

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

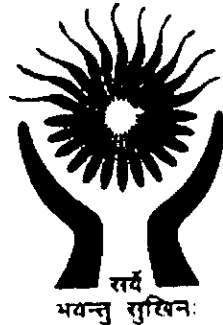
1 March - 1 July, 2002



*National Human Rights Commission
India*

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on the situation in
Gujarat**

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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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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 Commission of a qualitatively different kind.

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 an 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 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

CORAM

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 State Governments also to set up a credible mechanism for selection of Police Chiefs

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 officers who have performed their duties commendably have already been rewarded

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 tranquility":

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 assembly;

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" (paragraphs 25-27).

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.

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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 looked 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

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 12motu 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 CM, 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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- iii) Although the presentation mentioned some major incidents of arson and looting, it was silent about the registration of criminal cases against the miscreants.
 - iv) Details of Police/Army firing and date and community-wise break-up of casualties was not shown.
 - v) The presentation did not mention the alarming fact of the spread of the communal violence to the rural, particularly the tribal areas, though some figures of evacuation/rescue operations were given.
 - vi) The presentation made no mention of destruction of Mosques and Dargahs in Ahmedabad and elsewhere which the media has been regularly reporting.
 - vii) The presentation gave the consolidated figure of arrests (10,196 till 18 March) without giving community-wise break-up and without showing separately the number of persons arrested in cases registered in connection with the incidents of killing, arson and looting.
 - viii) The presentation was also silent about the number of policemen killed or injured on duty or otherwise in connection with the communal incidents which may reflect their commitment and devotion to duty.
 - (ix) Particulars of visits to relief camps of VIPs / political leaders / senior officers were also not indicated, nor were the facilities provided in these camps mentioned in detail.

The team drew the attention of the Chief Secretary to the media reports of the date (20 Feb.) about the application of POTO to the cases registered against the accused persons of the Godhara incident without indicating that a similar move is contemplated against the criminals of violence in other parts of the State. The Chief Secretary was asked to examine this question in the light of likelihood of allegations of discrimination between offenders.

The Addl. Chief Secretary (Home) Shri Ashok Narayan mentioned the move of the VHP to take out the Asthi-kalash Yatra to various States of Godhra victims and their advice to the CM to prevail upon the VHP to exclude Gujarat from this programme to which he stated that the CM was receptive. The Chairperson asked the Chief Secretary to advise the Government to use its influence over the VHP to stop this programme altogether in all parts of the country in view of its dangerous implications to communal harmony.

DGP, Gujarat, Shri K. Chakravarthi, described the communal riots as unprecedented in terms of scale and intensity and as a reaction to Godhara incident and narrated the difficulties of the Department arising from shortage of manpower, lack of equipment and total absence of "specific prior information" about Godhra incident. He explained that available resources including even the recruits in the training were utilised and officers were recalled from leave.

Shri P.C. Pande, Commissioner, Ahmedabad was asked to explain his widely publicised statement in an interview given to Rediff.com to the effect that the policemen have their own feelings and cannot be expected to remain uninfluenced by the mood of the community. He said, all he had told the reporter was that the police force being drawn from the same society cannot remain totally insulated and immune to the external influences. On being complimented

by the Chairperson for having stated in the interview that his head hangs in shame, he clarified that he had said this in reply to the question put by the correspondent as to how he felt that this time the well-to-do people coming in expensive cars were involved in looting in the posh areas of Ahmedabad which meant he was ashamed to belong to that very society. Shri Pande tried to explain the inability of his police force to control the violence because of the enormity of the challenge and unanticipated emergence of new trouble spots different from those of the past and the shortage of manpower and equipment.

At the conclusion of the meeting, the Chairperson observed that it was evident that normalcy had not till then been restored and that there was a prevailing sense of insecurity, felt even by a sitting and retired High Court Judges. He stressed on the officers exercising their statutory powers uninfluenced by any extraneous consideration. He reminded the officers that democracy is not majoritarian rule but should be 'inclusive' in character representing the interests of all sections of the society. He concluded by adding that the tragic events which had occurred should never be allowed to recur.

The team met many prominent citizens – individually as well as in groups – and thereafter had a long meeting with NGOs/Human Rights activists numbering 72. A summary of what was said by the above is:

Gujarat has, over the years, become prone to frequent outbreaks of communal riots. It had serious communal riots in 1969, 1985, 1992 and 1996. However, the present riots are different from all earlier riots in terms of intensity of violence and degree of brutality. New areas and not only the usual trouble spots identified on the basis of past experience were affected by the menace this time. While the riots in the past involved both the communities in group clashes resulting even from minor incidents, the incidents following the Godhra incident are characterised by assaults by huge Hindu mobs on the members of the minority community. The size of the marauding crowds involved in the major incidents was found to be between five to fifteen thousand and the scale of violence and brutality of methods of killing and looting indicated long planning and indoctrination.

The Vishwa Hindu Parishad (VHP) gave a call for "Bandh" on the 28th Feb. pursuant to the Godhra incident of burning alive of Karsewaks which was supported by the State BJP. The police did not take effective steps to make proper security arrangements in several areas known for their communal sensitivity. Many felt that the police should have learnt from the past experience that Bandhs supported by the ruling party are never peaceful and should have therefore made full preparations. Whereas the VHP leaders could mobilise their supporters for the 'Bandh', the police did not take any effective measures to control the unlawful crowds, while they were building up. The police, by and large, chose to act as silent spectators allowing the crowds to swell in size and become uncontrollable.

While in the previous riots also political elements did play a major part and the police and administration failed to control violence, they were not accused of direct involvement in the carnage. The failure of police and administration in the current riots is attributed not to their professional incompetence but to their attitude of apathy and callousness in general and the accusation of connivance and complicity was made in some cases.

A number of persons holding responsible positions in public life alleged involvement of some

Ministers and MLAs in these riots. They mentioned that Shri Gordhan Zadafia, Home Minister and Shri Ashok Bhatt, Health Minister were monitoring the progress of riots from the City Police control room. Shri I.K. Jadeja, Urban Development Minister was accused of controlling things at Police Bhawan, Gandhi Nagar. Someone stated that he had seen the Home Minister moving about in the riot affected areas openly displaying the "V" signal. Smt. Maya Ben Kudnani, MLA and former Dy. Mayor, Ahmedabad and Dr. Jai Deep Patel, VHP leader were named by a number of victim families of Naroda Patia who appeared before the team at Shah-e-Alam Relief Camp. Shri Usman Bhai, MLA alleged that the Home Minister Gordhan Zadafia was directly monitoring the progress of attacks on Muslim localities from the room of Shri Ashok Raina, Home Secretary.

Representatives of many NGOs and some Prominant citizens narrated a number of the minority community under attack from the marauding mobs but their pleas evoked no responce. Shri Amar Sinh Chaudhary, former Chief minister, Gujarat Narrated to the team his futile efforts in seeking of police help for Shri Ahsan Jaffrey former M.P. He claimed to have personally contacted the police commissioner. P.C Pande at 10.30 AM on 28 february and apprised him of the imminent danger to the life of Shri Jaffrey. The Police Commissioner assured him that police assistance will be despatched rapidly. He reminded him again after receiving another frantic call from Ahsan Jaffrey that no police reinforcement had reached his place and that the few policemen present were ineffective and unwilling to control the violent mob. Shri Chaudhary said that he also spoke to the CM Narendra Modi in the afternoon and found him well informed about the presence of a violent crowd outside Shri Jaffrey's house. He also spoke to the Chief Secretary and Home Secretary between 12.30 and 2 PM. Shri Jaffrey was burnt alive along with his family and 39 others (total killed -50).

The team heard several allegations of connivance of police in incidents of arson and looting by the marauding crowds. It was alleged that the crowds involved in the destruction of slums opposite Ambika Mill No.1 near Khokra over bridge, Gomtipur, Ahmedabad had the support of the administration (275 hutments housing approximately 1800 persons with 90 % Muslims and the other Dalits were totally destroyed). These hutments have been in existence for over 30 years and the Gujarat High Court had ordered status quo in 1999 when the authorities sought to demolish them. It is alleged that one PSI Modi from Gomtipur police station had come to the site in police jeep (GJ1-AR-5342). He parked his jeep near the gate of Ambika Mill, spoke to the mob in the presence of Shri Mohan Bundela, Shri Israil Bhai Ansari and some other activists of Jan Sangarsh Manch. The mob took out 4 to 5 bottles of diesel from the jeep of Shri Modi, which were subsequently used in torching the hutments. Another specific allegation of connivance of police was narrated by some victims at the Shah-e-Alam camp. They charged a senior police Inspector K.K. Mysorewala with misdirecting some helpless Muslims including some young girls into the arms of a murderous mob. (These cases were brought to the notice of the Chief Secretary by the Chairperson for immediate action).

Many representatives of the NGOs/activists accused the police of outright discriminatory approach in the matter of arrest. It was alleged by many that though it was the minority community which was under attack at all the places after the Godhra incident, the bulk of the arrests made by the police were from minority community. Since the official presentation made before the team did not give community-wise break-up of arrests which is an important parameter of police action in the handling of communal riots, the allegations made by people holding re-

sponsible position and enjoying high reputation for their integrity cannot be rejected outright.

It was alleged by many that the police allowed the crowds to swell and turn violent by ignoring the calls for help from the victims of mob attack. Admitting that the police presence on such spots was very thin, it was asserted that their sense of duty demanded that they should have used firepower to rescue the persons under attack from mob fury. It was said by many that the police either did not use the weapons or merely fired a couple of rounds in the air without producing any deterrence.

It was alleged that the mobs were led by VHP, Bajrang Dal and BJP activists some of whom carried mobile phones to contact others and coordinate operations. The mobs were equipped with items like gas cylinders, kerosene oil, petrol bombs for burning people and torching people and houses, shops and business establishments. They were seen carrying lists with full details of Muslim houses and establishments which were to be targeted. Hotel businesses on the N.H-8 had suffered most. About 90 percent of the commercial establishments including small shops, godowns and factories were wiped out on national highway No.8.

One of the NGO representatives referred to the Govt. claim to have controlled the riots in 72 hours. She said that all it means is that the VHP elements supported by the police were given freedom of loot and plunder for 72 hours to finish the Muslim population. It is believed by many that deployment of Army to control violence was deliberately delayed.

Describing the prevailing sense of insecurity and fear in the minds of the members of the minority community, a number of representatives of the NGOs/activists including A.P. Ravani, former Chief Justice, Rajasthan, referred to the cases of Justice A Divecha, ret'd. Judge of Gujarat High Court who was forced to leave his house which was later burnt and Justice Qadri, a sitting High Court Judge who had to leave his bungalow in Law Garden area and move to the Judges colony as no one assured safety and security to him and his family.

Even the police officials belonging to the minority community were targets of threats from the marauding mobs. A number of gazetted police officers belonging to the minority community were advised by their superiors to remain confined in their homes during the period of violence. The incident involving IGP, Saiyed who was in uniform with name tag and was menacingly accosted by a mob in the presence of some policemen was mentioned by a number of speakers.

A number of NGOs/activists stated that the violence and destruction witnessed in Ahmedabad and elsewhere was not entirely a spontaneous reaction of the majority community to the Godhra massacre. The suggestion made by many was that the continued disturbed situation in Gujarat appeared to be the result of at least tacit support by acts and omissions of the State Government without which this situation could not prevail. They stated, inter alia, that leaders of mobs were in constant touch with others on mobile phones, that every wing of the State Government was used to ascertain full or partial ownership of assets by the minority community.

A distressing and alarming feature of these riots pointed out is that for the first time rural and tribal areas were also affected by communal virus. It is estimated that more than 1200 villages, particularly in districts of Panch Mahal, Mehsana, Sabarkantha, Bharuch, Bhavnagar and Vadodra witnessed mob attacks on minority communities leading to large scale exodus.

The migration of Muslims from rural areas is attributed by many to a sustained drive launched by the VHP and Bajrang Dal during the last 8-9 years to mobilise the tribal population in revolt against the Bohra Muslim community which it is alleged is controlling businesses in rural areas.

Over 100 mosques and dargahs were desecrated and damaged in Ahmedabad and about 500 in other parts of Gujarat. (Two members of the team saw the site of Dargah of Sufi poet Wali Gujarati, revered by both the communities, near the underground bridge at Shahibag, which had been razed to the ground.) Allegedly, the Govt., instead of protecting the site for reconstruction of the Dargah, has got the old historic Dargah ground flattened and now one sees an asphalt road with vehicles moving over it.

The President of Ahmedabad Sunni Muslim Waqf Board stated that 33 mosques including 7 identified as heritage sites by the ASI have been damaged. He expressed the concern of his community for the protection of the remaining mosques particularly the 'Jali masjid' which is considered a treasured monument. (The Chairperson directed the officials present in the meeting to take immediate steps in this regard.)

