

D-39

Pages 1 to 40

**ELECTION COMMISSION OF INDIA**  
Nirvachan Sadan, Ashoka Road, New Delhi - 110 001.

No.464/GJ-LA/2002

Dated : 16<sup>th</sup> August, 2002.

**ORDER**

The term of the Legislative Assembly of the State of Gujarat was normally due to expire, in terms of Article 172(1) of the Constitution, on the 18<sup>th</sup> March, 2003. Keeping that in view, the Commission had been planning to hold the next general election in the State for constituting a new Legislative Assembly in the early part of the year 2003, alongwith the general elections to the Legislative Assemblies of Himachal Pradesh, Meghalaya, Nagaland and Tripura whose terms are also normally due to expire in the month of March 2003.

2. The Legislative Assembly of the State of Gujarat was, however, dissolved prematurely by the Governor of Gujarat on the 19<sup>th</sup> July, 2002 in exercise of his powers under Article 174(2)(b) of the Constitution. On such premature dissolution of the State Legislative Assembly, a demand is being made, particularly by the Bharatiya Janata Party and a few other smaller parties and NGOs, that the general election to constitute the new Legislative Assembly be urgently held by the Commission so as to enable the new Legislative Assembly so constituted to meet for its first session before 6<sup>th</sup> October, 2002. In support of such demand, they are citing Article 174(1) of the Constitution which provides that 'the Governor shall, from time to time, summon the House or each House of the Legislature of the State to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session'. The last session of the dissolved

See  
Para-20  
32

Para 16  
19  
21

Legislative Assembly of Gujarat was prorogued on 6<sup>th</sup> April, 2002 and it is contended that the first session of the new Legislative Assembly should be held before 6<sup>th</sup> October, 2002 and, therefore, it is mandatory for the Commission to hold the election well before 6<sup>th</sup> October, 2002. They also claim that the situation in the State of Gujarat is quite normal and conducive to the holding of free and fair elections, as is evident from the facts that the panchayat elections in large areas were successfully conducted in April 2002, that HSC, SSC examinations were held peacefully and that various religious festivals like the Rath Yatra had passed off without any untoward incident.

3. On the other hand, the Commission has received a very large number of representations from political parties (like, the Indian National Congress, the Samajwadi Party, CPI, CPI (M), NCP, JD (S), etc.), eminent political personages, including some former Prime Ministers of India, retired Chief Justices of different High Courts, NGOs and other social and cultural organisations, urging upon the Commission not to hold the general election to the Gujarat Legislative Assembly immediately but to wait for some time until the people who were affected by the communal riots and violence and had to leave their hearths and homes in the aftermath of the Godhra incident on 27.2.2002 return to their houses with an assuring sense of security and safety. These parties and representationists are of the view that there is no constitutional compulsion on the part of the Election Commission to hold the election before the 6<sup>th</sup> October 2002, as they contend that the provisions of Article 174 (1) of the Constitution, which have been heavily relied upon by the Bharatiya Janata Party and its allies, apply to an existing Assembly and have no application after an Assembly has been dissolved and it is not obligatory that the new House to be constituted after the general election meets within six months of the last sitting of the dissolved Assembly. Their further contention is that,

in any event, the Constitution has vested the superintendence, direction and control of elections to Parliament and State legislatures in the Election Commission and it is for the Election Commission to decide as to when a general election should be held so as to ensure a fair and free election.

4. The Commission has carefully examined the provisions of Article 174(1) of the Constitution. It has also considered other relevant provisions in the Constitution having a bearing on functioning of the Legislative Assemblies and the conduct of elections to constitute them. The Commission has, in the past, been taking the view that the six months in Article 174(1) of the Constitution applies not only to a Legislative Assembly in existence but also to elections to constitute the new Assembly on the dissolution of the previous Assembly and in all past cases, like the recent dissolution of the Goa Legislative Assembly on 27<sup>th</sup> February, 2002, wherever any Assembly has been dissolved prematurely by the Governor under Article 174(2)(b) of the Constitution (and where the President has not taken over the administration of the State under Article 356 of the Constitution on the dissolution of the Assembly), elections to constitute a new Legislative Assembly have always been held in such time as have enabled the new Assembly to meet within the period of six months from the last date of the last session of the dissolved Assembly. Similar action has been taken by the Commission wherever the House of the People has been prematurely dissolved by the President under Article 85(2)(b) of the Constitution – for example, the dissolution of the House of the People in 1999, 1998, and earlier in 1991, 1979 and 1971 – so that the new House of the People could meet within the period of six months from the last sitting of the dissolved House.

5. Thus, the Commission has all along been consistent that, normally, a Legislative Assembly should meet atleast every six months as contemplated by Article 174(1) of the Constitution, even when it has been dissolved (except where President's Rule has been imposed in the State under Article 356 of the Constitution). The Commission sees no convincing/justifiable reason to take a different view in the present case. In fact, any other view on the interpretation of Article 174(1) of the Constitution might lead to extensive gaps between two Houses of a Legislative Assembly and the abuse of democracy, there being no provision in the Constitution or in any law in force prescribing a period during which an election is to be held to constitute a new Legislative Assembly on the dissolution of the previous House. This will be contrary to the basic scheme of the Constitution which prescribes that there shall be a State Legislative Assembly (Article 168) and the Council of Ministers shall be collectively responsible to that Assembly [Article 164(2)] and that if a minister is not a member of the Assembly for a consecutive six months period, he shall cease to be a minister [Article 164(4)]. A more alarming situation may arise with Parliament where Article 85 (1) of the Constitution makes identical provisions relating to the holding of sessions of the House of the People. Any view that the House of the People need not meet every six months and the elections be indefinitely postponed after one House has been dissolved, would not only be destructive of the whole Parliamentary system so assiduously built in our Constitution but also be abhorrent to every section of the Indian polity and citizenry.

6. The Commission is also fortified in its above interpretation by the view taken by the President and Parliament on the provisions of Article 174(1) whenever there was an imposition of President's Rule in a State under Article 356 of the Constitution. Whenever the Legislative Assembly of any State has been dissolved in the past by the



President under Article 356 of the Constitution, the provisions of Article 174 (1) have invariably been expressly suspended in the Proclamation issued by the President under that Article and approved by Parliament during the operation of that Proclamation (See, for example, the latest Proclamation dated 10<sup>th</sup> February, 1999 issued by the President dissolving the Goa Legislative Assembly and imposing President's Rule in that State). If Article 174(1) has no application after an Assembly has been dissolved, as is being contended by one set of representationists, there is no question of the suspension of that provision after the dissolution of the Assembly by the said Proclamation.

7. Shri D.D. Basu, an eminent authority on the Constitution of India, has in his 'Commentary on the Constitution of India (Fifth Edition)' also observed at page 292 that 'it might be argued that if the new Assembly has to wait for some time till the date fixed by the Governor under Art. 172 (1) comes, there may be an interregnum during which the State may not have any Assembly at all. The answer is that this is actually envisaged but limited by Art. 174 (1), by providing that the Governor's summons must be issued in such time that more than 6 months must not elapse between the date of the last sitting of the dissolved or expired Assembly and the date appointed for the first sitting of the newly elected Assembly.'

