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**Proceedings of the
National Human Rights Commission
on the situation in
Gujarat**

1 March - 1 July, 2002



*National Human Rights Commission
India*

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NATIONAL HUMAN RIGHTS COMMISSION
SARDAR PATEL BHAWAN, NEW DELHI

Name of the complainant : Suo motu
Case No. : 1150/6/2001-2002
Date : 1 March, 2002

CORAM

Justice Shri J.S.Verma, Chairperson
Dr. Justice K.Ramaswamy, Member
Justice Mrs. Sujata V. Manohar, Member
Shri Virendra Dayal, Member

PROCEEDINGS

This matter is registered for suo motu action on the basis of media reports, both print and electronic. In addition, a request on e-mail has also been received requesting this Commission to intervene.

This matter relates to the existing serious situation in the State of Gujarat. The news items report a communal flare-up in the State of Gujarat and what is more disturbing, they suggest inaction by the police force and the highest functionaries in the State to deal with this situation. In view of the urgency of the matter, it would not be appropriate for this Commission to stay its hand till the veracity of these reports has been established; and it is necessary to proceed immediately assuming them to be prima facie correct. The situation, therefore, demands that this Commission take note of these facts and steps-in to prevent any negligence in the protection of human rights of the people in the State of Gujarat irrespective of their religion.

Issue notice by FAX today to the Chief Secretary and Director General of Police, Gujarat for their reply within three days indicating the measures being taken and in contemplation to prevent any further escalation of the situation in the State of Gujarat which is resulting in continued violation of human rights of the people.

(Justice J.S.Verma)
Chairperson

(Justice K.Ramaswamy)
Member

(Justice Sujata V.Manohar)
Member

(Virendra Dayal)
Member

NATIONAL HUMAN RIGHTS COMMISSION
SARDAR PATEL BHAWAN
NEW DELHI

Name of the complainant : Suo motu
Case No. : 1150/6/2001-2002
Date : 6 March, 2002

CORAM

Justice Shri J.S.Verma, Chairperson
Dr. Justice K.Ramaswamy, Member
Justice Mrs. Sujata V. Manohar, Member
Shri Virendra Dayal, Member

PROCEEDINGS

On 4 March, 2002 the Secretary General was requested to send a copy of the commission's notice dated 1 March, 2002 to Shri P.G.J.Nampoothiri, Special Representative, N.H.R.C. for his information. Shri Nampoothiri was also requested to send a report on the subject, involving in that exercise also other members of the Group constituted by the Commission for monitoring the rehabilitation work after the recent earth-quake in Kutch.

In the meantime, a large number of media reports have appeared which are distressing and appear to suggest that the needful has not yet been done completely by the Administration. There are also media reports attributing certain statements to the Police Commissioner and even the Chief Minister of Gujarat which, if true, raise serious questions relating to discrimination and other aspects of governance affecting human rights.

We had expected a detailed reply from the Government of Gujarat by now in response to the notice issued by FAX on 1 March, 2002 but, the same has not yet come, and, instead, there is a request from the Chief Secretary, Gujarat for grant of further time of 15 days stating that 'as most of the State machinery is busy with the law and order situation, it would take some time to collect the information and compile the report'. May be, preparation of a comprehensive report requires some more time, but, at least, a preliminary report indicating the action so far taken and that in contemplation, should have been sent together with an assurance of the State Government of strict implementation of the rule of law.

The Commission is constrained to record its disappointment that even this has not yet been done by the Government of Gujarat in a matter of such urgency and significance, even when the unfortunate incidents have led the Hon. Prime Minister also to describe the happenings as a matter of national shame.

A FAX message has been received from the NGO, Citizen's Initiative, which is engaged in working for improvement of the situation in Gujarat. It requests for provision of adequate

police protection to Shri Gagan Sethi and others who are working for this purpose in collaboration with the Special Representative of NHRC, Shri P.G.J. Nampoothiri. It does appear to the Commission that the request for police protection to these persons is reasonable and it should be afforded to them so that they are able to perform the task properly without being exposed to any personal danger to themselves. A copy of this request received from Citizen's Initiative be sent to the Director General of Police, Gujarat as well as to Shri P.G.J. Nampoothiri with a request to the DGP to make adequate provision for the protection of these persons working for the promotion of communal harmony. The clippings of the news items and the other documents referred above be included in the record.

In these circumstances, the Commission expects from the Government of Gujarat a comprehensive response at the earliest.

Copy of these documents be sent along with a copy of this proceedings to the Chief Secretary and to Shri P.G.J. Nampoothiri, Special Representative, NHRC.

(Justice J.S.Verma)
Chairperson

(Justice K.Ramaswamy)
Member

(Justice Sujata V.Manohar)
Member

(Virendra Dayal)
Member

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Name of the complainant : Suo motu
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Justice Smt. Sujata V. Manohar, Member
Shri Virendra Dayal, Member

PROCEEDINGS

1. These Proceedings on the situation in Gujarat are being recorded in continuation of earlier Proceedings of the Commission dated 1 and 6 March 2002. They also follow upon a visit of the Chairperson of the Commission to Gujarat between 19-22 March 2002, during which mission he was accompanied by the Secretary-General of the Commission, Shri P.C. Sen, the Special Rapporteur of the Commission, Shri Chaman Lal, and his Private Secretary, Shri Y.S. Murthy. During the course of that mission, the team visited Ahmedabad, Vadodara and Godhra and held intensive discussions, inter alia, with the Chief Minister, Chief Secretary and senior officers of the State, eminent citizens, including retired Chief Justices and Judges of High Courts, former civil servants, leaders of political parties, representatives of NGOs and the business community, numerous private citizens and, most importantly, those who were the victims of the recent acts of violence.
2. In his meeting with the Chief Secretary and senior officers of the State Government, the Chairperson explained the purpose and timing of his visit. He indicated that he had not visited the State earlier in order not to divert the attention of the State authorities from the tasks in which they were engaged. However, the visit could not be further delayed as normalcy had not been restored in the State despite the passage of three weeks since the tragic events in Godhra. It was the concern of the Commission to see an end to the violence that was occurring and a restoration of normalcy. The Chairperson added that it was the role of the Commission to serve as a facilitator to improve the quality of governance, as a proper respect for human rights depended on such governance. This duty had been performed by the Commission in earlier instances too, notably after the Orissa cyclone and the Gujarat earthquake. As then, it was now the responsibility of the Commission to ensure that the violation of human rights ceased, that further violations were prevented and that those who were victims were expeditiously rehabilitated and their dignity restored.
3. The Commission would like to emphasize that the present Proceedings contain the Preliminary Comments of the Commission on the situation in Gujarat. Likewise, the

Recommendations that it contains are of an immediate character and constitute the minimum that needs to be said at this stage.

4. This is because the report of the team that visited Gujarat is being sent under separate cover, confidentially, both to the Central and State Governments, and it would be appropriate to wait for their response to it before commenting in greater length on the situation or setting out comprehensive recommendations.

5. Further, while the team was able to meet with a considerable range of persons concerned with the situation in Gujarat who were desirous of meeting with it, the numbers of such persons was vast and it was not possible for the team, within the constraints of the time available and the circumstances prevailing on the ground, to meet individually with all of those who sought to interact with it. The team therefore encouraged those who wished to meet with it to do so, if possible, in groups and also to submit their views and concerns in writing. Numerous and voluminous written representations have thus been received by the Commission, both from groups and from individuals, during the visit of the team to Gujarat and subsequently. These have been and are being carefully examined. They have been of great value to the Commission in the recording of the Preliminary Comments and Recommendations contained in these Proceedings and their further analysis and study will contribute immensely to subsequent Proceedings of the Commission.

6. On 28 March 2002, the Commission also received a response from the Government of Gujarat to a notice that it had sent on 1 March 2000; it was entitled "Report on the incidents in Gujarat after the burning of the Sabarmati Express Train on 27th February 2002," and came with three Annexures A, B and C, providing details respectively on the "Law and Order Measures" taken by the State Government; the "Rescue, Relief and Rehabilitation Measures;" and a "Response to Press Clippings" that had been sent by the Commission to the State Government for comment. The Report of the State Government, hereinafter referred to as 'the Report,' has been carefully examined and taken into account in drafting the present Proceedings.

7. The Commission would like to emphasize that these Proceedings must therefore be seen as part of a continuing process to examine and address the human rights situation prevailing in Gujarat beginning with the Godhra tragedy and continuing with the violence that ensued subsequently. In this respect, the Proceedings in this case bear some similarity to the manner in which the Commission kept the situation under review, monitoring and commenting on it as the need arose, following both the super-cyclone in Orissa in 1999 and the earthquake in Gujarat in 2001.8. There is, however, a fundamental difference as well. The earlier instances arose from catastrophic natural disasters which subsequently required a monitoring of the performance of the State to ensure that the rights of all, particularly those of the most vulnerable, were respected. In the present instance, however, the death and destruction sadly resulted from the inhumanity of human beings towards other human beings, and the large-scale violation of human rights. This therefore requires a response from the

9. The Commission would like to observe that the tragic events that have occurred have serious implications for the country as a whole, affecting both its sense of self-esteem and the esteem in which it is held in the comity of nations. Grave questions arise of fidelity to the Constitution and to treaty obligations. There are obvious implications in respect of the protection of civil and political rights, as well as of economic, social and cultural rights in the State of Gujarat as also the country more widely; there are implications for trade, investment, tourism and employment. Not without reason have both the President and the Prime Minister of the country expressed their deep anguish at what has occurred, describing the events as a matter of national shame. But most of all, the recent events have resulted in the violation of the Fundamental Rights to life, liberty, equality and the dignity of citizens of India as guaranteed in the Constitution. And that, above all, is the reason for the continuing concern of the Commission.
10. It would now be appropriate and useful to recall the background to the involvement of the Commission in this matter.
11. The Commission took suo motu action on the situation in Gujarat on 1 March 2002 on the basis of media reports, both print and electronic. In addition, it had also received a request by e-mail, asking it to intervene.
12. In its Proceedings of that date, the Commission inter alia observed that the news items reported on a communal flare-up and, more disturbingly, suggested inaction by the police force and the highest functionaries in the State to deal with the situation. The Commission added:
- "In view of the urgency of the matter, it would not be appropriate for this Commission to stay its hand till the veracity of these reports has been established; and it is necessary to proceed immediately assuming them to be prima facie correct. The situation therefore demands that the Commission take note of these facts and steps-in to prevent any negligence in the protection of human rights of the people of the State of Gujarat irrespective of their religion."
13. Notice was accordingly issued on 1 March 2002 to the Chief Secretary and Director General of Police, Gujarat, asking "for their reply within three days indicating the measures being taken and in contemplation to prevent any further escalation of the situation in the State of Gujarat which is resulting in continued violation of human rights of the people."
14. Meeting again on 6 March 2002, the Commission noted, inter alia, that it had requested its Secretary General, on 4 March 2002, to send a copy of its 1 March notice to its Special Representative in Gujarat, Shri Nampoothiri, for his information. The latter was also asked to send a report to the Commission on the situation, involving in that exercise other members of the Group constituted by the Commission to monitor the rehabilitation work in that State after the recent earthquake in Kutch.

15. In its Proceedings of 6 March 2002, the Commission further noted that "a large number of media reports have appeared which are distressing and appear to suggest that the needful has not yet been done completely by the Administration. There are also media reports attributing certain statements to the Police Commissioner and even the Chief Minister which, if true, raise serious questions relating to discrimination and other aspects of governance affecting human rights."

16. Instead of a detailed reply from the State Government to its notice of 1 March 2002, the Commission observed that it had received a request dated 4 March 2002, seeking a further 15 days to report as most of the State machinery is busy with the law and order situation, and it would take time to collect the information and compile the report.

17. The Commission's Proceedings of 6 March 2002 accordingly stated "May be, preparation of a comprehensive report requires some more time, but, at least, a preliminary report indicating the action so far taken and that in contemplation should have been sent together with an assurance of the State Government of strict implementation of the rule of law."

The Commission recorded its disappointment that even this had not been done by the Government of Gujarat in a matter of such urgency and significance. It added that it "expects from the Government of Gujarat a comprehensive response at the earliest."

