present on the spot it does not appear that the District Magistrate deputed them with any of the parties. According to Shri Sushil Kumar, the two Magistrates had accompanied these parties though he has not mentioned the parties, which they accompanied. Shri Paitandy said that he stayed with the Deputy Commissioner on the main Asaf Ali Road and that he only conveyed to Shri Kain's group the District Magistrate's orders that a determined effort should be made to encircle the crowd which was stoning the police from behind the Turkman Gate. He further said that a group of policemen had gone under the command of Shri Bhinder and another group under the SDM, Shri N. C. Ray, had followed them. Shri Ray, however, said that the District Magistrate had not specifically detailed them to join any particular police party but he accompanied the party which included Shri Bhinder.

14.59 The five parties of Police and Magistrates, according to Shri Ohri, consisted of:—

- (1) Shri Bhinder, accompanied by Shri N. C. Ray, which proceeded towards the LIC Building and Angoori Ghata.
- (2) Party headed by Shri Ohri and Shri Ashok Pradhan which went towards the streets about 200 yards in front of Fazal-e-Ilahi Mosque.
- (3) The party led by Shri A. K. Singh which went into the area behind Bari Masjid.
- (4) Shri Kain's party in Phatak Teliyan area, and
- (5) Shri R. K. Sharma's party in the streets behind the Turkman Gate and adjoining area.

Firing

14.60 Shri Bhinder has denied that he led any police party which resorted to firing in the area. He said that it had been decided to divide the force into three parties—one to go behind the Hamdard Dawakhana, the second into a lane from where fierce stone-throwing was going on and the third into a lane by the side of Police Post Turkman Gate. He also said that Shri Kain had not been deputed with any party.

14.61 He said that a DIG does not normally lead any firing party and there was no reason for him to have done so, and that the CRPF Message dated April 19, 1976 which mentioned that the CRPF Unit had fired six rounds on the orders of Shri P. S. Bhinder was untrue. He, has, however, said that he had gone to the Hamdard Dawakhana side. He said that he had shortly before April 19th undergone an operation and that he was not physically fit to lead any party.

14.62 Shri K. D. Nayyar, Superintendent of Police, New Delhi was deputed by the IGP to proceed to Turkman Gate to help tackle the law and order situation. He reached the area about 4 p.m. and reported to Shri Bhinder near the Hamdard Dawakhana. At about the time he arrived he noticed a dead body of a Hindu male lying on the road near Hamdard Dawakhana; it appeared that death had been caused by a bullet injury. After he reached the spot no firing took place though he came to know from some people that the police had opened fire in this area. When he reached Hamdard Dawakhana, there was no crowd and stone-throwing had virtually ceased though the crowd was shouting in the interior of the area.

14.63 Shri N. C. Ray, SDM, said that he had accompanied the party which included Shri Bhinder, but he was at a distance of about 20 feet from the main road. The police party went inside the road by the side of LIC building for about 50 feet and shortly after that, he heard the report of firing. Shri Ray did not see any policeman firing but he heard the report of firing of two or three rounds.

14.64 Naik Ram Bhawan Sharma of 21 Battalion CRPF was in the party which went with Shri Bhinder. According to Naik Ram Bhawan Sharma, there was intense stone-throwing from the roof-tops of houses near Hamdard Dawakhana. Shri Nayyar got hurt by a stone: thereupon Shri Nayyar asked Naik Ram Bhawan Sharma to give him his rifle so that he could fire upon the crowd. Naik Ram Bhawan Sharma refused and thereupon Shri Nayyar ordered him to open fire and told him that he would give him written orders later. Naik Ram Bhawan Sharma then fired one round towards the right of the lane and another round towards Angoori Ghata. He did not see anyone getting hurt by his firing. At about the same time a Sikh Sub-Inspector of Delhi Police fired from his revolver at close range on the crowd. He also heard reports of rounds fired from behind and later came to know that on the orders of Shri Bhinder, Constable Baikunth Pandey and Constable Nagendra Kumar Singh of 21 Battalion CRPF had also opened fire. When the crowd had dispersed, they found a dead body with its head blown off. According to Naik Ram Bhawan Sharma, no Magistrate was present when he opened fire. Shri Nayyar has said that the story that he had ordered a CRPF Constable to fire two rounds is totally baseless and that at no stage did he ever ask any person to open fire.

14.65 Constable Baikunth Pandey of 21 Battalion CRPF said that his platoon was taken towards Hamdard Dawakhana by Shri Bhinder and Shri Nayyar. Constable Pandey has said that when they went towards Hamdard Dawakhana curfew had not been imposed and all the while the platoon was on the Asaf Ali Road, he did not hear any loudspeaker announcement warning the crowd to disperse failing which strict action including firing would be taken. He along with the other force went with Shri Bhinder to the rear of the Hamdard Dawakhana. Intense brickbating was going on but they

managed to reach the post office. Shri Bhinder tried to snatch the rifle from Constable Baikunth Pandey but the Constable says that he refused to give the rifle to Shri Bhinder. Then Shri Bhinder ordered him to open fire and told him that written orders would be given to him later. Constable Baikunth Pandey fired one round from his rifle. He also saw Naik Nagendra Kumar Singh firing his rifle and a Sikh Sub-Inspector of the Delhi Police firing his pistol. While these people were firing, from behind he heard the report of firing of yet another round. When firing was over and the crowd dispersed he saw a dead body lying on the road.

14.66 Constable Nagendra Kumar Singh of 21 Battalion, CRPF, was also with the party which went with Shri Bhinder. According to him, as soon as they reached the LIC Building, Shri Bhinder warned the crowd to disperse, otherwise firing would be resorted to: that the warning had no effect on the crowd and even a lathi charge proved ineffective; that Shri Bhinder tried to take the rifle from him but he refused to give it; that after some time Shri Bhinder gave orders for firing two rounds; that the Constable Nagendra Kumar Singh fired one round in the lane when the crowd was about 50 yards from him; that when this round had no effect, he fired another round in the same direction after a minute or so; that on his right there was a Sikh Sub-Inspector of the Delhi Police who took his pistol and fired on the crowd; that neither the rounds fired by him nor that fired by the Sikh SI had any effect on the crowd; that he saw Constable Baikunth Pandey firing one round under the orders of Shri Bhinder; and that a few minutes later he heard the report of a round being fired from behind him but he cannot say who fired that round or under whose orders. Constable Nagendra Kumar Singh did not see any dead body near Asaf Ali Road.

14.67 The party led by Shri Ashok Pradhan and Shri R. K. Ohri along with two sections of police force went towards the direction of the street that joins Asaf Ali Road about 300 yards north-west of Fazal-e-Ilahi Mosque. A crowd of about 150 boys was throwing stones at the police party. As they did not pay heed to the warning to disperse, Shri Pradhan ordered SI Bhanwar Singh of 21 Battalion CRPF to fire a single round at such an angle that it would hit a wall but not the crowd.

14.68 Sub-Inspector Bhanwar Singh said that his platoon had gone along with Shri Ashok Pradhan and that it had come under intense stone-throwing; that a lathi charge had been ordered by ADM, which had no effect on the crowd; that on orders from Shri Ashok Pradhan he took Constable Banwari Lal's rifle and fired one round from it over the crowd; that after some time while they were still on the spot (i.e. at about 3.45 p.m.) he heard the report of one or two rounds being fired, but he did not know who had fired; that no one was injured by the round fired by him, but the firing had effect on the crowd, and the area was cleared of the rioters.

14.69 Shri I. J. Verma says that he saw near the Police Post Turkman Gate a group of 20 to 30 persons standing on roof tops on the periphery of the demolished area indulging in brickbattling; that Shri Pradhan's warning to the crowd had no effect and therefore he asked a Constable accompanying him to fire a round with the deliberate intention of not hitting the crowd. This made no impression on the crowd and they continued brickbattling but Shri Ashok Pradhan did not take any further action.

14.70 Shri Verma says that he initially came to the spot at 2.25 p.m. and left the place at 2.50 p.m.; that he reached Police Post Turkman Gate again at about 3.15 p.m., and stayed there till about 8 p.m., and that he was sent to the scene to ascertain facts as the IGP was not getting the correct information. But during the time he was in the police station no one told him nor did he gather any impression that the police had opened fire—the only firing he had seen was the one round fired on the orders of Shri Ashok Pradhan. He also did not know at what time the curfew was imposed nor did he know about the registration of any case of riot. He did not see the situation going out of control and no one asked him anything of what he had observed. He was also not asked to submit any report about what he saw at Police Post Turkman Gate.

14.71 Shri A. K. Singh, Commandant, Delhi Armed Police, says that he reached the Turkman Gate at about 3.20 p.m., and met Shri Bhinder; that Shri Sushil Kumar, Shri Ashok Pradhan and Shri Ohri were also at the scene; that every one said that the situation was out of control and that the police was facing great difficulty because the lanes leading into the interior from the Asaf Ali Road had been blocked; that Shri Ashok Pradhan suggested to him that he should take a force into the lane in front of Fazal-e-Ilahi Mosque and if he succeeded in making a break-through, it would be possible for the force to spread out and control the riotous mob operating from the house-tops; that every one agreed that in the situation then prevailing, he—Shri A. K. Singh may have to open fire; that he proceeded into the lane along with a force of CRPF and the DAP; that a Magistrate accompanied him but he does not remember his name; that when they started going inside the lane the mob started pelting them with stones as a result of which a CRPF Constable was injured; that on seeing this almost the entire force accompanying Shri Singh ran away including the Magistrate; that he had with him his tear-gas squad and one Constable Attar Singh who had been rushed from the DAP lines to the site; that as the stone throwing intensified they took cover and he ordered his rifle man to open fire; that two rounds were fired which according to him must have resulted in at least two casualties; that he saw one of the rioters falling after a bullet had hit him; that before opening fire, he had given a warning to the crowd which had gone unheeded; that after the second round the mob ran away and thereafter further firing was not resorted to and as the mob was dispersing, the

CRPF men were called up by Shri Singh and they brought out one dead body from a house.

14.72 Constable Attar Singh confirms that he was detailed for duty with Shri A. K. Singh from the DAP lines and he fired two rounds in the air. He does not know whether Shri A. K. Singh fired from his revolver but Shri A. K. Singh was frequently closing and opening his holster.

14.73 Inspector Amar Nath, Inspector Armourer of DAP, has confirmed that Constable Attar Singh had fired in the air. In a note made by Inspector Amar Nath it was recorded that Constable Attar Singh had fired two rounds in the air to disperse the unlawful assembly. He had put up this note to Shri A. K. Singh for writing off of these two rounds from his records.

14.74 Shri A. K. Singh says that he had given an order for effective firing and that Inspector Amar Nath's report was incorrect. The reason why this report was put up was that Constable Attar Singh did not want to say that the weapon he had used had caused the death of any person. Shri Singh admitted that while writing off these rounds he had only glanced at the report and passed the necessary orders; he said that he had made a mistake.

14.75. Shri S. K. Kain, AIG of Police, said that he had seen Shri A. K. Singh at about 4 p.m. going towards Phatak Teliyan along with four or five policemen. Shri Singh and another SI with him were armed with revolvers. Shri Singh, while moving forward, was firing from his revolver and Shri Kain saw him actually firing three or four rounds. Shri A. K. Singh has denied that he ever fired from his revolver near Phatak Teliyan at about 4 p.m.

14.76 Shri A. K. Singh had with him two loaded magazines i.e. 40 rounds. Subsequently, according to Shri Amar Nath Mehta, Inspector Armourer, DAP, 50 rounds more were issued to Shri A. K. Singh. All the 90 rounds were deposited in the armoury by him on the 19th April. It is not known why Shri A. K. Singh took the additional 50 rounds, if he had not fired a single round even from the two magazines that he had originally taken.

14.77 The firing by Shri R. K. Sharma has already been discussed earlier in dealing with the firing at Police Post Turkman Gate.

14.78 According to Shri S. K. Kain at about 3.45 p.m., he had seen 10 to 12 Constables following Shri R. K. Sharma, who was firing from his pistol and trying to enter a lane. He did not see any casualty as a result of the firing by Shri R. K. Sharma.

