Smt. Kiran Bedi

Vs

Committee of Inquiry and Another

Writ Petition No. 626 of 1988

Smt. Kiran Bedi

Vs

Committee of Inquiry and Another

Special Leave Petition (Civil) Nos. 6719-21 of 1988

Jinder Singh

Vs

Committee of Inquiry and Another

Writ Petition No. 579 of 1988

Jinder Singh

Vs

Committee of Inquiry and Another

Special Leave Petition (Civil) No. 6774 of 1988

(N. D. Ojha, M. M. Dutt, E. S. Vankataramiah JJ)

04.01.1989

JUDGMENT

OJHA, J. –

1. In the writ petition and the special leave petitions filed by Smt. Kiran Bedi, the orders dated May 17, 20 and 23, 1988 passed by the Committee of Inquiry consisting of Mr. Justice N. N. Goswami and Mr. Justice D. P. Wadhwa of the High Court of Delhi (hereinafter referred to as 'the Committee') are sought to be quashed whereas in the writ petition and the SLP filed by Jinder Singh, the order dated May 26, 1988 passed by the said Committee is sought to be quashed.

2. In order to appreciate the respective submissions made by learned counsel for the parties, it would be useful to give in brief the circumstances leading to the appointment of the Committee and also to quote the terms of reference. What ultimately assumed the shape of confrontation between lawyers and police sparked off from an alleged unfortunate incident on January 15, 1988 of a lawyer

being apprehended by the students of St. Stephen's College, University of Delhi and being handed over to the police on the accusation of committing an offence within the campus of the said College. According to the statement of the case filed before the Committee on behalf of the Delhi High Court Bar Association, the said lawyer was brought by the police in handcuffs for production before a Metropolitan Magistrate on January 16, 1988. The lawyers present protested against the handcuffing but their protest was ignored by the police officials. The Metropolitan Magistrate ultimately discharged the lawyer on the same date and also directed the Commissioner of Police to take action against the guilty police officials. In support of their demand for action against the police officials, the lawyers went on strike from January 18, 1988. In the said statement of case it was further stated that on January 20, 1988, Smt. Kiran Bedi, Deputy Commissioner of Police, North District, Delhi, made a statement in a press conference justifying the action of police and criticising the order of the Magistrate in discharging a "thief" and that in order to express their deep concern and anguish a group of lawyers went to meet Smt. Bedi on January 21, 1988 in her office which at that time was situated in the Tis Hazari Court complex itself. Smt. Bedi, however, refused to come out and meet the lawyers whereupon they preferred to wait upon her till such time as she agreed to meet them. They assert that while they had waited for 15-20 minutes the police took recourse to lathi charge on the lawyers on the orders of Smt. Bedi. In the said statement of case it has further been asserted that while the indefinite strike and +the agitation of the lawyers demanding a judicial inquiry into the incident of lathi charge and suspension of Smt. Kiran Bedi was continuing, a mob which eventually swelled to about 3000 persons came to Tis Hazari Court complex on February 17, 1988 raising slogans in support of Smt. Bedi and against the striking lawyers. The mob used brickbats and stones causing injury to some lawyers and damage to property. According to them this mob attack was engineered by Smt. Kiran Bedi. A statement of case was also filed by Ved Prakash Marwah, the then Commissioner of Police attaching thereto affidavits of 25 police officers including an affidavit of Smt. Kiran Bedi. There is a denial on their part of the assertions and insinuations made against them by the Delhi Bar Association referred to above. With regard to the incident of January 21, 1988 the case of Smt. Kiran Bedi as is apparent from her affidavit filed along with the aforesaid statement of case is that she along with some other officers reached her Tis Hazari office at about 11.15 a.m. and while a meeting was in progress in connection with the arrangements for the Republic Day some time around 12 noon, slogans were heard

being raised outside by an apparently large crowd approaching in our direction. Before we realised what was happening, all of sudden a group of lawyers stormed into my office pushing aside the female constable on duty at my door. They rushed towards me making violent gestures and uttering obscenities at me. They made physical gesture and threats to the effect .... The police officers who were sitting around my table jumped to their feet. They held back one of the hysterical persons who had actually advanced in my direction and formed a ring around the lawyers and managed to move them out of my office while bolting me inside along with my female constable and a female visitor who had come to see me for her own work.

We have thought it proper not to quote the actual words of threat stated in the said affidavit. According to Smt. Kiran Bedi the situation thereafter outside her office was handled by the other officers present while she remained inside the office.

3. We are not concerned with the correctness or otherwise of either of the two versions stated above and as already pointed out we have referred to them only to indicate the background in which the Committee was constituted. Having referred in brief to the circumstances which led to the appointment of the Committee we now quote the order of reference :

F. No. 10/9/88-NP-II Delhi Administration : Delhi (Home Police-II Delhi) Dated February 23, 1988. ORDER##

Whereas the Administrator of the Union Territory of Delhi is of the opinion that a judicial inquiry is necessary into matters of public importance mentioned below; Now therefore, the Administrator is pleased to constitute a Committee, in consultation with the Chief Justice of Delhi High Court consisting of Mr. Justice N. N. Goswami and Mr. Justice D. P. Wadhwa Hon'ble Judges of the High Court to inquire into and record their findings on the following :

(i) The incident of January 15, 1988 in St. Stephen's College, University of Delhi regarding apprehension of a lawyer by the police.

(ii) The incident and reported lathi charge on January 21, 1988 outside the office of the DCP/North, Delhi.

(iii) Circumstances leading to presence of a mob in Tis Hazari premises on February 17, 1988 and the resultant violence.

(iv) Any other incidental development connected with the above.

The Committee is requested to ascertain the facts leading to the aforesaid incidents with a view to identifying those responsible for the incidents so that stringent action could be taken against all those responsible.

The Committee may, if it deems appropriate, submit an interim report within seven days of its first sitting suggesting action if any, against police officials or any other involved persons pending submission of the final report within a period of 3 months.

4. Subsequently in pursuance of a direction issued by this Court the aforesaid notification was modified by the Administrator vide Notification dated March 15, 1988 by directing that the provisions of Sections 4, 5, 5-A, 6, 8, 8-A, 8-B, 8-C, 9, 10 and 10-A of the Commissions of Inquiry Act, 1952 and the rules made under Section 12 thereof shall apply to the said Committee.

5. The Committee submitted an interim report on April 9, 1988 and during the course of proceedings before it it thereafter passed the aforesaid orders which are the subject matter of these writ petitions and special leave petitions.

6. After having heard learned counsel for the parties at length we passed an order on August 18, 1988 (Kiran Bedi v. Committee of Inquiry, (1988) 4 SCC 49 : 1988 SCC (Cri) 895) which we consider it appropriate to reproduce here with a view to avoiding the repetition of the reasons already given therein in support of the said order :

It is unfortunate that this case has arisen between lawyers and police who are both guardians of law and who constitute two important segments of society on whom the stability of the country depends. It is hoped that cordiality between the two sections will be restored soon.