18. A 'Preliminary Report' dated 8 March 2002 was received by the Commission from the Government of Gujarat on 11 March 2002. However, it was perfunctory in character. In the meantime, the Commission had received a fairly detailed report on the situation from its Special Group in Gujarat, comprising its Special Representative, Shri P.G.J. Nampoothri, former Director General of Police, Gujarat, Smt. Annie Prasad, IAS (Retd) and Shri Gagan Sethi, Director, Jan Vikas. With violence continuing, it was in such circumstances that the Commission decided that the Chairperson should lead a team of the Commission on a mission to Gujarat between 19-22 March 2002. And it was pursuant to this that the detailed Report of the State of Gujarat was received on 28 March 2002, in response to the Commission's notice of 1 March 2002 and the discussions held with the team.

19. There follow below certain Preliminary Comments and Recommendations of the Commission on the situation in Gujarat. As indicated above, these will be followed, as required, by other Proceedings, containing Comments and Recommendations, which will take into account the response that will be received from the Central and State Governments to the mission-report of the Commission's team, a further reading and analysis of the voluminous material that has been, and is being, submitted to the Commission, and the situation as it develops on the ground.

Preliminary Comments:

20. (i) The Statute of the Commission, as contained in the Protection of Human Rights Act,

1993, requires the Commission under the provisions of Section 12, to perform all or any of the following functions, namely:-

"(a) inquire, suo motu or on a petition presented to it by a victim or any person on his behalf, into complaint of

- (i) Violation of human rights or abetment thereof; or
- (ii) Negligence in the prevention of such violation, by a public servant;
 - (b) review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;
 - (c) study treaties and other international instruments on human rights and make recommendations for their effective implementation;
 - (d) such other functions as it may consider necessary for the promotion of human rights."

The term 'human rights' is defined to mean the right relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India (Section 2(1)(d)), and the International Covenants are defined as the "International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on 16th December 1966" (Section 2(1)(f)).

(ii) It is therefore in the light of this Statute that the Commission must examine whether violations of human rights were committed, or were abetted, or resulted from negligence in the prevention of such violation. It must also examine whether the acts that occurred infringed the rights guaranteed by the Constitution or those that were embodied in the two great International Covenants cited above.

(iii) The Commission would like to observe at this stage that it is the primary and inescapable responsibility of the State to protect the right to life, liberty, equality and dignity of all of those who constitute it. It is also the responsibility of the State to ensure that such rights are not violated either through overt acts, or through abetment or negligence. It is a clear and emerging principle of human rights jurisprudence that the State is responsible not only for the acts of its own agents, but also for the acts of non-State players acting within its jurisdiction. The State is, in addition, responsible for any inaction that may cause or facilitate the violation of human rights.

(iv) The first question that arises therefore is whether the State has discharged its responsibilities appropriately in accordance with the above. It has been stated in the Report of the State Government that the attack on kar sevaks in Godhra occurred in the absence of

"specific information about the return of kar sevaks from Ayodhya" (p. 12 of the Report). It is also asserted that while there were intelligence inputs pertaining to the movement of kar sevaks to Ayodhya between 10-15 March 2002, there were no such in-puts concerning their return either from the State Intelligence Branch or the Central Intelligence Agencies (p. 5) and that the "only message" about the return of kar sevaks, provided by the Uttar Pradesh police, was received in Gujarat on 28 February 2002 i.e., after the tragic incident of 27 February 2002 and even that did not relate to a possible attack on the Sabarmati Express.

(v) The Commission is deeply concerned to be informed of this. It would appear to constitute an extraordinary lack of appreciation of the potential dangers of the situation, both by the Central and State intelligence agencies. This is the more so given the history of communal violence in Gujarat. The Report of the State Government itself states:

"The State of Gujarat has a long history of communal riots. Major riots have been occurring periodically in the State since 1969. Two Commissions of Inquiry viz., the Jagmohan Reddy Commission of Inquiry, 1969, and the Dave Commission of Inquiry, 1985, were constituted to go into the widespread communal violence that erupted in the State from time to time. Subsequently, major communal incidents all over the State have taken place in 1990 and in 1992-93 following the Babri Masjid episode. In fact, between 1970 and 2002, Gujarat has witnessed 443 major communal incidents. Even minor altercations, over trivial matters like kite flying have led to communal violence." (p. 127).

The Report adds that the Godhra incident occurred at a time when the environment was already surcharged due to developments in Ayodhya and related events (also p. 127).

Indeed, it has been reported to the Commission that, in intelligence parlance, several places of the State have been classified as communally sensitive or hyper-sensitive and that, in many cities of the State, including Ahmedabad, Vadodara and Godhra, members of both the majority and minority communities are constantly in a state of preparedness to face the perceived danger of communal violence. In such circumstances, the police are reported to be normally well prepared to handle such dangers and it is reported to be standard practice to alert police stations down the line when sensitive situations are likely to develop.

(vi) Given the above, the Commission is constrained to observe that a serious failure of intelligence and action by the State Government marked the events leading to the Godhra tragedy and the subsequent deaths and destruction that occurred. On the face of it, in the light of the history of communal violence in Gujarat, recalled in the Report of the State Government

itself, the question must arise whether the principle of 'res ipsa loquitur' ('the affair speaking for itself') should not apply in this case in assessing the degree of State responsibility in the failure to protect the life, liberty, equality and dignity of the people of Gujarat. The Commission accordingly requests the response of the Central and State Governments on this matter, it being the primary and inescapable responsibility of the State to protect such rights and to be responsible for the acts not only of its own agents, but also for the acts of non-State players within its jurisdiction and any inaction that may cause or facilitate the violation of human rights. Unless rebutted by the State Government, the adverse inference arising against it would render it accountable. The burden is therefore now on the State Government to rebut this presumption.

(vii) An ancillary question that arises is whether there was adequate anticipation in regard to the measures to be taken, and whether these measures were indeed taken, to ensure that the tragic events in Godhra would not occur and would not lead to serious repercussions elsewhere. The Commission has noted that many instances are recorded in the Report of prompt and courageous action by District Collectors, Commissioners and Superintendents of Police and other officers to control the violence and to deal with its consequences through appropriate preventive measures and, thereafter, through rescue, relief and rehabilitation measures. The Commission cannot but note, however, that the Report itself reveals that while some communally-prone districts succeeded in controlling the violence, other districts – sometimes less prone to such violence – succumbed to it. In the same vein, the Report further indicates that while the factors underlining the danger of communal violence spreading were common to all districts, and that, "in the wake of the call for the 'Gujarat Bandh' and the possible fall-out of the Godhra incident, the State Government took all possible precautions" (p. 128), some districts withstood the dangers far more firmly than did others. Such a development clearly points to local factors and players overwhelming the district officers in certain instances, but not in others. Given the widespread reports and allegations of groups of well-organized persons, armed with mobile telephones and addresses, singling out certain homes and properties for death and destruction in certain districts – sometimes within view of police stations and personnel – the further question arises as to what the factors were, and who the players were in the situations that went out of control. The Commission requests the comments of the State Government on these matters.

(viii) The Commission has noted that while the Report states that the Godhra incident was "premeditated" (p. 5), the Report does not clarify as to who precisely was responsible for this incident. Considering its gruesome nature and catastrophic consequences, the team of the Commission that visited Godhra on 22 March 2002 was concerned to note from the comments of the Special IGP, CID Crime that while two cases had been registered, they were being investigated by an SDPO of the Western Railway and that no major progress had been made until then. In the light of fact that numerous allegations have been made both in the media and to the team of the Commission to the effect that FIRs in various instances were being distorted or poorly recorded, and that senior political personalities were seeking to 'influence' the working

of police stations by their presence within them, the Commission is constrained to observe that there is a widespread lack of faith in the integrity of the investigating process and the ability of those conducting investigations. The Commission notes, for instance, that in Ahmedabad, in most cases, looting was "reported in well-to-do localities by relatively rich people" (p. 130). Yet the Report does not identify who these persons were. The conclusion cannot but be drawn that there is need for greater transparency and integrity to investigate the instances of death and destruction appropriately and to instil confidence in the public mind.

(ix) The Report takes the view that "the major incidents of violence were contained within the first 72 hours." It asserts, however, that "on account of widespread reporting both in the visual as well as the electronic media, incidents of violence on a large-scale started occurring in Ahmedabad, Baroda cities and some towns of Panchmahals, Sabarkantha, Mehsana, etc" in spite of "all possible precautions having been taken" (p. 128-129). The Report also adds that various comments attributed to the Chief Minister and Commissioner of Police, Ahmedabad, among others, were torn out of context by the media, or entirely without foundation.

(x) As indicated earlier in these Proceedings, the Commission considers it would be naïve for it to subscribe to the view that the situation was brought under control within the first 72 hours. Violence continues in Gujarat as of the time of writing these Proceedings. There was a pervasive sense of insecurity prevailing in the State at the time of the team's visit to Gujarat. This was most acute among the victims of the successive tragedies, but it extended to all segments of society, including to two Judges of the High Court of Gujarat, one sitting and the other retired who were compelled to leave their own homes because of the vitiated atmosphere. There could be no clearer evidence of the failure to control the situation.

(xi) The Commission has, however, taken note of the views of the State Government in respect of the media. The Commission firmly believes that it is essential to uphold the Right to Freedom of Speech and Expression articulated in Article 19(1)(a) of the Constitution, which finds comparable provision in Article 19 of the Universal Declaration of Human Rights, 1948 and Article 19 of the International Covenant on Civil and Political Rights, 1966. It is therefore clearly in favour of a courageous and investigative role for the media. At the same time, the Commission is of the view that there is need for all concerned to reflect further on possible guidelines that the media should adopt, on a 'self-policing' basis, to govern its conduct in volatile situations, including those of inter-communal violence, with a view to ensuring that passions are not inflamed and further violence perpetrated. It has to be noted that the right under Article 19(1)(a) is subject to reasonable restrictions under Article 19(2) of the Constitution.

(xii) The Commission has noted the contents of the Report on two matters that raised serious questions of discriminatory treatment and led to most adverse comment both within the country and abroad. The first related to the announcement of Rs. 2 lakhs as compensation to the next-of-kin of those who perished in the attack on the Sabarmati Express, and of Rs. 1 lakh for those who died in the subsequent violence. The second related to the application of POTO to the first incident, but not to those involved in the subsequent violence. On the

question of compensation, the Commission has noted from the Report that Rs. 1 lakh will be paid in all instances, "thus establishing parity." It has also noted that, according to the Report, this decision was taken on 9 March 2002, after a letter was received by the Chief Minister, "on behalf of the kar sevaks," saying "that they would welcome the financial help of Rs. 1 lakh instead of Rs. 2 lakhs to the bereaved families of Godhra massacre" (see p. 115). This decision, in the view of the Commission, should have been taken on the initiative of the Government itself, as the issue raised impinged seriously on the provisions of the Constitution contained in Articles 14 and 15, dealing respectively with equality before the law and equal protection of the laws within the territory of India, and the prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. The Commission has also noted the contents of the Report which state that "No guidelines were given by the Home Department regarding the type of cases in which POTO should or should not be used" and that, subsequent to the initial decision to apply POTO in respect of individual cases in Godhra, the Government received legal advice to defer "the applicability of POTO till the investigation is completed" (pp. 66-67). The Commission intends to monitor this matter further, POTO having since been enacted as a law.

(xiii) The Commission has taken good note of the "Rescue, Relief and Rehabilitation Measures" undertaken by the State Government. In many instances, strenuous efforts have been made by Collectors and other district officers, often acting on their own initiative. The Commission was informed, however, during the course of its visit, that many of the largest camps, including Shah-e-Alam in Ahmedabad, had not received visits at a high political or administrative level till the visit of the Chairperson of this Commission. This was viewed by the inmates as being indicative of a deeper malaise, that was discriminatory in origin and character. Unfortunately, too, numerous complaints were received by the team of the Commission regarding the lack of facilities in the camps. The Commission has noted the range of activities and measures taken by the State Government to pursue the relief and rehabilitation of those who have suffered. It appreciates the positive steps that have been taken and commends those officials and NGOs that have worked to ameliorate the suffering of the victims. The Commission, however, considers it essential to monitor the on-going implementation of the decisions taken since a great deal still needs to be done. The Commission has already indicated to the Chief Minister that a follow-up mission will be made on behalf of the Commission at an appropriate time and it appreciates the response of the Chief Minister that such a visit will be welcome and that every effort will be made to restore complete normalcy expeditiously.