Organised attempts for effecting a social and economic boycott of the minority community was another distressing feature of the current riots stressed by many. Pamphlets and handbills were widely circulated exhorting Hindus to boycott Muslims in matters of employment and business activities. Shri R.K. Sayed, a retired Secretary to the Govt. of India and former advisor to the Governor of J&K said in anguish that the husband of his maid servant, Rayeesa Banu, has been told not to report for work at a motor garage whose Hindu owner has been threatened not to employ any Muslim workers. He further said that the authorities of Don Bosco school have also received threats not to allow students from the Muslim community to attend.

Godhra incident was condemned strongly and without any reservations by all. However, a few persons attributed irresponsible behaviour of Karsevaks as the immediate provocation for the incident. Everybody who referred to this incident emphasized the need for immediate apprehension and prosecution of the culprits and awarding of the harshest possible punishment to them. Some members of the minority community said these persons deserve unusually severe punishment for having caused barbarous reprisals on the community by their ghastly criminal act.

A total lack of faith in the State police to investigate the riot cases was voiced by many. The popular perception was that these cases will not be investigated fairly and the culprits will go scot-free. Many stated that the FIRs are either not being recorded or not recorded honestly by mentioning the accused persons named by the complainants. There was a general demand for investigation of these cases by an outside independent agency like CBI. This suggestion was voiced also in respect of the investigation into Godhra incident which is suspected to be pre-planned and widely believed to be the origin of the communal disturbances.

A number of persons criticized the Govt. decision to modify its order regarding postponement of class X and XII examinations. They said the Govt. is forcing the traumatised students throughout the State, except in Ahmedabad and Vadodara, to take the Board examinations at their own risk just to show that normalcy has been restored. (On request from several persons for immediate intervention, the Chairperson advised the Chief Secretary to convey to the Chief Minister the Commission's desire for reconsideration of the matter keeping the welfare of the students in mind.)

Delegation of Media persons and Activists

A delegation of prominent media persons including Mallika Sarabhai, Teesta Setalvad and Batuk Vora met the team and apprised it of the attempts of the Govt. to bar some TV channels for a few hours on the crucial day of carnage while allowing the Gujarati print media, which grossly violated the code of ethics laid down by the Press Council of India by its inflammatory reporting of incidents, to operate freely. The delegation informed the team about physical attacks on several media persons, particularly of the electronic-media, and damage caused to their cameras. A specific instance of the burning of the branch office of Gujarat Today Daily run by a Muslim trust was cited.

Visit to relief camps

The team visited two relief camps, one each of the minority and majority community.

Shah-e-Alam Relief Camp

The camp holding about 9000 refugees is being run by Shah-e-Alam Relief Committee. The office bearers of the Committee apprised the team of the atrocities at Naroda Patia and Naroda village which had borne the brunt of communal riots in Ahmedabad. The Committee was informed that a 5000 strong mob armed with swords, daggers, lathies and petrol bombs attacked Naroda Patia around 9 AM on 28th February. After damaging a masjid and razing one of its minarets to the ground, the crowd hoisted a saffron flag and burnt a heap of religious books including Holi Quran. When the terrorized residents went to the nearby SRP camp for shelter they were pushed back by the jawans. They went to the nearby police station where PSI K.K. Mysorewala turned down their request for a safe passage. Ultimately these people were surrounded by the mob. Men and women were segregated; young girls were stripped, gang raped, lynched and thrown into the burning fire. No man was spared. A young woman, Quasar, in advance-stage of pregnancy, pleaded for her life. Her abdomen was slit open, the foetus was taken out and thrown into the fire. They picked up the woman and threw her into the same fire. The survivors of Naroda Patia were brought to the relief camp by the Shah-e-Alam Committee members. In village Naroda, the entire Muslim locality was wiped out. A few survivors were rescued by the Addl. Police Commissioner, Tandon, who was praised by many victims.

The team went round the Relief Camp and spoke to a number of families. Each had a horrible tale of suffering to narrate. Ameena Bibi narrated the incidents of arson and rape from 9 AM to 9 PM in Naroda Patia. She said that MLA, Smt. Maya Ben Kudnani, was moving about in the area and encouraging the rioters. Jannat Bibi stated that she was raped and her nephew and his son were burnt alive. Bilkis, sole survivor of her family, stated that her mother-in-law, her husband and his brother were burnt alive. Mariam Bibi lost her disabled son and Noor Jahan her husband. Sharifa Bibi, wife of Iqbal Sheikh, stated that her 18 year old son was burnt alive before her eyes. She stated that she was a witness to the murderous attack on the pregnant woman, Quasar. Mehjabeen, wife of Iqbal Hussain, stated that MLA, Smt. Maya Ben Kudnani, and VHP leader Dr. Jaydev Patel were openly leading the miscreants in acts of arson, killing and looting. Naimuddin said that his mother, sister, niece, brother-in-law and two nephews were burnt alive by the mob, some of whose members came from Gangotri Society and Gopinath Society. He produced before the team his wife who suffered a head injury and had her right arm chopped off.

11 year old Raja, s/o Munna, gave a graphic account of the incidents at Naroda Patia from 8 AM onwards on 28th February. He lost his mother and sister and his father is lying in a state of trauma.

Nanhoo Miyan accused PSI K.K. Mysorewala of directing the fleeing Muslim-men and women-into the arms of the marauding crowd and ensuring that no one escaped unhurt. Abdul Majid said that his daughter was raped by one Bhawani Singh and she died after 8 days in the hospital. Reshma said that she took 6 days to trace her children who got separated from her in the attack. She said she had saved 8 children from the marauding mob. She confirmed the incident-involving the pregnant women, Quasar.

The office bearers of the Camp Committee praised the Collector, Ahmedabad, for being sympathetic and responsive to their needs and calls adding with a sense of hurt that no senior officer of the Government or political leader from the ruling party has visited the camp.

The team visited a relief camp operating from Saryudas Temple where 106 Hindu families comprising 471 members have been living since 28 Feb. Smt. Kailash Ben and two other inmates spoke to the team. They stated that these families had moved out from their houses in Prem Darwaja Bagrivan situated in the heart of a Muslim locality. They said that they were attacked by a group of Muslims and have lost all their properties. In reply to a specific question asked by the team they said that none of their family members had been killed or injured in the incident. They accused the SRP of not providing any help to them. The inmates had no further complaint to make either orally or in writing.

Meeting of the Chief Minister with the Chairperson

Shri Narendra Modi, CM, Gujarat, called on the Chairperson at Raj Bhawan Annexe at 9 AM on 21 March and had a discussion lasting over an hour during which he assured the

Chairperson of the needful being done by the Administration to restore normalcy in the State while promising to send the comprehensive report to the NHRC within the next few days. The CM also invited the Chairperson to visit the State again after a month to see for himself the restoration of normalcy. He requested the Commission to issue suitable directions/appeal to the Insurance Companies for an expeditious settlement of property claims of the sufferers of the riots. The CM also assured the Chairperson that no student will be allowed to suffer on account of the examination policy decision.

Delegation of Traders

A delegation of Beopar Mandal (Hindu) from machinery area met the team and apprised it about the burning and looting of 17 shops on 28-29 February by the members of Muslim community. They expressed their sense of insecurity and requested the posting of an SRP picket which was there since 1985 but was removed some 8 months back by the Municipal Corporation to establish a water-piao. (The Chairperson asked Shri Kumara Swamy, IGP, Human Rights Cell to get the request examined and make necessary arrangements for the security of these people).

Some Karsevaks meet the team

Two victims of Godhra incident met the team at Raj Bhawan Annexe on 20 March. 11 year old Gayatri, d/o Harshad Bhai, is the sole survivor of her family. She said that her mother, father and two sisters died in the fire in compartment S/6 of Sabarmati Express. She could manage to jump out to the safe side from the burning coach. She said that the train was attacked by a crowd, which was 1500-2000 strong. She added that the crowd was shouting 'Get the girls out'. Smt. Urmila Trivedi who accompanied Gayatri said that she was travelling in coach S/5 and was injured in stone pelting.

Sunil Kumar Jamna Prasad Tiwari and his brother Amarjeet met the team at Govt. Guest House on 21 March, 2002 morning. They said that their father Jamna Prasad (67) and mother Surti Ben (54) were among the Godhra victims. Only one of them is employed in a private TV repair shop. They have two unmarried sisters to look after. They requested for assistance and employment.

Smt. Veena Ben Rajut, a VHP activist appeared before the team at Govt. Guest House on 21st March morning. She said that the Godhra tragedy could have claimed many more lives if the train was not running late by six hours. She said that about 2800 karsevaks were travelling in this train. She claimed to have saved 18 people by pulling them out from the burning coach. She said that the Muslim community wants to make Gujarat into a Kashmir. She said that the women were particularly targeted by the mobs. She said 3-4 women among Karsevaks are still missing. On being asked to furnish their names, she said that they belonged to Bihar and as such as she did not know their names.

Vadodara

The NHRC team reached Vadodara by road from Ahmedabad around 3 PM on 21.03.02. After a two hour long meeting with the district officials, it held an interaction with some eminent citizens representing various sections of civil society and thereafter received 17 delegations – 7 Muslims and 10 Hindus ranging in strength from 2 to 20. The team, thus, met a total of 176 citizens. The meeting with officers started with a presentation by DM, Bhagyesh Jha. He claimed to have effectively controlled the reaction of Godhra incident in his district by mounting a vigil at the communally sensitive areas of Dabhoi, Padra and Karajan. On his own initiative, he could arrange a flag-march by the training unit of EME stationed at Vadodara on 1st March, in addition to the deployment of Forest Guards in rural areas.

The DM said that for the first time in the history of communal riots in his district, rural tribal areas were affected by the communal violence. Army had to be diverted to tribal areas on 5th March. 2517 persons belonging to minority community were rescued and evacuated from 22 villages to safer places. The SP, Keshav Kumar, described the particularly difficult job of shifting 100 persons from Kawant. The DM and SP confirmed that these villages now have no member of minority community. They did not sound confident about the safety of the property – houses, agriculture land and standing crops left behind by the evacuees. All these persons, they informed, have been moved to the Relief camps at Godhra and Dahod. They tried to explain the attack by tribals on members of minority community (largely Bohra Muslim traders) on the ground of economic exploitation of tribals by the traders. Rural economy is largely controlled by the Bohra community which they said, has earned the wrath of the tribal population.

I.G.P (Zone) Vadodara, Deepak Swaroop who was also present, confirmed that all the districts in his range namely Bharuch, Narmada, Panchmahal and Dahod have been affected by unrest in the tribal villages resulting in the exodus of Muslim population.

The DM informed that 8 lives have been lost (Hindu –6 and Muslims –2) till 20 March in the district. While the Muslim casualties (2) were at the hands of riotous mobs, 2 Hindus were killed by the rioters and 4 died in police firing.

Shri Tuteja, Police Commissioner, Vadodara, briefed the team about the situation in Vadodara city. He stated that almost the entire city was affected and curfew was imposed well in time. The Commissioner read out date-wise account of major events from 27 Feb. to 20 March. The city police swung into action from 1020 hrs. on 27 Feb. after receiving a message from the State Control Board about the attack on Karsewaks at Godhra Rly. Station. All the P.Is and SRP personnel were alerted and patrolling was intensified. All the P.Is were briefed properly for dealing with the Gujarat Bandh on 28 February and a company of RAF was also requisitioned. 95 preventive arrests were made during 27-28 Feb. night. The Police Commissioner accepted the observation of the team about the stabbing incident at the Rly. Station Vadodara

on arrival of Sabarmati Exp. from Godhra in which one person was killed and two injured. He said he had excluded this incident from his presentation on 'technical reasons' as the incident had taken place in the jurisdiction of Railway police. Two deaths of stabbing were reported in early hours of 28 February – one was a truck-driver and the other auto-rickshaw driver. Curfew was imposed in areas of 6 PSs from 8 AM on 28 Feb. It was extended to six more PS at 5.30p.m. onwards.

The Police Commissioner claimed police effectiveness in rescuing 102 Muslim children studying in the Islamic Centre in Panigate PS. In response to a query from the team, he admitted that the Islamic Study Centre was burnt – a fact which finds no mention in his written presentation submitted to the Commission.

During the night intervening 1-2 March, Best bakery was set on fire in the Hanuman Tekri area on Dabhoi Road in the outskirts of the city. A 300 strong mob armed with swords, stones and kerosene attacked and looted the bakery. After stabbing the families and workers staying in the Bakery, the building was set on fire. 9 Muslims and 3 Hindus were killed and 6 Muslims were injured in this incident. 18 accused have been identified in the FIR but no arrests could be made till then.

The presentation made by the Police Commissioner, Vadodara, gave the following information:

A total of 37 persons (24 Hindu, 12 Muslims and 1 other) had died in disturbances in Vadodara till 21 March (morning). 17 of them were killed in arson, 13 in stabbing incidents, 6 in police firing and 1 in pvt. firing. The police firing resulted in killing of 3 Hindus and 3 Muslims. A total of 125 persons – 45 Hindu & 80 Muslims have been injured in disturbances till 21 March. 16 police personnel are also reported to have been injured.