In order to avoid any further delay in the proceedings before the Committee consisting of Goswami and Wadhwa, JJ., constituted by order dated February 23, 1988 to enquire into certain incidents which took place on January 15, 1988, January 21, 1988 and February 17, 1988, we pass the

following order now but we shall give detailed reasons in support of this order in due course.

The order is as under :

> (1) This order is passed on the basis of the material available on record, the various steps already taken before the Committee and other peculiar features of the case.
>
> (2) The Delhi Administration has to examine first all its witnesses as required by Rule 5(5)(a) of the Commissions of Inquiry (Central) Rules, 1972 (hereinafter referred to as 'the Rules') framed under the Commissions of Inquiry Act, 1952 (hereinafter referred to as 'the Act'). Even those witnesses who may have filed affidavits already may first be examined-in-chief before they are cross-examined, since it is stated that when the affidavits were filed the deponents did not know what the other parties who have also filed affidavits had stated in their affidavits. The question whether a party has the right of cross-examination or not shall be decided by the Committee in accordance with Section 8-C of the Act. In the facts and circumstances of the case to which reference will be made hereafter this direction issued to the Delhi Administration to examine its witnesses first as provided by Rule 5(5)(a) of the Rules referred to above does not apply to those witnesses falling under Section 8-B of the Act, who have to be examined at the end of the inquiry as opined by the Committee itself.
>
> (3) We have gone through the several affidavits and other material placed before the Committee and also the Interim Report dated April 9, 1988 passed by the Committee. In para 13 of the Interim Report the Committee has observed thus :

During the course of the inquiry, we have to examine the conduct of various police officers and others and particularly, as the record shows, of the DCP (North), Addl. DCP (North), SHO, P. S. Samaipur (Badli) and SI Incharge Police Post, Tis Hazari and SI, Samaipur (Badli).

In para 14 of the Interim Report it is observed :

> Lawyers have seriously urged that this Committee should send a report recommending suspension of the DCP (North) Ms. Kiran Bedi.

Ultimately the Committee recommended the transfer of the petitioners in these cases, namely, Ms. Kiran Bedi, DCP (North) and Jinder Singh SI, Incharge Police Post, Tis Hazari.

Section 8-B of the Act reads :

> 8-B. If, at any stage of the inquiry, the Commission, -
>
> (a) considers it necessary to inquire into the conduct of any person; or
>
> (b) is of opinion that the reputation of any person is likely to be prejudicially affected by the inquiry,
>
> the Commission shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence :

> Provided that nothing in this section shall apply where the credit of a witness is being impeached.

In its Interim Report the Committee has unequivocally observed that it had to examine the conduct of various police officers, and in particular among others Ms. Kiran Bedi, DCP (North) and Jinder Singh, SI, Incharge Police Post, Tis Hazari.

Having given our anxious consideration to all the aspects of the case we hold that the petitioners Ms. Kiran Bedi and Jinder Singh are persons who fall under Section 8-B of the Act and have to be dealt with accordingly.

> (4) According to the Committee's own opinion formed in the light of the facts and circumstances of the case, all those persons to whom notices under Section 8-B of the Act are issued have to be examined at the end of the inquiry. This is obvious from the order of the Committee passed on June 29, 1988 after it was asked by this Court by its order dated June 2, 1988 to reconsider the whole question relating to the order in which the witnesses had to be examined in the case. In its order dated June 29, 1988 the Committee has observed thus :

Without going into the controversy if Rule 5(5) is an independent rule or is governed by Sections 8-B and 8-C of the Act, we would direct that in the circumstances of the case three persons namely, the Additional Commissioner of Police (Special Branch), DCP (Traffic) and Mr. Gopal Das Kalra, SI to whom notices under Section 8-B of the Act have been issued be examined at the end of the inquiry.

If three persons referred to above to whom notices under Section 8-B have been issued are to be examined even according to the Committee at the end of the inquiry there is no justifiable reason to deny the same treatment to the petitioners Ms. Kiran Bedi and Jinder Singh who are in the same position as those three persons. The action of the Committee in asking them to be cross-examined at the beginning of the inquiry appears to us to be discriminatory. Mere non-issue of notices to them under Section 8-B ought not to make any difference if they otherwise satisfy the conditions mentioned in Section 8-B. The issue of such a notice is not contemplated under Section 8-B of the Act. It is enough if at any stage the Commission considers it necessary to inquire into the conduct of any person. Such person would thereafter be governed by Section 8-B of the Act. The Committee should have considered whether the petitioners were entitled to be treated as persons governed by Section 8-B of the Act before asking them to get into the witness box for being cross-examined. If the Committee had found that the petitioners were covered under Section 8-B, then perhaps they would not have been asked to get into the witness box for being cross-examined till the end of the inquiry. The Committee would have then asked them to give evidence along with others who were similarly placed at the end of the inquiry.

On behalf of both the petitioners it is submitted that they did not either wish to delay the proceedings or to show disrespect to the Committee but only wanted to protect their own interest by making the submission which they made before the Committee as per legal advice given to them.

This is not a case where the circumstances in which the several incidents that had taken place were not known to anybody else. The affidavits and other material before the Committee show that there were a large number of persons who were eye-witnesses to the incidents and who could give evidence before the Committee.

Taking into consideration all the aspects of the case we feel that the Committee should not have in the circumstances of the case directed the filing of a complaint against either of the petitioners for an offence punishable under Section 178 IPC.

In view of the foregoing we feel that the orders of the Committee directing the filing of the complaints and the criminal proceedings initiated against the petitioners before the Metropolitan Magistrate pursuant to the complaints filed on behalf of the Committee should be quashed and we accordingly quash the said orders of the Committee and also the criminal proceedings.

A judgment containing the reasons for this order will follow.

Before concluding this order we record the statement made by Shri Kuldip Singh, learned Additional Solicitor General appearing for the Delhi Administration that the Delhi Administration and its police officers will fully cooperate with the Committee so that the Committee may complete its work as early as possible. We also record the statement made by Shri G. Ramaswamy, learned Additional Solicitor General that he and his clients, the petitioners in this case hold the Committee in great respect and that they never intended to show any kind of discourtesy to the Committee. He also expresses apology for using one or two strong words against the Committee in the course of the arguments in this Court.