(xiv) In the light of the above, the Commission is duty bound to continue to follow developments in Gujarat consequent to the tragic incidents that occurred in Godhra and elsewhere. Under its Statute, it is required to monitor the compliance of the State with the rule of law and its human rights obligations. This will be a continuing duty of the Commission which must be fulfilled, Parliament having established the Commission with the objective of

ensuring the "better protection" of human rights in the country, expecting thereby that the efforts of the Commission would be additional to those of existing agencies and institutions. In this task, the Commission will continue to count on receiving the cooperation of the Government of Gujarat, a cooperation of which the Chief Minister has stated that it can be assured.

Recommendations

21. The Commission now wishes to make a first set of Recommendations for the immediate consideration of the Central and State Governments. As indicated earlier, once a response has been received from these Governments on the report of the visit of the Commission's team to Gujarat, and a full analysis made of the numerous representations received by the Commission, additional Proceedings will be recorded by the Commission on the situation in Gujarat, offering further Comments and Recommendations.

I. Law & Order

- (i) In view of the widespread allegations that FIRs have been poorly or wrongly recorded and that investigations are being 'influenced' by extraneous considerations or players, the Commission is of the view that the integrity of the process has to be restored. It therefore recommends the entrusting of certain critical cases to the CBI. These include the cases relating to the

Godhra incident, which is at present being investigated by the GRP;

Chamanpura (Gulbarga Society) incident;

Naroda Patiya incident;

Best Bakery case in Vadodara; and the

Sadarpura case in Mehsana district.

- (ii) The Commission recommends that Special Courts should try these cases on a day-to-day basis, the Judges being handpicked by the Chief Justice of the High Court of Gujarat. Special Prosecutors should be appointed as needed. Procedures should be adopted for the conduct of the proceedings in such a manner that the traumatized condition of many of the victims, particularly women and children, is not aggravated and they are protected from further trauma or threat. A particular effort should be made to depute sensitive officers, particularly officers who are women, to assist in the handling of such cases.

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- (iii) Special Cells should be constituted under the concerned District Magistrates to follow the progress of the investigation of cases not entrusted to the CBI; these should be monitored by the Additional Director-General (Crime).
 - (iv) Specific time-frames should be fixed for the thorough and expeditious completion of investigations.
 - (v) Police desks should be set-up in the relief camps to receive complaints, record FIRs and forward them to Police Stations having jurisdiction.
 - (vi) Material collected by NGOs such as Citizen's Initiative, PUCL and others should also be used.
 - (vii) Provocative statements made by persons to the electronic or print media should be examined and acted upon, and the burden of proof shifted to such persons to explain or contradict their statements.
 - (viii) Given the wide variation in the performance of public servants in the discharge of their statutory responsibilities, action should be initiated to identify and proceed against those who have failed to act appropriately to control the violence in its incipient stages, or to prevent its escalation thereafter. By the same token, officers who have performed their duties well, should be commended.

II. Camps

- (i) Visits to camps by senior political leaders and officers should be organized in a systematic way in order to restore confidence among those who have been victimized. NGOs should be involved in the process and the management and running of the camps should be marked by transparency and accountability.
- (ii) Senior officers of the rank of Secretary and above should be given specific responsibility in respect of groups of camps.
- (iii) Special facilities/camps should be set-up for the processing of insurance and compensation claims. The Chief Minister of the State had requested the Commission to issue an appropriate request to insurance companies for the expeditious settlement of claims of those who had suffered in the riots. The Commission will readily do so and recommends that the State Government send to it the necessary details at an early date in order to facilitate such supportive action.

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- (iv) Inmates should not be asked to leave the camps until appropriate relief and rehabilitation measures are in place for them and they feel assured, on security grounds, that they can indeed leave the camps.

III. Rehabilitation

- (i) The Commission recommends that places of worship that have been destroyed be repaired expeditiously. Assistance should be provided, as appropriate, inter alia by the State.
- (ii) Adequate compensation should be provided to those who have suffered. This will require an augmentation of the funds allocated thus far, through cooperative arrangements involving both the State and Central Governments. Efforts should be made to involve HUDCO, HFDC and international financial and other agencies and programmes in this process.
- (iii) The private sector, including the pharmaceutical industry, should also be requested to participate in the relief and rehabilitation process and proper coordinating arrangements established.
- (iv) The role of NGOs should be encouraged and be an intrinsic part of the overall effort to restore normalcy, as was the case in the coordinated effort after the earthquake. The Gujarat Disaster Management Authority, which was also deeply engaged in the post-earthquake measures, should be requested to assist in the present circumstances as well.
- (v) Special efforts will need to be made to identify and assist destitute women and orphans, and those subjected to rape. The Women and Child Development Department, Government of India and concerned international agencies/programmes should be requested to help. Particular care will need to be taken to mobilize psychiatric and counselling services to help the traumatized victims. Special efforts will need to be made to identify and depute competent personnel for this purpose.
- (vi) The media should be requested to cooperate fully in this endeavour, including radio, which is often under-utilized in such circumstances.

IV. Police Reform

- (i) The Commission would like to draw attention to the deeper question of Police Reform, on which recommendations of the National Police Commission and of the National Human Rights Commission have been pend-

ing despite repeated efforts to have them acted upon. The Commission is of the view that recent events in Gujarat and, indeed, in other States of the country, underline the need to proceed without delay to implement the reforms that have already been recommended in order to preserve the integrity of the investigating process and to insulate it from extraneous influences.

(Justice J.S. Verma)

Chairperson

(Justice Sujata V. Manohar)

Member

(Virendra Dayal)

Member

NATIONAL HUMAN RIGHTS COMMISSION
SARDAR PATEL BHAWAN, NEW DELHI

Name of the complainant : Suo motu
Case No. : 1150/6/2001-2002
Date : 1 May 2002

CORAM

Justice Shri J.S.Verma, Chairperson
Dr. justice k Ramaswamy, Member
Justice Mrs. Sujata V. Manohar, Member
Shri Virendra Dayal, Member

PROCEEDINGS

Pursuant to the notice given by the Commission to the Government of Gujarat and the Ministry of Home Affairs, Govt. of India, as indicated in the proceedings dated 1 April 2002, the Government of Gujarat has sent its reply dated 13 April 2002 and the Ministry of Home Affairs, Govt. of India has sent and interim reply dated 16 April 2002 assuring the detailed reply by 30 April 2002. No further reply has been received from the Ministry of Home Affairs as yet.

The above reply of Government of Gujarat does not respond to the contents of the Confidential Report of the NHRC team referred to, in the proceedings dated 1 April 2002. A specific reply was sought to this Report to enable further consideration of the matter, in view of the allegations made which are mentioned in that report. Ordinarily, it would be in order to proceed with the further consideration of this matter with the available reply alone treating the contents of the Confidential Report as unrebutted. Government of Gujarat to reply/comment on the specific matters mentioned in the above report, confidentially of which the Commission continues to maintain.

Accordingly, two weeks further time is given to the Government of Gujarat to reply/ comment on the contents of the above Confidential report of the NHRC team to enable further consideration of this matter. In these circumstances, the Ministry of Home Affairs, Govt. of India also is given further two weeks for its detailed reply as required earlier, covering inter alia the contents of the said Confidential report, already sent to it.

Intimation to both be given by Fax today.

(Justice J.S.Verma)
Chairperson

(Dr. Justice K Ramaswamy)
Member

(Justice Sujata V. Manohar)
Member

(Virendra Dayal)
Member

NATIONAL HUMAN RIGHTS COMMISSION
SARDAR PATEL BHAVAN, NEW DELHI

Name of the complainant : Suo motu
Case No. : 1150/6/2001-2002
Date : 31 May 2002

CCRAM

Justice Shri J.S. Verma, Chairperson
Justice Shri K. Ramaswamy, Member
Justice Smt Sujata V. Manohar, Member
Shri Virendra Dayal, Member

PROCEEDINGS

1. These Proceedings of the Commission in respect of the situation in Gujarat are in continuation of those recorded by the Commission on 1 and 6 March 2002 and 1 April and 1 May, 2002.

Proceedings of 1 April 2002; transmittal of Preliminary Comments and Recommendations, together with Confidential Report, to Government of Gujarat, Ministry of Home Affairs, Government of India and Prime Minister

2. It will be recalled that, in its Proceedings of 1 April 2002, the Commission had set out its Preliminary Comments and Recommendations on the situation. It had also directed that a copy of those Proceedings, together with a copy of the Confidential Report of the team of the Commission that visited Gujarat from 19-22 March 2002, be sent by the Secretary-General to the Chief Secretary, Government of Gujarat and to the Home Secretary, Government of India, requesting them to send the response/comments of the State Government and the Government of India within two weeks. In view of the visit of the Hon'ble Prime Minister to Gujarat that had been announced for 4 April 2002, the Chairperson was also requested to send a copy of the Proceedings and of the Confidential Report to him.

Proceedings of 1 May 2002; response of Government of Gujarat, dated 12 April 2002 to Preliminary Comments and Recommendations of 1 April 2002

3. In its Proceedings of 1 May 2002, the Commission noted that the Government of Gujarat had sent a reply dated 12 April 2002, but that the Ministry of Home Affairs had sent an interim response, dated 16 April 2002, seeking time until 30 April 2002 to send a more detailed reply.

However, no further reply had been received from the Ministry of Home Affairs as of the time of recording the 1 May Proceedings.

Lack of response to Confidential Report

4. In the same Proceedings, the Commission further noted that the reply of the Government of Gujarat did not respond to the Confidential Report of the Commission's team, referred to in its Proceedings of 1 April 2002. The Commission also observed that a specific reply was sought to that Report in order to enable further consideration of the matter, in view of the allegations made, which are mentioned in that Report. While noting that, ordinarily, it would be in order for the Commission to proceed with the further consideration of this matter with the available reply alone while treating the contents of the Confidential Report as unrebutted, the Commission deemed it fit to give a further opportunity of two weeks to reply to the specific matters mentioned in the Confidential Report. The Ministry of Home Affairs, Government of India was also given a further two weeks for its detailed reply, which was to cover inter alia the contents of the Confidential Report that had already been sent to it.

Response of Ministry of Home Affairs, Government of India to Preliminary Comments and Recommendations of 1 April 2002 and to the Confidential Report

5. Later in the day on 1 May 2002, after it had recorded its Proceedings, the Commission received a further response from the Ministry of Home Affairs, Government of India. The covering letter, dated 1 May 2002, stated that the response related to "the Proceedings of the Commission dated 1st April 2002 and the recommendations made therein in so far as it concerns the Central Government." The response added that "the report of the visit of the team of the National Human Rights Commission to Gujarat between 19th and 22nd March, 2002 which was sent in a sealed cover has also been examined and since all the issues mentioned therein pertain to the Government of Gujarat, they have been requested to send their comments on the above report directly to NHRC."

Failure of the Government of Gujarat, until the date of recording the present Proceedings, to respond to the Confidential Report

6. Despite the above-mentioned response of the Government of India, and the extension of time until 15 May 2002 that was granted by the Commission to the Government of Gujarat to respond to the Confidential Report, no response has as yet been received from the State Government to that Report. This is so despite repeated oral reminders by the Commission and assurances by the State Government that a response would soon be forthcoming.

7. In these circumstances, the Commission is now adopting the following procedure:

- (A) It will offer additional Comments upon the response of the Government of

Gujarat of 12 April 2002, in respect of the Preliminary Comments of the Commission of 1 April 2002;

(B) It will not wait any longer for the response of the Government of Gujarat to the Confidential Report that was sent to it on 1 April 2002, enough time and opportunity having been provided to the State Government to comment on it. Instead, the Commission now considers it to be its duty to release that Confidential Report in totality. It is, accordingly, annexed to these Proceedings as Annexure I. The Commission had earlier withheld release of the Confidential Report because it considered it appropriate to give the State Government a full opportunity to comment on its contents, given the sensitivity of the allegations contained in it that were made to the team of the Commission that visited Gujarat between 19-22 March 2002. As and when the response of the State Government to that Confidential Report is received, the Commission will also make that public, together with the Commission's views thereon.

(C) It will make a further set of Recommendations developing on its earlier recommendations, in the light of the reply received from the Government of Gujarat dated 12 April 2002 and from the Ministry of Home Affairs, Government of India, dated 1 May 2002.

