

INTERIM REPORT

ON THE INCIDENTS THAT OCCURRED ON
THE 19TH FEBURARY 2009 AT THE
MADRAS HIGH COURT

BY

MR JUSTICE B.N. SRIKRISHNA
FORMER JUDGE OF THE SUPREME COURT

4th March 2009

INTERIM REPORT

By the order dated 26th February 2009 made in Writ Petition (Civil) No. 94 of 2009 the Hon'ble Supreme Court of India appointed me as a One Man Committee to inquire into the incidents of violent clashes between advocates and police personnel within the premises of the Madras High Court on 19th February 2009. The said order also requested me to give an Interim report within a week. A copy of the said order was transmitted by the Registry of the Supreme Court to my office and received late in the evening on 26th February 2009. A copy of the said order was also transmitted by the Registry of Madras High Court to my office on 27th February 2009 in the afternoon.

In view of the urgency of the matter, I rescheduled all my engagements and proceeded to Chennai on the evening of 27th February 2009. I interviewed several members of the bar, officers of the Registry of the Madras High Court, police officers, officers of the Government of Tamil Nadu and members of the public on 28th February 2009 from 9.00 a.m. to 8.30 p.m. and on 1st March 2009 from 9.00 a.m. to 4.00 p.m., after which I returned to Mumbai. In

view of the continuing boycott of all the Courts in the State of Tamil Nadu by the lawyers, the matter appears to have been considered urgent by the Hon'ble Supreme Court and I was requested to make an interim report within a week of its Order.

During the course of my interviews, the concerned persons handed over to me a number of written representations, affidavits, several Compact Discs (CDs) containing videos and also still photographs of the incident. I also did voice recording of the versions of a number of persons including some concerned Hon'ble Judges of the Madras High Court whom I interviewed.

I have perused all the written representations given to me, viewed the C.Ds. showing the videographed incidents over the period 29th January 2009 to 19th February 2009 (both days inclusive) and also listened to the voice recordings of the versions of the different persons.

In order to understand what transpired on 19th February 2009, it is essential to consider the background of events. Some of the lawyers practicing in the Madras High Court and the subordinate Courts owe allegiance to and sympathize With the cause of the Liberation Tigers of Tamil Eelam (LTTE). From or

about November 2008, those lawyers resorted to organizing meetings and demonstrations in support of LTTE and condemning the action taken by the Sri Lankan Government against the Tamils in Sri Lanka. They also organized a meeting to celebrate the 54th birthday of the LTTE leader Prabhakaran, who has been declared as an absconding accused in the Rajiv Gandhi assassination case. Surprisingly, such meetings were allowed to be held inside the premises of the Court without any strict action being taken by the Acting Chief Justice and administration of the Madras High Court. I am not going into the details of the said incidents in view of the urgency of the matter, the limited time at my disposal for this interim report, and the imperative need to restore normalcy. Suffice it to say that a number of criminal cases were registered by the police against several advocates for indulging in activities that amounted to criminal offences.

On 29th January 2009, an emergency meeting was held by the Madras High Court Advocates' Association in connection with the Eelam Tamils issue in its office within the High Court premises. Briefing the press, its president Paul Kanankaraj stated that the advocates had decided to boycott court work indefinitely. Some of the Advocates led by Mohan Krishnan,

Rajinikanth and others staged a demonstration and also expressed the desire to pay homage to one K Muthukumar who had earlier died by self immolation by burning in support of Eelam Tamils. The Advocates went in a procession to KMC hospital to pay homage to the said Muthukumar. A fracas ensued between the police trying to control the unruly mob of lawyers, for which cases under Section 143, 294(b), 353 and 506 of IPC were registered in the G-3 Kilpauk Police Station Crime No.76/2009. On the same day, about 150 advocates led by Mr. Jaykumar staged a demonstration near the Aavin entrance at the High Court premises. Some advocates went to the Bank of Ceylon premises on E.V.Periyar Salia, Kilpauk and pelted stones at the premises and cars there and damaged them. Two advocates, Amarnath and Keshavan, were arrested in this connection.

On 30th January 2009, the advocates organized a procession inside the High Court premises condemning the President of the All India Congress and also burning issues of The Hindu for publishing news items in favour of the Sri Lankan Government. About 40 advocates forcibly boarded an MTC bus 'registration No.TN-O1-N-4450 and forced the driver to take the bus to Kolathur to pay homage to the late Muthukumar.