14.79 Shri R. K. Ohri has said that Shri Kain had been in-charge of one of the parties and that the party which he had headed had gone towards Phatak Teliyan. According to Shri Kain he did not go towards Phatak Teliyan but on Shri Ohri's instructions, went in the direction of the Delite

Cinema from where some miscreants were coming. He had about 10 to 15 Constables and Head Constables. After that he returned to Police Post Turkman Gate and then went back to police Headquarters.

14.80 According to Shri Paitandy a group including Shri A. K. Singh, Shri S. K. Kain and Shri R. K. Sharma were trying to control the situation around Turkman Gate. He went to this group and conveyed to them the District Magistrate's orders that since stones were being thrown at the police force from behind Turkman Gate, a determined effort should be made to encircle it. No one has stated that Shri Kain had opened fire.

14.81 According to Shri Kain, at about 3.40 p.m., while he was standing near Police Post Turkman Gate and assessing the situation with Shri R. K. Sharma, he heard the report of 7 or 8 shots being fired, near Fazl-e-Ilahi Mosque. This has not been confirmed by other witnesses. Shri Bajwa says that when he was going from Police Post Turkman Gate to Police HQ at about 3.45 p.m., he heard the report of firing but he had not seen the actual firing. As he was leaving, he had come to know that one or two rounds had been fired and one man had been either injured or killed. SI Ram Bhuwan Sharma, had at about this time, also heard the report of one or two rounds being fired.

14.82 According to the Log Book of the Wireless Station EK-5 (i.e. the DC's wireless log book) at 4.10 p.m. on April 19, 1976 when the crowd could not be controlled after tear gas shells were exploded two rounds were fired and the situation was brought under control. After this there is an entry, the first word of which is indecipherable. Thereafter, it is marked to CA to Lt. Governor and Lt. Governor. From the evidence on record, it is not possible to say who ordered this firing and where.

Number of Rounds Fired

14.83 According to the official reports a total of 14 rounds had been fired by the Delhi Police and CRPF during the Turkman Gate incidents on April 19, 1976. In their report sent on April 19, 1976, the CRPF stated that they had fired 12 rounds whereas the Delhi Police in their report to the Home Ministry dated April 26, said that 8 rounds were fired by DAP and six rounds by the CRPF. The reports submitted by ADM (Central) and SP (Central) to the District Magistrate on the morning of April 20, 1976 do not mention the number of rounds fired. The Delhi Police have now taken the stand that 12 rounds had been fired by the CRPF and 2 by the DAP.

14.84 Neither the District Magistrate nor the DIG (Range), nor ADM (Central) nor SP (Central), SDM Shri Paitandy nor SDM Shri N. C. Ray, who were the senior supervising officers on the spot made any effort to find out the number of rounds that had been fired at that time, who ordered the firing at different spots, the site and

the time of the firing and other important details. The persons who had actually carried out the firing have not been asked the details by the supervising officers at the spot. In fact Shri Paitandy had not even heard any report of firing while he was on the Asaf Ali Road, even though Shri Pradhan and Shri R. K. Sharma had ordered firing barely 50—70 yards from the spot.

14.85 The CRPF initially reported *vide* their signal No. D-III-1/76-KWC dated April 19, 1976 from the CRPF Control Room to the Deputy Director CRPF HQ that six rounds had been fired under Shri Bhinder's orders and six other rounds under the orders of Dy. SP Shri R. K. Sharma. In the report dated May 14, 1976, by the Commandant, 21 Battalion CRPF to the Deputy Director (Operations) the details of firing of six rounds by 'C' Company of 21 Battalion CRPF is set out: according to this, Shri Bhanwar Singh had fired one round on the orders of the Magistrate, Shri Ashok Pradhan; two rounds were fired by Naik Ram Bhawan Sharma on the orders of Shri K. D. Nayyar, SP; two rounds were fired by Constable Nagendra Kumar Singh and one round by Constable Baikunth Pandey on the verbal orders of Shri Bhinder. There is thus some discrepancy in the reports of the CRPF with regard to the number of rounds fired by Shri Bhinder.

14.86 The evidence on record shows on analysis that the following firings took place in Turkman Gate area:—

- (1) 2 p.m.
 - 4 to 5 rounds revolver firing (This has been ascribed to Shri R. K. Sharma by Shri R. K. Ohri. Shri Sharma has denied this).
- (2) 2.30 p.m.
 - 6 rounds by CRPF Constables Mata Din (Shri R. K. Sharma has placed this firing between 3 to 5 p.m.) and two or three rounds from revolver by an unidentified Delhi Police SI. Report of one round was heard by Constable Mata Din.
- (3) 3.40 p.m.
 - 7 to 8 shots near Fazal-e-Ilahi Mosque (testified to by Shri Kain).
- (4) 3.45 p.m.
 - One or two rounds (testified to by Shri Bajwa).
- (5) 3.45 p.m.
 - 5 rounds by CRPF under the orders of Shri Bhinder near Hamdard Dawakhana building. Some rounds by revolver by an unidentified Sikh SI. One round by an unknown person (testified to by Shri Ram Bhuwan Sharma, Shri Baikunth Pandey and Shri Nagendra Singh, all of the CRPF).

(6) 4. p.m. (approx.)

- One round under orders of Shri Ashok Pradhan (testified to by Shri Ashok Pradhan and SI B. S. Shekhawat, CRPF). Reports of 1 or 2 rounds heard by SI B. S. Shekhawat.

(7) 4 p.m.

- 3 or 4 rounds from a revolver by Shri A. K. Singh (testified to by Shri Kain). 2 to 3 rounds by pistol by Shri R. K. Sharma (testified by Shri Kain).

(8) 4. p.m. (approx.)

- 2 rounds rifle firing on orders of Shri A. K. Singh (admitted by Shri A. K. Singh).

(9) 4.10 p.m.

- 2 rounds by an unknown person according to the DC's wireless log book.

14.87 Accordingly, 38 to 45 rounds were fired, but the actual official acknowledgement is only of 12 rounds by the CRPF and 2 by the Delhi Police. The discrepancy between the two figures is far too much to be accepted as a minor error in accounting. Even within the official figure of 14, the discrepancy in the stand taken by the Delhi Police is not satisfactorily explained. In the first version of the Delhi Police in its report to the Home Ministry on April 26, 1976 it is stated that CRPF had fired six rounds and DAP had fired eight rounds. However, before the Commission it has been stated that the CRPF had fired twelve rounds and the Delhi Police only two rounds. This does not reconcile with the Delhi Police's report to the Home Ministry dated April 26, 1976 where they had reported that eight rounds had been fired by them. This report must have been sent on the basis of records: no explanation is forthcoming as to how the record has been reconciled by the subsequent statements of Delhi Police officers before the Commission that only two rounds had been fired by the Delhi Police.

Treatment of Arrested Persons

14.88 Smt. Fatima Begum was informed that her son Shri Abdul Malik was wounded in the police firing and that he was lying in house No. 2438. When she reached the spot she was told that the police had taken him away. The owner of the house, Smt. Umran told her that SI Govind Ram Bhatia had dragged her son away and when Smt. Umran tried to stop him, she was given a blow with a lathi. Smt. Fatima tried to go to the police station to see her son but the police did not allow her to go there. Some time thereafter she came to know that her son was lying in a Masjid in front of the Police Post. She was not allowed to go there either, by some members of the police force. She then returned to her house. She was then told that her son had been taken to the hospital. When she went to the hospital the next day, she found her son in the operation theatre. She was not allowed to meet her son till April 22, when he was removed to the ward. Her son told

her that ASI Bhatia had beaten him with a rifle butt after he had been wounded by a bullet and his leg had been broken. He had offered Shri Bhatia Rs. 100 to let him go but he was not agreeable.

14.89 Shri A. K. Singh says that he gave orders to the CRPF personnel to take the injured out of the houses so that they could be sent to the hospital for treatment. One of these persons had an injury in the thigh and Shri Singh saw 4-5 CRPF personnel headed by a Sub-Inspector dragging this injured person on the road in a most inhuman manner. They were also beating him with the butt of a rifle. On seeing this, Shri Singh lost his temper with the CRPF personnel and arranged a cot on which the injured could be brought to the Asaf Ali Road.

14.90 According to Shri Zahiruddin, people who had been arrested were collected near the Mosque on Asaf Ali Road and one man was beaten mercilessly.

14.91 Shri Sushil Kumar said that he had seen the police trying to beat some arrested persons but he put his foot down and did not allow such a thing to happen.

14.92 Shri Paitandy confirmed that whenever people resisted arrest, they were beaten up by policemen and on several occasions he stopped this beating.

14.93 Shri I. J. Verma, DIG Police, also saw policemen assaulting a young boy while bringing him to the police van. According to Shri Verma this was a minor incident.

Forcible Entry into Houses, Looting and Molestation of Women by Police

14.94 Shri Rajesh Sharma said that when he came to know of the firing, he rushed to the spot and saw a large number of policemen rushing towards Phatak Teliyan opening the doors of the house forcibly and arresting people. Employees of M/s Panna Lal Girdhari Lal's factory were arrested. The police entered houses beating up the men and even women and children mercilessly. False cases were registered and people were kept in jail without any reason.

14.95 According to Shri Zahiruddin, on the evening of 19th at about 4.30—5.00 p.m., the police entered his house and "behaved atrociously" with him and he was arrested.

14.96 Shri Jahauddin of the Standard Screw Factory said that at about 3.30 p.m., the situation had become bad. After the firing, the police came to his factory, broke open the gate and entered and searched the factory. Only the factory workers were there and he told the police that they could not go because of the curfew. Those workers had to stay the whole night in the factory.

14.97 According to Shrimati Salah Khatoon, 8 to 10 policemen forcibly entered her house and beat up the men folk. When she intervened, she was hit by a lathi. She said that because of the riot they had stayed in the house the whole day; even though the police knew they were innocent, they still beat them up. The police broke open the cupboard and took away jewellery and other valuables. Inadvertently they left a cane-shield behind, which was of the CRPF. All the crockery was broken and every piece of glass smashed. The men folk were arrested and were taken away.

14.98 Smt. Anaro has said that at about 2.45 p.m., some 20—25 policemen entered her house and her two sons, Chanda and Babban were arrested and beaten up. Her two daughters-in-law were molested by the police, and their jewellery was removed. When she tried to protect them she was hit on the arm by a rifle butt.

14.99 Smt. Alla Rakhi said that at about 4.00 p.m., 6 or 7 policemen entered the house. At that time along with her daughters and herself, her husband and son were present. As soon as they entered the house, the policemen started beating them with their lathis and arrested her son and her husband. When she tried to intercede, they hit her on the forehead with a rifle butt causing a wound which required 10 stitches. The police then looted their property. According to Smt. Alla Rakhi, the police personnel, who had entered her house were not from the police post staff or from the Delhi Police; that 5 or 6 of the local girls had come to her house and the police started molesting them; the girls ran away, one of the girls jumping out from the balcony. The other girls escaped into a neighbouring house.

14.100 Police and Magistrates who were on duty at the spot confirm that they had entered the houses. According to Shri Ashok Pradhan they entered houses, moving from rooftop to rooftop, so that pickets could be established. He had given strict instructions and warned the force not to harass the residents.

14.101 Shri S. K. Singh said that he had sent his force into the house to clear the miscreants so that they could not throw stones on the police force.

14.102 Constables Mata Din, Baikunth Pandey, Nagendra Kumar Singh and Naik Ram Bhuwan Sharma of the CRPF said that the Delhi Police had entered the houses to effect the arrests; that the CRPF was not involved in it, but the Delhi Police was.

14.103 ASI Govind Ram Bhatia says that on the morning of 20th April, Constable Ravi Bhan Singh had told him that some CRPF Jawans had tried to molest some women but due to his intervention they were not successful. Shri Bhatia did not investigate the complaint because he felt that there was not sufficient evidence regarding the identity of the culprits.

14.104 On the 21st April, 1976 a resident of the area, Shri Mohd. Sultan, lodged a report of theft against the CRPF Jawans. According to Shri Ohri he had ordered the registration of a criminal case under section 380 IPC *vide* FIR No. 192 at PP Jama Masjid. As no clue to the miscreants could be found, the case was filed untraced, towards the end of June, 1976.