8. In proceeding in this manner, the Commission will also keep in mind, in particular, the reports that it has been receiving from its Special Representative in Gujarat, Shri P.G.J. Nampoothiri, a former Director-General of Police of that State, who has been requested by the Commission to continue to monitor the situation and to report on developments. The State Government has been advised of Shri Nampoothiri's responsibilities and it has informed the competent officers of the Government of Gujarat of this arrangement in writing. The Commission will, in addition, continue to be mindful of the extensive coverage of developments relating to Gujarat in the print and electronic media.

A. Comments of the Commission on the response of the Government of Gujarat of 12 April 2002, in respect of its Preliminary Comments of 1 April 2002
Failure to protect rights to life, liberty, equality and dignity

9 In its Preliminary Comments of 1 April 2002 the Commission had observed that the first question that arises is whether the State has discharged its primary and inescapable responsibility to protect the rights to life, liberty, equality and dignity of all of those who constitute it. Given the history of communal violence in Gujarat, a history vividly recalled in the report dated 28 March 2002 of the State Government itself, the Commission had raised the question whether the principle of 'res ipsa loquitur' ('the affair speaking for itself') should not apply in this case in assessing the degree of State responsibility in the failure to protect the rights of the people of Gujarat. It observed that the responsibility of the State extended not only to the acts of its own agents, but also to those of non-State players within its jurisdiction and to any action that may cause or facilitate the violation of human rights. The Commission added that, unless

rebutted by the State Government, the adverse inference arising against it would render it accountable. The burden of proof was therefore on the State Government to rebut this presumption.

10. Nothing in the reports received in response to the Proceedings of 1 April 2002 rebuts the presumption. The violence in the State, which was initially claimed to have been brought under control in seventy two hours, persisted in varying degree for over two months, the toll in death and destruction rising with the passage of time. Despite the measures reportedly taken by the State Government, which are recounted in its report of 12 April 2002, that report itself testifies to the increasing numbers who died or were injured or deprived of their liberty and compelled to seek shelter in relief camps. That report also testifies to the assault on the dignity and worth of the human person, particularly of women and children, through acts of rape and other humiliating crimes of violence and cruelty. The report further makes clear that many were deprived of their livelihood and capacity to sustain themselves with dignity. The facts, thus, speak for themselves, even as recounted in the 12 April 2002 report of the State Government itself. The Commission has therefore reached the definite conclusion that the principle of 'res ipsa loquitur' applies in this case and that there was a comprehensive failure of the State to protect the Constitutional rights of the people of Gujarat, starting with the tragedy in Godhra on 27 February 2002 and continuing with the violence that ensued in the weeks that followed. The Commission has also noted in this connection that, on 6 May 2002, the Rajya Sabha adopted with one voice the motion stating

"That this House expresses its deep sense of anguish at the persistence of violence in Gujarat for over six weeks, leading to loss of lives of a large number of persons, destruction of property worth crores of rupees and urges the Central Government to intervene effectively under article 355 of the Constitution to protect the lives and properties of the citizens and to provide effective relief and rehabilitation to the victims of violence."

The Commission has further noted, in this connection, that it has proven necessary to appoint a Security Advisor to the Chief Minister, to assist in dealing with the situation. The appointment implicitly confirms that a failure had occurred earlier to bring under control the persisting violation of the rights to life, liberty, equality and dignity of the people of the State.

Failure of intelligence

11. The response of the State Government of 12 April 2002 also fails to dispel the observation made by the Commission in its Preliminary Comments that the failure to protect the life, liberty, equality and dignity of the people of Gujarat itself stemmed from a serious failure of intelligence and a failure to take timely and adequate anticipatory steps to prevent the initial tragedy in Godhra and the subsequent violence.

12. The report of the State Government of 12 April 2002 asserts that the State Intelligence Bureau "had alerted all Superintendents and Commissioners of Police as early as 7.2.2002 about the movement of karsevaks from the State by train on 22.2.2002 to Ayodhya. Besides the State Intelligence Bureau had also intimated UP State Police authorities on 12th, 21st, 23rd, 25th and 26th February 2002 about the number of karsevaks who had left the State for Ayodhya by train." However, "specific information about the return journey of karsevaks by the Sabarmati Express starting from Ayodhya was received only on 28.2.2002 at 0122 hrs i.e., after the incident had taken place on 27.2.2002 morning."

13. It appears incomprehensible to the Commission that a matter which had been the subject of repeated communications between the Gujarat Intelligence Bureau and the UP State Police as to the out-going travel plans of the karsevaks, should have been so abysmally lacking in intelligence as to their return journeys. This is all the more so given the volatile situation that was developing in Ayodhya at that time and the frequent reports in the press warning of the dangers of inter-communal violence erupting in Ayodhya and other sensitive locations in the country. In the view of the Commission, it was imperative, in such circumstances, for the Gujarat Intelligence Bureau to have kept in close and continuing touch with their counterparts in Uttar Pradesh and with the Central Intelligence Bureau. The inability to establish a two-way flow of intelligence clearly led to tragic consequences. The Commission must therefore also definitively conclude that there was a major failure of intelligence and that the response of the State Government has been unable to rebut this presumption.

Failure to take appropriate action

14. The failure of intelligence was, in the opinion of the Commission, accompanied by a failure to take appropriate anticipatory and subsequent action to prevent the spread and continuation of violence. The Preliminary Comments of the Commission had observed, in this connection, that while some communally-prone districts had succeeded in controlling the violence, other districts – sometimes less communally prone – had succumbed to it. The Commission had therefore pointed to "local factors and players" overwhelming the district officers in certain instances, but not in others, and had asked the State Government as to who these players were in the situations that had gone out of control. Such information had been sought from the State Government particularly since there were widespread reports of well-organized persons, armed with mobile telephones and addresses, singling out certain homes and properties for death and destruction. The reports had also implied that public servants who had sought to perform their duties diligently and to deal firmly with those responsible for the violence had been transferred at short notice to other posts without consulting the Director-General of Police and, indeed, over his protests.

15. The reply of the State Government of 12 April 2002 does not answer these questions. Instead, it refers to the "gravity of the communal incident which provoked the disturbances" and the role of the electronic media. While there can be no doubt whatsoever about the gravity

of the Godhra tragedy, it is the considered view of the Commission that that itself should have demanded a higher degree of responsiveness from the State Government to control the likely fall-out, especially in the wake of the call for the 'Gujarat bandh' and the publicly announced support of the State Government to that call. Regrettably, immediate and stringent measures were not adequately taken; the response of the Government thus proved to be unequal to the challenge, as vividly illustrated by the numbers who lost their lives, or were brutally injured or humiliated as the violence spread and continued.

Failure to identify local factors and players

16. As to the "local factors and players", in respect of whom the Commission had sought specific information, the reply of the State Government is silent, taking instead the position that this is a "matter covered by the terms of reference of the Commission of Inquiry appointed by the State Government." The Commission is constrained to observe that it found this answer evasive and lacking in transparency, not least because of the numerous eye-witness and media reports – including allegations specifically made to the Commission and communicated to the State Government – which identify and name specific persons as being involved in the carnage, sometimes within the view of police stations and personnel. The reply makes no effort whatsoever to rebut the allegations made against such persons, or to indicate the action taken by the State Government against those specifically named for participating in the egregious violation of human rights that occurred, or for inciting the acts of violence that resulted in murder, arson, rape and the destruction of lives and property.

Pattern of arrests

17. In this connection, the Commission has made a careful analysis of the pattern of arrests indicated to it by the State Government in its report of 12 April 2002. That report states that a total number of 27,780 arrests had been made, involving both crimes and as preventive detention. The response does not, however, make clear how many arrests, preventive or otherwise, were made in the worst afflicted areas of the State within the first 72 hours of the tragedy in Godhra, nor the community-wise break-up of those arrested in those areas in the immediate aftermath of Godhra, though such data would have enabled a proper scrutiny of the charge of discrimination brought against the State Government in respect of its conduct in the critical hours immediately after the Godhra tragedy and the call for the 'bandh'. This lack of transparency seriously undermines the response. The report states instead, that, in relation to various offences, 11,167 persons were arrested, of whom 3,269 belonged to the "minority" community and 7,896 to the "majority." As regards the 16,615 preventive arrests, it mentions that 13,804 belong to the "majority" community and 2,811 to the "minority." The questions that arise, however, are when and where were the arrests made, who were arrested and for how long were they kept in custody, and were those who were specifically named arrested. The Special Representative of the Commission, Shri Nampoothiri has observed in a report to the Commission dated 24 April 2002 that "almost 90% of those arrested even in heinous offences

like murder, arson, etc., have managed to get bailed out almost as soon as they were arrested." Reports have also appeared in the media that those who have been released on bail were given warm public welcomes by some political leaders. This is in sharp contrast to the assertion made by the State Government in its report of 12 April 2002 that "bail applications of all accused persons are being strongly defended and rejected" (sic).

Uneven handling of major cases

18. The analysis made by the Commission of the State Government's reply of 12 April 2002 also illustrates the uneven manner in which some of the major cases had been handled until that date. In respect of the Godhra incident, where 59 persons were killed, 58 persons had been arrested and all were in custody (54 in judicial custody, 4 in police remand). In respect of the Chamanpura (Gulbarga Society) case, where some 50 persons including a former Member of Parliament were killed, 18 persons had been arrested (17 were in judicial custody, 1 was released by the juvenile court). As regards Naroda Patia, where some 150 persons were reportedly killed, 22 had been arrested, but the response is silent in respect of whether they had been released on bail or were in custody. In respect of the Best Bakery case in Vadodara, where some 8 persons were reportedly killed, 12 accused persons were in judicial custody. However, no details were given about the status of the 46 persons arrested in the Sadarpura case of Mehsana District where some 28 persons were reportedly killed.

Distorted FIRs: 'extraneous influences', issue of transparency and integrity

19. The Commission had recorded in its Proceedings of 1 April 2002 that there were numerous allegations made both in the media and to its team that FIRs in various instances were being distorted or poorly recorded, and that senior political personalities were seeking to influence the working of police stations by their presence within them. The Commission had thus been constrained to observe that there was a widespread lack of faith in the integrity of the investigating process and the ability of those conducting investigations. The Commission had also observed that according to the State Government itself, "in Ahmedabad, looting was reported in well-to-do localities by relatively rich people." Yet the State Government had not identified who these persons were.

20. The report of the State Government of 12 April 2002 once again fails to make the necessary identification of these persons. It also fails to rebut the repeatedly made allegation that senior political personalities – who have been named – were seeking to influence the working of police stations by their presence within them. It states that the Government "fully accepts the view that there should be transparency and integrity in investigating instances of death and destruction" and adds that "this is being taken care of". The Commission's Special Representative, Shri Nampoothiri, however, has reported to the Commission on 24 April 2002 in a totally opposite vein. He has stated that, in respect of most of the "sensational cases," the FIRs registered on behalf of the State by the police officers concerned, the accused persons are shown as "unknown". His report adds that "this is the general pattern seen all over the State. Even when complaints of the aggrieved parties have been recorded, it has been alleged

that the names of the offenders are not included. In almost all the cases, copies of the FIRs which the complainant is entitled to, has not been given." There has been widespread public outrage, in particular, in respect of atrocities against women, including acts of rape, in respect of which FIRs were neither promptly nor accurately recorded, and the victims harassed and intimidated. The Commission must conclude, therefore, that until the time of Shri Nampoothiri's 24 April 2002 report, the victims of the atrocities were experiencing great difficulty in having FIRs recorded, in naming those whom they had identified and in securing copies of their FIRs. Further – for far too long - politically-connected persons, named by the victims of the crimes committed, remained at large, many defying arrest. These are grave matters indeed that must not be allowed to be forgiven or forgotten. Based on Shri Nampoothiri's reports the Commission would therefore like to warn that the danger persists of a large-scale and unconscionable miscarriage of justice if the effort to investigate and prosecute the crimes that have been committed is not directed with greater skill and determination, and marked by a higher sense of integrity and freedom from 'extraneous political and other influences' than has hitherto been in evidence. Of particular concern to the Commission have been the heart-rending instances identified in its Proceedings of 1 April 2002, in respect of which it had called for investigations by the CBI: those cases relate to some of the very worst incidents of murder, arson, rape and other atrocities, including many committed against women and children whose tragic and inconsolable circumstances have profoundly shocked and pained the nation.