8. There is, to the Commission's knowledge, no authoritative pronouncement of the Supreme Court or of any High Court on this aspect of the issue. But the most plausible view that appears to the Commission is that Article 174(1) of the Constitution envisages that, normally, the Legislative Assembly of a State should meet every six months even after the dissolution of one House.

9. The next question for consideration of the Commission is whether the Commission is obliged, whatever may be the circumstances, to hold the general election within the period remaining out of the six months from the date of the last sitting of the dissolved Assembly. The Commission does not accept this view. Article 174(1) of the Constitution cannot be read in isolation and it has to be read along with other relevant provisions of the Constitution, particularly Article 324 of the Constitution. Article 324, which is not subject to the provisions of any other Article of the Constitution including Article 174(1), vests the superintendence, direction and control, *inter alia*, of the preparation of electoral rolls for, and conduct of, elections to Parliament and State Legislatures in the Election Commission. Elections, in the context of democratic institutions, mean free and fair elections and not merely a ritual to be gone through periodically. In the words of the Constitution Bench of the Supreme Court in *T.N. Seshan v Union of India and Ors* [(1995) 4 SCC 61]:

'Democracy being the basic feature of our constitutional set up, there can be no two opinions that free and fair elections to our Legislative bodies alone would guarantee the growth of a healthy democracy in the country. In order to ensure the purity of the election process, it was thought by our Constitution-makers that the responsibility to hold free and fair election in the country should be entrusted to an independent body which would be insulated from political and/or executive interference.'

Again, the Constitution Bench of the Supreme Court observed in the famous *Keshavanand Bharati v State of Kerala* (AIR 1973 SC 1461) that 'Free, fair, fearless and impartial elections are the guarantee of a democratic polity.' Likewise, the Supreme Court repeatedly underscored the importance of free and fair elections in the case of *Mohinder Singh Gill v Chief Election Commissioner and Others* (AIR 1978 SC 851),

*Kanhiya Lal Omar v R.K. Trivedi* (AIR 1986 SC 111) and a catena of other decisions. In the case of *Mohinder Singh Gill* (supra), the Supreme Court observed:

'The free and fair election based on universal adult franchise is the basic ... it needs little argument to hold that the heart of the Parliamentary system is free and fair election periodically held, based on adult franchise and that social and economic democracy may demand much more.'

Similar sentiments of the Supreme Court laying stress on free and fair elections to the legislative bodies have found echo in every other decision of the Supreme Court on elections.

10. Free and fair elections are not only a commitment of the Constitution of India, but a requirement of the international standards laid down by the comity of nations in various fora/conventions. For example, the '**Declaration on Criteria for Free and Fair Elections**' unanimously adopted by the Inter-Parliamentary Council (of which India is one of the members) at its 154<sup>th</sup> session (Paris, 26 March 1994) stated:

'The Inter-Parliamentary Council,

**Reaffirming** the significance of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights which establish that the authority to govern shall be based on the will of the people as expressed in periodic and **genuine** elections,

**Acknowledging and endorsing** the fundamental principles relating to periodic free and fair elections that have been recognised by States in universal and regional human rights instruments, including the right to everyone to take part in the government of his or her country directly or indirectly through freely chosen representatives...

**Recognising** that the establishment and strengthening of democratic processes and institutions is the common responsibility of governments, the electorate and organised political forces, that periodic and genuine elections are a necessary and indispensable element of sustained efforts to protect the rights and interests of the governed...

**Therefore adopts** the following Declaration on Free and fair Elections, and **urges** Governments and Parliaments throughout the world to be guided by the principles and standards set out therein:

**1. Free and Fair Elections**

In any State the authority of the government can only derive from the will of the people as expressed in **genuine, free and fair elections** held at regular intervals on the basis of universal, equal and secret suffrage...

**4. The Rights and Responsibilities of States**

- (1) States should take the necessary legislative steps and other measures, in accordance with their constitutional processes, to guarantee the rights and institutional framework for periodic and **genuine, free and fair elections**, in accordance with their obligations under international law...

Likewise, the United Nations, in its '1948 Universal Declaration of Human Rights', laid down in Article 21 that 'Everyone has a right to take part in the government of his country, directly or through freely chosen representatives' and 'The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and **genuine** elections which shall be held by universal and equal suffrage'. Similar standards have been laid down in various other resolutions of the United Nations, like the United Nations General Assembly Resolution No.A/RES/46/137 dated 17 December

1991, and several international covenants issued by various international organisations on civil and political rights, like the 1991 Commonwealth's Harare Declaration.

11. Thus, the Constitutional mandate given to the Election Commission under Article 324 of the Constitution is to hold free and fair elections to the legislative bodies. And, in the Commission's considered view, if a free and fair election cannot be held to a legislative body at a given point of time because of the extraordinary circumstances then prevailing, Article 174 of the Constitution must yield to Article 324 in the interest of genuine democracy and purity of elections. Further, in the Commission's considered view, such interpretation of the provisions of Articles 174(1) and 324 would not create a situation which is not contemplated or envisaged under the Constitution and which cannot be met thereunder. The non-observance of the provisions of Article 174(1) in the aforesaid eventuality would mean that the Government of the State cannot be carried on in accordance with the provisions of the Constitution within the meaning of Article 356 (1) of the Constitution and the President would then step in.

12. There cannot be two opinions that under the Constitution, it is the Election Commission, and this Commission alone, which is empowered to decide as to when an election, that is, a free and fair election, can be held. Any doubt on this aspect will stand dispelled by the following observation of the Constitution Bench of the Supreme Court in the case of *Election Commission v State of Haryana* (AIR 1984 SC 1406):

"The Government of Haryana is undoubtedly in the best position to assess the situation of law and order in areas within its jurisdiction and under its control. But the ultimate decision as to whether it is possible and expedient to hold the elections at any given point of time must rest with the Election Commission."

'The fixing of the dates of polling is a matter for the informed judgment of the Election Commission consistent with its perception of the law and order situation and of the ensurement of the requisite precautionary and remedial measures.'

In the case of *Election Commission of India V. Union of India and Others* (Writ Petition No.606 of 1993), the Supreme Court observed in its order dated 30<sup>th</sup> August, 1993:

'...we reiterate the judicial perception as to the constitutional position and the plenitude of the powers of the Election Commission as a high and exclusive body charged with the duty, at once sensitive and difficult, of overseeing the free and fair elections in the country and that its perceptions of the imperatives for a free and fair elections are not to be interfered with by the courts...'