14.105 Shri Paitandy says that while he was on duty in Turkman Gate he did not receive any complaint regarding molestation of women or of theft of property. A day or two later, he was asked by ADM (Central) to inquire into some complaints made by one Shri Karamat. Shri Pradhan directed Shri Paitandy to contact Shri Mohd. Sultan, a relation of Shri Karamat, about the details of these complaints. Shri Paitandy found that there were two complaints, one relating to molestation of women and the other of looting of property. He submitted a report in May, 1976 to the ADM/DM stating that the complaints were true. Shri Paitandy says that Shri Pradhan had discussed this matter with Shri Sushil Kumar. Shri Pradhan had mentioned to Shri Sushil Kumar that the inquiries did not identify the culprits and that a case had been registered at the police station regarding one of the complaints. Shri Pradhan further asked Shri Paitandy to see the result of the investigation made by police. On July 29, 1976, Shri Pradhan ordered the matter to be kept pending and later on when he was transferred, he sent the file back to Shri Paitandy.

14.106 Shri Pradhan says that during the period that curfew was in force, he had received a few complaints that certain members of the police force had beaten up the inmates of a house and had taken away valuables and misbehaved with women. As soon as the complaints came to his knowledge he had got an inquiry conducted by Shri Paitandy and the inquiry report was brought to the notice of Shri Sushil Kumar. As the police personnel could not be identified, these complaints were filed as untraced.

14.107 Shri Sushil Kumar said that regarding these complaints he had got a magisterial inquiry conducted by Shri Paitandy. Since the identity of the persons responsible could not be established and a case had been registered by the police, no further action was taken by him. He also did not try to subsequently find out as to what had happened to the case which had been registered by the police, or even to ascertain what investigation was made.

14.108 The IGP Shri Bhawani Mal had also received a complaint that some police officers had entered a house and removed cash and valuables. A few days later he received a letter from a Member of the Parliament mentioning this case and also some allegations of high handedness and molestation of women. The first case was under investigation by the police and in the second case a magisterial inquiry had been ordered. Shri Bhawani Mal has stated that he did not try to find out what was happening in the magisterial inquiry or to supervise the police investigation.

Injured and Dead

14.109 According to the Delhi Police, 146 persons including 58 police personnel and 2 magistrates had sustained injuries during the riots. Only one person, namely, Iftikhar Hussain had sustained a bullet injury. One Sub-Inspector and two Constables sustained stab injuries.

14.110 According to the reports received from the Medical Department, 21 injured persons came to the Willingdon Hospital all of whom (except Shri Mohd. Arif who died) were discharged on April 20, 1976 after treatment. The police surgeon (Police Hospital, Rajpur Road) received 57 cases on April 19 and 20. In 11 cases X-Ray examination was advised. In the Irwin Hospital, 54 cases were received, out of which 17 were admitted as indoor patients, two (Shri Salauddin and Shri Om Prakash) were brought dead and one (Shri Abdul Malik) expired on April 24, 1976. Among the members of the public admitted as indoor patients, Shri Abdul Hamid had fractures of both left fore-arm bones. Both the bones of the right leg of Shri Jahiruddin were fractured and Shri Mohd. Yakub was found to have sustained cerebral concussion and fracture of the 6th rib. Shri Ahmed Sayeed was also admitted with a fractured trapesium. In the Bara Hindu Rao Hospital, 19 injured persons were treated for simple injuries. These figures total upto 146 (excluding the 4 dead).

14.111 The names of 36 persons including those of 22 Police officials and 1 magistrate, figuring in the list furnished by the police do not figure in the list of injured furnished by the Medical Authorities. The lists given by medical authorities, however, include names of 35 persons who do not figure on the list of those injured in police records.

14.112 These discrepancies between the medical and the police records in respect of the injured persons would seem to indicate that more persons were injured than shown by the police in their records.

14.113 In addition, the All India Institute of Medical Sciences has given a list of 9 persons from the Turkman Gate area who reported in the casualty ward of the Institute on April 24, 1976. They had reported to have met with an accident. 8 of the 9 persons had received simple injuries from a blunt weapon and one a grievous injury again due to a blunt weapon. From the medico-legal reports it appears that the ages of eight persons ranged from 2 to 16 (4 boys and 4 girls). The last case is of a 65 year old man, who also received simple injuries by a blunt weapon. It is not understood how the people from the Turkman Gate area should have come to the All India Institute and that too through PS Kalkaji which is situated in an altogether different district from the Turkman Gate. Also it is not understood how the persons reportedly injured in an accident should have suffered injuries caused by blunt weapon, according to the medical opinion.

14.114 From a perusal of the medico-legal reports of other hospitals also, it would be seen that 13 minors of both sexes figure in the list of the injured, many of them having received injuries caused by blunt weapons.

14.115 According to the Administration's reports 6 persons died as a result of the firing.

14.116 According to Delhi Police, 6 persons had died as a result of the police firing :—

- (1) Shri Om Prakash alias Omi s/o Neeru.
- (2) Shri Sagir Ahmed s/o Majid Ahmed.
- (3) Shri Mohd. Arif s/o Mohd. Bashir.
- (4) Shri Mohd. Shaheed s/o Mohd. Yasim.
- (5) Shri Abdul Malik s/o Abdul Haque.
- (6) Shri Salauddin s/o Mohd. Yamin.

14.117 However, as reported by the Fact Finding Committee on the Turkman Gate Firing, there is an entry in the daily diary dated April 20, 1976 of PS Jama Masjid (Report No. 4-B recorded at 02.40 hrs.) regarding information received from Constable No. 3473 Sahib Singh at Irwin Hospital that Alauddin s/o Imamuddin R/o 111 Moh, Rakab Ganj, Jama Masjid, who was injured during the course of disturbance in the Turkman Gate area on 19th April, 1976 had succumbed to injuries. Another entry has been made at 8.55 p.m. (Report No. 47-B) the same day by SI Rishi Prakash in which he stated that he had made enquiries into the death in the Irwin Hospital of Salauddin s/o Mohd. Yamin R/o 1942 Kucha Chelan as had come to notice *vide* Report No. 4-B above. The name, parentage and the address of the deceased in the two reports are different—further there is no reference to the death of Shri Allauddin in subsequent reports in the daily diary. Also there is no explanation in the daily diary of how Allauddin s/o Imamuddin became Salauddin s/o Mohd. Yamin. This has not been satisfactorily explained and it has not been possible to establish the seventh death.

14.118 According to Shri Ohri, 4 persons had died on the spot and two were admitted to the hospital with bullet injuries. He came to know subsequently that one more dead body had been found. Of the two injured, one died later. According to Shri Ohri, two persons had died as a result of the firing by the police party led by Shri Bhinder. Two persons had received bullet injuries in the lanes behind Turkman Gate as a result of firing by Shri R. K. Sharma and the other two by the firing of Shri A. K. Singh. In one case at least, Mohd. Shaheed had suffered a bullet injury in the back as is borne out by the post mortem report. According to expert opinion, this injury was possible if the deceased was shot from the back while he was bending forward or if he was standing at a higher level and shot in the back from below. The bullet was probably fired from a 303 rifle.

14.119 According to ASI Govind Ram Bhatia of the P. P. Turkman Gate, he had come to know after the firing that 8 persons had died. He did

not know the exact places where the people had been killed nor about the removal of the dead bodies to the hospitals/mortuary. He said that according to the records of the police post, the 8 bodies were found in different places, but the records do not indicate the exact location of these bodies. On questioning by the Commission regarding the number of dead bodies, ASI Bhatia said "*Weh Galti Se Nikal Gaya*". On further questioning about the number of people killed he said, "*Weh Galti Se Kaha tha 6 Ke Bajay 8 Thi*".

14.120 According to Shri Rajesh Sharma, at least 20 persons had died in the firing and bodies of old women and children were found under the debris.

14.121 Shri Jamaluddin stated that on the date of the firing he was trying to search for his sons. He came to know that they had been badly wounded. He went to the Irwin Hospital to verify the information; but the hospital authorities had no knowledge about this case. From the hospital he went to the cemetery and there he came to know that dead bodies of 5 to 6 people, who had died as a result of bullet injuries had been taken away by the police. On going to police station, Darya Ganj, he was told that only the wounded had been brought to the police station and not the dead.

14.122 It appears that such reports went around because some of the dead bodies were taken to the police stations instead of to the mortuaries or to hospitals. According to Shri Ohri, many persons were taken straight to the hospitals but as regards the dead bodies there were a number of problems in taking them to the mortuaries, because their identity had to be established and the next of kin informed. He also said that though the mortuaries are supposed to be open round the clock, in actual practice they do not accept bodies between 10 p.m. and 6 a.m. because the attendants "fear the presence of ghosts in the mortuaries and normally they are reluctant to take bodies". Shri Ohri said that the dead bodies had been picked up by different parties and the concerned police stations had to take the follow-up action. No inquest could be held on the spot because of the curfew. The bodies could not be left lying on the road, because the sight of the dead bodies would have further aggravated the situation. Therefore the dead bodies were removed to the police station.

14.123 Taking the dead bodies to the police stations instead of the mortuaries is to say the least an unusual practice. Normally all bodies should be taken to the hospital where necessary facilities exist for preservation till they are identified and claimed by next of kin. In the case of the bodies found after riots in this area, the Irwin Hospital which is at a short distance from P. P. Turkman Gate should have been the place where these bodies should normally have been taken. Taking them to the police stations instead, caused a number of rumours to go around about the number of people actually killed in the incident and also caused much anxiety and apprehension in the minds of the people whose relatives were not immediately traceable after the riots.

14.124 Even if it is conceded that an inquest could not be held on the spot because of the curfew and the presence of the dead bodies lying in the open would have aggravated the tension, there is no explanation for not taking the bodies to the Irwin Hospital. In fact tension would have eased and not increased by taking the bodies to hospitals instead of the police stations.

14.125 Officers of the District on the spot did not make any enquiries regarding the number of the dead. The District Magistrate does not appear to have made any enquiries on the spot to find out the number of casualties. According to Shri Sushil Kumar, the police parties on their return did not tell him about the number of casualties. It is not clear from the evidence whether the District Magistrate asked for this information from the police parties.

14.126 Shri Ohri said that he could not make any enquiries on the spot as Shri A. K. Singh had left the site and thereafter he could not be contacted. Nobody seems to have asked Shri R. K. Sharma if there were any casualties from his firing. The SDM Shri N. C. Ray has admitted that he did not try to enquire about the casualties and that it was an omission on his part. The only person who has admitted to any casualties by his firing is Shri A. K. Singh, who said that one person had died and another injured as a result of the two rounds fired under his orders.

Records—Tampering of Wireless Log Books

14.127 Attempts appear to have been made to tamper with some of the Wireless Log Books, with the object of hiding the revolver firing incident which occurred at 1400 hours at the Police Post Turkman Gate. There is however no evidence to indicate as to who had done this. These log books were examined by the Central Forensic Science Laboratory. After examination the C.F.S.L. has confirmed that there has been tampering with the entries relating to the incident in these log books. The word "Revolver" has been sought to be substituted by the words "Tear Gas".

Blank Firing Orders

14.128 Two blank firing orders, one signed by Shri R. K. Sharma and the other by Shri Ohri were given to the CRPF at the time of the riot. This *pro forma* firing order is to be normally signed by a Magistrate First Class and the CRPF had this *pro forma* cyclostyled. According to Shri Ohri, Shri Paitandy, SDM was not present and since the crowd was heavily stoning them, he signed a blank form and gave it to a CRPF Sub-Inspector.

14.129 Shri R. K. Sharma said that the CRPF always insisted on written firing orders and that he himself had signed this order and later on forgot to withdraw it. He signed an additional order which was kept in readiness in case of necessity. He had already issued one written firing order to another CRPF company because they had insisted on this order.

DAP Control Room Diary

14.130 Shri Mishra said that on the day of rioting he was present in the DAP Control Room. He said that the daily diary maintained in the Control Room did not show how much of the force was armed and what weapons, if any, they carried; at least 20 to 22 companies were deployed that day but the figures were not correctly reflected in the daily diary; and that the omission of reference to weapons and ammunition carried by the force in the daily diary, though not intentional, was serious, as it would be impossible to say who had used these weapons and if so in what manner. Shri Mishra admitted that such an omission had not taken place on any other occasion.