Same day, at about 10.40 a.m. , the agitating advocates entered the Court of the Acting Chief Justice and shouted at the advocates sitting there to come out and join them. Senior Advocate Chellappa and his wife Vasanti, who were conducting their case, were pulled out and humiliated. The Acting Chief Justice appears to have merely advised the lawyers to disperse peacefully. The lawyers also went to Court Room NoV presided over by Manikumar J, and disrupted the proceedings by scolding the Government Advocate conducting his proceeding by banging on the Court doors and windows.

Every day thereafter, there used to be some incident or the other during which there was a clash between the agitating lawyers and the police and some cases registered for criminal offences by the lawyers. In all, about 110 criminal cases appear to have been registered against different lawyers for different offences during the period of agitation.

The lawyers had continued their boycott of Court proceedings in sympathy for the Sri Lankan Tamilians, a purely political issue that had nothing to do with the work of the Courts. Yet the lawyers continued to abstain from the Courts in order to put pressure on the State and the Central Governments.

Some advocates practicing in Chennai Courts addressed a memorandum to the Chief Minister of Tamil Nadu on 5th February 2009 pointing out that a group of lawyers owing alliance to LTTE were indulging in disruptive and unlawful activities within and outside the High Court premises, and requested the Chief Minister to take appropriate measures to ensure the safety and security of the lawyers and litigant public so that the court proceedings could be carried on smoothly. A copy of the said Memorandum was also addressed to the Principal Secretary of the Home Department, which ultimately came to be forwarded to the Commissioner of Police, Chennai.

By a D.O. letter dated 12th February 2009 addressed to the Registrar, Madras High Court, the Commissioner of Police pointed out that the grievance made by the practicing lawyers was justified and that the activities of the pro-LTTE lawyers were disrupting the work in the Courts. He, therefore, requested the Registrar of Madras High Court to *"kindly apprise the development that has taken place in and around the High Court campus to the Hon'ble Acting Chief Justice, High Court of Madras, for kind information and necessary action"*. No specific action seems to have been taken as a follow up measure.

On 17th February 2009, Writ Appeals NO.181 to 183 of 2009 relating to the taking over of the administration of the Chidambaram Nalaraja temple were listed for hearing in the Court of P K Mishra and Chandru, JJ. in Court Room No.III. At about 10.00 *a.m.* Mr.Subramaniam Swamy, President of Janata Party, who has been given Z category protection by the Government, came to the said Court and was waiting in the Court wanting to implead himself in the said pending Writ Appeals. Some of the police officers and security personnel accompanying him stayed outside the Court *room* while Mr. Subramaniam Swamy waited inside the Court room. At about 11.50 *a.m.*, 20 advocates, who were agitating in support of the Sri Lankan Tamils and led by Advocates Vijendra, Rajnikanth, Ginileo Immanuel and Pugazhendhi, came to the Court shouting slogans condemning the Central and State Governments and the police. They entered Court room shouting slogans and pushed out the police personnel who were posted at the entrance. In the meanwhile, some of the Advocates hurled rotten eggs at Mr. Subramaniam Swamy, shouted slogans against him and demanded that the police should go out. Assistant Commissioner of Police, High Court Range was physically pushed out. The police managed to escort Mr.

Subramaniam Swamy to his vehicle and took him away with his pilot and escort. This incident resulted in an order being made by the Division Bench of Mishra and Chandra, JJ. dated 17th February 2009 in Writ Appeal Nos.181 to .183 of 2009: These facts are stated in the said order and need to be accepted as true. The order reproduces the English translation of the slogans shouted by the lawyers in Tamil: "Brahmin dog down down" and "Rajiv Gandhi killer go away". The order states that the crowd had shouted many other filthy slogans and such unruly behavior continued despite warnings given by the learned Judges presiding over the Court. The functioning of the Court came to a standstill for fifteen minutes. Mr. Subramaniam Swamy asked for an adjournment as it was felt unsafe to argue the matter on the same day. Accordingly, the hearing of the Writ Appeals was adjourned to 19th February 2009. The learned Judges thereafter directed that the copy of the order be placed before the learned Acting Chief Justice for appropriate action.

On 18th February 2009, Advocate Gini Leo Immanuel who was an accused in D-4 High Court TS Criminal NO.13 of 09, registered in connection with assault on Mr Subramaniam Swamy

on 17th February 2009, was arrested. He was produced before the George Town Criminal Court and remanded to judicial custody.