13. Even the Constitution itself expressly recognises the power of the Election Commission to decide whether an election is possible or not at a given point of time. Under Article 356(5)(b) of the Constitution, President's Rule in a State can be extended by Parliament, after a period of one year from the date of its imposition, only if the Election Commission gives a certificate that the holding of a general election to its Legislative Assembly in the State is not possible. By the very creation of the Election Commission as an independent Constitutional authority, the founding fathers of the Constitution cast a sacred duty on the Commission to hold free and fair elections. Dr. B.R. Ambedkar, chief architect of the Constitution of India, observed in the Constituent Assembly on the 15<sup>th</sup> June, 1949, while introducing draft Article 289 (which is the present Article 324) that:

'The House will realise that franchise is a most fundamental thing in a democracy. No person who is entitled to be brought into the electoral rolls on the grounds which we have already mentioned in our Constitution, namely, an adult

of 21 years of age, should be excluded merely as a result of the prejudice of local government, or the whim of an officer. That would cut at the very root of democratic government. In order, therefore, to prevent injustice being done by provincial governments to people other than those who belong to the province racially, linguistically and culturally, it is felt desirable to depart from the original proposal of having a separate Election Commission for each province under the guidance of the Governor and the local Government. Therefore, this new change has been brought about, namely, that the whole of the election machinery should be in the hands of a Central Election Commission, which alone would be entitled to issue directives to returning officers, polling officers and others engaged in the preparation and revision of electoral rolls so that no injustice may be done to any citizen in India, who under this Constitution is entitled to be brought on the electoral rolls.'

14. Parliament has also expressly provided that it is the Election Commission which is to decide about the timing of a general election in a State. Section 15 of the Representation of the People Act 1951 stipulates that the Governor of the State shall call upon the Assembly Constituencies in the State to elect a new Assembly **on such date or dates as may be recommended by the Election Commission.**

15. Guided by these considerations, the Election Commission decided to make an assessment of its own on the possibilities of a free and fair election in the State of Gujarat in the context of the large scale movement and migration of electors due to communal riots and violence, particularly those belonging to the minority community, in the wake of the Godhra incident and the current law and order situation presently prevailing in the State. The Commission first deputed a nine-member team of senior officers headed by two of its Deputy Election Commissioners S/Shri S. Mendiratta and A.N. Jha. The team visited, during the period from 31<sup>st</sup> July, 2002 to 4<sup>th</sup> August, 2002,

12 out of 25 districts in the State of Gujarat, covering a large part of the affected areas. On the basis of its on-the-spot study of the ground situation, the team observed that the electoral rolls in the State, which had been revised with reference to 1<sup>st</sup> January, 2002 as the qualifying date, had become very defective as a large number of electors included therein had moved out of the houses wherein they were ordinarily resident during the riots and had not returned, their houses having been totally demolished/damaged/burnt and the law and order situation having not become conducive for their return to their original places of ordinary residence. The team found that there was still a sense of insecurity pervading the minds of such displaced persons and it was evident that under such a fear psychosis, they could not be expected to run the gauntlet and go to the polling stations to cast their vote. The team felt that any election on the basis of such defective electoral rolls and in a such traumatic situation would not only deprive the electors concerned of exercising their franchise but would also give an opportunity to unscrupulous elements to cast bogus votes in the names of those absentee voters. The team felt that first a conducive atmosphere needed to be created by taking appropriate confidence-building measures.

16. On the receipt of the report of the team, the full Commission decided to make a visit of some of the affected areas to see the ground situation for itself and to have first-hand information about the facts reported by the team. Thereupon, the full Commission, consisting the Chief Election Commissioner and both the Election Commissioners, visited Ahmedabad and Vadodara from 9<sup>th</sup> August to 11<sup>th</sup> August, 2002. It had extensive interaction with the State Government machinery right from the Chief Secretary and Director General of Police and downwards, with retired Chief Justices of different High Courts, with political parties, with organisations manning relief camps, with inmates of



the relief camps and other affected families and with NGOs and other social and cultural organisations. On such on-the-spot examination and study of the situation, the full Commission found that the situation was indeed bad as reported by the team and that the conditions in the State were not conducive at all for holding any free and fair election for the present.

17. It is here appropriate to sum up the observations and findings of the full Commission and of its 9-member team:

#### **Extent of Affected Areas**

18. After the incident at Godhra on 27<sup>th</sup> February 2002, the State of Gujarat was engulfed by communal riots and violence which rapidly spread to many parts of the State. The State Government, in its presentation to the Commission and its team, emphasized that the riots were confined to pockets in a few districts of the State, with 13 districts remaining unaffected. But the State Government in its presentation also indicated that for relief and rehabilitation of persons in affected areas it had introduced a scheme of distribution of free rations to BPL (below poverty line) families in areas classified as "affected areas". The classification of such affected areas has been made by the State Government on the following criteria:

- i. Those Talukas in which day and night curfew was imposed – entire area of such affected Taluk, OR,
- ii. Those Talukas in which standard 10 and 12 exams could not be conducted – entire area of such Taluk, OR,
- iii. Districts in which two or more Talukas were affected as narrated upon – in such circumstances entire district should be considered 'affected'.

*Selection Commission of India  
Order, Dt 16-8-2002*

The enquiries reveal that based on the above classification adopted by the State Government, 20 districts out of 25 in the State are "affected areas" in which nearly 27 lakh and 12 thousand BPL families are in receipt of free rations.

19. The two sets of information given by the State Government on the extent of affected areas are mutually contradictory. If only 12 districts were affected as claimed in one report on law and order presented by the State Government, it is not understood why or with what intention the scheme of distribution of free rations has been extended to 20 districts. Out of the 20 such affected districts, the Commission's team covered 12 districts during their visit and observed that all had been substantially affected by the outbreak of communal violence. The remaining 8 districts out of 20 could not be covered due to paucity of time, but the Commission's team was furnished with a statement showing the names of towns, cities and villages affected by riots and these cover even more than 20 districts. In any case, it is the Government's own admission that 20 districts are "affected areas" which merit relief. Whether this has been done with the intention to genuinely benefit the affected persons who suffered on account of communal violence in all or parts of 20 out of 25 districts in the State, in which case the claim of the riots being localized and confined to 12 districts is apparently incorrect, or to cover non-affected areas is unclear. What is amply clear is that the scheme of relief supplies to BPL families has been extended upto October 2002 when possibly the elections were expected to be held.

20. Significantly, Additional Director General of Police, Shri R.B. Sreekumar, stated before the Commission that 151 towns and 993 villages, covering 154 out of 182 Assembly Constituencies in the State, and 284 Police Stations out of 464 Police Stations

were affected by the riots. This evidently falsifies the claims of the other authorities that the riots were localised only in certain pockets of the State.