General Diary

14.131 The General Diary of the PP Turkman Gate contains no entry regarding the riots in the area on April 19, 1976. In the General Diary of PS Jama Masjid (in whose area PP Turkman Gate falls), there are only two entries regarding riots:

- (i) that a case has been registered under FIR No. 189; and
- (ii) the second relating to the number of persons arrested in this area.

The General Diary, according to Rule 22.49 of the Punjab Police Rules, 1934, shall contain all reports of "all arrivals and despatches from the Police Station of persons in custody; and all admission to and removals from the Police Station lock-up whether temporary or otherwise being given in every case; and a reference to every information relating to the commission of cognisable offence is taken under section 157 Cr. P.C., the number and date of the First Information Report submitted". It may be noted that the General Diary of PP Turkman Gate is silent on some of these important points even though a number of persons were arrested and cognisable offences committed.

Investigations and Enquiries—F.I.R.

FIR No. 189 under section 147/148/186/307/353/427/332/436/188/149 I.P.C. and 68 DIR was registered at 5.45 p.m. on 19th April, at PS Jama Masjid by Inspector Garib Ram, S.H.O., Patel Nagar.

14.132 Shri Garib Ram, Inspector, the complainant in this case, said that he had recorded the FIR on the advice of DSP Shri Tiwari and Shri Avinash Chander. He said that before recording the FIR he did not ask any one about the incident which had taken place, and that during the course of the investigation his statement had not been recorded though normally the statement of the complainant is recorded.

14.133 Shri Govind Ram Bhatia, who was the Investigating Officer, said that he should not have been made the Investigating Officer as he was an eye-witness to the incidents.

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14.134 However, he did not know why this investigation was given to him. He said that he had completed the investigation and had prepared the charge sheet but it had not been filed in the Court as the prosecution branch had raised a number of queries. He said, he had recorded the statement of 60 to 70 witnesses including Sarvshri Bhinder, Ohri and Pradhan. His investigation was neither supervised nor was he given any guidance by his superior officers during the course of the investigation.

14.135 The investigation of the case was scrutinised by the Prosecution Branch of the Delhi Police on May 12, 1977. They had pointed out certain inherent and serious defects in the investigation of the case.

14.136 According to Shri R. K. Ohri when the FIR was registered only those details which were within the knowledge of Inspector Garib Ram, who registered the case were incorporated. No instructions could have been given to Inspector Garib Ram to delay or withhold the FIR for obtaining greater details.

14.137 According to Shri Sushil Kumar, it never came to his notice that the investigation of such a serious case was not being properly carried out and that it was in the hands of a very junior officer. He said that during his posting in Delhi as District Magistrate he had "never seen any such thing being brought to the notice of District Magistrate".

14.138 Shri Bhawani Mal admitted that he did not supervise the investigation of this case. He said that it had never come to his notice that this investigation was being handled by a junior officer. He agreed that this was a very serious and important investigation.

Enquiries

14.139 It may be recalled that the senior officers on the spot had not made any enquiries regarding the number of rounds fired by the CRPF and the police or the number of casualties that had occurred.

14.140 Shri Ohri said that he had been told that firing had taken place in that area but he had not received any report; that he tried to contact the officers but they did not give him any information and as many of the officers were of equal or superior rank he could not get the information from them; that once senior officers like the DIG and District Magistrate came to the spot, both under the law and in administrative practice the responsibility was theirs; that even so, when he had come to the area again at 10 p.m., he had ascertained that four persons had died, and that later he submitted a joint report along with Shri Ashok Pradhan, ADM (Central), to the District Magistrate on the 20th April, 1976.

14.141 According to Shri Ashok Pradhan he and Shri Ohri had prepared a joint report on April 20, 1976. The facts incorporated in the report were based on the personal knowledge of the SP

and himself as well as discussions with other officers who were on the spot; that the draft of the report was approved by the District Magistrate and then it was sent to the Home Secretary; that no Magisterial enquiry was ordered in the firing. He and Shri Ohri who had drafted the joint report did not give details of the number of rounds fired, the number of occasions on which the firing was resorted to, or the places where firing occurred; and that even the names of police officers and Magistrates who authorised the firing had not been given.

14.142 Shri Sushil Kumar admitted that no formal enquiry was made to ascertain the causes and circumstances in which the riots took place; that he would have been happy if an enquiry had been ordered immediately after the riots as rumours were going round and the news of the incident had been completely blacked out; that as the District Magistrate he could not do anything about it and as he had already submitted a detailed report of the incident on the 20th April morning, it was for the Home Secretary and the Lt. Governor to take a decision.

14.143 Shri Bhawani Mal, IGP, said that the officers whom he had sent to the spot, like Shri I. J. Verma, Shri G. S. Mandher and Shri S. K. Kain were sent to assist the Range DIG in case of necessity. According to Shri Kain, though Shri Bhawani Mal had sent him to the spot to find out what had happened, when he tried to give him an oral report, Shri Bhawani Mal had told him that he knew all about it already. According to Shri Bhawani Mal, however, he did not come to know of the number of rounds fired till April 20, and he also did not make any attempt to ascertain the facts for himself. He also went round the area in the night of April 19, 1976, when the situation had settled down. Citing the Punjab Police Regulations Shri Bhawani Mal said that it was for the District Magistrate to hold an enquiry. Shri Bhawani Mal said that even though he was the Head of the Department, he was acting under the Punjab Police Regulation in which there was a specific provision about holding of enquiries. To a question from the Commission Shri Bhawani Mal admitted that there was no specific provision under the Punjab Police Regulation which prohibited any enquiry by the IGP.

14.144 Shri Krishan Chand, Lt. Governor, while admitting that very serious riot had taken place, stated that the question of holding a judicial enquiry never came to his mind. He said that an administrative enquiry had to be held by the Magistrates and the Police Officers who were present on the spot, and the Union Home Secretary was already seized of the matter—a decision was not in the hands of the Delhi Administration.

Press Release

14.145 The Lt. Governor had imposed censorship on all news relating to this incident. According to Shri Sushil Kumar because of this, a number of rumours were in the air.

14.146 A draft statement to be issued in the name of Mir Mushtaq Ahmad, Chairman of the Metropolitan Council was prepared by Shri Navin Chawla, Secretary to the Lt. Governor, Delhi. This draft, which contained the words "Muslim League and JEI" (Jamait-e-Islami) in Shri Chawla's own handwriting blamed communal elements like the Muslim League and JEI for the violence in this area.

14.147 According to Shri Navin Chawla, Mir Mushtaq Ahmed had brought the draft to the Lt. Governor who had then directed that it should be redrafted. He altered this report on the lines suggested by the Lt. Governor. This was again shown to the Lt. Governor who felt that the words 'Jamait-e-Islami' and 'Muslim League' should be added in place of the words 'Communal'. Shri Chawla said that there was no doubt that the intention was to give a communal turn to a political dispute. After the alterations had been made, he again showed the draft to the Lt. Governor who said that it should be clarified by the use of word 'Communal' which was also added. It was the Lt. Governor who had suggested that wide publicity should be given to this report.

14.148 Shri Krishan Chand, however, said it was untrue that he had suggested to anybody to give a communal colour to anything. According to him Shri Chawla may have made these modifications at the instance of Shri Mir Mushtaq Ahmad.

Visit of Shri Sanjay Gandhi to Turkman Gate

14.149 Shri Ohri said that in the evening of 20th April, 1976 Shri P. S. Bhinder sent him a wireless message that he along with Shri Sanjay Gandhi would be reaching Turkman Gate locality and that they should be received at the Police Post. Shri Ohri received them as ordered. Shri Gandhi had come in Shri Bhinder's official car. Shri Ohri got into it and took them to the areas where trouble had taken place and explained to them what had happened. Shri Gandhi stayed in the area for about 10 minutes and then went back to his residence. Shri Bhinder, however, has denied that he had taken Shri Sanjay Gandhi round the locality. Shri Bhawani Mal remembered that he had received a message that Shri Sanjay Gandhi was going to the Turkman Gate area and that IG should be informed; but he, however, did not go to the spot.

14.150 Shri Navin Chawla told the Commission that the Lt. Governor Shri Krishan Chand had asked him to go to the Prime Minister's House on the 20th evening to apprise Shri Sanjay Gandhi about the facts of the situation. When Shri Chawla reached the Prime Minister's House, Shri Gandhi was then getting into Shri Bhinder's car. Shri Navin Chawla asked Shri Gandhi if he could accompany him so that he could bring these matters to his notice. He went in the car with Shri Bhinder and Shri Gandhi to Turkman Gate. They stayed there for about 5 minutes or so; after that Shri Chawla returned to Raj Niwas.

14.151 Shortly after this visit to Turkman Gate, Shri Ohri received another message from Shri Bhinder that Shri Sanjay Gandhi would visit the Irwin Hospital to see the injured police personnel and that he should receive him there. Shri Ohri went to the hospital and shortly after that Shri Bhawani Mal also arrived there. Shri Sanjay Gandhi came accompanied by Shri Bhinder. He was received by Shri Bhawani Mal and others. He was taken to the wards where the policemen were being treated. He encouraged the injured policemen and at his instance some of the seriously injured policemen were rewarded. Shri Gandhi did not visit any members of the public who were injured during the riots and who had been admitted in the Irwin Hospital.

14.152 Shri Bhawani Mal says that he did not know till he had reached the hospital that Shri Sanjay Gandhi was going to visit it; but when he reached the hospital he had found Shri Ohri and others present, and they had told him that Shri Sanjay Gandhi was visiting the hospital. While he was talking to Shri Ohri and others, Shri Gandhi arrived and Shri Bhawani Mal accompanied him when he made a round of the wards.

14.153 Shri Bhinder says that he had sent a message that Shri Gandhi was visiting the hospital. He, however, went to the hospital in his own car. As he was ill he could not accompany Shri Gandhi through the wards and lagged behind. He said that Shri Gandhi was conducted by the IGP and he did not know whether Shri Gandhi congratulated the policemen for their work or whether he visited any member of the public. According to Shri Bhinder, Shri Gandhi was at the hospital for about 10 minutes.

Resumption of Demolition

14.154 After the situation was brought under control, according to Shri Pradhan, at about 6 or 7 p.m. in the evening, bulldozers of the DDA arrived at the spot and resumed the demolition operations under cover of the curfew. A number of witnesses have stated that the floodlights were installed and the number of bulldozers increased after which demolition proceeded. The demolition continued till the 27th of April 1976.

14.155 The area under the jurisdiction of police station Jama Masjid which included the riot affected Turkman Gate area continued to be under curfew from April 19 to May 13, 1976.

14.156 According to Shri Ohri the hours of curfew were for a longer period in the area of PP Turkman Gate. He had understood that this was with a view to penalise the residents of the area.

14.157 Shri Navin Chawla said that the Lt. Governor was furious with the people of Turkman Gate and had suggested that punitive curfew should be imposed—by punitive curfew, he

had meant that apart from the curfew order, the people of the area should be made to pay for the law and order arrangements and the damage to Government property. Nothing happened about his proposal of the Lt. Governor.

OBSERVATIONS

14.158 There is great conflict in the testimony of important witnesses even on the basic facts. While a certain amount of uncertainty and imprecision on the timings relating to different incidents may be expected, it is not possible to understand how there should have been so much conflicting information on salient points like the number of rounds fired, the people who fired and the places where the firings took place. The contradictory statements may be partly because of the lapse of time but more because of a deliberate attempt to withhold information.

14.159 Since no Notice under Rule 5(2)(a) and summons u/s 8B have been issued to anyone with regard to the incidents related to the firing in the Turkman Gate area on the 19th of April, the Commission refrains from making any observations concerning the involvement of individual officers. But at the same time in view of the gravity of the events of 19th April, 1976 and the manner in which the whole episode was handled generally by the authorities, the Commission is constrained to make certain broad observations :

(i) It is on record from the statements of the SP, CID (Special Branch), Shri K. S. Bajwa that the Special Branch did not receive any report about any tension following the demolition in that area between 13th and 18th of April, 1976. This is indeed amazing and if true, it only underlines the need for energising the Special Branch of the Delhi Police. The Commission, however, finds it difficult to accept that plea, for an operation of the type undertaken in the Turkman Gate locality between 13th and 18th could not have gone on without the Intelligence Wing of the Delhi Police knowing anything about it.