7. We now proceed to give our detailed reasons in support of the aforesaid order :

> We find it necessary to refer to some of the regulations framed by the Committee to regulate its procedure. We also find it necessary to indicate the nature of the orders which have been challenged in these writ petitions and special leave petitions. It also seems appropriate at this very place to refer to the order of his Court passed in these proceedings on June 2, 1988 and the order of the Committee passed on June 29, 1988 in pursuance of the order of this Court dated June 2, 1988. As is apparent from the copy of the regulations filed in these proceedings, the Committee framed "Regulations of procedure under Section 8 of the Commissions of Enquiry Act, 1952 to be followed by the Committee of Inquiry". Regulations 8, 11, 14, 18 and 21 which in our opinion appear to be relevant for purposes of these cases are reproduced as hereunder :

8. To avoid its proceedings being unduly prolonged and protracted, the Committee may divide and group together the various persons, associations and departments before it in such manner as it thinks just and proper for the purposes of producing oral evidence, cross-examination of witnesses examined before it, and for addressing arguments :

> Provided, however, any person who is likely to be prejudicially affected as provided in Section 8-B of the Act shall be entitled to appear personally or through an authorised agent, and to produce evidence in his or her defence.

11. The witnesses whose evidence is recorded by the Committee orally on oath will be allowed to be cross-examined by the concerned parties in accordance with the provisions of the Act.

14. The affidavit or statement of case filed by any deponent can be treated as his examination-in-chief.

18. Technical rules of the Evidence Act, as such, shall not govern the recording and admissibility of

evidence before the Committee. However, the principles of natural justice and fair play shall be followed.

21. The Committee reserves the right to alter, modify, delete or add to any of these regulations of procedure at any time during the inquiry, as and when it considers necessary.

8. In pursuance of a notice issued by the Committee under Rule 5(2)(a) of the Rules, statements of case inter alia on behalf of Delhi High Court Bar Association and the Commissioner of Police which were accompanied by affidavits in support of the facts set out in the respective statements of case were filed before the Committee. On April 8, 1988, the parties and their counsel stated that they would need two weeks' time to file counter-affidavit and list of witnesses to be examined by them. The time prayed for was granted. The proceedings on that date were adjourned to April 22, 1988. On that date an application was made on behalf of the Commissioner of Police and other police officers for extension of time to file counter-affidavit which was extended till May 13, 1988. The following order, however, was simultaneously passed on that date :

> Mr. Vijay Shankar Dass has been told to keep his witnesses ready for being examined from May 16, 1988. The Committee proposes to hold the sitting from day-to-day w.e.f. May 16, 1988. For further proceedings and recording of evidence to come up on May 16, 1988.

Here it may be pointed out that Mr. Vijay Shankar Dass was the counsel appearing for the Delhi Police and the effect of the order aforesaid was that the Delhi Police was required to keep its witnesses ready for being examined from May 16, 1988. On May 16 time till 5 p.m. to all concerned to file their counter-affidavits along with the list of witnesses was granted and further proceedings were adjourned for the next day. On May 17, 1988 two applications were made on behalf of the Commissioner of Police : one for postponement of hearing and the other for calling upon the Bar Association to start their evidence and to call upon the Commissioner of Police to adduce his evidence thereafter. The counter-affidavit and the list of witnesses on behalf of the Commissioner of Police had not been filed even till May 17, 1988. The Committee dismissed both the applications referred to above and passed an order saying that since the Commissioner of Police has failed to file the counter-affidavit or the list of witnesses, Mr. Jinder Singh, SI, and Mrs. Kiran Bedi, the then DCP (North) be present in court on May 19, 1988 at 10.30 a.m. for being cross-examined. On May 19, 1988, counsel for Delhi Police was directed to produce Mr. Jinder Singh, SI, in the witness box for being cross-examined. On being informed by counsel for Delhi Police that Mr. Jinder Singh was not available, bailable warrant was ordered by the Committee to be issued for production of Mr. Jinder Singh at 10.30 a.m. on May 23, 1988. Thereafter Smt. Kiran Bedi who was present in court was directed to come in the witness box for cross-examination. The relevant portion of the order passed thereafter on May 19, 1988 reads as hereunder :

> Ms. Bedi has been asked to take oath, but she has refused to do so. At this stage, we called upon Mr. G. Ramaswamy, counsel appearing for Delhi Police as also Mr. Vijay Shankar Dass, counsel appearing for Ms. Kiran Bedi to justify the action of the witness in not taking the oath. We call upon the counsel to address because according to us prima facie offence is made out under Section 178 IPC.

Mr. Ramaswamy relies on the judgment of this Court in Smt. Indira Gandhi v. Mr. J. C. Shah, Commission of Inquiry (ILR (1980) 1 Del 552). We have been taken through certain passages of judgment and we find that the facts of case are entirely different inasmuch as no affidavit had been

filed by Smt. Indira Gandhi in that case and she had been summoned merely under Section 8-B of the Commissions of Enquiry Act.

In the present case, an affidavit of Ms. Kiran Bedi is on record. She had to be given further opportunity to make any further statement and her affidavit already filed has to be justified by cross-examination.

Let notice issue to Ms. Kiran Bedi to show cause why she should not be prosecuted under Section 178 IPC. Since she is present, she is accepting this notice. The notice is returnable for tomorrow, May 20, 1988. Ordinarily directions have to be issued to her to be present in court, but Mr. Shankar Dass undertakes that she will be present in court tomorrow and as such no further directions are necessary.

9. On May 20, 1988 as the order sheet of that date indicates counter-affidavit along with list of witnesses was filed on behalf of the Commissioner of Police and both were taken on record. With regard to the notice issued to Smt. Kiran Bedi on May 19, 1988, the following order was passed :

By our order dated May 19, 1988, we had issued a notice to Ms. Bedi to show cause as to why she should not be prosecuted under Section 178 of the IPC for refusing to take oath in the witness box. Notice was made returnable for today.

Mr. Shankar Dass who appears for Ms. Kiran Bedi has refused to show cause on the ground that notice was too short.

We have heard the arguments of Mr. K. K. Venugopal on behalf of the Bar Association.

For orders to come up on May 23, 1988. Ms. Kiran Bedi who is present today is directed to be present in the court on May 23, 1988 at 10.30 a.m.

10. On May 23, 1988, the Committee held that refusal of Smt. Kiran Bedi in not testifying on oath before the Committee was wholly unjustified and proceeded to file a complaint for an offence under Section 178 of the Indian Penal Code. As regards Mr. Jinder Singh, it seems that he could not be required to appear in the witness box on May 23, 24 or 25, 1988. On May 26, 1988 the following order was passed :

> Mr. Jinder Singh was directed to come into the witness box. When asked by us to bind himself on oath or affirmation to state the truth, the witness refused to do so. Earlier we had authorised the court master to administer him the oath. But, as we have already said, the witness refused to take the oath. The witness states that he is willing to make a statement without oath and would be prepared to answer all the questions in cross-examination. When asked if he is aware of the fact that his action in not taking the oath is punishable under Section 178 of the Indian Penal Code, he says he has nothing further to state. On consideration the Committee is of the opinion that since this witness has already filed an affidavit which is a statement on oath, it is not possible to record any further statement or cross-examine without oath. Mr. Jinder Singh, however, states that he is not prepared to take the oath because he is in the nature of an accused and he cannot be asked to start the evidence and would be prepared to come in the witness box after the evidence of other party is recorded.