Pervasive insecurity: Justices Kadri & Divecha

21. In its Preliminary Comments of 1 April 2002 the Commission had referred to the pervasive sense of insecurity prevailing in Gujarat at the time of the visit of its team to that State between 19-22 March 2002. It added that this was most acute among the victims of the successive tragedies, but that it extended to all segments of society, including to two Judges of the High Court of Gujarat, one sitting (Justice Kadri) and the other retired (Justice Divecha) who were compelled to leave their homes because of the vitiated atmosphere.

22. The Commission has carefully considered the 12 April 2002 response of the State Government in respect of Justices Kadri and Divecha. In regard to the former, the response states that, "prior to 28th, there was already half a section of police guards" posted outside Justice Kadri's residence in Law Garden. It adds that on 28 February 2002, Justice Kadri shifted to Judges Colony in Vastrapur "of his own accord." It goes on to state that, from 9 March 2002, a further police guard was placed at his house "since he desired to shift back to his original residence." The Commission is compelled to observe that the response of the State Government fails to acknowledge an incontrovertible fact: the movements of Justice Kadri from house to house were compelled on him because of the pervasive insecurity. They were not "of his own accord" because they were clearly involuntary. And the conclusion is inescapable that the insecurity was such that it was not dispelled by the police arrangements reportedly made for him.

23. As to the 12 April 2002 response of the State Government in respect of Justice Divecha, it totally ignores any mention of the repeated efforts made by him and his associates to seek appropriate police protection, the repeated visits of mobs to his home on 27 and 28 February, his forced departure, together with Mrs. Divecha, from their home at around 12.20 p.m. on 28 February 2002 and the fire that was set to their apartment and property at around 4 p.m. on that day. Justice Divecha's letter to the Chairperson of this Commission dated 23 March 2002 (Annexure II) speaks for itself. The fact that criminal case no. 121/2002 was subsequently registered, that 7 arrests had been made and that the matter was under investigation, does not explain the failure to protect Justice Divecha. The action taken was, sadly, too little and too late. Nor can the Commission accept the proposition that, "As the city of Ahmedabad was engulfed by the disturbance, it was not possible for the City Police to arrange for protection for every society." The Commission would like to underline that there were communal reasons for the repeated and specifically targeted attacks on Justice Divecha's property. The attacks were not a case of random violence against "every society" in the city, as the response of the State Government would have the Commission believe. Indeed, the response betrays a considerable lack of sensitivity in explaining what occurred. It is for this reason that the Commission must reject as utterly inadequate the response of the State Government, as contained in its reply of 12 April 2002, in respect of this matter.

24. There is a deeper point at issue here that the Commission wishes to make. If the response of the State Government to the security needs of two Justices of the High Court was so hopelessly inadequate, despite the time and the opportunity that it had to prevent the harm that was done, it must be inferred that the response to the needs of others, who were far less prominent, was even worse. Indeed, the facts indicate that the response was often abysmal, or even non-existent, pointing to gross negligence in certain instances or, worse still, as was widely believed, to a complicity that was tacit if not explicit.

B. Release of the Confidential Report transmitted to the Government of Gujarat with the Commission's Proceedings of 1 April 2002

25. For the reasons indicated earlier in these Proceedings, the Confidential Report transmitted to the State Government of Gujarat on 1 April 2002, and to which the State Government has not responded for nearly two months despite repeated opportunities to do so, is now being released by the Commission (see Annexure I). Even while doing so, however, the Commission urges that Government to come forward with a clear response, indicating in detail the steps it has taken in respect of the persons named in that report who allegedly violated human rights or interfered in the discharge of the responsibilities of the State to protect such rights. Further, the Commission once again calls upon the State Government to provide a full account of the incidents to which the Commission drew its attention in that Confidential Report, and to indicate the measures it has taken to investigate and redress the wrongs that were committed.

C. Further set of Recommendations of the Commission, in the light of the reply of 1 April 2002 received from the Government of Gujarat, and of 1 May 2002 from the Ministry of Home Affairs, Government of India

26. Having reviewed the responses received thus far, the Commission would now like to make a further set of Recommendations, keeping in mind those that it had made in its Proceedings of 1 April 2002.

I. Law and Order

Involvement of CBI

27. (i) In view of the widespread allegations that FIRs had been poorly or wrongly recorded and that investigations had been 'influenced' by extraneous considerations or players, the Commission had stated that the integrity of the process had to be restored. It had therefore recommended that certain critical cases, including five that it had specifically mentioned, be entrusted to the CBI.

(ii) The State Government responded on 12 April 2002 saying that "An investigation conducted by the State Police cannot be discredited, cannot be put into disrepute and its fairness questioned merely on the basis of hostile propaganda". It then recounted the steps taken in respect of the five cases listed by the Commission and added that transference of these cases to the CBI would "indefinitely delay the investigation" and help the accused persons to get bail. It also stated that the CBI is already understaffed and over-burdened. The Commission was therefore requested to reconsider its recommendation as it was based on "unsubstantiated information given to the Commission by sources with whom authentic information was not available."

(iii) The response of the Ministry of Home Affairs, Government of India, dated 1 May 2002, summarizes the position of the State Government. It then adds that; under existing rules, the CBI can take up the investigation of cases only if the State Government addresses and appropriately requests the CBI to do so. Since the State Government had expressed the opinion that investigation into the cases is not required by the CBI at this stage, "it is not possible for the Central Government to direct the CBI to take up the investigation of the above cases."

(iv) The Commission has considered these responses with utmost care. It does not share the view of the State Government that the substance of the allegations made against the conduct of the police, and the reports of "extraneous" influences brought to bear on the police, were based on "hostile propaganda" or "unsubstantiated information." The allegations were made by those who were personally affected by, or witness to, the events, and by eminent personalities and activists who spoke to the Commission directly, or addressed petitions to it,

with a full sense of responsibility. The Commission would like to underline that it is a central principle in the administration of criminal justice that those against whom allegations are made should not themselves be entrusted with the investigation of those allegations. It has universally been the practice to act on this principle, including in this country. To depart from that principle would, therefore, be to invite a failure of justice. In respect of the cases listed by the Commission, the allegations of inaction, or complicity by the elements of the State apparatus were grave and severely damaging to its credibility and integrity. It would thus be a travesty of the principles of criminal justice if such cases were not transferred to the CBI. Worse still, the inability to do so could severely compromise the fundamental rights to life, liberty, equality and dignity guaranteed by the Constitution to all of the people of India on a non-discriminatory basis. Further, in the light of the unanimously adopted resolution in the Rajya Sabha on 6 May 2002, urging the Central Government "to intervene effectively under Article 355 of the Constitution to protect the lives and properties of citizens," the Commission is emphatically of the view that the role of the Central Government in respect of the investigation of the cases identified by the Commission should go beyond a mere invocation of the "existing rules" in respect of when the CBI can take up a case for investigation and a statement to the effect that "it is not possible" for it to direct the CBI to take up the investigation of these cases given the position taken by the State Government.

(v) In these circumstances, the Commission urges once again that the critical cases be entrusted to the CBI and that the Central Government ensure that this is done, not least in view of the Rajya Sabha resolution referring to its responsibilities under Article 355 of the Constitution. The Commission is deeply concerned, in this connexion, to see from Shri Nampoothiri's report of 28 May 2002 that, of 16,245 persons arrested for substantive offences, all but some 2100 had been bailed out as of 10 May 2002. It also noted from that report that of the 11,363 Hindus arrested for such offences, 8% remained in custody, while 20% of the 4,882 Muslims thus arrested remained in such custody. This does not provide a particularly reassuring commentary on the determination of the State Authorities to keep in check those who were arrested or to bring them to justice.

Police Reform

28 (i) The Commission drew attention in its 1 April 2002 Proceedings to the need to act decisively on the deeper question of Police Reform, on which recommendations of the National Police Commission (NPC) and of the National Human Rights Commission have been pending despite efforts to have them acted upon. The Commission added that recent events in Gujarat and, indeed, in other States of the country, underlined the need to proceed without delay to implement the reforms that have already been recommended in order to preserve the integrity of the investigating process and to insulate it from 'traneous influences'.

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- (ii) The report of the State Government of 12 April 2002 contains the ambiguous response that "the question of Police Reform is already under the consideration of the State Government." Nothing further is said.
- (iii) As to the 1 May 2002 response of the Central Government, it recounts the history of the less than purposeful effort thus far made to bring about Police Reform. It takes the position that "Police" is a State subject and that "the Centre at best can lead and give guidance." Without going into details of the recommendations made, it recalls the work of the National Police Commission (NPC), the letters addressed to Chief Ministers in 1994, the judgement of the Supreme Court in the case filed by Vineet Narain, the PIL before the Supreme Court in yet another case, the work of the Ribeiro Committee constituted to review the action taken to implement the recommendations of the NPC, NHRC and Vohra Committee, etc. The response concludes "However, crucial recommendations of the Commission (the NPC) relating to the constitution of State Security Commission/selection of DGP, insulation of investigation from undue pressure etc., could not be implemented."
- (iv) The Commission is fully familiar with this melancholy history of failure – and of the lack of political and administrative will that it signifies – to revive the quality of policing in this country and to save it from the catastrophic 'extraneous influences' that are ruining the investigative work of the police. The Commission therefore urges both the Central and State Governments once again, taking the situation in Gujarat as a warning and catalyst, to act with determination to implement the various police reforms recommended and referred to above.
- (v) By drawing attention to the fundamental need for Police Reform, the Commission did not have in mind the temporary appointment of a Security Advisor to a Chief Minister, necessary as such a step may be, or the transfer of police personnel – sometimes for the right reasons, but frequently for the wrong. It had in mind, instead, the crucial reforms which are detailed in full in its submissions to the Supreme Court in the case Prakash Singh vs. Union of India. These are fully known to the Central and State Governments and are also published, in extenso, in the Commission's annual report for the year 1997-98, where they may readily be seen. Further, the Commission has in mind the judgement of the Supreme Court in the case Vineet Narain & Others vs. Union of India & Another (1998 1SCC 273) in which the Apex Court, inter alia, set out the method of appointment and functioning of the Central Bureau of Investigation (CBI) and the Central Vigilance Commission (CVC), and of a Central Prosecution Agency and went on to observe:

"In view of the problem in the States being even more acute, as elaborately discussed in the Report of the National Police Commission (1979), there is urgent need for the

in the States. The Central Government must pursue the matter with the State Governments and ensure that a similar mechanism, (as indicated above) is set up in each State for selection/appointment, tenure, transfer and posting of not merely the Chief of the State Police but also of all police officers of the rank of Superintendent of Police and above. It is shocking to hear, a matter of common knowledge, that in some States the tenure of a Superintendent of Police is on an average only a few months and transfers are made for whimsical reasons. Apart from demoralizing the police force, it has also the adverse effect of politicizing the personnel. It is, therefore, essential that prompt measures are taken by the Central Government within the ambit of their Constitutional powers in the federation to impress upon the State Government that such a practice is alien to the envisaged constitutional machinery. The situation described in the National Police Commission's Report (1979) was alarming and it has become much worse by now. The desperation of the Union Home Minister (then Shri Indrajit Gupta) in his letters to the State Government, placed before us at the hearing, reveal a distressing situation which must be cured, if the rule of law is to prevail. No action within the constitutional scheme found necessary to remedy the situation is too stringent in these circumstances."

- (vi) These observations of the Supreme Court, written in 1997, are singularly prescient when set against the situation in Gujarat. The Police Reforms directed by the Apex Court never took place. An unreformed police force thus allowed itself to be overwhelmed by the situation and by the 'extraneous influences' brought to bear on it. In the face of the challenges confronting it, the State Government thus failed in its primary and inescapable duty to protect the constitutionally guaranteed rights of the citizenry. In such a situation, it was widely reported that certain transfers of police personnel were made for whimsical, 'extraneously' influenced reasons. It was also reported that the Director-General of Police was not consulted in respect of them, but side-lined in the decision-making process and protested against the manner in which these transfers were made. With the Central Government now being fully associated with the unanimously adopted resolution of the Rajya Sabha requiring it to "intervene effectively under Article 355 of the Constitution," it becomes doubly incumbent on it to ensure that "prompt measures" are taken by it, "within the ambit of its constitutional powers in the federation" to impress upon the State Government that much of what occurred in the aftermath of the Godhra tragedy was "alien to the envisaged constitutional machinery" and that there is, inter alia, urgent need for radical police reform along the lines already directed by the Supreme Court "if the situation is to be cured, if the rule of law is to prevail." The Commission therefore urges that the matter of Police Reform receive attention at the highest political level, at the Centre and in the States, and that this issue be pursued in good faith, and on a sustained basis with the greater interest of the country alone in mind, an interest that must over-rule every 'extraneous' consideration. The rot that has set-in must be cured if the rule of law is to prevail.