The details of arrests furnished by the Police Commissioner have been found incomplete and confusing. However, what is clear is that only 4 persons – 3 Hindu and 1 Muslim have been arrested under Arms Act and 2 (one Hindu and one Muslim) under Explosive Act. The rest of the arrests are under Section 151 Cr. PC, Section 135 Bombay Police Act and for Curfew violations. The presentation made by the police shows that 132 vehicles including 6 luxury buses and 11 trucks were burnt and property worth over Rs. 10 crore was looted/damaged. A total of 380 offences have been registered, 72 cases detected and 3746 arrests have been made.

The Police Commissioner stated that 8 Mosques, 7 Dargahs and one Temple have been damaged in the disturbances.

The death toll in Distt. Vadodara till 20 March comes to 46 including 37 in the city, one at Rly. Strn. and 8 in rural area. The community-wise details are: Hindu 30, Muslims 15 and other 1.

INTERACTION WITH PROMINENT CITIZENS

Following points emerged from the interaction:

1. Many members of the majority community stated that the riots were a reaction to the incident at Godhra. They added that there had been a feeling of resentment over the increasing visits of people from Pakistan who are using Ahmedabad, Vadodara and Godhra for subversive activities. They feel that the Godhra attack on karsewaks was pre-planned and there is involvement of a foreign hand in it. Local Muslims and Hindus have no problem in living together peacefully. It is only the visitors from the neighbouring country receiving huge amount of foreign money who are working to create disaster in India.
2. Media played a negative role by repeated display of pictures of Godhra incident which inflamed passions and infuriated the people.
3. Expressing a feeling of disappointment, it was stated by some persons that not many people/parties came forward to condemn the Godhra incident. It is believed that a strong condemnation of the attack on Karsewaks at Godhra regardless of ideological differences could have cooled tempers and prevented unprecedented retaliation.
4. The trouble in rural areas is rooted in the economic and other forms of exploitation of tribals by traders belonging to minority community. However, one person mentioned that it is a part of the political strategy of the ruling party in the State to mobilise grievances of the tribals in their ultimate aim of driving the Muslims out.
5. These riots are different from the past riots in the sense that new areas, not the traditional sensitive spots, were affected and Hindus turned offensive for the first time.
6. Most of the speakers praised the Administration for effectively handling the communal situation in the first phase of violence but found the same Admn. weak and also partisan after 15 March when the Ram Dhun procession in response to developments at Ayodhya was taken out. The incident of Machhipeeth was mentioned in this connection.

The delegations of voluntary agencies and various Citizen Committees made the following submissions before the NHRC team:

- i) Representatives of the Chamber of Commerce and Forum of Industries (18) said that the intensity of violence in the aftermath of Godhra inci-

dent would have been much less had the burning alive of Karsewaks at Godhra on 27 February been condemned promptly by all parties regardless of their ideological differences. They blamed the 'pseudo-secularists' for the communal violence. They praised the District Administration and the police for doing well despite being under tremendous strain.

- ii) The representatives of the Qureshi Jamat Khana praised the Collector for rescuing 400-500 Muslims. However, they expressed their anguish over the burning of the Islamic Study Centre.
- iii) Representatives of Machhipeeth Musafirkhana (10) described the events of March 15 at Machhipeeth arising from the 'Ramdhun' call given by the VHP and Bajrang Dal after the 'Shilladan' at Ayodhya. At about 2.30 p.m. a crowd of about 500 after the spiritual Aarti in the temple at Ahmedawadi marched towards Machhipeeth. The police did not intervene in spite of an order under Section 144 Cr.PC being in force. In the presence of 6-7 policemen who were accompanying the mob, the crowd went on raising slogans "Bandiao, go away to Pakistan", "Babar ki Aulado Hindustan chod do". The rally reached Machhipeeth Naka around 3.10 p.m. after burning a number of Muslim shops including Boot House and Tower Shoes en-route. On reaching Machhipeeth some of the rally members rushed to residential lanes with trishuls and swords and started pelting stones. Some took off their pants and danced around in the lanes. By the time police reinforcement came in 4 Jeeps, both sides – the attackers and local residents – were engaged in stone-pelting. The police started firing directly from stenguns and service-revolvers. The police firing lasting for about 25 minutes was directed at the residents of Machhipeeth. They also lobbed some tear-gas-shells. After about 15 minutes of police firing, the army personnel reached and the situation was brought under control and the rally left the scene. The police conducted combing operation, abused the residents and arrested 13 persons including a boy of 12 years and a 60 year old TB patient. All these people were beaten up and taken to Police Station.
- (iv) At 7.30 p.m., on instigation from Municipal Councillor and Bajrang Dal Chief, Neeraj Jain and Ajay Dave, Bajrang Dal activists attacked the mosque from the top of the building in the adjacent lane when a number of Muslims were offering evening Namaz. Mr. R.N. Rathore, a Police Officer, fired some 20 rounds under the directions of Neeraj Jain. Thereafter in combing operation, the police arrested 12 persons including a stage singer and an Advocate. All the persons arrested from Machhipeeth

were booked under section 307 IPC. The Leader of the Delegation mentioned that the 12 year old boy arrested in this case was actually a riot victim who had come to the relief camp from Tarsali area. They also told the team that many Muslims of Machhipeeth have been relieved from their jobs by Hindu employers.

- (v) The delegation stated that the police are reluctant to record FIRs on their complaints. The names of the accused mentioned by them are not being recorded. The police knows the persons in some cases who are involved in looting of shops. The police is persuading them to throw away the looted property on the streets which is being seized as unclaimed property without initiating any action against the looters. However, even this delegation stated that the performance of the administration has been satisfactory and many lives were saved.
- (vi) The delegation of Bajrang Dal stated that disturbances were a reaction to the Godhra incident. They referred to strong resentment among Hindus over the news of slaughtering of 300 cows at Bharuch on the last Id day.
- (vii) Praveen Rawal of Hindu Suraksha Dal said that the large concentration of refugees near Wasna Road, Diwalipura area, was causing tension and the camps should therefore be shifted from there.
- (viii) It was mentioned by most of the delegations that the media had overplayed the incident of 27 February at Godhra and thus played a negative role by inflaming passions.
- (ix) Shri Kirit Bhatt, President, PUCL, Gujarat, informed the team about the plight of Prof. J.S. Bandukwala, a respected citizen of Vadodara and an active member of PUCL who has been a consistent critic of both Hindu and Muslim fundamentalism. A mob of around 20 people attacked his house at 10 a.m. on 28 February. One car in his compound was completely burnt and the other was damaged. Prof. Bandukwala and his daughter were saved by their Hindu neighbours who gave them protection. However, he had to leave his house under police escort after his house was attacked again the following day and his Hindu neighbours went into hiding for 3-4 days fearing an attack on them.
- (x) Shri Kirit Bhatt informed the team that situation in Vadodara had become tense on 27 February afternoon after the incident of stabbing in the presence of police at the Railway Stn. when the Sabarmati Express arrived from Godhra. One Muslim was killed and two were injured. Shri Bhatt blamed the local political leaders for using the electronic local media

in the most despicable manner. He requested the Commission to see the video-cassette of the speeches made on Local TV Channel (JTV, Deep and VNM) by Ajay Dave, Nalin Bhatt, Deepak Kharchikar, Neeraj Jain, Bhartiben, Jitendra Sukhadia and others. Shri Kirit Bhatt stated that from the 15th of March, the second round of violence erupted when the VHP gave a call for Ramdhun procession in response to the Shilladan at Ayodhya. The Muslim establishments which survived the fury of first round were systematically attacked in the second round.

GODHRA

The team arrived at Godhra around 10 AM on 22nd March. The District Magistrate, Ms. Jayanthi S. Ravi, briefed the team about the current situation. The team thereafter visited the site near the railway station where the coaches S-5 and S-6 of Sabarmati Express which were the target of attack on 27th Feb. stand parked. The team inspected both the coaches and observed that in coach S-6 everything except the steel frame was completely gutted. The team then went to the railway station and spoke to Shri Jai Singh Katija, Station Superintendent, and some eye witnesses of the incident of 27th Feb. Shri Shafi Ghulam Rasool, a tea stall owner, said that around 8 AM on 27th Feb. when the Sabarmati Express arrived, he had seen the slogan-shouting passengers who alighted from the train. He heard about their altercation with tea vendor, Siddiqui Bokkar, only after the train left. Shri Bhairon Singh, tea vendor, stated that the karsevaks had quarreled with Siddiqui. Constable Karan Singh Yadav of RPF said that he had seen 2-3 passengers in a scuffle with the tea vendor. ASI, GRP, Chatter Singh Chauhan, said that the karsevaks were trying to force the tea vendor to raise the slogan 'Jai Shri Ram'. He also stated that one of the karsevaks had pulled the beard of a Muslim tea vendor and asked him to utter the words 'Jai Shri Ram'. They also beat the vendor. After the train started and before it could leave the platform, the chain was pulled. As the train halted, it was attacked with stones from the left side. The GRP staff rushed to the train, chased away the crowd and the train was made to leave. However, there was second chain pulling and the train stopped at a distance of about one kilometer from the railway station near 'A' cabin. It was at this spot that coaches S/5 and S/6 were heavily stoned by a mob, which later burnt coach S/6. SI M.J. Jhalla, PSO, GRP said that he had learnt about the incident at 8 AM and before he reached the spot at 8.15 AM, the coach had already been burnt. His estimate of the crowd was 500 to 700. He said that on his orders the RPF had fired 4 rounds to disperse the mob. Shri Jai Singh Katija, Station Supdt. said that he had come after the incident and learnt about the altercation between the karsevaks and Muslim tea vendor over the raising of 'Shri Ram Bolo' slogan and subsequent attack on the train. He said that the train had arrived at 7.43 AM and left at 7.48 AM. The first chain pulling was at 7.50 AM. The train again left at 7.55 AM and came to halt at 7.58 AM with the second chain pulling. He said he alerted the civil authorities, the RPF and GRP rushed to the spot. After the district police came, situation was brought under control by resorting to firing, which resulted in killing of 2 attackers. The police firing was effective in chasing away the attackers and preventing any further loss of life.

The DM briefed the team about the action taken by the District Administration to arrange medical aid for the injured, and move the train at 12.40 PM after detaching the coaches S/5 and S/6. The tragedy had taken 58 lives – 26 women, 12 children and 20 men – all burnt alive. She described the arrangements made by the District Administration for the despatch of bodies after the post mortem examinations were conducted the same day.

Anticipating violent reaction to the ghastly incident, the DM imposed curfew in Godhra city at 10.55 AM on the same day. Curfew was imposed in Kalol city, Vejalpur, Derol and Halol, Lunawada and Gohoghamba cities on the 28th February. Curfew was imposed in Santrampur city on 1st March and at Mora, Rampur (Kasanpur) Natapur and Morva Hadaf on the 2nd March. Army was called on 1st March and its 3 columns were deployed at Godhra, Lunawada and Halol where effective flag-marches were held. 8 miscreants were injured in army fire on 3 March and one on 4 March. Army had to resort to firing to clear access to some villages blocked by the miscreants from where members of minority community had to be rescued. Army columns were used effectively in intensive patrolling and were helpful in rescuing members of the minority community.

The DM informed that a total of 7569 persons were rescued – 1065 from Godhra and the rest from 27 villages and taken to safer places. The SP and the DM confirmed that no Muslim population has been left behind in these 27 villages. They could not give a definite reply about the safety of their houses, agricultural land and the standing crops left behind by these persons.

Special police protection has been provided at the following places with estimated number of the Muslim population given against each:

Sr. No.	Places	Taluka No. of people	Estimated
1.	Karanta	Khanpur	4000
2.	Aantalwada	Kadana	5000
3.	Pallav	Rajgadh	2100
4.	Baska	Halol	1200
5.	Khandivav	Jambughoda	100
6.	Vejalpur	Kalol	800

8169 persons are accommodated in 7 relief camps including the Iqbal Primary School camp at Godhra. These camps are being run by the minority community itself with supply of food-grains and milk by the administration.

The DM stated that 81 riot casualties have been reported from the district – 77 Muslims and 4 Hindus. 9 persons have died in army/police firing. Pandarwada (23 killed), Kalol (14), Limidya (13) and Anjanvav (11) are the worst affected villages.

Casualties in firing are: Army – 1 (Hindu) GRP 2 (Muslim), police 6 (3Hindus and 3 Muslims).

As per preliminary estimates, 2595 houses, 801 shops and commercial establishments and 223 vehicles have been damaged in the riots.

A total of 144 offences have been registered on charges of murder (17), attempt to murder (3), robbery/dacoity (45), arson (54) and rioting (25).

A total of 405 persons (320 Hindus and 85 Muslims) have been arrested during the period from 27th Feb to 20 March 2002. They include 11 prominent public leaders, 4 of minority community and 7 of majority community.

Shri P.P. Agja, Spl IGP, CID Crime, could not answer satisfactorily the team's queries about investigation of the crime case registered in connection with the train burning at Godhra on 27 February. He informed that two cases have been registered under relevant sections of the IPC, Indian Railways Act and POTO on 27 February. Both are being investigated by Shri K.C. Bava, SDPO, Western Railway, Ahmedabad, and are being supervised by him. It shows that the investigation of this important case, has not been formally transferred to the State CID.