Mr. Jinder Singh at present SI at Police Post, Railway Station, Subzi Mandi, Delhi, who was SI in

charge Tis Hazari Courts, Delhi during January and February 1988, was summoned as a witness and was asked to step into the witness box. His statement was to be recorded on oath for the purpose of cross-examination. He, however, refused to bind himself by an oath or affirmation to state the truth when required so to bind himself by the Committee. The Committee considers that Mr. Jinder Singh who was at the relevant time SI in charge at Tis Hazari Courts, Delhi, where the incidents took place is a very material witness and his case is identical to the case of Ms. Kiran Bedi. For the reasons recorded in our order dated May 23, 1988 regarding Ms. Kiran Bedi, we proceed to file a complaint for an offence under Section 178 of the Indian Penal Code.

11. In pursuance of the orders dated May 23 and May 26, 1988 complaints were filed by the Committee in the court of the Chief Metropolitan Magistrate, Delhi, for an offence under Section 178 of the Indian Penal Code and as is apparent from a copy of one of the complaints produced before us these complaints have been filed under sub-section (4) of Section 5 of the Commissions of Inquiry Act, 1952 read with Section 346 of the Code of Criminal Procedure, 1973. As already indicated, it is the aforesaid orders dated May 17, 20, 23 and 26, 1988 which have been challenged in these writ petitions and special leave petitions. These writ petitions and special leave petitions first came up for consideration before K. N. Singh, J. who was functioning as the Vacation Judge. After hearing the parties he passed an order on June 2, 1988. The relevant portion of the order which was passed by this Court on June 2, 1988 in these proceedings, reads as hereunder :

> Learned counsel for the parties agree that the respondent Committee should be directed to re-examine the order and sequence in which parties witnesses as well as the witnesses summoned by the Committee should be examined with reference to the incidents mentioned in the Notification dated February 23, 1988. The Committee is accordingly directed to consider afresh the order in which the parties witnesses as well as witnesses summoned by the Committee on its own are to be examined with reference to the incidents mentioned in the notification appointing the Committee after hearing counsel for the parties. The Committee is further directed to consider the question as to the stage when main witnesses on behalf of the respective parties should be examined. The Committee will pass a reasoned order after hearing the parties. Parties agree that these questions should be considered by the Committee on June 20, 1988 or any subsequent date subject to its convenience.

12. In pursuance of the aforesaid order, the Committee after hearing learned counsel for the parties passed an order on June 29, 1988. It inter alia took the view that the concept of burden of proof did not appear to be quiet relevant in the proceedings before a Commission under the Act which had been given free hand to lay down its own procedure subject, of course, to the provisions of the Act and the rules made thereunder. It also held that it would be difficult for the Committee to lay down the manner in which the witnesses are to be examined foregoing its right to examine any witness at any stage if his statement appeared to be relevant.

13. One of the submissions made by learned counsel for the Commissioner of Police was that since serious accusations have been made by the lawyers against Smt. Kiran Bedi and the police with regard to the incidents dated January 21 and February 17, 1988, the lawyers should be first called upon to lead evidence to substantiate their allegations and the police personnel may be required to lead evidence only in rebuttal. This submission, however, did not find favour with the Committee. It took the view that the whole stress of learned counsel seemed to be on burden of proof and was based on certain misconceptions. Likewise, the argument that Smt. Kiran Bedi and Jinder Singh also fell within the purview of Section 8-B of the Act did not find favour with the Committee. In this

connection, it was pointed out that except for the three officers namely, the Additional Commissioner of Police (Special Branch), New Delhi, DCP (Traffic) and Mr. Gopal Das Kalra, SI, Police Station, Samaipur (Badli), to no other officer notice under Section 8-B of the Act had been issued and that merely because there were allegations against a particular person he could not be said to be covered under Section 8-B which required a positive order from the Committee. It was also pointed out that a person has to be put on guard by the Committee if it considers it necessary to inquire into his conduct or the Committee is of the opinion that the reputation of that person is likely to be prejudicially affected by the inquiry. When its attention was invited to the interim report where the Committee had mentioned that conduct of various police officers particularly of the DCP (North), Addl. DCP (North) SHO, P.S. Samaipur (Badli) and SI Incharge Police Post Tis Hazari and SI, Samaipur (Badli), was to be examined and it was submitted that consequently they were covered under Section 8-B, the Committee took the view that the submission was misplaced inasmuch as when the Committee mentioned that it was to examine the conduct of various police officers and others, it did not have in view Section 8-B of the Act. According to the Committee the plea that Section 8-B was attracted appeared to be an afterthought.

14. With regard to the three persons mentioned above to whom notices under Section 8-B of the Act had been issued, the Committee specifically held that those persons would be examined at the end of the inquiry. The Committee emphasised on the circumstance that in the inquiry before it there was no "lis" as is commonly understood while trying a criminal or civil case and that principle of burden of proof had no relevance.

15. These cases were then posted before this Bench for hearing. On the respective submissions made by learned counsel for the parties, the following points, in our opinion, arise for consideration :

(i) whether the procedure adopted by the Committee with regard to the sequence in which witnesses were to be examined was legal ?

(ii) whether Smt. Kiran Bedi and Jinder Singh, the two petitioners, fell within the category of persons contemplated by Section 8-B of the Act and were consequently entitled to the same treatment as was accorded by the Committee to the persons to whom notice had been issued by it under the said section ?

(iii) whether the Committee was justified in calling upon the two petitioners to stand in the witness box for cross-examination almost at the very initial stage of the inquiry ?

(iv) whether the orders of the Committee directing prosecution of the two petitioners under Section 178 IPC are legal ?

(v) whether an appeal is maintainable against filing of complaint, the same being an administrative act ?

(vi) whether a challenge to the filing of the complaint is infructuous inasmuch as the order issuing summons to the petitioners passed by the Magistrate upon the complaints filed against them had not been challenged ?

(vii) whether it is a fit case for interference by this Court at this stage with the filing of complaint, it being open to the petitioners to prove themselves to be innocent before the Magistrate ?

16. With regard to point (i) we are of the opinion that apart from the directions contained in paragraph (4) of our order dated August 18, 1988 regarding the stage at which persons falling under Section 8-B of the Act were to be examined and also what has been observed in paragraph (2) of the said order, we do not find it expedient to lay down any particular rigid procedure to be followed by the Committee with regard to sequence in which witnesses were to be examined by it.