### **Status of Electoral Rolls and EPICs**

#### **Electoral Rolls**

21. The electoral roll is the basic document for the conduct of any election, as it is the one on which the whole electoral process is founded. When a constituency is called upon to elect a member to the Legislative Assembly of a State, it means, in effect, that its electors, who have been enrolled in the electoral roll, are called upon to elect such a member of the Assembly. Under Article 326 of the Constitution, every Indian citizen of the age of 18 years or above on the prescribed qualifying date is entitled to be registered as an elector in the electoral roll of the Parliamentary and Assembly constituency in which he is ordinarily resident (unless he suffers from a prescribed disqualification). But the right to vote in such constituency is conferred by section 62 of the Representation of the People Act 1951 only on those persons whose names are entered in the electoral roll for the time being in force, in the constituency. Therefore, the electoral roll of the constituency has to be as accurate and up-to-date as is humanly possible for the conduct of free and fair elections. Keeping in view these constitutional and statutory provisions, the Commission and its team inspected the electoral rolls of the districts visited by them to examine to what extent the electoral rolls of the constituencies reflected the ground situation as well as their fidelity vis-à-vis the electors included therein and ordinarily resident at the addresses given, particularly in the areas affected by riots and consequent exodus of electors from the riot-affected areas. The on-the-spot inspections have revealed that a substantial majority of electors who had to perforce leave their houses, and in many cases, flee from their villages to save themselves from the arson and carnage

in the wake of the Godhra incident on 27<sup>th</sup> Feb. 2002, have not yet returned to their houses or villages. In most of the cases, their houses stand totally demolished or burnt, and in many others, their houses have been so badly damaged that the same have been rendered totally unfit to live in. Their return to their houses is prevented primarily on two counts. Firstly, slow progress of reconstruction/repair of their demolished/burnt/damaged houses because of inadequate/no compensation paid to them by the State Govt., and, *secondly*, a fear psychosis still pervading the minds of the displaced persons, particularly, those belonging to the minority community. Thus, the electoral rolls as revised towards the end of the last year and in the early part of this year do not reflect, and do not show fidelity to, the actual situation obtaining on the ground. It is highly pertinent to take note of the fact that the draft electoral rolls in the State were prepared on the basis of house-to-house enumeration undertaken in the months of November-December, 2001 and the draft rolls so prepared were published on 11<sup>th</sup> Feb 2002 for inviting claims and objections up to 26<sup>th</sup> Feb 2002. Significantly, the period for lodging claims and objections expired on 26<sup>th</sup> Feb 2002, that is to say, a day prior to the day (27<sup>th</sup> Feb 2002) on which the holocaust descended on the State of Gujarat. The electoral rolls were thereafter finalised on the basis of claims and objections filed during the period when normalcy prevailed in the State and were finally published on 15<sup>th</sup> May 2002, without taking into account the large-scale movement and migration of the affected people from the riot-torn areas to safer havens. As mentioned earlier, most of the displaced electors have not yet returned to their respective houses/villages. Though all but 8 relief camps, out of 121 camps said to have been set up in the State of Gujarat, have been disbanded or closed, as per the claims of the State Govt., the reality of the situation on the ground, as verified by the visits of the Commission and of its team to the affected areas, is that the inmates of these disbanded/closed camps have yet to go back to

their respective houses/villages. They are staying either in the makeshift camps organised by some relief committees and NGOs or are staying somewhere else with their relatives and friends or in rented houses. It is also worthy of notice here that substantial numbers of riot victims did not go to the officially-recognised relief camps but shifted to other safer places to take shelter with their relatives and friends and they have not yet gone back. The State Government authorities have no record of such displaced families, nor any clue as to their whereabouts. Some of them are even said to have moved out of the State of Gujarat to the neighbouring States of Maharashtra, Madhya Pradesh, Rajasthan, etc. The information furnished by the State Government in response to a specific query made by the team to the Chief Secretary speaks for itself. The Secretary, General Administration Department, in response to the said query stated in his letter No. Nil dated 3<sup>rd</sup> August, 2002: -

“... neither the Revenue Department nor the Collectorate have any system to track the movement of the inmates of the camps once they have left the camps. Therefore, no figures are available to indicate how many of those inmates who have left the camps have actually returned to their original homes and how many have either migrated or have sought temporary residence in the homes of their relatives. The accurate figures of such migration would be available only on the basis of a detailed study. However, it would be safe to assume that the number of persons who have migrated from Gujarat to other States will be negligible. While consulting the collectors of the districts, collectors of Kheda, Panchmahals and Dahod reported that all the inmates of the camps have safely returned to their habitations. Collectors of Anand, Mehsana and Sabarkantha have reported that a small number of the inmates of the camps may still be living at locations other than their original homes or with any relatives.

Collector of Ahmedabad has mentioned that the existing relief camps are located closer to the homes of the remaining inmates."

22. The Commission is obviously not in a position to persuade itself to agree with the latter part of the above statement of the State Government that the inmates of the camps have mostly returned to their houses, as it contradicts the ground situation as observed by the Commission itself while visiting some of the affected areas.

23. Having regard to this ground situation, the electoral rolls in the State of Gujarat, particularly in those districts which were disturbed by the riots, cannot be said to be as reasonably accurate and up-to-date as desirable for a free and fair election, as these contain the names of a large number of electors who are either dead or are not ordinarily resident at the address at which they have been registered in the electoral rolls; nor the names of these displaced persons included at the addresses at which they are presently resident ordinarily. It is pertinent to point out again that in terms of the State Government's circular No.PDS/10/2002/1470/A, dated 30<sup>th</sup> April, 2002 read with GR No. RHL-232002/513/(13)/S-4 dated 6<sup>th</sup> May, 2002, 20 out of the 25 districts in the State have been classified as districts disturbed/affected by riots and the State Government is distributing, upto October 2002, free rations to the disturbed families below the poverty line (BPL) in those affected districts. The number of such BPL families identified by the State Govt. authorities for such relief in these 20 districts is as high as 27.12 lakhs.

24. Apart from these defects in the electoral rolls arising on account of the large-scale movement of the affected families from their places of ordinary residence, the electoral rolls in the districts of Vadodara, and maybe in some other districts as well, suffer from

another defect, namely, in that these rolls do not show the full address of electors in very large numbers. The electoral registration authorities were reportedly making endeavours to ascertain the full address of these electors before printing the rolls finally; but this exercise received a serious setback and had to be aborted because of the riots and the attention of those authorities being diverted to relief measures. The electoral rolls have, therefore, been published in the district of Vadodara by integrating the draft rolls and the supplements, without indication of the full address of a very large number of voters.

25. Complaints were also made to the Commission and its team by several political parties that they had not yet been supplied with the copies of the finally printed electoral rolls, after their final publication in May, 2002. Enquiries made from the Collectors-cum-District Election Officers revealed that in many cases the electoral rolls were still under print after final publication and that the process got slowed down as their energies were diverted in relief measures.