A total of 12 Dargahs and 23 mosques have been destroyed in the district during communal violence. Cases have been registered for each incident and a total of 76 persons of Hindu community have been arrested.

Visit to Relief Camp at Godhra

The team visited the Iqbal Primary School Relief Camp which is holding 3040 persons. It is the only relief camp at Godhra. The team met some victims of violence and heard pathetic accounts of their suffering and misery.

Noorunisa, a ten-year old girl from village Pandarwada stated that her uncle was killed in the riots. Bilkis, about 25 years, of Mora village in Morva (H. Taluka) said that she was raped by a group of persons at village Randikapura in Limkheida Taluka of District Dahod. The DM informed that her complaint was recorded by the Executive Magistrate in which she has named 12 persons. The FIR was also registered and transferred to Limkheida police station for further action. In the FIR she had mentioned only 3 names. Additional names mentioned before the Executive Magistrate are being intimidated to SP, Dahod.

Maqsooda, a young woman bearing marks of injury caused by sword on her head, has been rescued from village Anjanva. She said that she was thrown into a well along with her two children who are no more. She said that a total of 12 persons were thrown into the well. Only three of them could be rescued. The rest nine died. This was confirmed by the D.M.

Delegations

The team heard 6 delegations of Hindus and 2 of Muslims. Shri KP Seth, representing Federation of Panchmahal Industries stated that the Hindus have been the target of attacks by Muslims since Independence and their patience is wearing out and it is, therefore, natural for them to take the offensive.

Mr. Sharad Shah, Educationist said that the disturbances are caused only by 'Goondas' belonging to both the communities.

Shri Kishore Lal Bhayani, Ex-President, Nagar Palika Sindhi Society pointed out the need for strengthening police presence at railway station, old bus stand and two other places. He stated that frequent reports of cow-slaughter by Muslims is causing provocation to Hindus.

Son of Sanji Bhai Damor, 7 time MP (Lok Sabha) from Dahod said that the VHP and Bajrang Dal activists had incited tribals to attack Muslims and that property worth crores has been destroyed in these attacks.

Ahmed Bhai Kalota, District President, Janta Dal, said that the present policies of Govt. cannot bring about peace. He criticized the Govt. for arresting innocent persons including the President of Godhra Municipal Corporation in the Godhra incident case. He also criticized selective application of POTO. He said that about 100 Muslims have been burnt in village Pandarwada.

Jainuddin of Bohra community condemned Godhra incident and held both the communities equally responsible for communal violence. He appealed for speedy rehabilitation of the displaced persons and restoration of communal harmony.

As the number of persons desirous of meeting the team of the Commission in each city was vast, they were encouraged to express their views, whenever possible, in groups and to submit their views in writing. The Commission regrets that it was impossible, 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 the team. However, all such persons were also requested to submit their views and concerns to the Commission in writing, for the study and consideration of the Commission. A large number of written representations were thus submitted to the team, both during its stay in Gujarat and subsequently. All of these are being carefully examined.

31 March, 2002

**(Y.S.R. Murthy)
PS to Chairperson**

Annexure - II

A.N. DIVECHA, M.A., LL.M.

Judge (Reid.), High Court of Gujarat
Chairman (Reid.), M.R.T.P. Commission
Chairman Expert Committee (Government of Gujarat)

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23rd March 2002

**The Hon 'ble Chairperson
National Human Rights Commission
Sardar Patel Bhawan
Parliament Street
NEW DELHI-11 0001**

Sub: Travails of Communal Riots in the State of Gujarat

Respected Sir,

I am indeed obliged to the Hon'ble Chairman for having fixed a separate appointment for me at the Raj Bhavan Annexe in Ahmedabad on 19th March 2002 at 7.30 p.m. and having given to me a patient hearing with respect to the traumatic experience my wife and I had undergone in the wake of communal rights that broke out in the State of Gujarat on and from 27 February 2002.

Incidentally, by virtue of one Interim Order passed by the Hon'ble Supreme Court on 16th February 2002 in SLP (Civil) No.13658 of 1996, the Government of Gujarat has constituted one Expert Committee with Members drawn from different fields like hydrology, soil erosion, environment, forest, and geology and mining and I was appointed its Chairman. The status of a sitting High Court Judge was conferred on me. An official car was also placed at my disposal. On my request, the Office of the Expert Committee for my functioning as its Chairman was located at my residence. My staff included one part-time stenographer, one part-time clerk, 2 part-time daily wagers peons and one driver for the official car provided for me. The Government had also placed at my disposal for my official work one Fax Machine and one Computer with a Printer and certain required furniture. In view of the tense situation on 27th February 2002, I contacted my staff on phone to inform them not to report for work on 28th February 2002 in the wake of the call of Gujarat Bandh on that day.

Since the Hon'ble Chairman is fully aware of what happened to people at large in Ahmedabad and elsewhere and more particularly to us on 27th and 28th February 2002, I need not repeat them in detail. In a nutshell, I have to say that my wife and I were blissfully ignorant of the Godhra carnage that occurred on 27th February 2002 till about 5.30 p.m. on that day when our opposite door neighbour informed us of it and requested me for using my good offices to provide protection in the wake of likely reaction and repercussions, more particularly in

Ahmedabad. I contacted Government Pleader Shri Arun Oza and our Chartered Accountant friend Shri Sanjay Shah. Shri Arun Oza was good enough to arrange for police patrolling in the area. However, at about 11 p.m. on that day, about 50-60 people gathered around our building on their motorbikes and scooters and hurled petrol bombs at our building. They dispersed within less than 10 minutes, presumably on spotting a police mobile van in the nearby area. I again contacted Government Pleader Shri Arun Oza and my Chartered Accountant friend Shri Sanjay Shah and informed them of the frightful incident. It needs no telling that -We were quite scared on that account. Shri Arun Oza arranged for sending one Deputy Commissioner of Police, Shri Parghi, at our residence at about 11.30 p.m. He assured us intensive police patrolling in the area. We requested for an armed police point near our building but that was not done, may be because of shortage of police personnel minding the so-supposed law and order situation in the city. No untoward incident occurred during the night in view of intensive police patrolling in the area.

In the morning on 28th February 2002, the milkman delivered to us our usual quota of milk pouches and the newspaper man brought to us newspapers of the day. On inquiry, both of them indicated to us that the situation was normal. In view of the previous night's frightening incident, the watchman of our building had fled. Since the situation was found normal, certain occupants of other flats in our building started going for their work. At about 11 a.m. on 28th February 2002, again about 70-80 people gathered around our building on their two-wheelers, mostly motorbikes and scooters, and started throwing stones at our building. Some miscreants flung open the compound gate with sticks, spears and swords and broke the glasses of the cars parked in the parking lot. Our building stands on pillars and the ground floor is used for parking vehicle. My official car was also damaged by certain miscreants. The crowd dispersed within about 10 minutes for some unknown reason, may be on spotting some police vehicle. I again contacted Government Pleader Shri Arun Oza on his mobile and my Chartered Accountant friend Shri Sanjay Shah, again on his mobile. My friend along with his wife immediately ran down to us and insisted on our leaving the house for safety at his residence. In the meantime, other occupants of the flats in the building were also panic-stricken and all of us decided to leave our respective houses for safety. Around 12.30 p.m. we left the house with a pair of clothes in a bag locking most rooms and the main door and the grill outside. A lock was applied each to the staircase grill and the compound gate. I received a phone call from my neighbour residing in a nearby area at about 4 p.m. on that day that my flat was set on fire. We tried to contact the Fire Brigade for help but in vain. My chartered accountant friend is a BJP active worker and he has good connections with certain Ministers. He immediately contacted Health Minister Shri Ashok Bhatt for help. About an hour later, Shri Ashok Bhatt informed my friend that the fire in my flat was extinguished. At about 6.15 p.m. on that day, I again received a phone call from an acquaintance from the nearby area that all the flats in the building were set on fire and were in flames. My friend and I tried to contact Government Pleader Shri Arun Oza and other Ministers including Health Minister Shri Ashok Bhatt, Revenue Minister Shri Haren Pandya and the like for help, but to no avail. It appears that they were also helpless and could

not provide any help to us. Since the Computer placed at my disposal for my official use for storing the relevant data with respect to the Expert Committee's functioning was located in the office room at my residence, I thought of retrieving it if possible with a view to saving the data stored therein. On my request, Government Pleader Shri Arun Oza arranged for some military escort and in their company we visited our residence at about 10 p.m. on that day. To our dismay, we could see that the outer grill was pulled out as the lock applied thereon could not be broken open by miscreants and the wooden door was set on fire and it was reduced to ashes, again because the lock applied thereon could not be broken open. The refrigerator and the dining table and the chairs were in flames. The sofa set and one diwan in the drawing room were found reduced to ashes. The colour TV was found missing, so was the cordless telephone in the drawing room. Since the dining table with chairs and the nearby refrigerator were in flames, we could not move further to our kitchen or bedrooms. With the help of military personnel, we could retrieve the Computer and it was found completely blackened by the smoke emanating from flames. We have still not been able to ascertain whether or not it is in a working order and the data stored in the hard disk would be in tact. The official car parked in the ground floor parking lot was found burned, so also certain two-wheelers belonging to other occupants of certain flats in the building. Our residence was wide open as the outside grill was pulled down and the wooden frame of the door was also in flames. It was completely dark as all electric meters of the building were broken and burnt down. My wife had a traumatic shock on seeing the condition of her house. With heavy heart we came back to our friend's residence.

Government Pleader Shri Arun Oza was good enough to arrange for military escort and police protection for our visit during the day time the next day, that is, 11th March 2002, at about 10.30 a.m. At that time we found that the house was littered with glasses all over and nails used for fixing sofa sets and other wooden articles were also found littered throughout the house. The refrigerator was found completely burnt and the dining table and the chairs were reduced to ashes. Our kitchen was also found ransacked and household kits therein were damaged and destroyed or useful articles like the grinder-cum-mixture and other kitchenwares etc. were found missing, presumably removed by miscreants. To our good fortune, the locks applied to bedrooms were found in tact and only the lock of one bedroom was found tampered with as it could not be opened with its key. Since we had military escort and police protection, we picked up our clothes, some important documents, our bank papers and returned to our friend's residence.

The then Hon'ble Chief Justice of Gujarat High Court (Hon'ble Mr. Justice D.M. Dharmadhikari who has since been elevated to the Supreme Court on and from 5th March 2002) was informed on 1st March 2002 of the tragedy that had befallen us in the previous evening and he immediately rang me up at my friend's house and on my oral request he was good enough to allot to me a bungalow in the Complex of the Bungalows meant for Hon'ble Judges of the High Court of Gujarat. Its possession was handed over to me on 2nd March 20. Under the cover of

police protection, we could shift from our ransacked residence whatever household kits and furniture that escaped fire to our new residence. We have now started residing in it after putting most things in order.

In the wake of insistence the part of Vishwa Hindu Parishad on bhoomipoojan and/or shiladan at Ayodhya on 15th March 2002, the situation in Ahmedabad was found to be tense from 13th March onwards. In order to see that our presence at his house would not put my chartered accountant friend to jeopardy qua his life and property, we thought of going to my brother's place residing in Juhapura, a predominantly Muslim habitat in Ahmedabad. My friend was however reluctant. He contacted Health Minister Shri Ashok Bhatt for guidance. To his credit, Shri Ashok Bhatt talked to me on phone and assured me not to worry about our safety or that of my chartered accountant friend Shri Sanjay Shah during the period by staying at his residence. Shri Bhatt was good enough to offer accommodation in his residence at Gandhinagar if we were quite scared or in the alternative in the Circuit House with full security cover. We therefore continued to stay at our friend's house during the period. Newspaper reports indicate that communal riots resulted in virtual-carnage and holocaust in Ahmedabad and elsewhere in the State, so many persons were roasted alive. Countless persons were rendered homeless and many lost all their belongings and had to take shelter in relief camps. A large number of people lost their business premises and their belongings therein were gutted in fire. They suffered colossal economic loss on both counts inasmuch as they were rendered homeless and left without any source of livelihood. During the Hon'ble Chairman's visit to this area, the Hon'ble Chairman and his team had a first hand account of their sufferings.

In view of my personal relations as also my present position, friends did provide us timely help and took us to safety and we could retrieve some important documents, our bank papers and clothes and the like, but one may shudder to think the plight of people who have lost everything including the source of eking out a living. Some of them could be belonging to good families and they had to take shelter in relief camps at the mercy of organizers. One wonders whether or not they would be in a position to get two square meals a day when the situation becomes normal and when they have to leave the relief camps. The tragedy is too ghastly to describe in words; it would beggar description.

It is reported that conditions of persons taking shelter in relief camps are quite pathetic and pitiable. The food that they get is often of sub-standard quality. Besides, it is reported that meals served to them are also not adequate. Sanitation conditions therein are highly deplorable. Medical facilities are reported to be simply out of question. They live like animals put together in some open space rather than human beings with proper concern with human treatment. If some epidemic breaks out, it would further add to their woes.