17. Consequently, we find it unnecessary to consider in any further detail, the submissions made by counsel for the parties on this point. Insofar as point (ii) is concerned, it would be seen that the use of the word 'or' between clauses (a) and (b) of Section 8-B of the Act makes it clear that Section 8-B would be attracted if requirement of either clause (a) or clause (b) is fulfilled. Clause (a) of Section 8-B applies when the conduct of any person is to be enquired into whereas clause (b) applies to a case where reputation of a person is likely to be prejudicially affected. As regards the enquiry about the conduct of Smt. Kiran Bedi and Jinder Singh, even the Committee in its interim report specifically stated that the conduct of these two petitioners among others was to be examined. Having once so stated in unequivocal terms, it was not open to the Committee to still take the stand that Section 8-B was not attracted insofar as they were concerned. Recourse to procedure under Section 8-B is not confined to any particular stage and if not earlier, at any rate, as soon as the Committee made the aforesaid unequivocal declaration of its intention in its interim report, it should have issued notice under Section 8-B to the two petitioners, if it was of the view as it seems to be, for which view there is apparently no justification, that issue of a formal notice under Section 8-B was the sine qua non for attracting that section. At all events, the Committee could not deny the petitioners the statutory protection of Section 8-B by merely refraining from issuing a formal notice even though on its own declared intention the section was clearly attracted.

18. In State of J & K v. Bakshi Ghulam Mohammad (1966 Supp SCR 401, 410-11 : AIR 1967 SC 122), while dealing with Section 10 of the Jammu and Kashmir Commission of Enquiry Act, 1962 which seems to be an amalgam of Sections 8-B and 8-C of the Commissions of Enquiry Act, 1952 and repelling the argument that Section 10 applied only when the conduct of a person came to be enquired into incidentally and not when the Commission had been set up to enquire directly into the conduct of a person, it was held :

If a Commission is set up to inquire directly into the conduct of a person, the Commission must find it necessary to inquire into that conduct and such a person would, therefore, be one covered by Section 10. It would be strange indeed if the Act provided for rights of a person whose conduct incidentally came to be enquired into but did not do so in the case of persons whose conduct has directly to be inquired into under the order setting up the Commission. It would be equally strange if the Act contemplated the conduct of a person being inquired into incidentally and not directly. What can be done indirectly should obviously have been considered capable of being done directly.

19. In State of Karnataka v. Union of India ((1977) 4 SCC 608 : (1978) 2 SCR 1), with reference to Section 8-B of the Act, it was held at page 108 of the report (SCC p. 700, para 184) that it was undeniable that the person whose conduct was being enquired into was exposed to the fierce light of publicity.

20. Keeping in view the nature of the allegations made in the statements of case and the supporting affidavits filed on behalf of the various Bar Associations including the Delhi High Court Bar Association requirement of even clause (b) of Section 8-B was fulfilled inasmuch as if those allegations were proved they were likely to prejudicially affect the reputation of the two petitioners. Indeed, in view of the term of reference which contemplated taking of "stringent action" against all

those responsible, even the career of the petitioners as police officers was likely to be affected in case an adverse finding was recorded against them. In view of the aforesaid specific term of reference, the principle that the report of a Commission of Enquiry has no force proprio vigore does not on a pragmatic approach to the consequences seem to constitute sufficient safeguard so far as the petitioners are concerned.

21. The reason for the importance attached with regard to the matter of safeguarding the reputation of a person being prejudicially affected in clause (b) of Section 8-B of the Act is not far to seek.

22. The following words of caution uttered by the Lord to Arjun in Bhagwad Gita with regard to dishonour or loss of reputation may usefully be quoted :

> Akirtinchapi bhutani kathaishyanti te-a-vyayam, Sambhavitasya Chakirtir maranadatirichyate. (2.34)
>
> (Men will recount thy perpetual dishonour, and to one highly esteemed, dishonour exceedeth death.)

23. In Blackstone's Commentary of the Laws of England, Volume I, 4th edn., it has been stated at page 101 that the right of personal security consists in a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health and his reputation.

24. In Corpus Juris Secundum, Volume 77 at page 268 is to be found the statement of law in the following terms :

> It is stated in the definition Person, 70 C.J.S. p. 688 note 66 that legally the term "person" includes not only the physical body and members, but also every bodily sense and personal attribute, among which is the reputation a man has acquired. Blackstone in his Commentaries classifies and distinguishes those rights which are annexed to the person, jura personarum, and acquired rights in external objects, jura rerum; and in the former he includes personal security, which consists in a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health and his reputation. And he makes the corresponding classification of remedies. The idea expressed is that a man's reputation is a part of himself, as his body and limbs are, and reputation is a sort of right to enjoy the good opinion of others, and it is capable of growth and real existence, as an arm or leg. Reputation is, therefore, a personal right, and the right to reputation is put among those absolute personal rights equal in dignity and importance to security from violence. According to Chancellor Kent "as a part of the rights of personal security, the preservation of every person's good name from the vile arts of detraction is justly included. The laws of the ancients, no less than those of modern nations, made private reputation one of the objects of their protection.

The right to the enjoyment of a good reputation is a valuable privilege, of ancient origin, and necessary to human society, as stated in Libel and Slander Section 4, and this right is within the constitutional guaranty of personal security as stated in Constitutional Law Section 205, and a person may not be deprived of this right through falsehood and violence without liability for the injury as stated in Libel and Slander Section 4.

Detraction from a man's reputation is an injury to his personality, and thus an injury to reputation is

a personal injury, that is, an injury to an absolute personal right.

25. In D. F. Marion v. Davis (55 ALR 171), it was held :

> The right to the enjoyment of a private reputation, unassailed by malicious slander is of ancient origin, and is necessary to human society. A good reputation is an element of personal security, and is protected by the Constitution equally with the right to the enjoyment of life, liberty, and property.

26. In view of the foregoing discussion and the reasons already stated in our order dated August 18, 1988, we are of the view that the two petitioners namely, Smt. Kiran Bedi and Jinder Singh clearly fell within the category of persons contemplated by Section 8-B of the Act and were consequently entitled to the same treatment as has been accorded by the Committee to the persons to whom notice has been issued by it under the said section. As a consequence, we are further of the opinion that our answer to point (iii) has to be that the Committee was not justified in calling upon the two petitioners to stand in the witness box for cross-examination at the very initial stage of the enquiry. In this connection, it has to be borne in mind that Section 8-B inter alia contemplates an opportunity being given to the person governed by the said section to produce evidence in his defence whereas Section 8-C inter alia gives him the right to cross-examine the witnesses who depose against him. Not only that calling upon a person governed by Section 8-B to produce evidence in his defence at the very inception of the inquiry is a contradiction in terms inasmuch as in this situation such a person would really be required to disprove statements prejudicial to him of such witnesses who are yet to be examined, it would also reduce the right of cross-examination by such person to a mere formality for the obvious reason that by the time the witnesses who are to be cross-examined are produced, the defence of such person which would normally constitute the basis for the line and object of cross-examination would already be known to such witnesses and they are likely to refashion their statements accordingly.

27. Perhaps in a case where there is no other witness to give information about the alleged incident about which the inquiry is being held and the only person or persons who could give such information is or are the person or persons who are likely to be adversely affected by the inquiry, it may be necessary to depart from the above view as a matter of necessity. But this is not one such case. There are admittedly any number of other persons who can give evidence about what happened on the relevant dates.