26. In the normal course, the general election to the Legislative Assembly of Gujarat was due only in the first quarter of 2003, as the normal duration of the Assembly was up to and including 18<sup>th</sup> March 2003. The Commission was contemplating, in the normal course, a summary revision of electoral rolls of all the Assembly Constituencies in the State with reference to 1.1.2003 as the qualifying date. This summary revision was scheduled to be taken up in the months of November, December this year and early part of January 2003. With the premature dissolution of the State Assembly on 19<sup>th</sup> July 2002, a general election has become due before the normally expected period and it may not be possible to conduct the aforesaid summary revision with reference to 1.1.2003 as the qualifying date, because such revision, if undertaken, would delay the elections

considerably and, in that event, it may not be possible to hold the elections before the months of February-March 2003. But at the same time, the Commission is of the considered opinion that elections cannot be held on the basis of the existing electoral rolls which are defective to a considerable extent as pointed out hereinabove. Any election held on the basis of these defective rolls would deprive a substantially large number of electors who have been displaced from their places of ordinary residence. On the other hand, these electoral rolls may also give an opportunity to unscrupulous elements to resort to bogus voting in the name of electors who are either dead or are no longer resident in the polling areas/constituencies concerned. Therefore, in the interest of free and fair elections, which are the foundation of democratic institutions, it is imperative that defects in the electoral rolls which have cropped up as a result of large scale exodus/migration of electors from the affected areas are remedied expeditiously and electoral rolls are made as accurate and up-to-date as humanly possible before the exercise of conducting elections is embarked upon.

#### **Electors' Photo Identity Cards (EPICs)**

27. At each place visited by the Commission and its team, a common grievance was made that some of the displaced electors had lost, along with their other belongings, the electoral identity cards (EPICs) issued by the Election Commission. They also stated that they were not left with any other identification documents. Before the revision of electoral rolls was undertaken in the State of Gujarat in 2001-2002, the percentage of electors with EPICs was around 71.37%. After the revision, such percentage was reported to have come down to about 61%. Therefore, a special drive needs to be taken up to issue EPICs to as large a number of electors as possible before the elections, so that



electors are properly identified at the time of poll and their rights are not usurped by bogus voters impersonating them.

### **Law and Order**

28. A conducive law and order situation is as essential for the conduct of free and fair elections as the accurate electoral rolls. Control of crime, rioting, terrorism etc is one aspect of the law and order situation. The other, and equally important, aspect is the existence of a climate devoid of apprehension and fear of threat to life and property of an individual or a community in exercise of the right to free and fair franchise.

29. The presentation before the Commission's team highlighted that normalcy had been restored in the State and the climate was conducive for the conduct of free and fair elections. Statistics presented by the Government giving the comparative crime chart for June 2002 and June 2001 show a decline in the overall crime rate, but in the category of rioting there is an increase of 13.66 percent. Statistics presented also indicate that instances of rioting are still high in the 12 affected districts visited by the team during their stay in Gujarat. And to the specific queries raised by the Commission with the Chief Secretary on the number of FIRs filed, charge-sheets filed and the progress of cases, the State Government says that out of 4208 FIRs filed as on 31 July 2002 a total of only 1360 cases have been charge-sheeted. "The other cases are either pending investigation or final report has been filed details of which will be provided separately."

30. The State Government have also provided information of the deployment of police and paramilitary forces on 12<sup>th</sup> July 2002 in Ahmedabad during Rath Yatra to support the case for normalcy prevailing in the State. It has been reported that 14,812

police personnel of various ranks (including 87 companies of paramilitary forces and armed-police) were deployed during the Rath Yatra this year whereas, 18,059 personnel (including 41 companies of SRP) were deployed during the Rath Yatra last year. The Government concluded that, "deployment of forces last year which was a normal year from the law and order point of view is far higher than the deployment this year." Two points are to be noted in this regard. The first is that in the current year CPMF has been extensively used unlike last year when only the State Police was deployed. The second, and more important, the route of the Rath Yatra this year was only one third of its normal length of nearly 14 kilometers. The claims of the State Government do not reveal the true situation on the ground where fear, anxiety and apprehension amongst the affected persons continue to exist.

31. The Commission's team had the following observations to make regarding the overall law and order situation in the State: -

- i. Though the situation on the surface seems to be normal with trade, business and general activities continuing without any apparent hindrance, there is, however, an under current of fear and tension prevailing in the State particularly amongst the minority community. At almost all the places visited by the team people were scared to return to their place of residence on account of the fear psychosis. There is still strong apprehension in their minds about their safety and security in view of the carnage on such an extensive scale spreading across both urban and rural areas of the State. In Godhra district for instance, one family was motivated in July, 2002 to return to their original village under police

protection and they were found murdered on the following day (17.07.2002).

- ii. Even minor incidents provoke tensions between the communities - cases in point are Kheda, Viramgam (Ahmedabad District), Prantij (Sabarkantha District) and Bhavnagar. In Kheda night curfew is still imposed, Viramgam witnessed fresh communal violence as recently as 19<sup>th</sup> July, 2002, in Prantij on 28<sup>th</sup> July communal clashes took place and the district authorities in Bhavnagar reported a general climate of tension on account of reported incidents taking place in other parts of the State such as Petlad and Viramgam. The day the team reached Ahmedabad on 30<sup>th</sup> July evening, the western grid had failed and rumours had spread in Ahmedabad of outbreak of violence leading to stone pelting and skirmishes in some areas visited by the team.
- iii. Everywhere there were complaints of culprits of the violence still moving around scot-free including some prominent political persons and those on bail. These persons threaten the displaced affected persons to withdraw cases against them, failing which they would not be allowed to return to their homes. In Dakor (Kheda District), the team was told by a delegation, in the presence of senior police officers and the district administration authorities, that the culprits had been identified before the police but no arrests had taken place and the main culprits continued to threaten the villagers to withdraw their FIRs. The team has cited many other such cases from almost all the 12 districts covered by them. [In Ahmedabad, the Commission itself observed that a large group of Muslim families

- could not move to their houses because the culprits of the riots had blocked the accesses to their houses.]
- iv. The progress of cases filed as indicated by the State Government does not indicate the number of people named in FIRs but not yet arrested for their crime. In fact, in several instances the prominent persons named in the FIRs/complaints have not been booked at all.
  - v. There is a general lack of confidence in the State Armed Police (SRP), which is seen by many victims as abettors and perpetrators of violence that took place post-Godhra in Gujarat.
  - vi. The CRPF, RAF and BSF are seen to be neutral forces and everywhere there was a demand for replacing the SRP with CPMF. In places where CPMF has been replaced after the Rath Yatra of 12<sup>th</sup> July, demands were made particularly by persons in the affected areas to bring them back.
  - vii. A large number of IPS officers who did commendable work in preventing the spread of violence were soon replaced. A common complaint received was that these officers were punished for their impartiality.

32 Before the Commission, the Chief Secretary and Director General of Police painted a similar picture of normalcy in Gujarat. But the Additional Director General of Police (Intelligence), Shri R.B. Sreekumar, whose views were supported by the new Commissioner of Police, Ahmedabad, Shri K.R. Kaushik, stated before the Commission that an undercurrent of tension and fear was prevailing beneath the apparent normalcy in the State. He further added that there was no interaction between the two communities even though moderates were trying their level best, as there were hawks in both the groups. He added that additional forces would be required to ensure that there were no

communal clashes. And the State Government have on the Commission's queries subsequently been avoiding giving a clear picture on the number and identity of persons complained against, similar details of persons included in the FIRs, similar details of persons who have been arrested, similar details of persons named in the FIRs who have been enlarged on bail, similar details of persons enlarged on bail as against whom appeals have been filed for cancellation of their bail bonds.