Almost all persons taking shelter in relief camps have no work to do. It is a matter of common sense that they might be ruminating over what has happened to them. The whole episode of

ransacking their houses or business premises and setting on fire their belongings would be very much before their eyes. It would therefore be necessary to find out some solution to keep them engaged in some kind of economic activities which would enable them to keep their minds preoccupied as also to give them a source of earning their livelihood. In cases of natural calamities like famine, floods, earthquakes and the like, the Government often undertakes relief works. That provides self-sufficiency to victims of such calamities. They have also to feel a sense of dignity by eking out their own living. Their minds would remain preoccupied with some kind of activities. In the case of victims of communal riots, whether Hindus or Muslims, it would be necessary to evolve some kind of relief work under the cover of security so as to generate in them the sense of dignity of toiling for their bread. Besides, that would result in no idle minds and there will not be any devil's workshop operating in their idle minds. Similarly, female members in such relief camps may also be engaged in some kind of gainful activities of stitching, knitting, and the like. In my humble suggestion, the State Government's attention may be drawn on this aspect of the issue or the problem.

A question of rehabilitation of persons taking shelter in relief camps would also deserve proper consideration. Those who have seen their houses or business premises ransacked and their belongings set on fire therein might be scared to go back to their original places for residence or work. Their rehabilitation need not result into segregation or division of two main communities, Hindus and Muslims, in water-tight compartments.

Such an attempt might keep the communal tension alive and burning. They should be persuaded to go back to their original places under the cover of proper security. Their neighbors may also be persuaded to take care of such persons so that they feel safe and secure and may not remain frightened or scared any longer in settling down in their original places. If such an attempt is not made, it might result in creation of separate pockets of habitation of the main two communities, namely, Hindus and Muslims. That would be a dangerous proposition. Any attempt to allow them to settle for residence and business in their original places in a harmonious manner would result in building up communal harmony in the society. It might also result in mitigating economic losses that such victims might have suffered on account of loss, temporary or otherwise, of cover over their head or source of livelihood; else their sufferings on account of economic loss would be aggravated inasmuch as they will have to dispose of their properties practically at throwaway prices. If the victim of communal violence is a Hindu residing or carrying on business in a predominantly Muslim locality may not be in a position to dispose of his property to any Hindu because no Hindu would like to purchase such property in that area and a Muslim purchaser would like to acquire it at a throwaway price. So would be the case of a Muslim victim of communal violence residing or carrying on business in a predominantly Hindu locality. The best course for the Government would be to cultivate and to develop a public opinion for peaceful existence in communal harmony. It is certainly a long drawn process difficult to realize in a near future but is not an impossibility.

It is everyone's common knowledge that this time communal violence has spread in far-flung areas including in rural areas. The victims of such communal violence might be scared of living in their original villages. That might result in building up separate rural habitats for different communities like Hindus and Muslims. In our secular country such segregation in rural areas is highly undesirable. Such segregation might result in treating each other as enemies rather than friends. In this case also the State Government could play a vital role in allowing the victims of communal violence in rural areas to settle down in their original places either for residence or for business or for both under the cover of proper security for the time being. Again, an atmosphere of peaceful co-existence with communal harmony need be developed by cultivation of public opinion in that regard. This is not impossible in view of the mass appeal that can be created with the help of visual media.

Our State of Gujarat is known for its industrial peace. In order to maintain such industrial peace it is necessary to establish communal harmony between the two main communities, namely, Hindus and Muslims. If this is not done, industrial entrepreneurs might not be inclined to have their industrial activities in our State of Gujarat. The prospects of foreign investment for industrial activities in our State might have considerably dwindled on account of recent communal riots. It is therefore necessary for the state Government to take necessary remedial measures for establishment of communal harmony in the State anywhere and everywhere irrespective of caste, creed or religion. This would result in taking big strides in recouping the loss suffered by our State of Gujarat on account of large-scale communal riots in recent times which have put the State at least a decade behind on the economic front as well. In my humble opinion, since the law and order machinery had almost completely failed during the early period of riots for nearly 72 hours resulting in loss of life and property by victims thereof, the State Government should provide adequate compensation not only to bereaved family members of the dead but also to those who are rendered homeless, whose properties are destroyed or gutted in fire and those who have lost their substance on account of setting their business premises on fire. Victims of the communal violence could be both Hindus and Muslims. No discrimination need be permitted to be made for providing adequate compensation to them for whatever loss they have suffered. I humbly suggest that the National Human Rights Commission itself or through its committee, if any, may survey the damage and assess the loss in each case and recommend adequate compensation for victims of communal riots in the state. The state Government need not be permitted to escape its liability on that score. The whole issue may be likened to "no fault liability" as in the case of certain motor accidents. The State Government need not be permitted to claim any immunity under any pretext. I need not carry coal to the New Castle by stating that the primary function of the State is to protect its citizens and other residents from internal disturbances. The concepts of Welfare State need not obliterate its primary concepts of Police State. For the traumatic shock undergone by victims of communal riots as also for economic loss on being rendered homeless as also loss of substance, some formula may be evolved for the minimum compensation may be worked out on assessment of loss in each case by the Hon'ble Commission or its committee, if any. This is

my humble suggestion to the Hon'ble commission. I express my great sense of gratitude for giving me patient hearing in the evening of the 19th march, 2002 in the Raj Bhavan Annexe and i look forward to kin and sympathetic consideration of my humble suggestion stated here in above by the Hon'ble Commission and I again express my deep sense of gratitude and thankfulness in anticipation.

Respectfully Yours

A. N. Divecha



**GUIDELINES
TO
PROMOTE
COMMUNAL HARMONY**



**GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS**

Home Minister India

New Delhi-110001

22nd Oct., 1997

Indrajit Gupta

Dear Shri,

Please refer to the former Home Minister's d.o letter No.5/3/90-CHC dated 23rd April.1990 forwarding therewith guidelines to promote communal harmony.

2. The changing face of communal tension/riots and particularly the use of illegal lethal weapons by the rioters, has necessitated a reappraisal of the present system of dealing with Communal situations. For this purpose, my ministry convened a meeting of a few District Magistrates and Superintendents of police to gather first hand knowledge of the level of implementation of the guidelines. During the discussions, the contemporary scenario which emerged is as under:-

- (a) Most Internal security situations, today have an external angle to them. subversive elements infiltrating through our borders work on frustrated elements in minority communities, which results in acts of communal instead of accepting these incidents as acts of misguided individuals. This in turn, further heightens the tensions between the two communities.

- (b) Minority communities often have their own perceptions of injustice done to them by the Governmental agencies. Particularly the state police force.

- (c) There is a certain amount of growth of competitive communalism visible in the manner of celebration of religious festivals.

- (d) Despite the presence of Central enactments against misuse of places of worship and against changing their religious character, there are occasional attempts to misuse them for subversive purpose and attempts by one religious community to reclaim a place of worship belonging to another. In this background, it has become imperative for the administration to gather timely intelligence, interpret the developments and be in a position to react in time.

3. Some of the points raised by the participants as mentioned below need attention of state governments:-

- (a) Gathering of intelligence by uniformed services has its own limitations. therefore, DMs need to develop their independent sources of intelligence. such sources will have higher credibility. in this context, most participants felt that the DM should have a separate fund for this purpose.

(b) Their must be a periodic (more monthly than quarterly) meeting for review of the communal situation at the district level. However, for this , it is not necessary to add one more meeting to the already existing long list. States can decide whether it can be clubbed with the monthly crime rievew Meeting or any similar meeting. The point to be stressed is that apart from routine matters, the communal situation must be discussed in the light of intelligence reports with a view to take preventive action.

(c) Srong sentiments were voiced by most participants against the practice of routine transferes of DMs and SPs by most state govts. after a communal riot/tension. They felt that it amounts to declaring the officeres guilty before trial. Similarly, Whereever a judicial enquiry is commissioned to look into any incident or riot, Its proceedings be- come a personal harassment and that in all such cases, the state govt. should bear the expenses of the officeres involved in explaining their official conduct

in explaining their official conduct before the Commission.

4. Based on the past experience and the shotcomings noticed in the execution of contin- gency plans with communal situations. The guidelines for tackling such situation have been reappraised and a copy thereof is enclosed for urgent action. These guidelines are by no means exhaustive . Additional action points may be included based on the situation.
5. I shall be grateful, if I am also kept informed regularly of the operational effectiveness of these guidelines.

With Regards,

Yours Sincerely

Sd/-

(INDRAJIT GUPTA)

To all The Chief Ministers of states / UT Administration.

GUIDELINES TO PROMOTE COMMUNAL HARMONY

INTELLIGENCE

1. Preventing a communal riot is far more important and effective than containing a raging one. It is, therefore, essential for the administration to anticipate the developments and make advance preparations for preventing it.
2. Intelligence is the eyes and ears of administration. The organisational 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 should be thoroughly reviewed on a priority basis.
3. Gathering of Intelligence by uniformed services has its own limitations. Therefore, DMs need to develop their independent sources of intelligence.
4. Emphasis should be laid on the setting up of special intelligence units for trackling communal problems. Special training should be imparted to the personnel manning these units so as to ensure a proper, systematic and timely feed-back of the requisite information to the concerned authorities. The staff of this special branch should be fanned out among various thanas, Particularly in the sensitive pockets. This would plug the chances of breakdown of the mechanism of communication between village authorities and the police.
5. Matters arising out of inter-communal issues, religious processions etc., should get priority in the matter of collection of intelligence.
6. Data pertaining to sensitive areas should be carefully collected and changes in population and distribution of population in the various towns and other significant areas in the district should be carefully observed and the reasons for such migration should be ascertained and analysed.
7. This should be made an integral part of the assessment exercise which should be beneficial to the district authorities while making contingency plans especially when major festivals are round the corner. Organisations collecting intelligence/ information should keep a close watch on the activities of the organised communal groups with special reference of their propaganda and publications.
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 atleast a monthly review of intelligence at the district level by the District Magistrate, Superintendent of police and the Head of District Intelligence. Such review should be sent to the State Government.

**PERIODICAL REVIEW OF COMMUNAL SITUATION
AT DISTRICT LEVEL AND STATE LEVEL**

9. It is necessary to periodically review the communal situation at all levels in the state so that appropriate steps may be taken to promote peace and communal harmony. Administration should comprehensively review the communal situation on a monthly basis and send a report of the review to the Home Secretary of the state. Similarly, communal situation in the state as a whole should be reviewed by the Home Secretary on a quarterly basis and a report of such review should be sent to the Ministry of Home Affairs by the end of January, April, July and October every year.
10. The Working of the district communal harmony Committee / Zila Quami Ekta Samiti should be activated. Their working should be closely monitored by the district Magistrate. Deliberations of these meetings should be closely monitored by the District Magistrate. Deliberations of these meetings should be communicated at least once a month to the state Government. Similarly, the state level integration committees headed by the chief Minister should review the situation at least once a quarter and keep the Central Government informed. Every town identified as communally sensitive should have a peace committee consisting of prominent citizens of all communities, representatives of political parties, public representatives, office bearers of prominent associations/union.

Communal forces and antisocial elements should not be included in the committee. At the time of apprehension of communal tension, meetings of the peace committee should always be called to discuss all matters relating to the communal tension. Efforts should be made to enlist the support of the members of the committee for persuading the members of different communities to find an amicable settlement of the cause of tension and to defuse the situation.

11. Women are the most affected group in communal tensions or riots. They can be effective in helping to defuse the communal tension and to prevent riots. As such they should get fair representation in the membership of the peace Committees/ Integration Committee/Tripartite Committees.
12. Peace Committee shall also:-
- (a) Assist the Administration in identifying children rendered orphans or widows becoming helpless in communal riots /clashes for recommendation of financial relief by the National Foundation for Community Harmony.
- (b) Recommend to the District Administration names of those individuals who, belonging to one community, have come forward to protect lives and properties of members of another community. In case of a communal riot or clash. The District Administration may consider such recommendation for proposing these individuals for award of Kabir Puraskar by the Government of India.

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13. Industrial areas may be prone communal flareups. Tripartite committees comprising representatives of state government, employers and the labour should be set up. The composition of these committees should take into account the communal mix.
 14. The police, the local intelligence and the local bodies best know the elements, who have the capacity to create possible communal rifts, directly or indirectly. An update of these persons should be readily available in all police stations and the district Headquarters. Whenever a festival, religious procession etc., is about to occur, the District Administration should take timely advance action to immobilise these elements through preventive arrests.
 15. 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.
 16. Activities of communal organisations 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.
 17. Processions have been the single largest cause of communal conflagrations. A tendency has also developed among the communal organisations to organise processions on religious occasions as a part of competitive communalism. As far as possible, no new processions, as did not exist before 1.1.1990 should be allowed. Only traditional religious processions should be permitted in sensitive areas. Care must be taken that the conduct of processions is not left to any informal understanding or verbal promise of good behaviour by the organisers. These should be accompanied by adequately armed police "Bandobust" commensurate with the estimated strength of the participants. Only traditional slogans should be permitted and in the event that slogans offensive to other communities are shouted, the organisers of the procession should be proceeded against under relevant law. In any case, organisers should be asked to guarantee good behaviour, a breach of which should attract a collective fine, heavy enough to be deterrent. Action under relevant laws should also be taken against erring persons. If the procession of one religious community has to pass through a route to which any important places of worship belonging to another religious community is situated, an undertaking should be obtained from the organisers of the procession that nothing will be done by the processionists to offend the religious sanctity of such place of worship.
 18. A common code of conduct should be evolved in consultation with the leaders of different communities for the observance of their festivals. This code should be for every festival and festive occasion. The common code of conduct should be widely publicised so that everybody knows about it.