28. Learned counsel for the various Bar Associations who shall hereinafter be referred to as learned counsel for the respondent expressed an apprehension that in case a person governed by Section 8-B was to be examined at the end and at that stage such person even at the risk of not producing his defence, for some reason, chooses not to appear as a witness, the Committee would be deprived of knowing the facts in the knowledge of such person and such a course would obviously hamper the enquiry. To us this apprehension seems to be more imaginary than real inasmuch as the power of the Commission to call upon any person to appear as a witness under Section 4 of the Act which in terms is very wide and is not circumscribed by fetters of stage, will be available to the Commission and the Commission would be entitled to call such person as a witness even at that stage.

29. Before parting with these points we may point out that learned counsel for the respondent cited several authorities in support of the principle that the report of a Commission of Inquiry which was only a fact finding body did not have force proprio vigore and was only recommendatory in nature. Since the principle is well settled we have not considered it necessary to deal with those authorities.

Likewise some cases were cited with regard to claim of privilege by a witness. Since the petitioners are not claiming any privilege but are only claiming to be treated in a reasonable way as persons governed by Section 8-B of the Act and to be meted out the same treatment which has been given to persons falling in that category, those cases also are not necessary to be dealt with.

30. Now we come to the fourth point namely whether the orders of the Committee directing prosecution of the petitioners under Section 178 IPC are legal. In order to appreciate the respective submissions of the learned counsel for the parties on this point it will be useful to reproduce here Sections 178 and 179 IPC. They read :

> 178. Refusing oath or affirmation when duly required by public servant to make it. - Whoever refuses to bind himself by an oath or affirmation to state the truth, when required so to bind himself by a public servant legally competent to require that he shall so bind himself, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

179. Refusing to answer public servant authorised to question. - Whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him touching that subject by such public servant in the exercise of the legal powers of such public servant, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

31. The Committee had in the instant case directed a complaint to be filed against each of the petitioners for an offence punishable under Section 178 IPC and subsequently filed complaints accordingly. The charge against the petitioners, therefore, was of refusal to bind themselves by an oath or affirmation to state the truth on being called upon to do so. Section 179 IPC in the context becomes relevant insofar as it deals with the consequences of refusal by the person concerned to answer questions demanded of him touching that subject with regard to which such person had bound himself to state the truth under Section 178. The context in which the two petitioners were required to bind themselves by an oath or affirmation to state the truth was to face cross-examination. The petitioners were obviously placed on the horns of a dilemma. If they refused to bind themselves by an oath or affirmation to state the truth they became liable to be punished with simple imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both. If on the other hand they had so bound themselves and thereafter refused to answer any question as contemplated by Section 179 they would have again become vulnerable to identical punishment.

32. The problem in the aforesaid background presents two propositions : (1) whether on the belief that they were persons covered by Section 8-B of the Act the petitioners could avoid the consequences of Sections 178 and 179 IPC by claiming absolute immunity from binding themselves by an oath or affirmation for answering questions put to them and (2) whether they could avoid those consequences if they had valid justification for refusing to take oath or affirmation without claiming an absolute immunity from binding themselves by an oath or affirmation. The answer to the first proposition, in our opinion, has to be in the negative whereas of the second in the affirmative. Our reasons for this conclusion are these :

> In McGrain v. Daugherty (71 L ed 580) one of the questions which arose for consideration was whether the Senate - or the House of Representatives, both being

> on the same plane in this regard - has power, through its own process, to compel a private individual to appear before it or one of its committees and give testimony needed to enable it efficiently to exercise a legislative function belonging to it under the Constitution. It was held that the power of inquiry - with process to enforce it - is an essential and appropriate auxiliary to the legislative function and that the provisions in this behalf are not of doubtful meaning, but

are intended to be effectively exercised, and therefore to carry with them such auxiliary powers as are necessary and appropriate to that end. While the power to exact information in aid of the legislative function was not involved in those cases, the rule of interpretation applied there is applicable here. A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information - which not infrequently is true - recourse must be had to others who do possess it. Experience has taught that mere request for such information often are unavailing, and also that information which is volunteered is not always or complete; so some means of compulsion are essential to obtain what is needed. All this was true before and when the Constitution was framed and adopted. In that period the power of inquiry - with enforcing process - was regarded and employed as a necessary and appropriate attribute of the power to legislate - indeed, was treated as inhering in it. Thus there is ample warrant for thinking, as we do, that the constitutional provisions which commit the legislative function to the two houses are intended to include this attribute to the end that the function may be effectively exercised.

33. On these findings, with regard to refusal by the witness to appear and testify before the Committee and being attached as a consequence thereof, it was held :

> We conclude that the investigation was ordered for a legitimate object; that the witness wrongfully refused to appear and testify before the committee and was lawfully attached; that the Senate is entitled to have him give testimony pertinent to the inquiry, either at its bar or before the committee; and that the district court erred in discharging him from custody under the attachment.

34. In Uphaus v. Wyman (3 L ed 2d 1090) a witness at an investigation by the Attorney General of the State of New Hampshire, conducted pursuant to a resolution of the State legislature authorizing the Attorney General to determine whether there were subversives within the State, refused to obey a subpoena calling for the production of a list of persons who were guests at a camp operated within New Hampshire by a voluntary corporation of which the witness was executive director. On petition of the Attorney General, the Merrimack County Court called the witness before it and the witness again refused to produce the information, asserting, first, that, by the Smith Act (18 USC s. 2385), Congress had so completely occupied the field of subversive activities that the States were without power to investigate in that area, and, second, that the due process clause precluded enforcement of the subpoena. The court rejected the witness' argument, and, upon his continued refusal to produce the list, adjudged him in contempt and committed him to jail until he should comply. The Supreme Court of New Hampshire affirmed, and even after remand by the United States Supreme Court it reaffirmed its former decision. On appeal, while affirming the decision of the Supreme Court of New Hampshire the United States Supreme Court held that since the Attorney General sought to learn if subversive persons were in the State because of the legislative determination that such persons, statutorily defined with a view toward the Communist Party, posed a serious threat to the security of the State, the investigation was undertaken in the interest of self-preservation and this

governmental interest outweighed individual rights in an associational privacy which, however real in other circumstances were here tenuous at best. It was further held that

the governmental interest in self-preservation is sufficiently compelling to subordinate the interest in associational privacy of persons who, at least to the extent of the guest registration statute, made public at the inception the association they now wish to keep private. In the light of such a record we conclude that the State's interest has not been "pressed, in this instance, to a point where it has come into fatal collision with the overriding" constitutionally protected rights of appellant and those he may represent.