33. The Commission is thus of the considered view that the law and order situation in the State is still far from normal. The wounds of the communal divide following the riots have not yet healed. The slow progress in relief and rehabilitation work on the one hand and non-arrest and non-punishment of the guilty on the other have hampered the process of normalcy returning to the State, the victims carrying the fear and anxiety of another backlash. Similar feelings are shared by persons from the majority community as well living in minority-dominated areas. The people have lost confidence in the local police force, the civil administration and political executive. Someone who met the Commission, in fact, said how could the situation mend when there was not even regret for what had happened. In this environment, election campaigns evoking passions will threaten a violent backlash. So confidence-building measures have to be taken up in earnestness and with urgency. Foremost among these would be to arrest and punish the guilty for their crimes, irrespective of their status and rank and to reinstate all officers who acted with courage to stem the riots, in their original posts. CPMF have to be inducted in large numbers for deployment in affected areas. Steps should be taken to rebuild peoples' confidence in the state police and administration. Most of all, the people of the State need the balm of generous and humane governance. All these confidence building measures are essential for creating an atmosphere conducive to the

holding of free and fair elections as then alone would the electors be in a position to go to the polling stations to cast their votes without fear in their minds.

#### **Elections to Municipalities and Taluka-Panchayats**

34. The State Government have itself volunteered that elections to two District panchayats, 15 Taluka panchayats and 81 Municipalities could not be conducted for various reasons for quite sometime and they have been postponed till October 2002. On a specific query by the nine-member team to the Chief Secretary on the reasons for not holding the elections in time, the State Government said that elections were not held for two district panchayats and 15 Taluka panchayats due in September 2000 on account of pending litigation and court matters. The State Government also said that the situation was reviewed in June 2002 and that it had been decided to hold these elections after the monsoon.

35. On the issue of municipality elections, the State Government said that "notification for holding these municipal elections was issued on 8<sup>th</sup> February, 2002. The process was started but the elections could not be held because of communal riots which started at the end of February 2002. After a review of the situation in June it has now been decided to hold the elections after monsoon."

36. A perusal of the Government notifications issued on December 19, 2000 and April 26, 2001 in respect of Gandhi Nagar Taluka Panchayat shows that the grave situation arising due to acute water shortage, the fodder problem and the difficulty of the administrative machinery to cope with the work relating to drought relief, in the event of holding the elections, were cited as the reasons for postponing the elections. The

Government announced on 6<sup>th</sup> February 2002 that it was satisfied that it was possible to hold elections, but the elections were further postponed on March 13, 2002 for the district panchayats of Kheda and Banaskantha, 12 Taluka panchayats of Banaskantha district, the Kathal and Kapadvanj Talukas of Kheda district and Gandhi Nagar Taluka Panchayat of Gandhi Nagar district on account of communal violence.

37. On 12<sup>th</sup> June, 2002 the State Government have issued another notification further postponing all the abovementioned elections to the district panchayats and taluka panchayats for a further period of four months, i.e. up to 11<sup>th</sup> October, 2002 on the following grounds: -

- i. "Due to ensuing monsoon, it is likely to be difficult to hold free and fair elections of the aforesaid panchayats and casual vacancies,
- ii. The farmers and workers who earned their livelihood from farming and harvesting are likely to be deprived of their right to franchise in the aforesaid elections."

38. The elections to 81 municipalities were postponed by an order of the Government dated 15<sup>th</sup> November 2000 on account of drought and shortage of drinking water for which the administrative machinery would be fully engaged. These were postponed again by the Government's notification of 5<sup>th</sup> March 2001 on account of the earthquake and its resultant impact. On 5<sup>th</sup> September 2001, the Government again postponed the elections to these 81 municipalities, and five more, whose term had expired in the interregnum, for a period of four months on account of continuing drought and the impacts of earthquake and cyclone. Though the Government announced the holding of these elections on 8<sup>th</sup> February, 2002 these were postponed on account of communal riots

for three months by the Government's orders of 13<sup>th</sup> March 2002. On 12<sup>th</sup> June 2002, the Government have again postponed these elections for four months up to 11<sup>th</sup> October, 2002 – this time citing its difficulty to hold free and fair elections during the monsoon when farmers and workers who earn their livelihood from farming and harvesting are likely to be deprived of their right to franchise in the aforesaid elections.

39. The Government have also admitted in its notification of March 2002 that a large number of persons had migrated outside the municipal areas on account of the communal riots. There are certain districts of the State, where municipal elections are due which were reportedly, not in the list of the 12 affected districts given in the presentation on law and order by the State Government. There are also districts which are not included in the affected areas categorized for the purposes of extending the free rations scheme for the BPL families such as Jamnagar, Porbandar, Amreli, Valsad, Navsari in which municipal

Government about the normalcy having being restored in the State on the ground that panchayat elections were held for 1677 panchayats in April is not borne by the evidence in respect of the postponed elections to municipalities in the State. In fact, it has been ascertained from the State Election Commissioner, Gujarat, that it was he, on account of his having notified these panchayats for elections, who compelled the State Government to hold the said elections. But, obviously, the people who had been affected in the riots had moved out and did not vote in those elections. There were also cases of uncontested elections ("Samras" panchayats) for which the State Government have a scheme of giving Rs. 60,000/- to the panchayat as incentive if there is no contest. And, according to the information furnished by the State Election Commissioner, Gujarat, there was no contest in as many as 620 panchayats out of the aforesaid 1677 panchayats. Therefore, it



is difficult to understand how a co-relation can be established between holding of panchayat elections and restoration of normalcy.

40. If the State Government is not in a position to hold elections to local bodies such as municipalities and Taluka panchayats on account of monsoons, and that too in urban areas, how it can hold a general election to the State Assembly which involves far greater mobilisation and effort throughout the State, is beyond one's comprehension. In this context, the drought situation in the State affecting a large number of areas due to failure of the monsoon has to be kept in mind. During the visit of the Commission and its team to different districts, the people and political parties highlighted the difficulties being faced due to failure of the monsoon and shortage of drinking water in many areas. On a specific query from the team to the Chief Secretary on the extent of drought and its likely impact on the conduct of elections, the State Government said that there had been a dry spell in the entire state and it was having a negative impact on the agriculture and irrigation systems in the State. It may be pointed out, however, that the State Government had, in December 2000, taken a view that holding of elections in drought conditions where acute water shortage and fodder problems exist, prevents the administrative machinery from carrying out relief work and, therefore, the elections were postponed for Gandhinagar Taluka panchayat. Now when the drought situation is widespread and the situation is far more serious, it is difficult to understand which would be a greater priority for the State Government — holding elections in the midst of drought and thereby disrupting relief work or relief work.

### **Relief and Rehabilitation**

41. The extensive and devastating impact of the riots have resulted in a large number of persons being displaced from their homes both in urban and rural areas. Relief and rehabilitation measures taken up by the state government are crucial for the victims to return to their homes and resume normal livelihood. From the Commission's point of view, these are important in the context of having clean and accurate electoral rolls before any electoral event, as displaced persons, even though on the rolls, may not be able to exercise their franchise at their designated polling stations. Early and speedy rehabilitation also leads to restoration of confidence in the administration and facilitates restoration of normalcy.