On 19th February 2009, there was a large number of police deployed because of the previous days incidents. At about 1420 hrs in the afternoon, about 50 Advocates including 14 advocates, named as accused in the said case of assault on Mr.Subramaniam Swamy, led by one Advocate Rajnikanth approached the B-4 High Court Police Station (established within the premises of the High Court for the security of the High Court pursuant to a direction on a PIL by the Division Bench presided over by the then Chief Justice) and informed the Officer in charge that the accused had come to surrender themselves, but they also wanted to file an FIR against Mr. Subramaniam Swamy for having allegedly uttered caste based abuses during the incident on 17th February 2009. They wanted that action should be taken against Mr Subramaniam Swamy under the provisions of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act. Their complaint was registered and a copy of the FIR was given to them at about 1420 hrs. The accused advocates, who claimed to have come there to surrender, refused to surrender and allow themselves to be taken into custody and entered into an argument



with the police officers insisting that Mr. Subramaniam Swamy should be first arrested after which alone they could be arrested. This led to a wordy dual between the police officers and the accused advocates. The police officers, who were present in large numbers apprehending some untoward incident, slowly started encircling the accused advocates to prevent their escape. The videos taken by the police as well as the TV reporters clearly show the continuing arguments between the police officers and the accused advocates and their leaders. At about 1545 hrs, when the police started pushing the accused advocates into the waiting police van for being taken into custody, the mob of lawyers swelled, becoming restive by the minute. The lawyers in the mob started shouting derogatory and provocative slogans and making aggressive gestures at the police. The police were armed with lathis, wore helmets and carried shields, perhaps anticipating that they may be subjected to stone throwing. Suddenly at about 1551 hours some lawyers in the minatory mob started throwing stones at the police. Even with this, the police merely retreated near the B-4 Police Station within the High Court complex. The taunting, jeering, gesticulating and hurting of stones by the advocates continued unabated till about 1609 hours. The police officers

present at the spot kept restraining the police constables from advancing further or taking any action. By about 1611 hours, the stone throwing became intense and advocates started throwing big stones at the police both from ground level and also from the first floor corridor of the High Court premises. Some of the advocates throwing stones and shouting slogans were even wearing gowns and bands. Some of the stones fell on the vehicles parked in the compound, damaging them. Some policemen picked up the stones hurled and hurled them back at the lawyers, despite attempts by their seniors to restrain them. This continued for about 15 minutes. Finally, the stone throwing became intense and at 1626 hrs the policemen started to chase the unruly mob of lawyers waving lathis.

Although, some representations and affidavits given by the lawyers name Director General of Police Mr. Jain, Commissioner of Police Mr. Radhakrishnan, Joint Commissioner of Police ,Mr. Ramasubranaian and Deputy Commissioner of Police, Mr. Saraangan as having ordered the lathi charge, it is not clear from the videos as to who was the officer that ordered the lathi charge. The video taken by the official videographer of the police has a timer ad indicates the time from second to second but

the videos taken by the TV staff produced by lawyers do not show the timings. The official video does not show the presence of the Commissioner of Police till about 1714 hours. From the information given by the Home Secretary and the Police Commissioner, it would appear that upto that time only the Additional Commissioner of Police K Vishwanathan was in charge and the Police Commissioner arrived on the scene at about 1714 hours upon receiving the information that the situation was going out of hand.

At about 1715 hours the Commissioner of Police is seen restraining the men and asking them to retreat. The police had merely gathered in front of the B-4 Police Station. At about 1730 hours the unruly mob of lawyers is seen marching towards the police station. One fat lawyer kept provoking the police and challenging them to arrest him. He was picked at about 1734 hours. The mob of lawyers in the meanwhile upturned a motorbike and threw waste paper and other materials near it in a heap. They also set fire to the petrol spilt out from the motorbike and started a fire. At about 1738 hours, the mob is seen breaking open the police station and bringing out a steel cupboard and throwing it along with a chair and a CPU like object into the big fire. Though a

fire engine arrived at 1740 hours, the firemen had to retreat in the face of stone throwing by the advocates. Police started running towards the mob and the police station was set on fire by the mob at about 1746 hours. At this time there appears to have been an order for lathi charge and the policemen are seen chasing the mob with their lathis and charging at them.

Once the policemen were given the order to lathi charge the unruly mob of lawyers to quell them, it would appear that the police interpreted it as a license to unleash mayhem at will. They chased the lawyers on the ground floor, along the corridors on the first floor and beat them up mercilessly. The policemen behaved in the same fashion as the unruly mob of lawyers. The exchange of stones between the lawyers and the policemen continued unabated. The policemen who undoubtedly had lawful authority to subdue the rioting mob, are seen using force disproportionate to the occasion and even after some of the rioters had actually been overpowered and apprehended. They continued to lash out lathi blows' on the lawyers apprehended by them. They threw stones at the lawyers, at the window panes of the Court premises, and also indulged in wanton destruction of and damage to the vehicles parked in the High Court premises. They