35. In Sinclair v. United States (73 L ed 692) it was held :

> Neither Senate Joint Resolution 54 nor the action taken under it operated to divest the Senate or the committee of power further to investigate the actual administration of the land laws. It may be conceded that Congress is without authority to compel disclosures for the purpose of aiding the prosecution of pending suits; but the authority of that body, directly or through its committees, to require pertinent disclosures in aid of its own constitutional power, is not abridged because the information sought to be elicited may also be of use in such suits.

36. In Kastigar v. United States (32 L ed 2d 212) the United States District Court for the Central District of California ordered the petitioners to appear before a grand jury and to answer its questions under a grant of immunity. The immunity was based upon a provision of the Organized Crime Control Act of 1970 stating that neither the compelled testimony nor any information directly or indirectly derived from such testimony could be used against the witness. Notwithstanding the grant of immunity, the petitioners refused to answer the grand jury's questions and were found in contempt. The United States Court of Appeals for the Ninth Circuit affirmed (440 F 2d 954), rejecting the petitioners' contention that it violated their constitutional privilege against self-incrimination to compel them to testify without granting them transactional immunity from prosecution for any offence to which the compelled testimony might relate.

37. On certiorari, the United States Supreme Court affirmed. It held that the power of government to compel persons to testify in court or before grand juries and other governmental agencies was firmly established but was not absolute, being subject to a number of exemptions, the most important of which was the Fifth Amendment privilege against self-incrimination. With reference to Federal Statute (18 USCS s. 6002) it was held :

> [That] a federal statute permitting the government to compel a witness to give testimony, but granting the witness immunity from the use in any criminal case of the compelled testimony or any evidence derived therefrom, does not violate the Fifth Amendment privilege against self-incrimination.

38. In Brown v. Walker (40 L ed 819) the question involved was with regard to an alleged incompatibility between that clause of the Fifth Amendment to the Constitution, which declares that no person "shall be compelled in any criminal case to be a witness against himself" and the Act of Congress of February 11, 1893 (27 Stat. at L. 443), which enacts that "no person shall be excused from attending and testifying or from producing books, papers, tariffs, contracts, agreements and documents before the Interstate Commerce Commission, or in obedience to the subpoena of the Commission, ... on the ground or for the reason that the testimony or evidence, documentary or

otherwise, required of him, may tend to criminate him or subject him to a penalty of forfeiture. But no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before said Commission, or in obedience to its subpoena, or either of them, or in any such case or proceeding". It was held :

It is entirely true that the statute does not purport, nor is it possible for any statute, to shield the witness from the personal disgrace or opprobrium attaching to the exposure of his crime; but, as we have already observed, the authorities are numerous and very nearly uniform to the effect that, if the proposed testimony is material to the issue on trial, the fact that the testimony may tend to degrade the witness in public estimation does not exempt him from the duty of disclosure. A person who commits a criminal act is bound to contemplate the consequences of exposure to his good name and reputation, and ought not to call upon the courts to protect that which he has himself esteemed to be of such little value. The safety and welfare of an entire community should not be put into the scale against the reputation of a self-confessed criminal, who ought not, either in justice or in good morals, to refuse to disclose that which may be of great public utility, in order that his neighbours may think well of him. The design of the constitutional privilege is not to aid the witness in vindicating his character, but to protect him against being compelled to furnish evidence to convict him of a criminal charge. If he secure legal immunity from prosecution, the possible impairment of his good name is a penalty which it is reasonable he should be compelled to pay for the common good. If it be once conceded that the fact that his testimony may tend to bring the witness into disrepute, though not to incriminate him, does not entitle him to the privilege of silence, it necessarily follows that if it also tends to incriminate, but at the same time operates as a pardon for the offence, the fact that the disgrace remains no more entitles him to immunity in this case than in the other.

39. It is in this view of the matter and in view of the provisions contained in Section 4 and 6 of the Act and rules framed thereunder that we are of the opinion that the petitioners on the belief that they were persons covered by Section 8-B could not avoid the consequences of Sections 178 and 179 by claiming absolute immunity from binding themselves by an oath or affirmation for answering questions put to them.

40. Indeed in the instant case the petitioners are not asserting that they could not be required at all to appear as a witness before the Committee and make statement on oath. As is apparent from our order dated August 18, 1988 on behalf of both the petitioners it was submitted that they did not either wish to delay the proceedings or to show disrespect to the Committee but only wanted to protect their own interest by making the submission which they made before the Committee as per legal advice given to them. According to learned counsel for the petitioners the legal advice given to the petitioners was that since they were persons covered by Section 8-B of the Act they were entitled to produce evidence in defence and could as such be called upon to enter the witness box at the end of the inquiry and could not be required to enter the witness box for cross-examination almost as the first two witnesses before the Committee. According to him the stand taken by the petitioners was that they being covered by Section 8-B of the Act their defence would be put to serious jeopardy and will be prejudicially affected if they were required to appear in the witness box for cross-examination at the very inception of the inquiry even before statements of witness proving the accusations against the petitioners had been recorded which they were entitled to defend. That this was really the case of the petitioners will be apparent from our discussion a little later. In this background we pass on to the second proposition referred to above namely whether the petitioners could avoid the consequences contemplated by Section 178 and 179 IPC by putting forth valid

justification for refusing to bind themselves by oath or affirmation even without claiming an absolute immunity from binding themselves by an oath or affirmation.

41. In Watkins v. United States (1 L ed 2d 1273) a union officer, appearing as a witness before a sub-committee of the House Committee on UnAmerican Activities, refused to answer questions as to past Communist Party membership of certain persons, objecting to the questions on the ground of lack of pertinency to the subject under inquiry by the sub-committee. In a prosecution in the United States District Court for the District of Columbia, he was convicted of violating the statute providing for criminal punishment of witnesses before congressional committees who refuse to answer any question pertinent to the question under inquiry, and the conviction was affirmed by the United States Court of Appeals for the District of Columbia Circuit. On certiorari, the United States Supreme Court reversed the conviction. Warren, C.J., speaking for the five members of the court, ruled that to support a conviction under a statute a congressional investigating committee must, upon objection of a witness on the grounds of pertinency, state for the record the subject under inquiry at that time and the manner in which the propounded questions are pertinent thereto. Consequently refusal to answer a question on the ground that it was not pertinent, was found to be a valid justification.

42. In Flaxer v. United States (3 L ed 2d 183) relying on the decision in Watkins (1 L ed 2d 1273) that the courts must accord to the defendants every right which is guaranteed to defendants in all other criminal cases it was held that one of these guarantees is proof beyond a reasonable doubt that the refusal of the witness was deliberate and intentional. This decision is, therefore, an authority for the proposition that if the refusal of the witness was not deliberate and intentional but was for a valid cause such refusal could not be made the basis for prosecuting the witness.