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19. Advance warning should be given that strict action will be taken against those who violate the norms of good behaviour while celebrating festivals.
 20. Areas may be demarcated and allotted to prominent persons, members of Peace/ Integration Committees and voluntary organizations of the area, who should ensure that the festivals are observed in an amicable atmosphere without causing any annoyance to any other persons.
 21. Mohalla Committees consisting of members of all religious communities should be constituted for the observance of festivals. This will greatly help in ensuring peace and observance of the festival with usual gaiety.
 22. Loud-speakers are a very potent instrument for exciting passions among the crowd or groups of persons. Police Act or similar local legislations should be effectively used while granting permission for the use of loud-speaker.
 23. Care should generally be taken not to permit use of loudspeakers between 11.00 pm and 6.00 am.
 24. Any construction of religious place should be made only with the prior approval of the District Authorities and at the earmarked place. Cases of construction of unauthorised religious places should be dealt with severely under existing laws. Negligence on the part of the District Administration in implementing this direction should be seriously viewed and the guilty dealt with.

STRINGENT IMPLEMENTATION OF ACTS RELATING TO RELIGIOUS PLACES

25. The Religious Institutions (Prevention of Misuse Act, 1988)

This Act has been enacted with a view to maintain sanctity of religious places and to prevent their misuse for political, criminal, subversive or communal purposes. It, inter-alia, casts responsibility on the manager to inform the police in the event of misuse of the places of worship. The Act also, inter-alia, prohibits storage of arms and ammunition inside any place of worship.

26. The Places of Worship (Special Provisions) Act, 1991

This Act provides that no person shall convert any place of worship of any religious denomination or any section thereof into a place of worship of a different section of the same religious denomination or of a different religious denomination or any section thereof. The Act also provides that the religious character of a place of worship existing on the 15th day of August, 1947 shall continue to be the same as existed on that day.

27. Both the above Acts provide for punishment of imprisonment as well as fine for violating

the provisions of the said Acts. There is need for strict enforcement of the penal provisions of these Acts and this will greatly help in maintenance of Communal harmony.

REMOVAL OF IRRITANTS, OBJECTIONABLE ACTS

28. Slaughtering of animals in public and near places of worship should be avoided.
29. Religious slogans should not be inscribed on the walls of Government buildings and there should be no religious places of workshop inside Government buildings.

PRESS

30. It is the responsibility of the Press to report incidents factually without imparting a communal color to them. It should not sensationalize the prevalent situation and should only publish the facts after checking their veracity. There should be a coordinated interaction between the Magistracy, the police and the publicity set-up at the District level for the proper use of the media to create public opinion against such incidents.
31. Reporters, editors, printers and publishers should be advised to discourage tendentious reporting. Action should be taken against writers and publishers of objectionable and inflammatory material aimed at inciting communal tension.

ADMINISTRATIVE MEASURES

32. Communally sensitive places should be identified in the riot-prone areas for making necessary administrative arrangements. Manpower requirements for these areas should be realistically assessed. It should be ensured that all vacancies are filled up and manned. Police Stations/Posts should be set up in all sensitive/trouble-prone areas. These should be provided with adequate personnel weaponry communication links, equipment including videographs, vehicles, etc. These administrative measures should be constantly reviewed.
33. Having identified communally sensitive places/pockets, it should be ensured that a Control Room at the District level is set up permanently, which should be adequately manned by competent personnel.
34. At the slightest indication of communal trouble the contingency plans should be put to use without the least hesitation.
35. As soon as a communal incident occurs, a report should be sent thereon to the Ministry of Home Affairs immediately which should be followed with a detailed report, mentioning, inter-alia, the grant of awards for good work or punishments for showing laxity to the district officers connected with the incidents.
36. In the case of serious communal disturbance special Public Prosecutors, preferably from outside the district concerned or in any event from outside the affected area should be appointed.
37. District level Screening Committees should be set up with District Magistrate as its

Chairman. These would review all arrests and detentions - both preventive and in the wake of communal riots-to ensure that the elements responsible for instigation and committing violence do not go scot free. These Committees should have representation of prominent and fair-minded citizens known for their integrity and communal impartiality.

MEDICAL RELIEF

38. It should be ensured that proper medical are units exist in all the sensitive places/ pockets, which can handle emergencies.
39. The police party dealing with riots should be accompanied by ambulance and first aid service.

LEGAL POSSESSION OF ARMS

40. It has been observed that illegal lethal weapons are used quite widely in communal riots. A campaign to detect and unearth such arms, raid places of manufacture and initiate action, should be launched by the District Authorities immediately. A special review of arms licences issued should be done and in the case of inadequate justification, licences should be cancelled.

THE ROLE OF POLICE

41. Police is the chief image-maker of the District Administration. Great care and attention should be paid towards providing proper leadership and suitable motivation to the police force. The emphasis should be on keeping their morale high.
42. There should be a review of the training programmes for the police forces with a view to inculcating in them the attitudes of secularism and communal harmony.
43. There is need for specialised training to the local police in gathering and sharing of intelligence.
44. It has been commonly observed that the presence of minority community members in the police force deployed in communally sensitive areas goes a long way in winning the confidence of the minority communities. This is of vital importance. The following steps which were recommended from time to time, should be taken earnestly:
 - a. Launching of Special Campaigns to recruit more members of minorities in the State Police Force.
 - b. Creation of composite battalions of armed police which should include members of all religious communities including SCs/STs for exclusive use in maintaining communal peace and amity in the sensitive areas.
 - c. Starting of special training/orientation programmes for State Police Force with a view to maintaining communal harmony.
45. The positioning and placement of the armed police should be done in such a manner

as to ensure their quick and easy movement to trouble spots. In case the armed police is deployed to assist the civil police, at no time should it remain leaderless. Steps should also be taken to ensure smooth functioning between the civil administration and the army.

46. The availability and capability of Home Guards should be fully made use of by the Police.

ESSENTIAL SERVICES MANAGEMENT

47. In many riot situations people suffer on account of delayed/Non-provision of essential supplies such as food, milk, water, electricity and medicines. by ensuring their timely provision, the District Administration would be removing a major irritant.

PUNITIVE ACTION

48. Laws relating to collective fines should be used without fear or favour, whenever the situation warrants.

PUNITIVE ACTION

48. Laws relating to collective fines should be used without fear or favour, whenever the situation warrants.
49. Crimes committed during riots should be registered, investigated and the criminals identified and prosecuted. If stringent judicial action is taken against a criminal and well publicised it would impose a high degree of constraint upon others from indulging in criminal activities.

SPECIAL COURTS

50. Special courts should be set up for the expeditious trial and disposal of communal riot cases. When a communal riot takes place and an Enquiry Committee/Commission is set up, it should be given a time-specific mandate for completion of its enquiry. the State Governments should give priority to providing all manner of logistic support required by the Committee/Commission to enable it to submit its report on time. Its recommendations should be expeditiously implemented, say within 3 months and the Central government should be kept informed.

PERSONNEL POLICY

51. In areas which are identified as communally sensitive and riot prone, police and administrative officials of proven integrity, efficiency, impartiality and non-partisan outlook should alone be posted. Good work in this regard should be rewarded and severe action taken against officials found to be instigating communal tension or taking part in communal violence.
52. The District Magistrate and the Superintendent of Police will be responsible for maintaining Communal Harmony in the District.

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53. 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 situation.
54. Due recognition needs to be given to the services rendered by the personnel in preventing and dealing with communal disturbances. A scheme of granting suitable awards in the form of promotions/commemoration certificate/cash awards should be considered. A similar system of award can be envisaged for the public also.

RELIEF AND REHABILITATION

55. A lot of resentment is generated on account of non-payment of timely relief/ex-gratia to the riot victims. A system of expeditious disbursement of the relief should therefore, be devised. Through the State Governments are competent to decide the quantum of ex-gratia, it would be desirable that all the State Governments pay ex-gratia at a uniform scale as suggested by the Central Government in the guidelines issued from time to time as, indicated below :

In the case of	(Rupees)
1. Death	100,000.00
2. Permanent incapacitation	50,000.00
3. Pension to the widow of the victim of riots belonging to low income group	500.00

DOCUMENTATION

56. The documentation of information, in its entirety, should be completed in the minimum period of time at the cessation of every communal riot.

RONE OF MINISTERS/OFFICE BEARERS OF POLITICAL PARTIES

57. Ministers and office bearers of Political Parties should exercise maximum restraint and self-discipline in making public utterances on any issue concerning the communal disturbances.
58. No Minister or an office bearer of any political party should participate in a 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.

NATIONAL HUMAN RIGHTS COMMISSION
SARDAR PATEL BHAVAN, NEW DELHI

Name of the complainant : Suo motu
Case No. : 1150/6/2001-2002
Date : 10 June 2002

CORAM

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

PROCEEDINGS

1. In paragraph 6 of its Proceedings of 31 March 2002, the Commission had observed that there had been no response until that date from the Government of Gujarat in respect of the Confidential Report on the visit of the team of the Commission to Gujarat between 19-22 March 2002. The Commission had noted that this was so despite repeated oral reminders by the Commission and assurances by the State Government that a response would soon be forthcoming.

2. In these circumstances, as recorded in paragraph 7(B) of its Proceedings of 1 May 2002, the Commission had stated:

"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."

3. On 31 May 2002, after the Commission had despatched its Proceedings of that date, inter alia to the Chief Secretary, Government of Gujarat, the Secretary-General of the Commission received by fax a letter dated 30 May 2002 from the Chief Secretary, Government of Gujarat to which was attached a "Reply to the Confidential Report of the National Human Rights Commission."

4. The Commission has carefully considered that reply. In accordance with paragraph 7(B) of its Proceedings of 31 May 2002 that reply is being made public, together with the Chief Secretary's letter dated 30 May 2002 (see Annexure I).

5. The Commission does not consider that there is any need, at this stage, to express its views on that reply since it does not add substantially to the earlier reports received from the Government of Gujarat, notably that dated 12 April 2002. The Commission, however, is deeply disturbed by recent press reports stating that the charge-sheets filed thus far in respect of the Gulbarga Society and Naroda Patia incidents lack credibility in as much as they are reported to depict the victims of violence as the provocateurs.

6. The Commission now awaits a reply from the Government of Gujarat to its Proceedings of 31 May 2002. Upon receiving that reply, which is due by 30 June 2002, the Commission will consider the nature of any further comments that it may wish to make in regard to the situation in Gujarat, including any views that it may need to express in respect of the reply that has been received in response to its Confidential Report.

(Justice J.S. Verma)
Chairperson

(Justice K. Ramaswamy)
Member

(Justice Sujata V. Manohar)
Member

(Virendra Dayal)
Member

Reply to the Confidential Report of The National Human Rights Commission.

It may be mentioned at the outset that the Confidential Report of the Commission is an account of the visit of the Commission to Gujarat and it contain a record of the discussions held with officers of the Government of Gujarat as well as representations made by members of the public, NGOs, inmates of relief camps etc. during the visit of the Commission to the relief camps and during discussions. The complaints, representations and views expressed by different persons to the Commission are mostly of very general nature and at places they pertain to specific incidents. As far as specific incidents are concerned, in most cases FIRs have been lodged or statements have been recorded during investigations and the correct factual position can be known only after the investigations are over. As far as general complaints, representations and opinion expressed are concerned, it should not be construed that anything contained in the Confidential Report of the Commission is admitted by the State Government unless so stated specifically in this report.

With the above remarks, point by point comments of the State Government are given below:

I. The details of preventive measures taken and personnel deployed have already been enumerated in the comprehensive report (Annexure A32 of Annexure-A Law and Order Measures)

The community-wise break up of 217 arrests made on 27.2.02 is 137 Hindus and 80 Muslims.

The presentation highlighted only major incidents. A number of less major incidents have also been reported and FIRs have been registered. As on 20th March 2751 FIRs have been registered.

Details of police firing date-wise and community-wise break up casualties up to 20th March are provided in Appendix.

It is not possible to give the final details of spread of communal violence, though broad details have been given in the comprehensive report on the course of disturbances on pages 7-53 which give a clear picture as to how some remote parts of the State were also affected by the riots. Details of the spread of communal violence in the rural areas, particularly the tribal areas have been highlighted in the comprehensive report

122 Mosques (Masjids) and 238 Dargahs have been subject to attacks and suffered partial damage in most of the cases. Seventeen temples and three churches also suffered damage as on 20th March 2002.