(ii) The District authorities and the Administration were not aware of the nature and extent of the demolitions which from the evidence appear to have gone far beyond its original scope. This uncertainty about the area proposed to be cleared by demolitions and the extension of this area, day after day, contributed in no small measure to the tension being built up and which eventually culminated in the tragedy.

(iii) (a) There is confusion about the exact provocation which resulted in the riot. While the public place the responsibility for this on the Police, the Police and the Administration place it on the provocation provided by the public.

(b) According to the official reports, in all 14 rounds were fired. The Delhi Police initially admitted to the firing of 8 rounds out of 14 and 6 rounds by the CRPF. A report dated April 26, 1976 signed by Addl. SP (Central), Delhi Police,

to this effect is also seen in the Home Ministry file of the Government of India. Later the Delhi Police took the position that CRPF had fired 12 rounds and the Delhi Police only 2 rounds. This shift in the stand by the Delhi Police regarding the number of rounds fired stands unexplained. The number of rounds fired should have been a matter of record prepared by the Delhi Police on the very day of the incident; and should have been reflected in the concerned registers maintained for the purpose in the Reserve Police Lines. If in fact the Delhi Police had fired 8 rounds as they admitted in the beginning and reported to that effect to the Government, there should have been evidence to that effect from the account of rounds of ammunition issued to the men going on riot duty and the number of rounds that they deposited on their return. The Commission understands that there is a regular procedure laid down for keeping a correct account of the arms and ammunition issued to the officers and men going out on duty outside the Lines. On their return from duty a similar count is taken of the arms and ammunition returned and the rounds expended, if any, in the operations. If this procedure had been observed by the Delhi Police, there should have been no reason why it could not have been established right on the first day or even on the day following, the actual number of rounds fired by the personnel in the course of their riot duties. In any event, there was enough time between 19th April when firing took place, and 26th April when the report was sent by the Police to the Home Ministry, to have arrived at the correct figure of rounds actually fired by the Delhi Police.

If, therefore, on 26th the Police reported that they had fired 8 rounds, it should have been a conclusion arrived at in the light of the facts contained in the documents. The number of rounds fired dropped to only two at a later date—this reduction in the rounds fired has not been explained.

Shri B. K. Misra, Commandant of the Delhi Armed Police, stated that the relevant registers in the Police Lines did not correctly reflect the actual issue of the arms and ammunition on April 19, 1976. This only shows that either there has been gross carelessness at the concerned levels or these omissions were intended to be deliberate so that the records would be silent, if later scrutinised in an inquiry.

(iv) There has been a lot of confusion about the number of rounds that were actually fired in the course of the riots. It ranges from 38 to 44. This calculation is on the basis of the evidence tendered by several witnesses in this regard. The official admission of the rounds fired is only 14. This discrepancy between 14 and 38/44 cannot be dismissed as a matter of minor error in accounting.

(v) The Police Lines records did not even state the exact number of men detailed for duty in connection with the riot on that day in Turkman Gate area. Shri B. K. Misra admitted that it was a gross omission, and that such omissions do not normally take place. Considering the importance

of these omissions in the context of the story that these would have revealed if recorded, the Commission is of the opinion that these omissions may well have been deliberate.

(vi) Shri A. K. Singh is reported to have been issued initially 40 rounds, and later another 50 rounds. It is not understood why he should have supplemented the initial issue of 40 by another 50 if only it was to return the entire lot of 90 rounds at the end of the day without firing even a single shot. Shri Kain has said that he had seen Shri A. K. Singh and Shri R. K. Sharma firing from their revolvers and this has been denied by Shri A. K. Singh and Shri R. K. Sharma. The Commission is of the opinion that the firing of several rounds has not been owned up by the concerned officials. But it is not possible for the Commission at this time to pin down the individuals concerned to the acts of firing alleged against them.

(vii) The Commission is of the opinion that a gross and probably a deliberate effort has been made to cover up the whole incident by not getting even an administrative inquiry made into the events leading to the death by Police firing of admittedly six persons. In the opinion of the Commission, this is a grave, if not deliberate, omission on the part of the Administration. Had an inquiry been conducted in the days immediately following the incident, several important facts could have been established. In the absence of that inquiry, the Commission is faced with conflicting statements, many of them deliberately so made, to bury yet deeper the tragic events of that day. The Lt. Governor had taken the plea that he did not order an inquiry as the Home Ministry was seized of the matter, and according to him, it was for the Home Ministry to order the inquiry. The Commission feels that the Administration had an inescapable responsibility to ascertain the facts and establish the exact chain of circumstances leading to the tragic death of at least six persons due to the police firing. The conclusion is inevitable that the Administration was more interested in covering up, rather than making a frank and honest appraisal of the events of the day.

(viii) According to the Punjab Police Rules :

"14.56(1)(j)—On occasions when fire arms have been used against unlawful assemblies, it should be the duty of the Magistrate, if one is present, to make adequate arrangements for the care of the wounded persons and for their removal to the hospital and also for the disposal of the dead, if any. He should also, then and there, draw up a full report in consultation with the senior police officer present, stating all the circumstances and quoting the number of rounds of ammunition issued and expended. If no Magistrate is present, this report shall be prepared by the senior police officer who shall also take all possible action with regard to the wounded and dead."

But this report does not appear to have been drawn up incorporating the relevant information.

The joint report prepared by the ADM and the SP, forwarded by the DM, lacked the most important details such as the exact number of persons who died, the rounds fired etc. The Magistracy do not appear to have fulfilled the role expected of it.

(ix) It is surprising that the bodies of the persons who died were taken to the Police Station and not to the mortuary, when the mortuary was closer to the scene of the incident than the Police Station. The reasons advanced for taking the bodies to the Police Station are unconvincing and evasive.

(x) Inquiries into complaints of molestation of women and looting of property, though ordered in a couple of cases, were not pursued. Why these inquiries stopped short of their final conclusions has not been properly explained. It is on evidence both from the Magistracy and the Police that the Police personnel were asked to enter the houses of people either on the pretext of removing the injured or for the purpose of putting up Police pickets. The Commission feels that the authorities should never have allowed this, much less ordered it if in fact they had done so.

(xi) Evidence was led before the Commission to prove that a wireless log book had been tampered with. In this tampering, the word 'revolver' was sought to be substituted by the words "Tear-gas". The Central Forensic Science Laboratory, had examined the Log Book. It is testified before the Commission that the record has been tampered with. It is not possible to establish the responsibility for this tampering of records. But it might be observed that if important official records are tampered with while in the custody of Police authorities, it raises issues which seriously reflect on the credibility and authenticity of the entire Police records.

(xii) The General Diaries of the Police Station Jama Masjid and the Turkman Gate Police Post, which are intended to reflect sequentially a complete account of the various developments within their respective jurisdictions are completely silent on the events that took place in the area on that day. The documentation of this unhappy event at the level of the office of the District Magistrate, Police and the Administration has been mutilated or defective.

14.160 All the important documents such as the General Diaries of the Police Station, the documents of the Reserve Police Lines dealing with the quantum of the Force deployed on the fateful day, the details regarding the arms and ammunition issued to the various Police parties, and even the one and the only report that was sent by the Administration on the events of the day on 20-4-1976 contains no relevant details. Absence of the relevant details in these vital documents cannot be regarded as a mere accidental coincidence.

14.161 Investigation of the F.I.R. No. 189 dealing with the riots of the day was entrusted to a very junior officer of the rank of an ASI when almost all the important senior officers of the Delhi Administration were present and were witnesses to

the events of the day. On the admission of the ASI himself the investigation was not supervised at all at any stage by any of his senior officers. Both the IGP and the District Magistrate have stated that they were not aware that the investigation of this important case was being done by such a junior officer. It is not surprising that the prosecution staff who scrutinised the investigation of this case some time in May 1977, have found the investigation full of defects, many of which were of a very grave nature. On the basis of the investigation of the case, the Prosecuting Officer who scrutinised the Investigation, has observed as follows :

"... The injury sheets attached the file of Police officials and Magistrates do not suggest that they received such serious nature of injury which could lead to the order of firing....."

Thus it would be difficult to hold who were at fault for causing excesses at the time of incident."

14.162 Many of the other defects in the investigation pointed out by the scrutiny officer are of a type which cannot be remedied after such a lapse of time. In a large measure this was avoidable with a little supervision and guidance of the investigation by the authorities at appropriate levels. The Commission views this neglect of such an important investigation as a part of a design to cover up the events of the day.

14.163 The official communique that was issued on the events of the day, and which was actually prepared at Raj Niwas, and which was put out in the name of Mir Mushtaq Ahmad, sought to give a communal colour to the events and this was totally unjustified and unwarranted. What was evidently a gross failure on the part of the Administration was sought to be covered and camouflaged by giving it a communal over-tone, to justify which there is not an iota of evidence.

14.164 The events of the day culminating in firing were precipitated by the demolition operations. Though the family planning programme may have contributed to the build-up of tension among the residents in the area generally, the direct and immediate provocation was provided by the insistence of the DDA authorities to go ahead with the demolitions. This conclusion is further reinforced by the fact that immediately after the curfew was imposed and situation was brought under control, demolition operations were resumed with re-doubled vigour. Extra bulldozers were pressed into service and with the help of floodlights the demolition operations continued throughout the night. The number of casualties due to police firing could have been kept down if only the authorities had gone about their job with a little more restraint. The crowd that the officers originally faced was largely of women and children who squatted in the area. This was certainly not a crowd which would have had any intention of forcing a show-down with the police. Since the authorities were determined on demolition, as should be evident both from their conduct prior and subsequent to the firing, they were

determined to suppress all resistance to the programme of demolitions which, in many cases, as has been pointed out in another chapter, were illegal. The firing was a natural sequel to the decision of the authorities to proceed with the demolitions regardless of the resistance by the people and the consequences. The subsequent conduct of the authorities, absence of even the elementary inquiries into the event of the day and the significant silence of several of the important and relevant records on material particulars, reinforces the belief that this was a part of a design calculated to justify the firing by the Police resulting in at least six deaths.

14.165 Before concluding, it may be necessary to make observations on the punitive and almost vindictive attitude exhibited by the authorities towards the people of that area who had chosen to protest against the illegal demolition of their places of residence and business. The Commission has on record the evidence of Shri R. K. Ohri and Shri Nawin Chawla who have deposed that the curfew in the area remained operative much longer than was necessary. As has been stated by the officers, this extension of the curfew beyond a reasonable and legitimate period was with the object of teaching the people of the area a lesson. Whatever the State Administration may say or do to justify their acts of omissions and commissions, an attitude of vindictiveness by the Administration towards the citizens is indefensible.

Pressurising Magistrates to Sign and Pre-date the firing order

14.166 Shri Sushil Kumar, District Magistrate, has stated before the Commission that a few days after the firing near the Turkman Gate area on April 19, 1976, Shri Ashok Pradhan, ADM (Central) informed him that the police were asking SDM, Shri N. C. Ray "to sign the firing order". According to Shri Ray, he had not issued any orders for opening fire on April 19, 1976. Shri Sushil Kumar says that he told Shri N. C. Ray that whoever had issued the firing orders should own it up, and that he had kept the Lt. Governor informed about this development. Towards the end of May or early in June 1976, Shri Sushil Kumar was called to the Prime Minister's house by Shri Sanjay Gandhi. When he reached the Prime Minister's house, Shri P. S. Bhinder was also present. Shri Gandhi told him that according to Shri Bhinder, the Magistrate on the spot was not prepared to own up the firing orders which he had given. Shri Sushil Kumar was not present on the spot where the firing had taken place and had been informed by the Magistrate that he had not ordered the firing, he told Shri Sanjay Gandhi that he could not ask the Magistrate to own something not done by him. Shri Sanjay Gandhi then wanted to talk to the other Magistrates present in the Turkman Gate area to find out the facts for himself.