Special Courts and Special Prosecutors

29. (i) The Commission had recommended on 1 April 2002 that Special Courts be established to try the most critical cases on a day-to-day basis, the Judges being hand-picked by the Chief Justice of the High Court of Gujarat, with Special Prosecutors being appointed as needed. Emphasis was also placed on the need for procedures to be adopted of a kind that protected the victimized women and children from further trauma and threat. The deputation of sensitive officers, particularly those who were women, was recommended to assist in the handling of such cases.

(ii) The response of the State Government does not indicate whether it accepts the recommendation for Special Courts of the kind proposed by the Commission, the purpose of which was to ensure expeditious trial and disposal of cases. The Commission would like to stress that justice appropriately and speedily delivered after an outburst of communal violence is essential to the return of normalcy, and that delays in the process exacerbate the climate of violence and mistrust. The response of the State Government also does not comment on the recommendation regarding the appointment of Special Prosecutors. This is regrettable since media and other reports have alleged that the existing Public Prosecutors have, in critical cases, not asked the Courts to send the accused to police remand, but have informed the Courts that there was no objection to the granting of bail. The Government is therefore requested to clarify the facts pertaining to these matters.

Special Cells

30. The Commission had recommended that Special Cells be constituted under the concerned District Magistrates to follow the progress of cases not entrusted to the CBI and that these should be monitored by the Additional Director General (Crime). The response of the State Government accepts the role proposed for the latter, but does not confirm if appropriate action has been taken. Further, it is silent on the need for Special Cells under the concerned District Magistrates/Police Commissioners. The recommendations are therefore repeated.

Time-frames for investigations

31. The Commission had recommended that specific time-frames should be fixed for the thorough and expeditious completion of investigations. This recommendation appears to have been accepted by the State Government, but it has not spelt out what the time-frames will be, so neither the Commission nor the public know how long the process will take. The State Government should therefore clarify its position on this matter.

Police Desks in Relief Camps

32. The Commission had recommended that police desks should be set-up in the relief camps to receive complaints, record FIRs and forward them to Police Stations having jurisdiction. The 12 April 2002 response of the State Government asserts that instructions to this effect had been given and that 3,532 statements and 283 FIRs had been recorded in the relief camps. The Commission, however, is constrained to observe that, according to a report received from its Special Representative dated 24 April 2002, police desks had been set up only in 9 out of a total of 35 relief camps then in existence in Ahmedabad, that these desks worked only for a few days and only for two hours on an average on those days. The Commission therefore calls for full compliance with its recommendation in respect of the setting-up of such police desks in the relief camps. That would go a long way towards ensuring that FIRs are more accurately and fully recorded, particularly in respect of crimes committed against women and children, especially rape and other acts of brutality. Regrettably, such cases are still not being adequately registered, a fact that emerges from Shri Nampoothiri's report of 28 May 2002, not least because of the insensitive questioning by police personnel. There is also a lack of evidence of sufficient women officers being appointed to help with such cases. In this connection, the Commission would also like to reiterate its view that, in the very nature of situations such as this, material collected and provided by other credible sources, e.g., NGOs, should be fully taken into account. There is little evidence to suggest that this is being done. There is therefore need for greater responsiveness to this recommendation and greater transparency on the part of Police Commissioners and Superintendents of Police who should establish a system whereby NGOs and others can know precisely what action has been taken in respect of material provided by them.

Survey of all Affected Persons

33. The Commission urges, in this connection, that a comprehensive survey be expeditiously completed to establish the facts concerning the number and names of those who have been killed, or who are missing, injured, rendered widows, orphans or destitute in the violence that has ensued. The response of the Government does not throw any light on what is being done to gather such data. This is posing a major legal and humanitarian problem, not least to those who are the next-of-kin of those who have been killed or who are missing. The procedure for declaring a person dead needs to be reviewed in the present circumstances, and a procedure developed based on affidavits by the next-of-kin and their neighbours or other reliable persons. The Commission further recommends that the State Government expeditiously publish the data that is compiled, on a district-wise basis. This would not only assist the survivors in receiving the compensation and benefits that is their due, but also set to rest speculation about the number of persons killed or missing, and the widespread belief that there is a serious discrepancy between 'official' and 'unofficial' figures. A comparable recommendation by the Commission in respect of casualties after the Super-Cyclone in Orissa and the earthquake in

Gujarat greatly assisted both the State and the affected population to arrive at the truth and to avoid painful controversy.

Analysis of material collected by NGOs and others

34. The Commission had recommended that material collected by NGOs such as Citizen's Initiative, PUCL and others should be used. The response of the State Government indicates that such material, provided by different organizations will be investigated and, if found to be correct upon investigation, appropriately used in accordance with law. The Commission has taken note of this and will be monitoring the action taken by the State Government, particularly in respect of certain critically important cases and of those involving crimes against women and children which have been extensively documented by NGOs and citizens groups. The Commission has also asked its Special Representative to keep it informed of developments in regard to these cases, the details of which are available in the widely circulated reports of these NGOs and citizens groups. The reports thus far received do not suggest that the State Government is acting with adequate diligence on this matter.

Provocative Statements

35. The Commission had drawn special attention to the provocative statements made by persons to the electronic or print media, especially the local media, and had urged that these be examined and acted upon, the burden of proof being shifted to such persons to explain or contradict their statements. The response of 12 April 2002 of the State Government merely states that such statements "will be examined and acted upon appropriately." It does not indicate which statements are being examined, nor does it provide the details of the action being taken under the provisions of the Indian Penal Code and other relevant acts to bring to book those individuals or organizations that have been making incendiary statements, or publishing articles or leaflets promoting communal enmity. The Commission would like to receive all relevant details of the persons or organizations identified by the State Government in this connection and of the statements or actions for which they are being prosecuted. Only then will the Commission be able to arrive at a conclusion as to whether the State Government has acted appropriately in respect of this most serious matter. A further detailed report from the State Government would therefore be appreciated in this respect.

Identification of delinquent public servants

36. The Commission had expressly called for the identification of officers who had failed to discharge their statutory responsibilities appropriately and for proceedings to be instituted against them. Likewise, the Commission had added that those who had performed their duties well, should be commended. The State Government has stated that it will be guided by the findings of the Commission of Inquiry appointed by the State Government. It adds that "some of the

appropriately." The Commission is of the view that action against the delinquent public servants need not, in all instances, await the outcome of the Commission of Inquiry. In situations such as prevailed in Gujarat, the swiftness and effectiveness of the action taken against delinquent public servants itself acts as a major deterrent to misconduct or negligence in the performance of duty. It also acts as a catalyst to the restoration of public confidence and as an indication of the good faith of the Administration. Failure to take prompt action has the opposite effect. The Commission therefore recommends that prompt action be taken against the delinquent public servants and that the progress in the action initiated be communicated to the Commission.

II. Proper Implementation of Existing Statutory Provisions, Circulars and Guidelines

37. Communal riots are not new to India and least of all so to Gujarat, as the responses of the State Government themselves indicate. The Commission would therefore like to stress that there already exists in the country a comprehensive body of material in the form of statutory provisions, circulars, guidelines and the like, that has been meticulously elaborated over the years, that can and must be followed by those responsible for the maintenance of law and order and communal harmony in the country. In assessing whether or not the Government of Gujarat discharged its responsibilities adequately in the face of the violence that convulsed the State for over two months, it is essential to assess its performance against this body of material. For purposes of these Proceedings, the Commission will not attempt to list out comprehensively the entire range of statutes, circulars and guidelines germane to developments in Gujarat, but it will, by way of illustration, draw attention to certain of them, since they are singularly relevant to an assessment of the conduct of the State Government and of its officials.

(i) Statutory Provisions

38. Amongst the principal statutory provisions that could and should have been vigorously used to control the situation are the following:

39. The Indian Penal Code (1860)
Chapter VIII entitled "Of offences against the public tranquillity":

This is relevant in its entirety (Sections 141-160 IPC)

The Commission would, however, draw attention in particular to the following provisions of that Chapter:

Section 153 – Wantonly giving provocation with intent to cause riot – If rioting be committed, if not committed;

Section 153-A – Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language,

etc., and doing acts prejudicial to maintenance of harmony;

Section 153-B – Imputations, assertions prejudicial to national integration.

Chapter XV entitled "Of offences relating to religion"

This, too, is most relevant and includes the following:

Section 295 – Injury or defiling place of worship with intent to insult the religion of any class;

Section 295-A – Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or beliefs;

Section 297 – Trespassing on burial places, etc.;

Section 298 – Uttering words, etc., with deliberate intent to wound religious feelings.

The Commission would also draw attention to the special relevance in Chapter XXII of Section 505 (1), (2) & (3) IPC, dealing respectively with Statements conducing to public mischief, Statements creating or promoting enmity, hatred or ill-will, between classes, and an Offence under sub-section (2) committed in a place of worship, etc

The Code of Criminal Produce (1973)

40. Attention is drawn, in particular, to the contents of Chapter V, relating to Arrest of Persons, and especially to

Section 41 – When police may arrest without warrant;

Section 51 – Search of arrested person; and

Section 52 – Power to seize offensive weapons.

The following sections of Chapter X, dealing with Maintenance of Public Order and Tranquility, are also particularly relevant

Section 129 – Dispersal of assembly by use of civil force;

Section 130 -- Use of armed force to disperse assembly;

Section 131 – Power of certain armed force officers to disperse

Section 144 – Power to issue order in urgent cases of nuisance or apprehended danger.

Chapter XI, dealing with Preventive Action of the Police, contains, in particular, the following:

Section 149 – Police to prevent cognizable offences;

Section 151 – Arrest to prevent the commission of cognizable offences.

Chapter XII concerning Information to the Police and their Powers to Investigate, is also of relevance, particularly Section 154 pertaining to the recording of information in cognizable cases.

41. In addition, attention is drawn to The Police Act, 1861

Of particular relevance are the following provisions:

- Section 23 – Duties of police officer;
- Section 30 – Regulation of public assemblies and processions and licensing of the same;

42. The National Security Act, 1980, which provides for preventive detention, is also germane to the situation that prevailed in Gujarat, as is the Arms Act, 1959.

43. As indicated earlier, the statutory provisions mentioned above do not purport to be a comprehensive listing of all such provisions under the various acts of the country relevant to the maintenance of law and order and communal harmony. However, even the selected listing contained in these Proceedings gives an idea of the vast range of the provisions of law that the Government of Gujarat could and should have drawn upon to deal swiftly and effectively with the violence that ensued. The performance of the authorities, however, points to a less than vigorous use of these provisions.

(ii) Circulars, Guidelines, etc.

44. In examining the situation, the Commission has, in particular, been struck by the apparent failure of the Government of Gujarat to follow vigorously the "Guidelines to Promote Communal Harmony" issued by the Ministry of Home Affairs, Government of India, in 1997 and circulated to all Chief Ministers with a covering letter dated 22 October 1997 from the then Union Minister for Home Affairs, Shri Indrajit Gupta, who called for "urgent action" on the basis of those Guidelines.

45. Given the pointed relevance of those Guidelines to the situation in Gujarat, they are being attached to these Proceedings in full as Annexure III. In addition, however, it is essential to highlight certain portions of those Guidelines, by reproducing them in the main body of these Proceedings.

Excerpts from the "Guidelines to Promote Communal Harmony"

46. From the Chapter entitled Intelligence

Paragraph 2: "The organizational aspect of intelligence, with special reference to its adequacy, scope and efficacy, both at the State level and in the Districts/Towns/Areas identified as sensitive/hyper-sensitive should be thoroughly reviewed on a priority basis."