42. The State Government have announced a package of measures for relief and rehabilitation of the riot victims and affected areas. Relief, by way of free rations as per specified entitlement, is only given to inmates of the officially recognised camps when they were staying in the camps and to those persons/families who had returned to their homes from officially recognised camps. Although relief material by way of rations is being distributed as per the prescribed norms, there is a wide variation in the number of inmates inside each of the 8 camps still being run in Ahmedabad, out of 121 camps which were set up in the State earlier. As per Government policy the number of inmates has to be verified by State Government officers on a daily basis with the register maintained by the organisers and the entitlement is fixed on the basis of the report of the inspecting officers. It was a common complaint that the inspecting officers visited the camps around mid-day when most of the bread-earners had gone out to pursue their vocations thus resulting in deflated numbers of inmates. Usually such persons who went out returned in the evening to the safety of the camp but were not accounted for by the

inspecting officers. As a result, the rations entitlements were much less than the actual requirement in the camp. The organisers, who are from voluntary organisations, tried to meet these expenses through donations and contributions but, in view of the large amounts involved, were finding it difficult to run the camps indefinitely.

43. In most of the camps visited, the people were scared to return to their original places of habitation due to fear of reprisal on the one hand and absence of any reconstruction in their original places of residence on the other. The people of Naroda Patia, who were among the most seriously affected, are spread over different relief camps and many of them stated that they did not intend to return to their localities till such time as the situation normalised and there was no fear of reprisal.

44. The scale of relief sanctioned for damage to houses varies from place to place with the maximum limit of Rs. 50,000/- for a destroyed house. Estimates are based on an assessment made by the Revenue and PWD officials. Instances were brought to the notice of the Commission and its team where the relief sanctioned for a completely destroyed house was as little as Rs. 200. While it was not possible for the Commission and its team to assess the actual value of the damaged houses and co-relate to the quantum of relief sanctioned, there was an invariable reluctance on the part of inmates of these camps to return to their original places of habitation on account of meagre amounts received for compensation. The amount sanctioned is just not adequate to construct a reasonable dwelling unit. Which of the two — meagre amount received or fear of reprisal — is the main cause of the reluctance to return is a subject of debate but the point to be emphasised is the general apathy of the administration in handling this most sensitive issue of restoration of the places of habitation of the affected persons.

45. In most of the camps visited by the Commission and its team, the affected persons and camp organisers complained about the coercion of district authorities to prematurely close the camps even while large numbers of inmates were not in a position to return to their homes. One noticeable consequence of this has been that the people have set up makeshift camps under tents etc in the vicinity of the earlier camps rather than earlier running the officially recognized camps. Further, a number of people have migrated to relatives and friends in safer areas. When questioned as to the number of such migrants who had not yet returned to their original homes, the State Government indicated that "no figures are available to indicate how many of those inmates who have left the Camps have actually returned to their original homes and how many have either migrated or have sought temporary residence in the homes of their relatives. The accurate figures of such migration would be available only on the basis of a detailed study."

46. In Ahmedabad as well as in the other districts, a large number of persons has been staying outside officially-recognised camps, in privately run camps which were not given recognition by the state government as they had less than 100 persons staying there. The enquiries revealed that there were others also who were staying with relatives and friends in different pockets within the State or even within the district itself and were reluctant to return to their own houses. Even on those who were in camps since closed and who, the Government claims, have returned to their original place of residence, enquiries revealed that many had not returned to their respective homes. They too are staying with relatives and friends in different places within the State. And first

generation migrants from other parts of the country to Gujarat and even some second generation migrants have been reported to have migrated to their States of origin.

47. It has also been observed that in a large number of districts, people who had shifted out but were not registered in officially recognised camps did not get the relief by way of rations authorised by the State Government for riot-affected victims. They were dependent mainly on relief from voluntary organisations and NGOs and the largesse of their friends and relatives. The total number of such persons is difficult to assess but it would, on a very conservative estimate, be more than those registered in officially recognized camps.

48. The State Government scheme for distribution of free rations to BPL families in the riot-affected areas did cover some of these cases. However, during the visits of the Commission and its team to various places, it was brought to its notice that there was considerable confusion about categorisation of BPL families resulting in many riot-affected victims being left out of the purview of the scheme itself.

49. There appears to be a bias in the implementation of relief and rehabilitation measures which is discernible from the two schemes referred to hereinabove. While rations on a fixed scale to the persons staying in officially recognized relief camps are supplied for the period they are in the camps and for two months after they leave, through authorized FP shops, rations for BPL families in riot-affected areas are for a period of six months from May to October 2002. The first scheme completely excludes those persons who did not stay in officially recognized camps. The second scheme excludes families above the poverty line who lost everything in the riots. There are many

such cases of persons above the poverty line who were not recipients of free rations either because they did not stay in officially recognized camps or because they did not qualify as under BPL families. There are cases of camps being closed as early as April or May but the families not returning to their original homes but staying in makeshift privately run camps. Such families, if they are not covered under the BPL category, do not get the benefit of free rations after two months of leaving the official camps.

50. For those cases in the riot-affected areas where people had not moved to officially-recognized camps, the process of receiving compensation for damaged houses

While the quantum of relief being distributed has left many unsatisfied and even disgusted, the assessment itself has not been carried out in most places as the concentration of the Government seems to be only on those persons who migrated to officially recognised camps and not on those who chose to move to safer places with relatives and friends.

51. There were also cases of people who were staying in rented houses and whose houses were damaged and destroyed during the riots. In such cases relief for reconstruction is only given if there is a certificate from the house-owner to the effect that he has no objection to the tenant claiming compensation for the destroyed property. In various places, it was observed that people have failed to obtain the necessary certificate, as the landlord is reluctant to give any such certificate.

52. For loans and advances to the riot victims to help them to resume their livelihood, the general impression has been that the DICs have been extremely tardy in processing

cases. As a result, the banks are not coming forward to give loans. Bare statistics furnished by the State Government would bear this out. Of a total of 4204 cases recommended, there are only 1469 cases of sanction and only 627 cases of disbursement of loan has taken place.

### Conclusions

53. After a careful examination and analysis of the situation obtaining presently in the State of Gujarat, the full Commission has unanimously come to the considered view that it is presently not in a position to conduct a free and fair election in the State. The electoral rolls in the State have become substantially defective in view of the large-scale displacement of electors in the wake of the communal riots and violence in the months of February, March, April 2002 *etc.* and their failure to return to their places of ordinary residence where they have been registered as electors. Also, the law and order situation cannot be said to have become normal as fear in the minds of large sections of the electorate, particularly of the minority community, is still a palpable reality and the riot-victims would be extremely wary of going to the polling stations to cast their votes fearing risk to their life and property. Many others would obviously be physically prevented from going to the polling stations. A situation has thus to be created which would be conducive to the holding of free, fair and peaceful polling in the State.