14.167 So on June 3, 1976 Shri Sushil Kumar alongwith S/Shri Ashok Pradhan, A. K. Paitandy and N. C. Ray, Magistrates, went to meet Shri

Sanjay Gandhi. A wireless message had already been sent to Shri P. S. Bhinder that Shri Sanjay Gandhi had called him. Accordingly, he had also come to No. 1 Safdarjang Road. Shri Bhinder again maintained that the Magistrate who had issued the order should sign it.

14.168 Shri Ashok Pradhan then said that he had ordered firing only at one place on April 19, 1976 and for that he had given a proper order. He also said that he had enquired from Shri N. C. Ray who had said that he was near Shri Bhinder but that he had not ordered any firing. Shri Sushil Kumar thereupon had said that if the Magistracy was to be pressurised at the instance of Shri Bhinder, his own position would be 'redundant'. Shri Gandhi then rebuked Shri Bhinder and told him that he must give due weightage to the views of the magistracy. Shri Bhinder replied that "I cannot run to a magistrate by the time where the situation is bad". It was then decided by Shri Gandhi that the police should in any case now be protected and the Magistrate who had accompanied the party or was anywhere near Shri Bhinder must own up the order of firing. A few days later the papers containing the firing order was brought to Shri Ashok Pradhan by a police official. He obtained telephonic instructions of the District Magistrate who told him that a decision had already been taken and Shri Ray should sign the firing orders and, therefore, the papers should be sent to him.

14.169 Shri N. C. Ray, SDM said that when they entered the room of Shri Sanjay Gandhi a discussion was already going on between him, Shri Sushil Kumar and the DIG (Range) as to who should sign the firing orders about the firing that had taken place near the Godrej Building on April 19, 1976. After each of the Magistrates had given their respective accounts, Shri Sanjay Gandhi said that one of the Magistrate must sign the firing orders. The District Magistrate replied that since no Magistrate had seen or ordered the firing in the area there was no question of any Magistrate signing it. But the District Magistrate was overruled by Shri Sanjay Gandhi, who said that the Magistrate who had accompanied the party must sign the firing order. Shri Ray told Shri Sanjay Gandhi that even though he was following the party he had neither seen the firing nor ordered it and, therefore, the question of signing the firing order did not arise. He was, however, made to sign the firing order later. Shri Ray said that he signed the firing order because he was the Magistrate on duty and it was decided at the meeting that he had to sign it. In spite of numerous questions from the Commission, Shri Ray could not say who decided that he had to sign the order. He said that he had signed the firing order even though he did not know who had actually fired : this was because it was the emergency period and he had apprehension about himself and the future of his service. He also feared that he might be arrested under MISA or otherwise harassed. He admitted that he was fabricating a document which was part of the public record.

14.170 According to Shri Sushil Kumar, Shri Sanjay Gandhi had told him that according to Shri Bhinder the Magistrate present on the spot was not prepared to own up the firing order that he had given. He had accordingly taken the Magistrates concerned to Shri Sanjay Gandhi and they had narrated to Shri Gandhi an account of the incident they had witnessed. Shri Sushil Kumar again mentioned to him that "Since I was not present on the spot it is for the concerned Magistrate to explain the position. Ultimately N. C. Ray signed the firing orders. I informed the Lt. Governor about these developments. Lt. Governor remarked that Bhinder had personal equation at the Prime Minister's house and there is hardly anything which can be done about it".

14.171 Shri Bhinder has denied that officers were summoned before Shri Sanjay Gandhi and the discussions that took place in his presence on the two occasions referred to by Shri Sushil Kumar. Four Magistrates have testified to this meeting and the discussion that took place there and one of them has implicated himself by admitting that he had agreed to fabricate a public document, at the instance of the District Magistrate. His superior officers, ADM (Central) and the District Magistrate had corroborated this. No reason has been given as to why Shri Ray or the other Magistrates would deliberately implicate themselves just to involve Shri Bhinder or Shri Sanjay Gandhi. Further, the wireless log book of DIG (Range) shows that Shri Bhinder was called by Shri Sanjay Gandhi to his residence at 9 a.m. on June 3, 1976. In view of this, it may justifiably be concluded that a pre-dated firing order was got signed through Shri N. C. Ray after pressure was brought to bear upon him by Shri Sanjay Gandhi at the instance of Shri Bhinder.

14.172 Notices under rule 5(2)(a) of the Commissions of Inquiry (Central) Rules, 1972 and summonses under section 8B of the Commissions of Inquiry Act were served on Shri Bhinder, DIG, Delhi Police and Shri Sanjay Gandhi in this case. Shri Bhinder did not furnish any statement under rule 5(2)(a) with regard to this case. When he appeared before the Commission on the 8th of April, he took the plea that since he was undergoing criminal trial in the Sessions Court in connection with a murder case, he wanted this case to be adjourned by the Commission. The Commission did not agree to the request and proceeded with the case *ex parte*. From the evidence brought on record, there is no doubt that Shri Bhinder did pressurise the Magistrates and he got the firing order signed and ante-dated through the intervention of Shri Sanjay Gandhi. Shri Bhinder had appeared before the Commission at the first stage of this case and had denied having ever gone to Shri Sanjay Gandhi and pressurised the Magistrates for getting one of them to sign the firing order. The evidence of Shri Bhinder is not tenable in the light of the categorical and convincing evidence tendered by the District Magistrate and three of his colleagues. The fact that on the relevant date at the relevant time Shri Bhinder had performed a journey to the Prime Minister's house is also

borne out by the record of his wireless log book. The Commission is of the opinion that Shri Bhinder did pressurise the Magistrates for doing a wholly improper act through the intervention of Shri Sanjay Gandhi.

14.173 Shri Sanjay Gandhi was served with a notice under Rule 5(2)(a) of the Commissions of Inquiry (Central) Rules, 1972 and summons under section 8B of the Commissions of Inquiry Act. In reply to the notice under Rule 5(2)(a) he made a statement questioning the procedure adopted by the Commission for conducting the inquiry. On the subject-matter of the cases relating to him, he did not furnish any information.

14.174 On April 8, 1978 when he appeared before the Commission, he raised certain technical objections regarding the service of notice. The Commission accepted his plea and directed that a fresh notice be issued under Rule 5(2)(a) of the Commissions of Inquiry Rules and fixed April 22, 1978 for his appearance and compliance with the requirements of the notice.

14.175 Though Shri Sanjay Gandhi appeared on the 22nd April before the Commission, he raised certain objections regarding the procedure adopted by the Commission and also took the plea that he was pre-occupied with his trial in the Court of Sessions, Delhi, in a criminal case under sections 120B, 409, 435 and 201 IPC, and requested the Commission to adjourn the proceedings pending the completion of the Sessions trial. The Commission declined to accede to this request. He then contended that he was being denied the protection of Article 20(3) of the Constitution. The Commission rejected the contention, observing that Shri Sanjay Gandhi was not accused of any offence. He then submitted a fresh application contending that he was denied the protection of Articles 14 and 21 of the Constitutions. That application was also rejected.

14.176 The Commission then directed him to take oath and give his version on the evidence, but he declined to do so. A complaint under sections 178 and 179 IPC has, therefore, been forwarded to the Chief Metropolitan Magistrate, Delhi, against him.

14.177 In the absence of any relevant information or explanation furnished by Shri Sanjay Gandhi with regard to the evidence of witnesses, who have been examined, the Commission is constrained to proceed on the evidence on record and on the assumption that he is unable to give any explanation in regard to the conduct attributed to him.

14.178 From the evidence on record, it is absolutely clear that Shri Sanjay Gandhi did intervene on behalf of Shri Bhinder and pressurised the District Magistrate and his colleagues and the junior Magistrate to sign and pre-date the firing order. It was a highly improper and unwarranted interference on the part of Shri Sanjay Gandhi to have called the Magistrates to his residence and ordered them to do a wholly improper and illegal act.

CHAPTER XV

Observations of the Commission

15.1 The Commission has by now a fairly comprehensive view of the excesses committed in Delhi during the period covered by the terms of reference, especially in relation to the circumstances in which imposition of the emergency was recommended, the manner in which certain key appointments were made for collateral purposes, the callousness with which arrests were ordered on false allegations to serve personal or party objectives and with a view to smother protest, the manner in which the statutory provisions governing detentions, confirmation of detentions and review of the detention orders were honoured in their breach, the total indifference displayed in considering even reasonable requests for parole and for revocation of detention orders and the ease with which established administrative procedures and conventions were subverted for the benefit of individuals, who had contacts at the "right places". With the Press gagged and a resultant black out of authentic information, arbitrary arrests and detentions went on apace. Effective dissent was smothered, followed by a general erosion of democratic values. Highhanded and arbitrary actions were carried out with impunity. The nation was initially in a state of shock, and then of stupor, unable to realise the directions and the full implications of the actions of the Government and its functionaries. Tyrants sprouted at all levels overnight—tyrants whose claim to authority was largely based on their proximity to the seats of power. The attitude of the general run of the public functionaries was largely characterised by a paralysis of the will to do the right and proper thing. The ethical considerations inherent in public behaviour became generally dim and in many cases beyond the mental grasp of many of the public functionaries. Desire for self-preservation as admitted by a number of public servants at various levels became the sole motivation for their official actions and behaviour. Anxiety to survive at any cost formed the key-note of approach to the problems that came before many of them. The fear generated by the mere threat and without even the actual use of the weapon of detention under MISA became so pervasive that the general run of public servants acted as willing tools of tyranny. That the primary and not infrequently the sole motivation in the case of a number of public servants who acted unlawfully to the prejudice of the rights of citizens, was the desire for self-protection—desire for survival, may be regarded as some extenuation of their conduct. Yet, if the nation is to preserve the fundamental values of a democratic society, every person whether a public functionary or private citizen must display a degree of vigilance and willingness to sacrifice. Without the awareness of what is right and a desire to act according to what is right there may be no realisation of what is wrong.

During the emergency, for many a public functionary the dividing line between right and wrong, moral and immoral, ceased to exist.

15.2 The Commission has attempted within the constraints of the terms of its reference to probe into broad patterns of public abuse of power manifested in diverse ways. Having regard to the scope of the enquiry and the panorama of excesses committed in different fields, the Commission has to be selective in its approach, the endeavour generally being to highlight certain patterns of behaviour in the general conduct of affairs during the period. It has not been possible for the Commission to undertake an exhaustive review of all cases even of a particular type or class because of the constraint of time and the magnitude of the task involved. Even the few cases that form the subject-matter of the two Reports have taken the Commission—apart from the time involved in sifting material and selecting gross cases for public hearings—nearly seven months of hearings involving 81 days, working at an average of five and a half hours per day in open session and hearing evidence. The Commission has tried to draw broad conclusions and make its observations on the cases that have been heard so far. As the Commission continues its task, it may come across more such cases or cases with a variation in the methods—the theme remaining the same. The Commission, however, believes that the observations made on the cases heard hitherto would continue to remain generally valid. The Commission reserves its right to make any departure from the observations made on the cases heard so far should the circumstances in any particular case warrant such a departure.

15.3 The circumstances in which the emergency was declared and the ease with which it was accomplished should be a warning to the citizens of the country. The Cabinet and the important functionaries of the Government were not only not consulted but were deliberately kept in the dark by Smt. Indira Gandhi when she decided to advise the President to impose an "internal emergency" upon an already existing emergency in the country.

15.4 Smt. Indira Gandhi did not consult the Cabinet even though she had plenty of time to do so. The plea that she had taken when writing to the President that she would have liked to take the matter up with the Cabinet but unfortunately it had not been possible that night, does not appear to be convincing. If a Cabinet meeting could be convened at 90 minutes' notice as it was actually done on the morning of June 26, there was no reason why a Cabinet meeting could not have been held at any time between her first visit to the

President at 5 p.m. on June 25 and the actual signing of the proclamation at about 11—11.30 p.m. on the same night. At any rate, the Commission has enough evidence to show that Smt. Indira Gandhi planned the imposition of the emergency at least as early as June 22. She had also shared the thought with some of her political confidants as early as the morning of June 25.