Paragraph 8: "There is an urgent need to make use of the intelligence feed-back so gleaned from the ground level. To ensure this there must be at least a monthly review of intelligence at the District level by the District Magistrate, Superintendent of Police and the Head of District Intelligence. Such reviews should not get 'routinised.' A monthly report of the review should be sent to the State Government."

47. From the Chapter entitled "Periodical Review of Communal Situation at District level and State level"

Special arrangements are recommended to ensure that women are protected as they are "the most affected group in communal tensions or riots" (paragraph 11), as also for "industrial areas," as they "may be prone to communal flare-ups" (paragraph 14).

Paragraph 15 requires: "At the first sign of trouble, immediate steps have to be taken to isolate elements having a non-secular outlook. Effective will needs to be displayed by the District Authorities in the management of such situations so that ugly incidents do not occur. Provisions of section 153(A), 153(B), 295 to 298 and 505 of IPC and any other law should be freely used to deal with individuals promoting communal enmity."

Paragraph 16: "Activities of communal organizations fomenting communal trouble, should be under constant watch of intelligence/police authorities. Prompt action should be taken against them at the first sign of trouble."

Paragraph 17: Processions have been the single largest cause of communal conflagrations.

48. Under the Chapter entitled Stringent Implementation of Acts relating to Religious Places, the Guidelines stress, in particular, the need to ensure respect for the Religious Institutions (Prevention of Misuse) Act, 1988 and the Places of Worship (Special Provisions) Act, 1991. The Guidelines also call for the "strict enforcement of the penal provisions of these Acts"

49. The responsibility of the Press is dealt with in the Chapter devoted to this subject. It calls on the Press to "report incidents factually without imparting a communal colour to them" (paragraph 30) and states that "Action should be taken against writers and publishers of objectionable and inflammatory material aimed at inciting communal tension." (paragraph 31).
50. In the "Administrative Measures" required for dealing with serious communal disturbances, the Guidelines state that, "as soon as a communal incident occurs, a report should be sent thereon to the Ministry of Home Affairs immediately, mentioning, inter alia, the grant of awards for good work or punishments for showing laxity in the district officer connected with the incidents" (paragraph 35). The Guidelines add "special Public Prosecutors, preferably from outside the district concerned or in any event from outside the affected area should be appointed" (paragraph 36).
51. The need to "Detect and Unearth" illegal arms and to cancel arms licences issued without adequate justification is considered in paragraph 40.
52. Thereafter, the "Role of the Police" is dealt with at some length. Paragraph 44 stresses the need for "minority community members in the police force deployed in communally sensitive areas;" it urges the "launching of special campaigns to recruit more members of minorities in the State Police Force" and the "creation of composite battalions of armed police which should include members of all religious communities including SC's/ST's for exclusive use in maintaining communal peace and amity in sensitive areas."
53. Under the heading "Punitive Action", the Guidelines state that "Laws relating to collective fines should be used without fear or favour, wherever the situation warrants" (paragraph 48). It is then urged that "Crimes committed during riots should be registered, investigated and the criminals identified and prosecuted." "Stringent judicial action" is required to be taken against criminals and it should be well publicized in order to impose "a high degree of constraint upon others" (paragraph 49).
54. Paragraph 50 deals with Special Courts for expeditious trial and disposal of cases. It also suggests that when an Enquiry Committee/ Commission is set up, "its recommendations should be expeditiously implemented, say within three months and the Central Government should be kept informed".
55. As regards "Personnel Policy," the Guidelines categorically state that the District Magistrate and the Superintendent of Police "will be responsible" for maintaining communal harmony in the district (paragraph 52) and that "A mention should be made in the ACRs of DMs/ SPs which should reflect their capability in managing law and order situations, especially their handling of communal situations" (paragraph 53).

56. Of great importance in the Guidelines and of clear relevance to the situation in Gujarat is the view expressed on the "Role of Ministers/Office Bearers of Political Parties." Paragraph 57 states that "Ministers and office bearers of political parties should exercise maximum restraint and self-discipline in making public utterances on any issue concerning the communal disturbance" and paragraph 58 adds "No Minister or an office bearer of a political party should participate in any function or a meeting or a procession which may have a bearing on religious or communal issues. It would be best if the District Magistrate is consulted before participating therein."

57. The Guidelines recapitulated above were issued by the Government of India 18 years after the Second Report of the National Police Commission (NPC) which, in 1979, analyzed the grave issue of Communal Riots in great detail. Chapter XLVII of that Report contained specific observations and recommendations which retain a high degree of relevance to what occurred in Gujarat recently.

58. The Second Report of the NPC recalled and examined the work of various Commissions of Inquiry appointed earlier to look into major incidents of communal violence, including inter alia the Raghubar Dayal Commission (Ranchi-1967), the Madon Commission (Bhiwandi-1970), the Jaganmohan Reddy Commission (Ahmedabad-1969) and the Balasubramanian Commission (Bihar Sharief-1981) and reached the conclusion that there was a "pattern in the failures" to deal effectively with the outbursts of communal violence. The "pattern" pointed to the following "failures" (paragraphs 47.6 - 47.16):

- A failure in timely and accurate gathering of intelligence;
- A failure to make a correct assessment of the intelligence reports;
- A failure to anticipate trouble, and to make adequate arrangements on the ground;
- A failure to deploy available resources adequately and imaginatively in vulnerable areas; a tendency to disperse the force in penny-packets without sufficient striking reserves;
- A failure by the DM and SP to take "quick and firm decisions" and a "growing tendency among the district authorities to seek instructions from higher quarters, where none are necessary";
- A failure of police officers and their men to function without bias; a pattern instead of such personnel showing "unmistakable bias against a particular community";
- A failure of officers to take responsibility in dealing with a situation, "to avoid to go to a trouble spot, or when they happen to be present there, (to) try not to order the use of force when the situation demands, or better still slip away from the scene leaving the force leaderless";
- A failure to post district officers on "objective considerations" or for "long enough ten-

ures"; instead, officers "being posted and transferred due to political pressures," adversely affecting the discipline and moral of the force, the "spate of transfers" undermining the "credibility of the administration."

A failure to be transparent in respect of a situation and a tendency to "hide the true-facts," even among senior officers. The tendency to "minimize" the number of casualties often resulted in rumours, the populace then choosing to believe "sources other than the administration and the government media."

59. The Second Report of the National Police Commission (NPC) then went on to make a number of powerful recommendations, many of which were subsequently used in the Guidelines of 1997, referred to above. Among the more relevant of the NPC recommendations, specifically in respect of communal situations, were the following:

The administration should disseminate correct information to the public through all available means. In cases of mischievous reporting, the State Government and local administration should use every weapon in the legal armory to fight obnoxious propaganda prejudicial to communal harmony (paragraphs 47.28, 47.29).

The authorities in dealing with communal riots should not be inhibited, by any consideration, to adopt luke-warm measures at the early stages; a clear distinction must be made between communal riots and other law and order situations and "the most stringent action taken at the first sign of communal trouble" (paragraph 47.34).

Officers who have successfully controlled the situation at the initial stages with firm action should be suitably rewarded. Immediate and exemplary action should be taken against officers who willfully fail to go to the trouble spot or who slip away from there after trouble has erupted (paragraph 47.35).

The NPC Report "strongly disapproves" of "the practice of posting and transfers on political pressures." Only specially selected experienced officers with an image of impartiality and fair play should be posted to communally sensitive districts (paragraph 47.36).

There should be a control room in all of those places which have been identified as prone to communal trouble. Even though some information passed on to the control room may not be useful every bit of information passed on to the control room should be acted upon as if it were genuine (paragraph 46.37).

Unless crimes committed are registered, investigated and the criminals identified and prosecuted, the police would not have completely fulfilled its role as a law enforcement agency. The police should realize that the task of investigation is a mandatory duty cast upon it and any indifference to this task can attract legal sanctions (paragraph 47.47).

In a riot situation registration of offences becomes a major casualty. "It is futile to expect the victim of the crime to reach a police station risking his (her) own life and report a crime to the police." The police should therefore open several reporting centers at different points in a riot-torn area (paragraph 47.48).

The police forces of the various States in the country should truly represent the social structure in the respective States (paragraph 47.58).

60. In drawing attention to the Circulars, Guidelines and Reports mentioned above, the Commission would like to underline its sense of anguish that, despite the existence of such thorough and far-reaching advice on how to handle incidents of communal violence, the Government of Gujarat has conspicuously failed to act in accordance with the long-standing provisions of these important instructions and that, measured against the standards set by them, the performance of the State appears to be severely wanting. The Commission believes that there is need for careful introspection within the State Government in this respect; the shortcomings in its performance need to be analyzed, inter alia, in the light of the statutory provisions, circulars and guidelines referred to above, and a detailed report based on that analysis should be made available by the State Government to the Ministry of Home Affairs, Government of India, and to this Commission for their consideration. The report should indicate the precise conclusions that the State Government has reached, and the steps that it intends to take, to prevent the recurrence of the type and range of failures that have marred the performance of the State in the handling of the tragic events that occurred recently. The report should also indicate clearly what steps the Government intends to take against those who are responsible for these multiple failures, identifying the delinquent public servants, and others in authority, without equivocation.

III. Camps

61. The Commission had recommended that the camps should be visited by senior political leaders and officers in a systematic way, that NGOs should be involved in the process, and that the management and running of camps should be marked by transparency and accountability. The State Government has, in its response of 12 April 2002, recounted the number of visits made, the medical, para-medical, sweepers, anganwadi and other staff appointed/deployed, the medicines distributed etc.

62. The Commission has taken note of these efforts. It would, however, like to draw particular attention to the following matters:
- (i) There is a manifest need to improve sanitary conditions in the camps, and increase the provision of toilets and water supply. Particular care must be taken of the needs of women, for whom special facilities should be provided. There should be a reasonable ratio prescribed of toilets and bathing places to population.
 - (ii) Particular vigilance must be ensured to prevent the spread of epidemics, measles and other illnesses having already taken a toll.
 - (iii) While the response of the State Government indicates the quantity of food-grains, pulses, etc., supplied to the camps in 8 districts, it does not indicate the standards adopted in providing essential food-items. These standards must accord with the minimal nutritional levels set by WHO/UNICEF and the competent Ministries of the Government of India in situations such as this. There have been alarming reports of arbitrary reductions in the quantity of foodstuffs being provided.
 - (iv) Given the scorching heat of summer, and the imminent monsoon that will follow, there is an immediate and most critical need to provide semi-permanent structures and better protection against the elements. Standards must also be set for the provision of fans etc., in terms of population, in order to ease the suffering of those who have sought refuge in the camps.
 - (v) Camp-wise monitoring committees should be appointed to watch over each of the camps.
 - (vi) The role and functions of NGOs should be more clearly defined than has been the case till now. Private sector organizations and business houses should be encouraged to 'adopt' certain camps, or specific activities within them, e.g., the provision of medicines, the improvement of shelter, sanitary conditions, etc.
 - (vii) The reports of the Secretary-level officers appointed to monitor work in the camps should be recorded on a prescribed form, and be available to the public as also to the Special Representative of the Commission in Gujarat.
 - (viii) An adequate number of trauma specialists should be sent to the camps and other distressed areas for the counseling and treatment of victims.
 - (ix) Procedures should be simplified for obtaining death certificates and ownership certificates, in order to expedite the giving of compensation. Time-frames

should be set for the settlement of claims and the survey of townships and villages that have been affected. These should be indicated to the public and to this Commission. There are disturbing reports that the compensation being announced for damaged homes and properties is being arbitrarily fixed and serving as a disincentive to victims to start their lives anew. This should be urgently looked into by the State Government which should establish credible mechanisms for assessing damages done to homes and items of property and ensure that those who have suffered receive fair and just compensation.

(x) Confidence building measures should be elaborated and made public, in order to facilitate the return of camp inmates and others who have fled, to their homes and work. Leadership must be provided by the highest echelons of the State Administration.

(xi) The Commission has noted the assurance given by the State Government, in its response of 12 April 2002, and reiterated subsequently in media reports to the effect that the inmates will not be asked to leave the camps until appropriate relief and rehabilitation measures are in place for them and they feel assured, on security grounds, that they can indeed leave the camps and return to their homes. Reports reaching the Commission, however, still point to pressures being exerted on the inmates, or conditions in some camps being so inhospitable, that inmates have felt compelled to leave the camps and seek refuge with family or friends. The Commission recommends once again, in the circumstances, that no camp be closed without a clear recommendation from a Committee comprising the Collector, a representative of a reputed NGO, a representative of the camp, and the Special Representative of the Commission in Gujarat or a nominee of his.