54. We would like to stress that we have reached the above conclusions only on the basis of the following guiding principles: -

- (a) that every vote is a valuable vote and that every voter wanting to participate in the elections should be allowed to vote;

- (b) that the elections are conducted in the most conducive conditions so that the "little voter", whatever be his denomination or background, is free to vote;
- (c) the election schedule should be announced without any delay at the earliest possible time after ensuring the necessary conditions for proper conduct of elections; and
- (d) that all other interests have to be subservient to the democratic values.

55. We do sincerely hope that having regard to the above principles that the period between now and the announcement of the elections will be best used to create such conditions so as to preserve the multiethnic, multireligious and multilingual nature of the polity in the larger interest of democracy and humanity and not used for promoting political acrimony.

#### **Directions of the Commission**

56. In order to make the electoral rolls as accurate and up-to-date as humanly possible, the Commission hereby directs under Section 21 (3) of the Representation of the People Act 1950, that a 'special revision' of electoral rolls shall be undertaken in all the 20 districts which have been identified by the State Government as riot-affected areas. For this special revision, the existing electoral rolls which have been finally published on 15.5.2002 will be published as draft electoral rolls on 28.8.2002 (Wednesday) for inviting claims and objections. And for the purpose of inviting claims and objections, a period of three weeks, i.e., upto 18.9.2002 (Wednesday) shall be given. Simultaneously, a house-to-house survey by official enumerators shall be undertaken in all the major cities and towns of the 20 affected districts. Similar exercise of house-to-



house verification shall also be undertaken from 28.8.2002 to 18.9.2002 in all the villages of those districts which were affected by the riots. The list of the cities, towns and villages in which house-to-house verification is to be taken up shall be drawn by the Chief Electoral Officer in consultation with the District Election Officers of the concerned districts and other authorities considered relevant/appropriate by him and he shall complete this exercise by 21.8.2002. This will give the district authorities about a week's time for the appointment of enumerators and the supervisors and their training, etc. In such house-to-house verification, the enumerators will repeat the same drill which they undertook last year when the house-to-house visits and verifications were carried out for the purposes of the special revision of intensive nature undertaken in the State with reference to 1.1.2002 as the qualifying date. They will go with the existing electoral rolls and use the same forms for the purposes of inclusions/deletions which were used for the aforesaid last verification. On the basis of this house-to-house verification, the EROs will prepare 3 lists, viz., lists of all deletions, inclusions and corrections in the existing rolls. They will then take appropriate action to delete the names of persons who are dead or who are no longer ordinarily resident in the constituencies under Rule 21 A of the Registration of Electors Rules 1960, and for the inclusion of the names of those who have shifted to their new places of ordinary residence under Rule 21 of the said Rules. They will also simultaneously dispose of the claims and objections received in prescribed Forms 6, 7 and 8 in response to the draft publication of the rolls on 28.8.2002 as directed above. After the remedial action taken in terms of Rules 21 and 21 A of the Registration of Electors Rules 1960 and the disposal of claims and objections received in Forms 6, 7 and 8, the electoral rolls will be finalised and final rolls shall be published on 15.10.2002 (Tuesday).

57. During the course of the house-to-house verification of electors, as directed above, it is quite likely that such of the registered electors as have moved out the State of Gujarat may not be found anywhere in that State. According to some rough estimates, the number of such electors who have temporarily migrated to other States is around 20,000. Efforts have to be made to ensure that they are not deprived of their right to franchise for their temporary absence from the State in the wake of communal riots. Therefore, wide publicity shall have to be given to the Commission's directions for the special revision of electoral rolls, not only in the State of Gujarat but also in the States of Maharashtra, Madhya Pradesh, Rajasthan, Uttar Pradesh, Bihar, etc., where these electors are stated to have migrated temporarily. Care must be taken to ensure against the deletion of their names merely on the ground of their temporary absence from the State of Gujarat to which they intend to return on the restoration of normalcy in the State. If any one of them responds to the publicity given to the Commission's direction for special revision of electoral rolls, his/her name should be retained in the electoral roll, if he so requests.

58. The Commission further directs that the programme for issue of EPICs can be restarted from 1.10.2002, as by that time, the house-to-house verification of electors would be over and the electoral registration officers would be knowing about the names of the persons, which are not likely to be affected by the remedial action under Rules 21 and 21 A of the 1960 Rules and the claims and objections received by them. This programme can also be started straightaway in the remaining 5 districts which are said to have not been affected by the riots. A target-oriented approach must be adopted to enable as large a section of people as possible who have lost their identification papers in the riots, to acquire the cards expeditiously.

59. In the full Commission's view, the law and order situation in the State is still far from normal. The wounds of the communal divide following the riots have not yet healed. The fear of a communal backlash on the other side of the divide, the arrest and non-punishment of the guilty and the fear of a communal backlash on the other side have hampered the process of restoration of normalcy to the State. Similar feelings are shared by persons from the majority community living in minority-dominated areas. The people have lost confidence in the local police, civil administration and political executive. In this environment, election campaigns evoking passions will only shatter the fragile peace unless adequate confidence-building measures are taken up in earnestness and with urgency. Foremost among these would be to arrest and punish the guilty, irrespective of their status and rank, for their crimes. Also, all physical obstructions and barriers erected to deny access of the riot-affected people to their destroyed homes, some of those noticed by the Commission itself, must be removed forthwith and never allowed to be re-erected in future. The CPMF have to be inducted in large numbers for deployment in affected areas and permanent pickets need to be set up in the affected areas of the State to build confidence. The induction of CPMF and opening of permanent pickets can be started immediately. Finally, steps should be taken to rebuild peoples' confidence in the State police, political leadership and civil administration, especially in the highest echelons. Exemplary action in arresting and punishing the guilty and restoring to their original postings the officers who performed their duties fearlessly and forthrightly to contain the riots would go a long way in restoring the confidence in the law and order apparatus of the State.

60. The above observations on the slow relief and rehabilitation efforts are being highlighted to underscore the widespread displacement of persons in riot affected areas which has, as explained above, an immediate bearing on the fidelity of the existing electoral rolls and the continuing perception of fear and victimisation amongst the affected persons. By removing the shortcomings in the relief and rehabilitation measures already undertaken and completing the restoration and rehabilitation work on war-footing in the period when the exercise for revision of rolls is undertaken in the State, the administration can restore the confidence among the affected persons, particularly the minorities, and thereby facilitate preparation of clean and accurate electoral rolls for the forthcoming elections and create conditions conducive to holding free and fair elections.

61. After completion of this exercise to correct the electoral rolls and bringing them as up-to-date as possible and creation of conditions conducive for free and fair elections in the State, the Commission will consider framing a suitable schedule for the general election to the State Assembly in November-December 2002.

(B.B. TANDON)

Election Commissioner

(J.M. LINGDOH)

Chief Election Commissioner

(T.S. KRISHNA MURTHY)

Election Commissioner