Community-wise break up of arrests as on 20th March in respect of registered crimes is 3911 Hindus 1592 Muslims. In respect of preventive arrests, it is 2189 Hindus and 646 Muslims. Arrests continue to be made as and when evidence is forthcoming against them in respect of their complicity in the offence. More than 4000 FIRs have been registered so far.

The number of policemen killed and injured is 4 killed and 503 injured which included officers, men and Home Guard personnel. (p 5)

II. Application of POTO. (P 5)

The details regarding application of POTO have been enumerated in the comprehensive report Vol. 1 Page 65.

III. The Hon'ble Chief Minister had personally intervened and impressed on the VHP to withdraw their proposed programme of *Asthi Kalash Yatra* on 27th March which was not taken out.(p 5)

IV. There are no comments on the observation of the Commissioner of Police Shri P.C. Pande made before the Commission. (p 6)

V. Major violence was contained in the first few days. However sporadic and isolated incidents have been continuing. The details regarding the incidents involving the Hon'ble Judges are as follows:

Honourable Mr. Justice M.H. Kadri is a sitting Judge of the Gujarat High Court. As per the report of CP Ahmedabad, the Hon'ble Judge was residing in a Government Bungalow in Law Garden area under Ellis bridge Police Station of Ahmedabad City. Prior to 28-02-2002, there was already half a section of police guard posted there for the security of the Hon'ble Judge at his residence. However, on 28th February, after assessing the situation, the Hon'ble Judge on his own shifted to Judges Colony in Vastrapur where official designated bungalows for the Judges exist. However, with effect from 09-03-2002, a further police guard was deployed at his house since he desired to shift back to his original residence. Hence, it is not true that Police had not provided any protection.

Justice A.N. Divecha, retired Judge of the Gujarat High Court, was living in No.1, Kazmi Apartment, Paldi, Ahmedabad city. On 28-2-2002 morning, an unknown mob had thrown stones on the said building, which has several flats. Thereafter, Justice Divecha had shifted to

a friend's house with his family. Subsequently, a part of his flat had been set on fire by a mob. An offence was registered vide Ellisbridge P.S. C.R. No. 121/2002 u/s 143, 147, 148, 149, 435, 436, 427 IPC. Subsequently, the statement of Justice Shri Divecha was also been recorded. 7 accused persons were arrested during investigation. Further investigation is in progress. As the city of Ahmedabad was engulfed by the disturbances, it was not possible for the City Police to arrange for protection in each and every residential society (p 6).

VI. It is a fact that these riots are different from the previous ones in terms of intensity of violence and degree of brutality. Areas affected have never in the past witnessed communal group clashes. Huge marauding mobs descended on smaller and unsuspecting groups. (p 7)

(2) It is a fact that the VHP had given a call for bandh. It is incorrect to blame the police for improper security measures in several areas known for their communal sensitivity. In fact in most places especially in Ahmedabad, traditional communal sensitive pockets were adequately guarded. Major incidents of violence like at Champura and Naroda took place in areas which were not known for communal violence and had no history of communal trouble. However the details of alert and precautionary measures taken and deployment of security forces have been enumerated in the Chapter on alert and precautionary measures and deployment of Army, CPFC/State Police on P.60-78 of the comprehensive report.(p 7)

It is not correct to say that the police acted as spectators. The very fact that the police fired more than 1000 rounds in Ahmedabad City itself on the first day i.e., 28th February is a testimony to the effective force used by the police. As violence erupted in many parts simultaneously, the available police force was not adequate to meet the demands of the situation. (p 7)

(3) Accusation of apathy and connivance will be inquired into by the Commission of Inquiry and any dereliction of duty will be dealt with in accordance with law.(p 7)

4) The alleged involvement of Ministers and MLAs in the riots would also be examined by the Commission of Inquiry on the basis representations, if any, made before the Commission.. It is not true that the Home Minister (Minister of State for Home) was monitoring the progress of attacks on Muslim localities from the room of the Home Secretary. (p 8)

It is also not true that Shri I.K. Jadeja, Urban Development Minister was controlling things at Police Bhavan, Gandhingar. As a matter of fact, there is nothing wrong if a Minister

of the State Government visits the DGP's office or the office of the Commissioner of Police for ascertaining facts as well as to ensure that timely and effective action are being taken by the administration.

5) The details regarding the attack on the former MP Shri Ehsan Jaffrey have been enumerated in the comprehensive report on P.56 & 57. (p 8)

6) The incidents involving Police Inspector Shri Mysorewala and Police Sub Inspector Shri Modi have been taken note of and are being inquired into. An offence was registered at Naroda Police Station CR No.193/2002 in which Police Inspector Shri Mysorewala has been named as an accused and the offence is being investigated. Incidentally Police Inspector Shri Mysorewala has also been transferred out of the police station. Police Sub Inspector Shri Modi has also been named in an FIR registered vide Gomtipur police station Crime register No 88/02 u/s 143,147,149, 436,188 etc., of the IPC.

7) It is not a fact that the bulk of arrests are from the minority community. In fact as on 20th March 3911 Hindus and 1592 Muslims were arrested in crime and 2189 Hindus and 646 Muslims were arrested in preventive sections of law

8) In the first few days innumerable distress calls were received. Police attended to as many calls as possible prioritizing the call on the basis of the intensity and magnitude of the violence. There were more than 1500 distress calls on the first day itself in Ahmedabad. Fire power was used to the maximum. In Ahmedabad city itself more than 1000 rounds were fired on the first day. Seventeen people were killed in police firing on the first day itself.

9) In respect of the role of Vishwa Hindu Parishad, Bajarang Dal & Bharatiya Janata Party activists, the same will be covered in the investigation of the various offences registered and also in the inquiry by the Commission of Inquiry.

10) It is a fact that major violence was contained in the first few days. It is not correct to allege that VHP elements supported by the police were given to loot and plunder.

10B) The deployment of the Army within 16 hours of their requisition has been elaborated in detail in the comprehensive report on P. 68.

11) The details of the incidents involving the High Court Judges have been elaborated in Para 5 above.

12) It is not true that any advice was given to Police Officers of the minority community by their superiors to remain confined to their house.

In respect of the incident involving IGP Shri Saiyed the details are as follows:

Shri A I Saiyed is an officer of the rank of Special IGP and serving as Director of Gujarat Police Academy at Karai, Gandhinagar. On 28-02-2002 (on the day of Gujarat Bandh), people in very large numbers turned up on the roads all over the city. Shri Saiyed, while coming from his house, was stopped by a crowd which wanted to get a 'particular road' opened. He explained the mob that he was not the officer in charge of Ahmedabad City. At this time, someone from the crowd saw his name plate and started shouting and giving 'cat calls'. The officer rather than entering into further arguments with this mob decided to drive away. No formal complaint was lodged in this matter.

It is an undisputable fact that the violence in the State was a direct consequence of the Godhra massacre. But for Godhra incident violence would not have taken place in the State. There was no question of any tacit support nor any acts/omission of the State Government. (p 9)

13) It is a fact that riots this time had affected some rural areas also. However it may be mentioned that only a small percentage of villages in the State were affected.

In respect of the alleged sustained drive launched by VHP/BD during the last 8-9 years, to mobilise the tribal population to revolt against the Bohra Muslims, no such drive has come to the notice of the Government.

14) It is a fact that mosques and dargahs were damaged during the riots. It is also a fact that the Dargah of Sufi Poet Wali Gujarati was raised to the ground. However, the Government only removed another structure built by the miscreants who had erected it after demolishing the dargah.

15) As mentioned earlier, it is a fact that Masjids and Dargahs have suffered damage during the riots. Historical monuments will be provided adequate protection.

16) The Godhra massacre is being thoroughly investigated. It is pertinent to mention here that Charge Sheet has been filed in the Godhra Massacre case on 22 May 2002 against all 57 people involved. Forty-four accused are absconding in this case. Efforts are on to arrest the remaining accused and action under various provisions of Cr.P.C. for declaring them absconders and attaching their property is also under way.

17) The role and responsibility of all people in the incident will be under through scrutiny

during the investigation of the incident and also by the Commission of Inquiry.

18) As of today more than 4000 FIRs have been registered for the various offences in connection with the riots. All necessary evidence will be collected and the culprits brought to book. Regarding demand for CBI enquiry into the major incidents, the views of the State Government have been enumerated in the response to the recommendations of the National Human Rights Commission. It is pertinent to mention that charge sheet has already been filed in the Godhra incident and charge sheets will also be filed shortly (within the time limit of 90 days) in the other major incidents also. (P.13 to 15)

19) The examinations have been conducted peacefully in both the phases with 98% attendance in the first phase and 95% in the second phase. Adequate arrangements were made for the students both at the examination centre and during travel to the examination center itself. The Government has always been committed to holding the examination and had also assured the students who have missed out on the examination that reexamination would be conducted. The decision of holding the examination was taken keeping the students welfare in mind.

Delegation of media persons and activists

The NHRC has acknowledged and appreciated the views of the Government on the media. There have been reports of irresponsible coverage of the riots by a section of the media, to such an extent those media reports especially the electronic media was indirectly contributing to inflaming the communal passions. It sometimes becomes necessary for the state to intervene in the over all interest of law and order.

There is an inherent danger to media personnel covering such incidents. They might become inadvertent victims of communal violence. The killing of Daniel Pearl in Pakistan is a perfect example.

VIII. Sham Alam Relief Camp

The incident of Naroda Patia is under investigation. An offence was registered vide C.R. No 100/2002. 26 accused have been arrested so far in this offence. None of the accused have been enlarged on bail. The case will be charge sheeted in the next couple of days. All necessary evidence is being collected to bring the culprits to book. The role of Police Inspector Shri Mysorewala is under investigation as he has been named in a FIR. He has since been transferred out of the police station.

The police is also recording statements in the camps and collecting evidence in the course

of the investigation. Victims are being encouraged to file FIRs and also give evidence before the police to enable them to initiate legal proceedings. Nearly 283 FIRs have been registered in the relief camps itself. The incident involving Kausar Begum who was allegedly abused and killed is being inquired into. Action will be taken against the guilty. Section 376 of the IPC is being incorporated wherever instances of rape are being reported.

Regarding statements made by the victims, they are all being inquired into by the Ahmedabad city police. FIRs naming MLA Mayaben Kodnani and Dr. Jaydeep Patel (Not Jaydev Patel) have already been registered vide C.R. No 100/2002 and 197/2002 of Naroda Police Station and they are being inquired into.

In respect of these two paragraphs the crime investigation and the commission of inquiry would examine them in the course of the investigation and inquiry. (paras 1&2 of P 13)

No comments on this para.(para 3 of P 13)

Regarding visit of the commission to the Saryudas temple, action if any will be initiated for dereliction of duty on the basis of written evidence presented before the investigation officer.

VIII. Meeting of the Chief Minister with the Chairperson.

No comments.

1X. Delegation of traders.

No comments.

X. Some Karsevaks met the team.

Various incidents narrated and the responsibility of the accused persons will be covered in the criminal investigation of the Godhra train incident.

XI. Vadodara

It is a fact for the first time tribal areas were severely affected in these riots. The role of the Bohra Muslims in exploiting the tribes which prompted their attack is an issue which needs to be studied independently by a professional agency. However it is also hoped that this aspect will be covered in the Commission of inquiry.

Regarding the Islamic study centre at Vadodara it has been clarified by C.P. Vadodara that the Islamic study centre was not burnt down but an attempt was made to damage it and

set it on fire but was thwarted by the timely arrival of the police. In fact police saved 11 people from being lynched by the mob.

It is a fact that the Best bakery in Vadodara was set on fire by some miscreants on the intervening night of 1st and 2nd March 2002. In this incident 9 Muslims and three Hindus were burnt alive. An offence vide C.R, No 82/02 u/s 143, 147, 148, 302, 307 etc., of the IPC has been registered. Since the whole population in that area had fled after the incident it was not possible to arrest the accused immediately. Until now 19 people have been arrested and ten more people's names have figured in the investigation. Attempts are being made to arrest these people also. Further investigation is in progress and charge sheet will be filed shortly.

The details of arrests in Vadodara city as on 20 March 2002 are as follows. A total of 1177 people were arrested in substantive offences related to these riots. 1275 people were arrested for breach of curfew orders, 102 people were arrested for carrying weapons in violation of the prohibitory orders, 736 prospective trouble makers were arrested u/s 151 of the Cr.P.C. 4 persons were arrested under the arms act and 2 under the explosives act.

XII. Interaction with prominent citizens

Godhra has traditional links with Pakistan as many people from this place had migrated to Pakistan during partition and hence regular contacts are maintained. However the role of visitors from Pakistan in the recent riots needs to be examined.

The role of the media has already been critically reviewed by the commission in its recommendations.

There is no political agenda of the ruling party to drive out the Muslims by mobilising the grievances of the tribals.

It is a fact that traditional non sensitive spots and new areas were engulfed in the riots, but the riots in these areas were contained and their spread prevented.

There was no partisan attitude of the administration before or after the 15th of March. In fact after 15th March the overall situation was well under control except for isolated incidents.