IV. Rehabilitation

63. (i) The Commission has noted that the State Government, in its response of the 12 April 2002, has accepted its recommendation "in principle" that places of worship that have been destroyed be repaired expeditiously. However, little has been done to start work as yet. The Commission recommends that the full list of damaged and destroyed sites/monuments be published district-wise. This would constitute an essential confidence-building-measure as certain historical sites have not only been destroyed but efforts have been made to erase any trace of them. Plans should be announced for the future protection of historical, religious and cultural sites in the State and the entire exercise undertaken in consonance with articles 25 to 29 of the Constitution.

(ii) The Commission has taken note of the package of relief and rehabilita-

tion measures announced by the State Government, including the contribution from the Prime Minister's Relief Fund. It has also noted that disbursement of assistance is "still under progress." The Commission is concerned that difficulties have arisen in obtaining death and ownership certificates and has referred to this matter earlier in these Proceedings. Delays have also occurred in assessing damages and paying compensation at an appropriate level. The Commission is aware of the immense amount of work that must be done to ensure proper relief and rehabilitation to those who have suffered. It would, however, urge that procedures be streamlined and expedited to deal with the issues mentioned above. Further, as long as inmates stay in the camps, there is need to ensure that this painful interlude in their lives is redeemed, in part at least, by the provision of work and training, by the maintenance of appropriate nutritional standards, by medical and psychiatric care adequate to the demands of the situation. Particular care should also be taken of the needs of widows, victims of gender-related crimes, and orphans. Further, while a number of special schemes have been announced for the victims of the violence, as indeed they should have been, this should not imply that they should not be eligible for the existing range of anti-poverty and employment schemes. In other words, there should be a convergence of Government schemes for their care.

(iii) The Commission has noted the measures being taken to re-settle the victims. Various reports indicate, however, that compensation for damaged property is often being arbitrarily set at unreasonably low amounts and that pressure is being put on victims that they can return to their homes only if they drop the cases they have filed or if they alter the FIRs that they have lodged. It is important to ensure that conditions are created for the return of victims in dignity and safety to their former locations. Only if they are unwilling to return to their original dwelling sites should alternative sites be developed for them. The response of the State Government of 12 April 2002 does not indicate whether it has acted upon the Commission's recommendation that HUDCO, HDFC and international funding agencies be approached to assist in the work for rehabilitation. The Commission would like a further response to this.

(iv) The Commission had recommended that the private sector, including the pharmaceutical industry should be requested to assist in the relief and rehabilitation process. The State Government has responded on 12 April 2002 that it has not experienced any shortage of drugs and medicines thus far. The Commission intends to continue monitoring the situation in this and other respects through its Special Representative, Shri Nampoothiri.

(v) The Commission has also taken note of the response of the State Govern-

ment in respect of the Commission's recommendation that NGOs and the Gujarat Disaster Management Authority be associated with the relief and rehabilitation work. The plight of women and children, particularly widows, victims of rape and orphans remains of particular concern to the Commission. It is essential their names and other details be recorded with care and individual solutions be pursued for each of them, whether this be for financial assistance, shelter, medical or psychiatric care, placement in homes, or in respect of the recording of FIRs and the prosecution of those responsible for their suffering. The Commission intends to monitor this matter closely.

Concluding Observations

64. The tragic events in Gujarat, starting with the Godhra incident and continuing with the violence that rocked the State for over two months, have greatly saddened the nation. There is no doubt, in the opinion of this Commission, that there was a comprehensive failure on the part of the State Government to control the persistent violation of the rights to life, liberty, equality and dignity of the people of the State. It is, of course, essential to heal the wounds and to look to a future of peace and harmony. But the pursuit of these high objectives must be based on justice and the upholding of the values of the Constitution of the Republic and the laws of the land. That is why it remains of fundamental importance that the measures that require to be taken to bring the violators of human rights to book are indeed taken.
65. The Commission has noted that there has been a decline in the incidents of violence in the past three weeks and that certain positive developments have taken place since the start of May 2002. However, as these Proceedings indicate, much remains to be done, and the integrity of the administration must be restored and sustained if those who have suffered are to be fully restored in their rights and dignity.
66. The Commission will therefore continue to monitor the situation with care, and it calls upon the Government of Gujarat to report to it again, by 30 June 2002, on all of the matters covered in the Comments and Recommendations contained in these Proceedings, including the Confidential Report of 1 April 2002 transmitted to it earlier (Annexure I).
67. The Commission would like to close with an invocation of the thoughts of Mahatma Gandhi and Sardar Vallabhbhai Patel who, born in Gujarat, illuminated the life of the country with their wisdom, foresight and courage.
68. Gandhiji once observed:

"It has always been a mystery to me how men can feel themselves honoured by the

humiliation of their fellow beings."

He also said:

"Peace will not come out of a clash of arms but out of justice lived and done."

69. And the comments of Sardar Patel, who chaired the Advisory Committee of the Constituent Assembly charged with the drafting of the articles on Fundamental Rights, are also of the deepest significance. The issue then was this: in the years preceding Independence, detractors of the National Movement, including elements of the retreating colonial power, repeatedly claimed that the minorities of India could not possibly find justice at the hands of other Indians. Sardar Patel was determined to refute this politically motivated assessment of the character of the country. Accordingly, on 27 February 1947, at the very first meeting of the Advisory Committee of the Constituent Assembly on Fundamental Rights, Minorities and Tribals and Excluded areas, Sardar Patel asserted:
- "It is for us to prove that it is a bogus claim, a false claim, and that nobody can be more interested than us, in India, in the protection of our minorities. Our mission is to satisfy every one of them. Let us prove we can rule ourselves and we have no ambition to rule others."
70. So it was that the Constitution of the Republic included a series of articles having a bearing on the rights of minorities – some of general applicability, others of greater specificity. The most notable were those relating to the Right to Equality (particularly articles 14, 15, 16 and 17), the Right to Freedom of Religion (articles 25, 26, 27 and 28), Cultural and Educational Rights (particularly articles 29 and 30) and, upholding them all, the Right to Constitutional Remedies (in particular article 32).
71. Critical and cruel as the communal dimension was to the tragedy of Gujarat, what was at stake, additionally, was respect for the rights of all Indians – irrespective of community – that are guaranteed by the Constitution. That Constitution assures the Fundamental Rights of all who dwell in this country, on a non-discriminatory basis, regardless of religion, race, caste, sex or place of birth. It was this guarantee that was challenged by the events in Gujarat. It is for this reason that the Commission has followed developments in that State closely, and that it will continue to monitor the situation for as long as is needed.

Chairperson

(Justice K.Ramaswamy)

Member

(Justice Sujata V. Manohar)

Member

(Virendra Dayal)

Member

Annexure - I

Report on the visit of NHRC Team headed by Chairperson, NHRC to Ahmedabad, Vadodra and Godhra from 19-22 March 2002.

Justice J.S. Verma, Chairperson, NHRC, accompanied by Shri P.C. Sen, Secretary General, Shri Chaman Lal, Special Rapporteur and Shri Y.S.R. Murthy, P.S. to the Chairperson, visited Ahmedabad, Vadodra and Godhra from 19-22 March 2002. The Commission had, by taking suo motu cognizance of the alarming media reports about the widespread communal violence in Gujarat beginning with the Godhra incident of 27 February 2002, registered the matter as case No. 1150/6/01-02 and issued notices on 1st March to the Chief Secretary and DGP, Gujarat to reply within 3 days "indicating the measures being taken and in contemplation to prevent any further escalation of the communal situation in the State" which was causing continued violation of the human rights of a large number of people. A copy of this notice was also sent to Shri P.G.J. Nampoothiri, Special Representative, NHRC on March 4 requesting him to send a report on the subject involving in that exercise, also other members of the group constituted by the Commission for monitoring the rehabilitation work related to the last year's earthquake in Gujarat.

The Chief Secretary & DGP, Gujarat on 4th March requested for grant of further time of 15 days stating that "as most of the State machinery is busy with the law and order situation, it would take some time to collect information and compile the report". The Commission, vide its proceedings dated 6 March 2002 observed that while preparation of a comprehensive report may require some more time, the Government of Gujarat was expected to send "at least, a preliminary report indicating the action taken so far and that in contemplation together with an assurance from the State Government of strict implementation of the rule of law". A preliminary report was received on 11 March. The Commission considered this report and found it rather perfunctory and silent on many vital aspects. In the meantime a fairly comprehensive report giving a broad picture of the situation in Gujarat with mention of some major incidents in the city of Ahmedabad was received from the Special Group comprising Shri P.G.J. Nampoothiri, Smt. Annie Prasad, IAS (Retd.) and Shri Gagan Sethi, Director, Jan Vikas. The Commission was also taking notice of media reports about continuing communal violence, and alleged inability of the State Government to restore normalcy. The Commission felt that consideration of the matter involving continued violation of human rights of a large section of people in Gujarat can not be deferred any further for want of the comprehensive report called from the State Government. The Commission, therefore, decided that a team led by the Chairperson should immediately visit the State for an on-the-spot assessment of the situation.

AHMEDABAD

The NHRC team reached Ahmedabad around 7 p.m. on 19 March. That very evening the team received a briefing from Shri P.G.J. Nampoothiri, Special Representative, NHRC about the chain of events starting with the incident at Godhra on 27 February. On the 20th March the team began with a meeting with senior State Government officials including the Chief Secretary, Addl. Chief Secretary (Home), DGP, Home Secretary, Revenue Secretary and the Police Commissioner, Ahmedabad. A number of prominent citizens including Shri Amar Singh Choudhry, former C.M., Justice T.U. Mehta, former Chief Justice, Justice P.D. Desai,

former Chief Justice, Justice Akbar Divecha, Justice R.A. Mehta called on the Chairperson and gave him their assessment of the situation highlighting the prevailing sense of insecurity in the community in general and the minority community in particular. In the afternoon, the team had a long interaction with a group of voluntary agencies, NGOs, Human Rights activists and some prominent citizens including Mr. R.K. Sayed, a retired Secretary to Government of India and Justice A.P. Ravani, former Chief Justice, Rajasthan. It also received a delegation of media persons and some more eminent citizens including Malika Sarabhai, Batuk Vora and Teesta Setalvad. The team also visited two Relief camps – Shah-e-Alam camp holding about 9000 displaced persons of minority community and Saryu Das Temple camp where 471 Hindus moved from Prem Darwaza Bhagriwar area have taken shelter. The team also met some victims of Godhra incident and traders' delegations from both the communities.

MEETING WITH THE STATE GOVERNMENT OFFICERS

In his opening remarks, the Chief Secretary, Shri G. Subba Rao, referred to the horrendous Godhra incident and subsequent violence in the State indicating the action taken by the administration in mobilising available resources and requisitioning the army. He expressed the resolve of the Government and administration to protect human rights of all sections of people without any distinction as to caste, creed and religion.

The Chairperson explained the purpose and timing of his visit. He indicated that he had not visited the State earlier in order not to divert the State authorities from the task in which they were engaged. However, the visit could not be further delayed as normalcy had not been restored despite the passage of three weeks. The Commission's concern for the stoppage of violence and restoration of normalcy in the State and the role of the NHRC as a facilitator to improve the quality of governance was emphasized. It was stated that, as in the aftermath of Orissa Cyclone and the Gujarat earthquake it was the duty of the NHRC to ensure the prevention of any further violation of human rights and focus on the need for expeditious rehabilitation of the victims.

Then followed a visual presentation by the Government officers in 3 parts entitled the Godhra incident of 27 February and immediate action taken by the Administration, 'unfolding events as reaction to the Godhra incident from 28 February onwards', and the relief and rehabilitation measures started by the Government. The Team pointed out the following omissions in the presentation:

- i) It does not indicate specifically the details of the preventive measures, if any, taken at the sensitive points in Ahmedabad city which witnessed large scale violence, arson and looting.
- ii) Though it was stated that 273 preventive arrests were made on 27 February, the date and community-wise break up was not shown to counter the allegations of discrimination.



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