43. In Murphy v. Waterfront Commission of New York Harbor (12 L ed 2d 678) notwithstanding the grant of immunity under the laws of New Jersey and New York, petitioners, as witnesses before the Waterfront Commission of New York Harbor, refused to answer questions on the ground that the answers might tend to incriminate them under federal law, to which the grant of immunity did not purport to extend. Petitioners were thereupon held in civil and criminal contempt of court. The New Jersey Supreme Court affirmed the civil contempt judgments, holding that a State may constitutionally compel a witness to give testimony which might be used in a federal prosecution against him. On certiorari, the United States Supreme Court vacated the judgment of contempt and remanded the cause to the New Jersey Supreme Court. It was held :

... we hold the constitutional rule to be that a State witness may not be compelled to give testimony which may be incriminating under federal law unless the compelled testimony and its fruits cannot be used in any manner by federal officials in connection with a criminal prosecution against him. We conclude, moreover, that in order to implement this constitutional rule and accommodate the interests of the State and Federal Governments in investigating and prosecuting crime, the Federal Government must be prohibited from making any such use of compelled testimony and its fruits. This exclusionary rule, while permitting the States to secure information necessary for effective law enforcement, leaves the witness and the Federal Government in substantially the same position as if the witness had claimed his privilege in the absence of a State grant of immunity.

It follows that petitioners here may now be compelled to answer the questions propounded to them. At the time they refused to answer however, petitioners had a reasonable fear based on this Court's decision in Feldman v. United States (88 L ed 1408 : 322 US 487), that the federal authorities might use the answers against them in connection with a federal prosecution. We have now overruled

Feldman (88 L ed 1408 : 322 US 487) and held that the Federal Government may make no such use of the answers. Fairness dictates that petitioners should now be afforded an opportunity, in light of this development, to answer the questions .... Accordingly, the judgment of the New Jersey courts ordering petitioners to answer the questions may remain undisturbed. But the judgment of contempt is vacated and the cause remanded to the New Jersey Supreme Court for proceedings not inconsistent with this opinion.

44. In this case also it is, therefore, clear that a valid justification put forth by the witness was considered to constitute sufficient ground to make him immune from prosecution.

45. We have already pointed out in our order dated August 18, 1988 that if the Committee had found that the petitioners were covered by Section 8-B of the Act it would most probably itself not have required them to get into the witness box for being cross-examined till the end of the inquiry. We have reached this conclusion from the circumstance that it is the Committee's own view as expressed in its order dated June 29, 1988 that persons covered by Section 8-B have to be examined at the end of the inquiry. That the case of the petitioners in not taking oath for being cross-examined at the very initial stage was based on Section 8-B seems to be apparent. The plea taken in the application made on behalf of the Commissioner of Police on May 17, 1988 for first calling upon the Bar Association to start their evidence and to call upon the Commissioner of Police to adduce his evidence thereafter was the first indication in this behalf. This plea was, at all events, relevant qua these police officers whose conduct was to be examined. Secondly, when on May 19, 1988 the learned counsel for Smt. Kiran Bedi was required to justify her stand of not taking oath. Section 8-B was specifically pleaded and reliance was placed on the decision in the case of Smt. Indira Gandhi v. Mr. J. C. Shah, Commission of Inquiry(ILR (1980) 1 Del 552) as is borne out by the order of Committee of that date. The justification so pleaded was repelled by the Committee on two grounds, namely that Smt. Indira Gandhi in that inquiry had not filed any affidavit and that she had been summoned under Section 8-B. On the view of the Committee expressed in its order dated June 29, 1988, which will, in the absence of any material to the contrary, be deemed to be its view even on May 19, 1988, that persons covered by Section 8-B were to be examined at the end of the inquiry, the fact that an affidavit of Smt. Kiran Bedi was on record could hardly justify her being called upon to enter the witness box at the very inception. As regards the second ground we have already held that the fact that no formal notice had been issued under Section 8-B would constitute no justification for not treating a person to be covered by that section, if otherwise the ingredients of the said section were made out.

46. As regards Jinder Singh the order of the Committee dated May 26, 1988 quoted earlier indicates that Jinder Singh had clearly stated that "he is not prepared to take the oath because he is in the nature of an accused and he cannot be asked to start the evidence and would be prepared to come in the witness box after the evidence of other party is recorded". Jinder Singh did not state that he was an accused before the Committee. In saying that he was "in the nature of" an accused he obviously meant that since his conduct was to be examined as contemplated by Section 8-B he was entitled to appear as a witness in his defence after the witnesses on behalf of the Bar Association which was accusing him had been examined. Had the Committee not been labouring under the misapprehension that the petitioners were not covered by Section 8-B, because no notices under that section had been issued to them, notwithstanding the fact that their conduct was to be examined on its own declared intention, it would obviously not have required the petitioners to take oath for being cross-examined at the stage at which it did so. The subsequent orders of the Committee directing complaints to be filed against the petitioners for an offence punishable under Section 178 IPC and the act of filing such complaints apparently were the consequences of the aforesaid

misapprehension. We have already held that the petitioners were covered by Section 8-B of the Act. The action of the Committee in compelling the petitioners to enter the witness box on the dates in question for being cross-examined, when even according to it as is apparent from its order dated June 29, 1988, persons similarly situated were to do so at the end of the inquiry, was in itself discriminatory. There was, therefore, valid justification for the refusal by the petitioners to take oath for cross-examination at the stage when they were required to do so. The Committee could have on its own reconsidered the question whether the prosecutions should be pressed further when the case was referred back to it by the learned Vacation Judge of this Court by his order dated June 2, 1988. For these reasons and the reasons already given in our order dated August 18, 1988 we are of the opinion that the Committee should not have in the instant case directed the filing of a complaint against either of the petitioners for an offence publishable under Section 178 IPC. We decide point (iv) accordingly.

47. As regards points (v), (vi) and (vii) suffice it to point out that the petitioners have apart from filing special leave petitions also filed writ petitions challenging the very same orders and since we have held that the action of the Committee in holding that the petitioners were not covered by Section 8-B of the Act and compelling them to enter the witness box on the dates in question was discriminatory and the orders directing complaint being filed against the petitioners were illegal, it is apparently a case involving infringement of Articles 14 and 21 of the Constitution. In such a situation the power of this Court to pass an appropriate order in exercise of its jurisdiction under Articles 32 and 142 of the Constitution cannot be seriously doubted particularly having regard to the special facts and circumstances of this case. On the orders directing filling of complaints being held to be invalid the consequential complaints and the proceedings thereon including the orders of the Magistrate issuing summons cannot survive and it is in this view of the matter that by our order dated August 18, 1988 we have quashed them. As regards the submission that it was not a fit case for interference either under Article 32 or Article 136 of the Constitution inasmuch as it was still open to the petitioners to prove their innocence before the Magistrate, suffice it to say that in the instant case if the petitioners are compelled to face prosecution in spite of the finding that the orders directing complaint to be filed against them were illegal it would obviously cause prejudice to them. Points (v), (vi) and (vii) are decided accordingly.

48. These, apart from those stated in our order dated August 18, 1988 are our reasons for the said order.

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