15.5 As would be manifest from what is stated in Chapter V of the Interim Report No. 1, there is no evidence of circumstances which would warrant the declaration of an emergency, much less the imposition of an additional emergency. The types of measures such as detentions under MISA and severing electricity connections to the Press, that closely followed in the wake of the declaration of emergency on the night of June 25, 1975, even before the formulation of the rules from which alone authority for these acts would be derived, were motivated by considerations of exigency only. There is no evidence of any breakdown of law and order in any part of the country—nor of any apprehension in that behalf; the economic condition was well under control and had in no way deteriorated. There is not even a report of an apprehension of any serious breakdown of the law and order situation or deterioration of the economic condition from any public functionary. The public records of the times, Secret, Confidential or Public and publications in newspapers, speak with unanimity that there was no unusual event or even a tendency in that direction to justify the imposition of emergency. There was no threat to the well-being of the nation from sources external or internal. The conclusion appears in the absence of any evidence given by Smt. Indira Gandhi or any one else, that the one and the only motivating force for tendering the extraordinary advice to the President to declare an "internal emergency" was the intense political activity generated in the ruling party and the opposition, by the decision of the Allahabad High Court declaring the election of the Prime Minister of the day invalid on the ground of corrupt election practices. There is no reason to think that if the democratic conventions were followed, the whole political upsurge would in the normal course have not subsided. But Smt. Gandhi in her anxiety to continue in power, brought about instead a situation which directly contributed to her continuance in power and also generated forces which sacrificed the interests of many to serve the ambitions of a few. Thousands were detained and a series of totally illegal and unwarranted actions followed involving untold human misery and suffering. In the absence of any explanation, the inference is inevitable that a political decision was taken by an interested Prime Minister in a desperate endeavour to save herself from the legitimate compulsion of a judicial verdict against her.

15.6 The nation owes it to the present and the succeeding generations to ensure that the administrative set-up is not subverted in future in the manner it was done, to serve the personal ends of any one individual or a group of individuals in or near the Government.

15.7 Absence of the freedom of the Press and the severity of the censorship rules coupled with *ad hoc* authoritarian oral orders, rendered the channels of communication over the sub-continent choked and polluted. Rumours became the accepted channels of communication. The Commission noted with surprise the deposition of a research scholar, Kum. Aditi Gupta, of the Delhi University, who had visited the Turkman Gate area in the days immediately following the firing. She herself believed that about 400 people had been killed in the police firing on April 19, 1976, whereas the official figure given at that time and sustained till today is only 6. If the intelligent and educated research scholar carried that impression, there can be no doubt that it must have circulated as reliable information even among the enlightened sections of the people. With the less enlightened sections, the rumour may well have assumed yet more frightening dimensions. Censorship of news and the manner in which the media was manipulated, should be a lesson to the Government and to the people that in a vast country like ours blanketing of news in the way it was done, has serious repercussions on the lives and thought of the people. The Commission notes with concern the observations made by Shri Kuldip Nayyar that there were not many people even among the senior journalists to go along with him when he took up the matter of censorship with the Press Council.

15.8 The Press has a special responsibility to safeguard the fundamentals of democracy and the rule of law. This responsibility cannot be discharged without vigilance, a measure of denials willingly and altruistically undertaken and courage to accept the consequences of challenging the infringement by the Government of not only the rights of the Press but also of the people. But the freedom of the Press was the second casualty; closely following the incarceration without trial of respected political leaders, who protested against Smt. Gandhi's attempt to flout the judicial verdict, instead of clearing herself of the impropriety in due course.

15.9 The Commission notes with great concern Shri S. S. Ray's statement insofar as it concerns the decision taken at an irresponsible level on the night of June 25, 1975 for closing down the courts and cutting off the electricity connections to the Press. What happened in the months following the declaration of the emergency with regard to the High Court Judges appears to have been merely an extension of the idea conceived on the night of the 25th on account of which Shri S. S. Ray had felt very uneasy and had also spoken to Smt. Indira Gandhi before leaving her residence that night.

15.10 The administration in a democratic society has a special responsibility to ensure that the proceedings of the law courts and the Parliament are available to the people at all times through the Press and other media. But this was sought to be smothered during the period of emergency. The tell-tale notings left in the file

of Justice Aggarwal or the Delhi High Court regarding the judgment in the Kuldip Nayyar's case and the consequences that followed both for Justice Aggarwal and Justice Rangarajan raise certain very grave issues on the subject of the independence of the judiciary. The State owes it to the nation to assure that this vital limb of the Government will not be subjected to strains which might even indirectly operate as punitive merely because of pronouncements not to the liking of the executive authority.

15.11 The Government during the emergency made appointments to some important offices which raise grave misgivings. On the basis of the cases that have already been heard in this context, the Commission is of the opinion that a calculated effort was made to place persons in vital positions who were willing to further the interests of the centre of power in gross violation of established administrative norms and practices. Indisputably every Government must have the right to select its own functionaries, especially for performing duties pertaining to important jobs, but, in doing so, the rules that the Government has framed for making such appointments should not be thrown to the winds. In some of the cases brought before the Commission, the recommendations of the Public Enterprises Selection Board were brushed aside and persons who had been interviewed and not considered fit for appointment by the PESB were appointed. Important financial institutions such as the Reserve Bank, the State Bank of India and the Punjab National Bank, came to be controlled through postings of men whose selection did not conform to the accepted norms. The conduct of the Chairman, Central Board of Direct Taxes, in certain matters has come to the adverse notice of the Commission. Some of these beneficiaries of Government actions were willing to go along with the power centres, though in the process they had to disregard the accepted norms and practices. These posts are some of the important levers of powers. This is evident from the use to which some of the incumbents of these posts are shown to have been put. The Government having framed the rules governing its conduct cannot normally arrogate to itself the discretion to disregard them, unless there are demonstrably compelling reasons and circumstances, justifying the side-stepping of those rules; and recording the reasons in writing by the functionaries concerned to justify the action, if need arises. Selective application of the rules is a direct invitation to indiscipline and arbitrary behaviour in appointments at all levels, with all that it implies. The appointments, terms and tenures of these important functionaries must strictly conform to the statutory requirements; and the Government has a special responsibility to ensure that the financial institutions are not manipulated for unscrupulous operations.

15.12 The Commission had opportunity to examine in detail the application of the Maintenance of Internal Security Act in relation to the various categories of persons including acknowledged national leaders, members of banned and not banned organisations and political parties,

students, teachers, trade union leaders, lawyers, juveniles, respected writers, journalists and ordinary criminals—in short, a broad spectrum of cases of persons drawn from almost every walk of life. Forging of records, fabrication of grounds for detentions, ante-dating of detention orders, the callousness with which the request of the detenus for revocation of orders of detention or even parole were ignored—in short, the manner in which a large majority of these persons were incarcerated for the only fault, namely, dissent or suspected dissent from the views of the centres of power, should be a warning to every thinking man as to how an Act initially intended to serve an extremely limited purpose to deal with the misdeeds of a special category of persons can be given such a wide and comprehensive application so as to embrace all sections of the population to penalise dissent.

15.13 The Commission views with anguish the evidence of patent collusion between the police and the Magistracy in denying the citizens their basic freedoms by arrests and detentions on grounds which were now admitted to be non-existent or deliberately invented. Even when the slender legal remedies were attempted to be resorted to by the aggrieved citizens, these were considered sufficient provocation for incarcerating them on fabricated or non-existent grounds.

15.14 Attention must be invited to the large-scale fabrication of records that followed every illegal action including arrests and detentions by the police and the Magistracy. The consequential entries in the chain of records of the Police Stations and offices of the Police and the Magistrates have become a part of the permanent records which may come to be consulted in future with the inevitable pit-falls.

15.15 On occasions, the Magistracy which is set up as a bulwark against the onslaught of arbitrary or unlawful execution of law and expected to function with independence and judicial restraint, was found seriously wanting, and willing to pander to the whims of the centres of power. Even the cream of the talent of the country in the administrative field often collapsed at the slightest pressure.

15.16 The Commission invites the Government's attention pointedly to the manner in which the Police was used and allowed themselves to be used for purposes some of which were, to say the least, questionable. Some Police officers behaved as though they are not accountable at all to any public authority. The decision to arrest and release certain persons were entirely on political considerations which were intended to be favourable to the ruling party. Employing the police to the advantage of any political party is a sure source of subverting the rule of law. The Government must seriously consider the feasibility and the desirability of insulating the Police from the politics of the country and employing it scrupulously on duties for which alone it is by law intended. The policemen must also be made to realise that politicking by them is outside the sphere of their domain and the Government would take a very serious view of it.

15.17 In this context the Commission can do no better than quote from one of the speeches of Shri Robert Mark, the ex-Chief Commissioner of Police,* London. Its relevance for the Police of our country is self-evident. Shri Robert Mark says :—

“Our authority under the law is strictly defined and we are personally liable for the consequences whenever we invoke it. We play no part in determining guilt or punishment and our accountability to the courts both criminal and civil, to local police authorities, to Parliament and to public opinion is unsurpassed anywhere else in the world. In the legal and constitutional framework in which society requires us to enforce the laws enacted by its elected representatives, the most essential weapons in our armoury are not firearms, water cannon, tear gas or rubber bullets, but the confidence and support of the people on whose behalf we act. That confidence and support depends not only on the factors I have already mentioned but on our personal and collective integrity and in particular on our long tradition of constitutional freedom from political interference in our operational role. Notwithstanding the heavy responsibilities for the policing of England and Wales given to the Home Secretary by the 1964 Police Act, it is important for you to understand that the police are not the servants of the Government at any level. We do not act at the behest of a minister or any political party, not even the party in government. We act on behalf of the people as a whole and the powers we exercise cannot be restricted or widened by anyone, save Parliament alone. It is this which above all else determines our relationship with the public, especially in relation to the maintenance of public order, and allows us to operate reasonably effectively with minimal numbers, limited powers and by the avoidance of force, or at least with the use only of such force as will be approved by the courts and by public opinion.”

“To sum the position up for you in easily understandable and practical terms, a chief officer of police will always give the most careful consideration to any views or representations he may receive from his police authority, be it Home Secretary or police committee, on any issue affecting enforcement of the law, whether public order or anything else, but in England and Wales it is generally for him and him alone to decide what operational action to take and to answer for the consequences. In the case of the Commissioner of Police of the Metropolis his exercise of those responsibilities will no doubt be all the more scrupulous in that he alone of all chief

police officers enjoys no security of tenure and that subject to parliamentary approval he may be removed by the Home Secretary.”

“I emphasise this because whilst the police place great importance on their constitutional freedom the significance of their accountability should not be overlooked as a counter-balance to any improper use of it.”

15.18 The Commission feels that what applies to the Police applies in equal measure to the Services as a whole. The politician who uses a public servant for purely political purposes and the public servant who allows himself to be so used are both debasing themselves and doing a signal disservice to the country.

15.19 It is necessary to emphasise, even at the risk of sounding pedantic, that the moral component must take its legitimate and rightful place in every decision-making process by the public functionary. The following quotation from Walt Lippman has great relevance for the public functionaries generally and to those who were called upon to function in the days of emergency :—

“Those in high places are more than the administrators of Government bureaux. They are the custodians of a nation's ideals, of the beliefs it cherishes, of its permanent hopes, of the faith which makes the nation out of a mere aggregation of individuals. They are unfaithful to their trust when by word and example they promote a spirit that is complacent, evasive and acquisitive.”

15.20 It may not be that the number of senior officials at important places doing the wrong things has increased. But what certainly can be sensed to the point of certainty is that there is a general and wider acceptance of the officials who indulge in shortcircuiting of administrative procedures, level jumpings in chains of command, and non-conformity to standard administrative norms and values. It is the absence of service sanctions and the non-critical and an almost supine acceptance of the wrong doings of the members of the services by the general run of officials which spurs others to swell the ranks of the wrong-doers. If there are honourable and brilliant exceptions like Shri R. L. Misra, Joint Secretary in the Ministry of Home Affairs, who never gave in to the wrongs indulged in by the Delhi Administration even when his own Secretary had thrown up the sponge, it only means that doing the right thing is an art of the possible. Instead of this type of officers being the honourable exceptions, they should constitute the general run. Imaginary fear of possible and probable consequences for doing the right things have done more havoc than the known consequences that actually may have followed the performance of duties on the right lines by the Government servants. One

*Policing A Perplexed Society by Sir Robert Mark.

must realise that even during the emergency there were several functionaries in the Government who stood up for what was right though the examples under this category were more in evidence among the lower functionaries than among the higher echelons.