chased the lawyers into the Court premises along the corridors and also on the first floor of the Court premises hitting blindly at them with lathis. Despite instructions that during a lathi charge the lathi blow should be aimed at parts of the body other than the head, the police freely rained lathi blows on the heads of the lawyers, causing head injuries to a number of lawyers. There was plenty of blood shed in the quadrangle, along the corridors and also inside the office premises where the police appeared to have entered apparently to look for the rioters. The police barged into the court rooms of the Judges of the Small Causes Court and family court within the High Court complex and indulged in deliberate destruction of the tables, chairs, fans, computers and other articles within the Court premises. When I went round the premises of the High Court complex for inspection, I noticed extensive damage to the Court's properties as glass panes were smashed, the doors of the Xerox machine room were smashed, one Xerox machine was damaged, one Computer was damaged, and fan blades at one place were twisted out of shape. The court staff were unanimous that all this damage was inflicted by the policemen. The police did not spare the children's creche also from the hail of stones. Luckily, however, no child was injured though it

did traumatize some of the children in the creche and the ayahs attending to them.

Not satisfied with beating up the lawyers within the Court premises, the rampaging police staff systematically ran through the chambers of lawyers within the High Court premises causing wanton damage to the premises, pulling out suspected lawyers and beating them. They also went to the lawyers' Chambers situated on the Lingi Chetty Street, Thambu Chetty Street, Armenian Street, Sungurama Chetty Street, Kondichetty Street and Baker Street in the vicinity of the High Court, systematically barged into such of the lawyers chambers which were open and caused damage and beat up some of the lawyers within. Even lady lawyers were not spared.

There is no doubt that the violence was started by the unruly mob of lawyers, some of whom were even dressed in robes and bands, but once the police got into action, there was no stopping them. It was as if the police force, as a body, went berserk. The lathi charge continued irrespective of whether a lawyer was a miscreant or otherwise. The overzealousness of the police resulted in their beating up a Despatch Peon, some other court staff, a canteen boy and even assaulting on the head an

Hon'ble Judge of the High Court namely, Justice. Arumuga Perumal Adithyan The videos show that Justice Arumuga Perumal Adithyan, who was somewhat unduly brave in going to the forefront of the rioting mob of lawyers clashing with the police, tried to appeal to both sides to maintain calm and behave with the dignity befitting the Chartered High Court. Neither side seems to have paid heed to him. In the melee, while lathis were being swung at the lawyers, one lathi blow from behind landed on the head of the Hon'ble Judge. The video shows something interesting. While being carried to the ambulance, the Hon'ble Judge is heard, appealing not to the police, but to the lawyers, and saying: "don't throw stones at the police, they are our protectors".

On the 19th February 2009, when the incident became serious, some of the lawyers rushed to the Chamber of the Learned Acting Chief Justice to apprise him of the developments. The Learned Acting Chief Justice and other Judges and the Registry attempted to contact the Director General of Police and the Commissioner of Police, but they were unable to contact them for a long time. Finally, when the Commissioner of Police was contacted, he assured that he would come to the spot and ensure withdrawal of the police. The Acting Chief Justice was emphatic

that all police personnel should be withdrawn from the High Court premises and they were withdrawn, although some of the lawyers continued to hold dharna inside even after 19th February 2009.

I have refrained from touching upon any of the events which occurred after 19th February 2009 as the order of the Hon'ble Supreme Court requires me to inquire into the incidents which took place on 19th February 2009 and make an interim report.

My view, albeit prima facie, is that the soft-pedaling policy followed by the Madras High Court Judges has led to the present piquant situation. The lawyers appear to have been encouraged by the wrong signals sent out and seemed to think that they could do anything and get away within the Court premises. Regretfully, far from being the upholders of the rule of law, the lawyers seem to have behaved as hooligans and miscreants. The incidents that transpired over a last month or so make it clear that the lawyers seemed to be under the impression that, because they are officers of the Court, they are immune from the process of law and that they could get away with any unlawful act without being answerable to the law enforcing agency. It is most unfortunate that the soft policy adopted by the Acting Chief

Justice of Madras High Court and its administration sent out clearly a wrong message that encouraged and emboldened the lawyers into becoming law breakers. Undoubtedly, the political cross-currents, from the Sri Lankan Tamil issues and caste based issues, contributed to and aggravated the situation. It should have been made clear to the lawyers from the beginning, in no uncertain terms, that whatever their political ideologies, the Court premises could not be utilized for airing them. .

The agitated lawyers whom I interviewed were demanding the scalp of the DGP and other senior police officers. As a result of the order of the Hon'ble Supreme Court made on 26th February, 2009, some of the senior police officers like Joint Commissioner of Police (Central Madras) and three Deputy Commissioners of Police, namely, Deputy Commissioner of Police (Kilpauk), Deputy Commissioner of Police (Flower Bazar) and Deputy Commissioner of Police (Pulianthope) have already been transferred from Chennai. As far as the Commissioner of Police is concerned, I do not think that any blame can be laid at his door. He was actually present at the spot only after 1714 hours. Further, at this time at least, there is no material suggesting that any of the officers had directed or ordered the policemen to behave in the

atrocious manner in which they behaved. As enforcers of law, the policemen are entitled to use such force as is commensurate with the danger that they apprehend. In my view, the circumstances facing the police on the fateful day on 19th February 2009, without doubt, justified quelling the unruly and rioting mob of lawyers by use of force, but the police went much beyond what was permissible use of force. They indulged in wanton lathi blows to lawyers, who were not even resisting or being violent, wanton destruction of property, both inside the compound as well as the Court premises and in then chambers of lawyers inside and outside the Court complex. The conduct of the Police in entering the Court Rooms and damaging the furniture and articles therein, entering the Chambers of the lawyers in the High Court premises and finally in barging into the Chambers of the lawyers away from the High Court premises and beating them and causing damage, is utterly despicable and needs to be roundly condemned. The Hon'ble Supreme Court has already put in place a machinery for disbursement of compensation to the victims.

Unless a detailed inquiry is made into the role played by each of the lawyers in the rioting mob as well as each of the

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Constables and/or Officers of the police force, it will be difficult to pin-point the responsibility on the individuals,

Although, it is irregular for armed police personnel to be deployed inside the High Court premises without the permission of the Chief Justice or the Acting Chief Justice, the circumstances appeared to be somewhat peculiar, As a result of an order passed by the Division Bench of the Madras High Court dated 2nd February' 2007 in Writ Petition No.3197 of 2002, the State of Tamil Nadu was directed to maintain a sanctioned strength of 252 police personnel within the High Court campus at a police outpost to be built by the State Government on a built up area of 4000 sq.ft. comprising ground and first floors. It was further directed that none of such personnel should be deployed elsewhere except for the work of the High Court without the permission of the Chief Justice of the High Court. Pursuant to these directions, a detailed security plan was prepared for the security of the Madras High Court building, which is a heritage building of great value, and appropriate police personnel was maintained in the police outpost known as B-4 Police Outpost which is within the High Court campus. Attached to the High Court campus, but with entrance from outside, is also a full fledge police

'station. In the circumstances, the presence of the armed policemen within the High Court complex, though unusual, was not inexplicable. Considering the series of events that had transpired over a period of about one month culminating in the Mr. Subramaniam Swamy incident on 17th February 2009, it is possible that the police expected further trouble on 19th February 2009 when Mr. Subramaniam Swamy's case was posted for hearing. Further, the fact that only one of the 17 accused could be arrested on 18th February 2009, coupled with information from their sources as to expected trouble on 19th February 2009, might have perhaps persuaded the police presence in large numbers armed with lathis and shields. Though it was highly irregular on the part of armed policemen to be deployed inside the High Court premises, the extra-ordinary circumstances might afford a justifiable excuse to them.

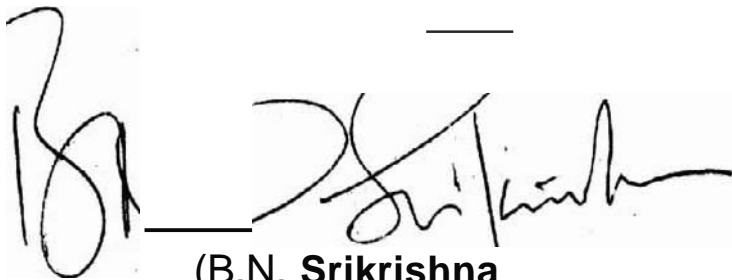
I would submit that the Hon'ble Supreme Court should take this opportunity to exercise its extra-ordinary Constitutional powers and lay down sufficient guidelines for the behavior of the lawyers within and without the Court premises as the Bar Councils have not been acting as an effective regulatory body of their professional conduct. It would be ideal if the

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Advocate's Act is amended to ensure a better disciplinary mechanism of the profession of law, since it affects not only lawyers but also litigants, the administration of the justice in the country, and finally the rule of law itself. Until such time that appropriate Legislation is made, it is desirable that this Hon'ble Court should formulate appropriate guidelines to be followed by lawyers and enforced by all Courts of law.

Mumbai

4th March 2009


(B.N. Srikrishna)