15.21 Apart from the legal facade fraudulently created under the cover of which large-scale and indiscriminate demolitions were carried out in Delhi, there is the poignant story of a vast majority of the demolitions carried out by the authorities which were attended by a complete disregard for the human suffering of persons in very humble walks of life to whom the demolition of their houses meant complete ruination and in some cases the loss of a life-time's savings. The Commission hopes that the Government will take immediate steps to remedy the wrongs and also to ensure that the conditions in the resettlement colonies are rendered safe, clean and convenient. Considering the colossal nature of the job involved, unless the Government gives the job top priority and sets up an agency equipped with the necessary staff, resources and the decision-making powers, there may be little hope of a satisfactory solution, assuaging the misery caused to several lakhs of affected individuals in the immediate future. The job needs to be taken up on priority footing and the usual 'red-tape' dispensed with if the Government is to carry conviction with the affected people about its purposeful intentions.

15.22 It was disconcerting for the Commission to note that some of the demolitions were carried out at the instance of and to pander to the whims of Shri Sanjay Gandhi who was not answerable to anybody and who held no position whatever in the administrative scheme. Tragic stories regarding the doings of Shri Sanjay Gandhi in the matter of demolitions, pressurising the District Magistrate of Delhi and the other magistrates to own up a firing order in the Turkman Gate area in the face of the pleadings of the concerned magistrate about his not having issued the said firing order have been unfolded in the course of evidence before the Commission. Even arrests of respectable citizens were carried out at the instance of Shri Sanjay Gandhi. The Commission had probed the case of the Boeing deal and seen how the financial projections of the Boeing deal were shown to people who were not at all concerned with the matter. The Government has a special responsibility to ensure that extra-constitutional centres of power are not allowed to grow, and if and when located, to snuff them out ruthlessly. As the Commission had occasion to observe, in the final analysis this country will be governed well or ill by the competence and character of the Government officers. If they are content to be mere tools and willing to lend themselves to questionable objectives, there will never be a dearth of unscrupulous operators. There is no substitute for a vigilant, enquiring and enlightened public opinion which keeps a close watch on the doings of the public servants.

15.23 The conditions in the jails of our country, as disclosed in the course of the evidence of some

of the witnesses who had personal experience, make a very painful reading. The Commission expects to put out a separate Chapter on the conditions in the jails in the country as a whole after a visit to some of the important jails by some of the senior officers attached to the Commission and on the basis of the replies of the State Governments to the questionnaire issued by the Commission. In the meantime, however, the Commission suggests to the Government to make a review of the conditions in the jails insofar as these concern the inmates. With regard to the political detenus the Commission finds it necessary to emphasise that preventive detention is not intended to be a punitive detention. Preventive detention is only intended to impose the minimum restraint on the individuals detained consistent with the objective effectively to prevent the persons detained from acting in a manner prejudicial to the security of the State or to the maintenance of law and order. It would be misuse of power for the authorities to heap on such detenus needless disabilities. In this connection the Commission must point out specifically the manner in which a number of student detenus were denied permission to take their annual examinations—a step which, apart from the illegality involved, exposed the authorities concerned to the charge of being completely oblivious to the objectives of preventive detention. The Commission trusts that specific instructions will be issued emphasising that detenus must be treated with dignity and respect due to them, the restraints imposed upon them will be minimal and consistent only with ensuring the safety of the State or interests of law and order and that student detenus will be permitted to take their periodical examinations and the authorities will extend the requisite facilities. Similarly, for female detenus, special provisions should be made for housing them and for extending to them appropriate conveniences.

15.24 Certain departments and organisations of the Government have understandably and necessarily to work under cover of a degree of secrecy. Functioning of some of the departments/organisations which have come to the notice of the Commission during its hearings are the Income Tax Department, Intelligence Bureau, Central Bureau of Investigation and the Enforcement Directorate. Because of the special nature of their functions and operations there is a greater necessity to ensure that their activities do not ever go wrong so as to affect the life, liberty and reputation of the individual citizen. The fairness and objectivity with which these organisations function would, in the ultimate analysis, depend upon the extent to which the higher executives of these organisations are allowed to function freely, fearlessly and independently and at the same time ensuring their accountability to statutorily constituted bodies. These executives should normally have fixed tenures, if necessary, to keep them above pressures and temptations. The Commission feels that the practice of continuing in service as heads of the Organisations retired officers on short-term renewable basis is a pernicious practice and often a source of serious abuse of authority. It is the respon-

sibility of the Government to ensure that such organisations are led by strong, competent and self-respecting individuals who are known for their appreciation of values and their concern for the interests of the country and its citizens. Lesser men as heads of such organisations which play a vital role in the life of the nation, would only be a disaster.

15.25 The Commission has viewed with concern some of the secret operations of the Intelligence Bureau and the complete absence of in-built constraints subject to which they function. The Commission had the opportunity to go through the records of the "Hearings before the Select Committee to Study Governmental Operations with respect to Intelligence Activities of the United States Senate, 1975". Senator Tower, Vice-Chairman of the Committee, making his opening statement in this Committee, observed :

"It is my view that there comes a point when the people's right to know must of necessity be subordinated to the people's right to be secure, to the extent that a sophisticated and effective intelligence—gathering capability makes them secure."

Senator Frank Church, Chairman of this Committee, observed :

"The decision to make this matter public should in my view, be tested not only against its particular facts but also in the light of several general principles. First, in a democratic society, there should be a strong preference in favour of letting the people know what their Government has been doing. Democracy depends upon an informed electorate. As one of our Founding Fathers, Edward Livingston, stated :

No nation has ever found any inconvenience from too close an inspection into the conduct of its officers, but many have been brought to ruin and reduced to slavery by suffering gradual impositions and abuses which are imperceptible, only because the means of publicity had not been secured.

Second, the general principle for disclosure is particularly apt in the context in which this committee finds itself. For 30 years this country has had a huge and highly secret intelligence apparatus whose actions have not been the subject of an informed public debate. Laws governing their activity have all too often been lacking, as with the NSA, or overly vague, as with the CIA. The agencies have sometimes acted in ways that appear to be unconstitutional and illegal. The Congress and the public should now be given

a chance to decide whether changes in the laws and procedures governing the intelligence agencies are necessary. That has not happened for 30 years, and surely we can afford a debate at least once in a generation.

Third, it does not follow, of course, that everything we learn in the work of this committee should be disclosed. And from what I have previously said, much of what we have learned about the NSA, which, in the judgment of the committee, falls clearly within its province, will not be disclosed. This country should have strong and effective intelligent services, but we must act legally. Keeping unlawful programmes secret can only serve in the long run to weaken our intelligence efforts. Unless the people are convinced that the intelligence agencies are acting within the law and in the best interest of the United States, a democratic people will not support these agencies for long. 'Eternal vigilance', as Thomas Jefferson said, 'is the price of liberty'. And as James Madison concluded, "the right of freely examining public characters and measures and the free communication thereon is the only effective guardian of every other right."

The Attorney General, Mr. Levi, said :

"But the legality of the activity does not remove from the Executive or from Congress the responsibility to take steps, within their power, to seek an accommodation between the vital public and private interests involved.....at present there is no warrantless electronic surveillance directed against any American citizen, and although it is conceivable that circumstances justifying such surveillance may arise in the future, I will not authorise the surveillance unless it is clear that the American citizen is an active, conscious agent or collaborator of a foreign power. In no event, of course, would I authorise any warrantless surveillance against domestic persons or organizations such as those involved in the KEITH case. Surveillance without a warrant will not be conducted for purposes of security against domestic or internal threats....."

The standards and procedures that the Department has established within the United States seek to insure that every request for surveillance receives thorough and impartial consideration before a decision is made whether to institute it. The process is elaborate and time-consuming, but it is necessary if the public interest is to be served and individual rights safeguarded..

There may be regulatory and institutional devices other than the warrant requirement that would better assure that intrusions for national security and foreign intelligence purposes reasonably balance the important needs of Government and of individual interests. In assessing possible approaches to this problem it may be useful to examine the practices of other Western democracies. For example, England, Canada and West Germany, each share our concern about the confidentiality of communications within their borders. Yet each recognizes the right of the Executive to intercept communications without a judicial warrant in cases involving suspected espionage, subversion or other national security intelligence matters.

In Canada and West Germany, which have statutes analogous to title III, the Executive in national security cases is exempt by statute from the requirement that judicial warrants be obtained to authorise surveillance of communications. In England, where judicial warrants are not required to authorise surveillance of communications in criminal investigations, the relevant statutes recognize an inherent authority in the Executive to authorise such surveillance in national security cases. In each case, this authority is deemed to cover interception of mail and telegrams, as well as telephone conversations.

In all three countries, requests for national security surveillance may be made by the nation's intelligence agencies. In each, a Cabinet member is authorised to grant the request. In England and West Germany, however, interception of communications is intended to be a last resort, used only when the information being sought is likely to be unobtainable by any other means. It is interesting to note, however, that both Canada and West Germany do require the Executive to report periodically to the legislature on its national security surveillance activities. In Canada, the Solicitor General files an annual report with the Parliament setting forth the number of national security surveillances initiated, their average length, a general description of the methods of interception or seizure used, and an assessment of their utility.

The problems are not simple. Evolving solutions probably will and should come—as they have in the past—from a combination of legislation, court decisions, and executive actions. The law in this area, as Lord Devlin once described the law of search in England, “is haphazard and ill-defined.”

It recognizes the existence and the necessity of the Executive's power. But the executive and the legislature are, as Lord Devlin also said, “expected to act reasonably.” “The future course of the law will depend on whether we can meet that obligation.”

15.26 The Commission does not suggest that a system developed in another country should be transplanted without appropriate amendments in our country. Each country has to evolve its own methods so as to suit its own primary and peculiar needs. Here it is only sought to emphasise that for the effective and objective functioning of the intelligence agencies, their activities and achievements should be suitably overseen and evaluated by responsible forums composed of persons specially selected for their integrity and sense of public duty and functioning independently of the intelligence agencies. The one and the only overriding consideration in suggesting this has been the overall interest of the nation and its citizens.

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15.27 Before concluding this chapter, the Commission would like to invite the Government's attention to certain guidelines that the Commission had set for itself in handling the large number of complaints involving the country's entire administrative machinery. In the guidelines that were issued by the Commission in July, 1977, it had stated :

“The function of the Commission is not to record conviction but to determine culpability of individuals or groups. As far as the public servants are concerned, they may be divided into the following three broad categories :

- (a) Those who may have simply acted in compliance with the orders or instructions given to them ;
- (b) Those who may have carried out the instructions a little zealously than others ;
- (c) Those who had exceeded or misused or abused their powers or authority for securing personal gain or for securing advantage to other individual(s)/organisation(s).

Public servants falling only in the third category would attract the critical attention of the Commission.”

15.28 The Commission has no doubt that its commitments to the officials, who have come and shared the information in their possession or power, with the Commission, will be honoured. In this context, the Commission would like to reiterate that it would reckon its achievements not by the number or the seriousness of the punitive actions taken against persons who had transgressed the laws, but by the nature and extent of the remedial and ameliorative actions that follow this labours of the Commission.

15.29 Some of the points that have been raised by the Commission in this Chapter may have also been mentioned in the earlier Chapters in connection with specific cases. The point that weighed with the Commission in setting down this Chapter of general observations was to assemble at one place and highlight some of the important issues that had come before the Commission and which the Commission feels are of national importance. If the Commission's observations should generate a public

debate on some of the vital issues focussed by the Commission with the object of devising corrective machinery and remedial action, the Commission's labours will be amply rewarded especially if the Administration is able to act on the various ameliorative and reformatory suggestions of the Commission with expedition. On the case and speed with which this is done will depend the vitality and resilience of our democratic processes and institutions.

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