With regard to the incident at Machhepeeth the facts are as follows. On 15-3-2002 a call was given for Ram Dhun at 14.15 hrs. The day also happened to be a Friday. Both the community members were persuaded to keep their religious activities at a low key in view of the surcharged atmosphere. However despite the assurance given by the leaders no one stuck to the promise and people were found moving around on the streets freely. There were confronta-

tions on the streets between members of both the communities. However on Raopura road after Ramdhun at Ahamadabadi pole when Hindus were passing by Machipeeth, stone throwing took place between members of both the communities. Police intervened and used force to disperse the crowds. Acid bulbs, petrol bombs were freely used and there was report of private firing also. Police combed the area immediately and arrested 13 people. They were all produced before the magistrate and none of them were found under age. The youngest accused was 18 years of age. While 13 people were arrested on the spot, ten more were arrested during combing operation. None of the accused arrested complained of beating by the police when they were produced before the magistrate. The army, which was nearby, had reached the spot earlier than the RAF which had to be sent from the control room. By the time the RAF reached the spot the situation was brought under control.

XII-A Delegation of voluntary agencies and various citizens Committee.

- 1) No comments
- 2) No comments. However it is pertinent to mention that many instances have been reported where the police and the local administration took considerable pains to rescue members of the minority community from the rioters.
- 3) The details regarding the incident at Machipeeth have been elaborated above
- 4) As stone throwing was taking place in the Mcheepeth area Police Inspector N.K.Rathod along with ACP 'C' Dn. and Police Inspector Kareli bag went to some roof tops and identified the building from where stone throwing was taking place and arrested some people. No action was taken against the stage singer and the advocate as they were not found involved in the offence.
- 5) Strict instructions have been issued by the DGP vide his Fax message dated 16-3-2002 to register FIRs freely. Names of the accused person will be recorded wherever mentioned In addition police had filed FIRs on behalf of the state whenever the victims were not available or forthcoming to register complaints. All victims have been given copies of the FIR along with copies of the panchnama to enable them to make necessary claims. Nearly 230 Hindus were arrested in offences of dacoities and robberies after searches were conducted.
- 6) Action will be taken against all concerned wherever evidence is forthcoming.
- 7) No comments
- 8) The role of the media is already under the critical review from many quarters.

9) In the case of the incident of Shri Bandukwala after the incident of the burning of his car a picket of two armed policemen have been posted at his residence which is still continuing.

10) The role of the electronic media has been critically examined. In Vadodra four persons belonging to the video channel operators group were proceeded against legally for inflaming communal passions by depicting communally sensitive scenes.

XIII. GODHRA

Critical evaluation of the various issues concerning the background of the attack on Sabarmati express are being examined both in the investigation of the offence registered and also by the Commission of Inquiry and hence no comments are being offered.

The immediate proactive response of the District administration has already been enumerated in the comprehensive report on P 3-6 and also in the presentation made before the Commission

The detailed deployment of the army in Godhra town has been elaborated in the comprehensive report on p 68-78 under the heading deployment of the army as also at Annexure A16(1) in the volume Annexure A.

No comments on the various statistical inputs provided by the D.M.

Regarding investigation of the Godhra train incident, it is a fact that Two FIRs vide C.R. No 9/ 2002 & 10/2002 have been registered. Both the cases are being investigated by Shri.K.C.Bava Dy.S.P. Western Railway, Ahamadabad under the direct supervision of Shri. Rakesh Asthana D.I.G C.I.D. It may be mentioned that Shri Rakesh Asthana has recently returned to the state after serving for ten years in the CBI. It may also be mentioned that the GRP is under the direct control of Addl.DGP C.I.D. Crime and Railways.As mentioned above the case No 9/2002 has been charge sheeted on 22nd May 2002.

XIV Visit to Relief Camp in Godhra

In respect of the complaint of Bilkis of Mora village , an offence has been registered vide Limkheda Police Station C.R. No 59/2002 u/s 143,147,148,149 376, 302 etc., of the IPC. The offence took place in Panivala village on 3.3.2002 at 11.00hrs. In this case when some Muslims were migrating for safety they were attacked by a mob of 500-600 people. Some member of the mob also allegedly raped some women. Investigation of this offence is in progress.

Bilkishben of Mora village had initially given a complaint at Limkheda Police station on 4.3.2002

to the effect that when she along-with other women and children had migrated from Panivela village on 3.3.2002 morning, enroute in the jungle area, they were attacked by a mob of about 500 people. Bilkishben had also mentioned that 3 Muslim- women viz. Mumtazben, Madinaben and Hamidaben were raped by the accused, who also killed the women and burnt them. Bilkishben, however, did not complain about herself also being raped. On her aforesaid complaint, F.I.R. was registered vide Limkheda P.Stn. I. CR No. 59/2002 u/s. 302, 376, 147, 148, 149, I.P.C. on 4.3.2002.

Subsequently, Bilkishben was shifted to Godhra Relief camp. Subsequently on 7.3.2002, she gave her complaint at Godhra Town P. Stn that she was raped by known accused of her village Randhikpur on 3.3.2002. It was registerede vide Godhra Town P.Stn C.R. No. 0/2002 u/s. 376, 114 I.P.C. and transferred to Limkheda Police station.).

XV. Delegations

No comments on the representations of the various delegations in Godhra.

Date	Hindu	Muslim	Total
27/02/2002	0	2	2
28/02/2002	10	7	17
01/03/2002	24	27	51
02/03/2002	12	4	16
03/03/2002	10	0	10
04/03/2002	4	0	4
05/03/2002	1	0	1
06/03/2002	0	0	0
07/03/2002	1	0	1
08/03/2002	0	0	0
09/03/2002	0	0	0
10/03/2002	2	0	2
11/03/2002	0	0	0
12/03/2002	0	0	0
13/03/2002	0	0	0
14/03/2002	0	0	0
15/03/2002	0	0	0
16/03/2002	0	2	2
17/03/2002	1	1	2
18/03/2002	1	0	1
19/03/2002	0	6	6
20/03/2002	0	5	5
Total	66	54	120

Government of Gujarat

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G. SUBBA RAO IAS
CHIEF SECRETARY

May 30, 2002

Dear Shri Sen,

Please refer to your D.O. letters No.1150/6/2001-2002 dated 1st April, 2002 and 1st May 2002 asking the State Government to send its reply/comments on the contents of the Confidential Report of the NHRC team.

As assured, we send herewith reply of Government of Gujarat in response to the Confidential Report of NHRC. In the said reply, a sincere effort is made to deal with the alleged omissions referred to by various groups of voluntary agencies, NGOs, human rights activists, some prominent citizens, media persons, etc. during the course of the visit of the team on 20th March to 23rd March and which are set out in the said Confidential Report.

With due deference, no attempt is made in the present reply to question the veracity of the said complaints, representations, opinions, etc., on the basis of which the alleged omissions have been attributed to the State Government. Instead of this, the Government has dealt with reported facts and actions taken in that behalf, without admitting the contents of the said general complaints, representations, opinions, etc. If the Hon'ble Commission so desires, the State Government is ready and prepared to bring on record the correct facts in respect of each of the incidents referred to in the Confidential Report based on the complaints, representations and opinions of various people. However, the said task is very huge and time consuming.

The Government requests to take into consideration the present reply to the Confidential Report in the light of what has already stated by the Government in its response to the proceedings dated 1-4-2002 of the Hon'ble Commission containing the details of the inquiry proceedings as well as recommendations of the Hon'ble Commission. At this stage, it may not be out of place to mention that most of the recommendations of the Hon'ble Commission have already been pressed in service.

With regards,

Yours sincerely,
(G. Subba Rao)

Shri P.C. Sen, IAS,
Secretary General,
National Human Rights Commission,
(Law Division) Sardar Patel Bhavan,
Sansad Marg,
New Delhi-11001

**NATIONAL HUMAN RIGHTS COMMISSION
SARDAR PATEL BHAWAN, NEW DELHI**

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

CORAM

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

PROCEEDINGS

In paragraph 66 of its Proceedings of 31 May 2002 in respect of the situation in Gujarat, the Commission had indicated that it intended to continue to monitor the situation with care and it called 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 those Proceedings, including the Confidential Report of 1 April 2002 transmitted to it earlier.

Subsequently, in paragraph 3 of its Proceedings of 10 June 2002, the Commission noted:

“On 31 May, after the Commission had despatched its Proceedings of that date, *inter alia* to the Chief Secretary, Government of Gujarat, the Secretary-General of the Commission received by fax a letter dated 30 May 2002 from the Chief Secretary, Government of Gujarat to which was attached a reply to the Confidential Report of the National Human Rights Commission.”

That reply was made public by the Commission on 12 June 2002, together with the Chief Secretary's letter dated 30 May 2002.

On 30 June 2002, the Commission received by fax a reply of that date from the Government of Gujarat to the Commission's Proceedings of 31 May 2002. That reply will be carefully studied and the Commission will comment upon it, as needed, in the period ahead.

On 1 July 2002, the Commission also received a response of that date from the Ministry of

Home Affairs, Government of India to its Proceedings of 31 May 2002 and the recommendations made therein, "so far as it concerns the Central Government" (see Annexure I). The Commission has taken note of that response.

In the meantime, however, the Commission has learnt both from its Special Rapporteur in Gujarat, Shri P.G.J. Nampoothiri, and from numerous media reports, that there are imminent plans to hold a series of Gaurav Yatras all-over Gujarat from 4 July 2002 and that Jagannath Rath Yatras are scheduled to be held on 12 July 2002 in over 70 locations of the State.

The reports indicate that there is a widespread apprehension both within sections of the Administration and among members of the public that this could re-ignite communal violence in the State. Of particular concern is the situation in Ahmedabad and Bhavnagar which, in the view of Shri Nampoothiri, Special Rapporteur of the Commission, and a former Director General of Police of Gujarat, have "a distinct potential for disturbing communal peace." Shri Nampoothiri has recalled that large-scale rioting occurred in Ahmedabad in 1985 and 1992 at the time of the Jagannath Rath Yatra and that such violence had also occurred twice in Bhavnagar. Indeed, in 1985 in Ahmedabad, despite the police having persuaded the organizers to cancel the event in view of the on-going disturbances in the State, on the appointed day, a full procession was held, defying the police ban. Shri Nampoothiri adds that "though the army had been deployed in the city, the procession passed through sensitive areas resulting in large-scale rioting."

Given this unfortunate history, of which the authorities in the Centre and State are fully aware, the Commission urges all concerned – including non-State actors in Gujarat – to behave in such a way that the peace is not disturbed and innocent residents of the State are not exposed, yet again, to violence or the threat of violence. Apprehensions have also been expressed that the Gaurav Yatras being planned might be countered by rival rallies and that, as a result, the situation could become volatile for this reason as well. The Commission trusts that this danger, too, will be avoided and contained by the Government and others concerned. The Commission recalls that, when its team visited Gujarat between 19-22 March 2002, an appeal was made by its Chairperson that the 'Asthi-kalash Yatra' planned from 27 March 2002, in the wake of the Godhra tragedy, be not proceeded with. At that time the Chief Minister had personally intervened to have that programme withdrawn. The Commission therefore expects that all due care will be taken by the State Government in the coming days - both at the political and at the administrative levels - to prevent situations arising that have the potential to endanger lives and property and that can lead to the violation of human rights.

The Commission would like to recall, in this connection, certain positions that it took in its Proceedings of 1 April 2002, when it held, inter alia, that:

“.... it is the primary responsibility of the State to protect the right to life, liberty, equality and dignity of all 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.”

The Commission then added that:

“.... 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.”

10. The Commission would, further, like to draw attention to its Proceedings of 31 May 2002, in which it underlined the unambiguous duty of the police and the magistracy to fulfill their statutory responsibilities under the laws of the land and in accordance with the circulars and guidelines already issued by the Central Government on matters relating to the promotion of communal harmony and the maintenance of law and order. As those responsibilities and the relevant statutory provisions, circulars and guidelines are detailed fully in the Commission's Proceedings of 31 May 2002, they are not being repeated here. Suffice it to say, however, that those laws and directives clearly lay down the manner in which the police and magistracy are expected to function and that any failure to discharge their responsibilities in accordance with those statutory provisions, circulars and guidelines would render the delinquent public servants personally liable and accountable for their conduct.

11. It is opportune here to recall the rulings of the High Court of Madras in two cases having to do with the duty of a magistrate when public peace is threatened, inter alia, by the taking out of processions in public streets. In Sundram Chetti and Others vs The Queen (1883 ILR 6 Mad. 203 (F.B.)), it was held:

“ The first duty of the Government is the preservation of life and property, and, to secure this end, power is conferred on its officer to interfere with even the ordinary rights of members of the community. In this view, it matters not whether the exercise of the rights of procession is of ancient usage or a novelty; the Government is not bound to deprive some members of the community of the services of the force that is found necessary for the protection of their lives and property to enable others to exercise a right which not only is not indispensable to life or to the security of property, but, in the case assumed, creates an excitement which endangers both. Where rights are threatened, the persons entitled to them should receive the fullest protection the law affords them and circumstances admit of. It needs no argument to prove that the authority of the Magistrate should be exerted in the defence of rights rather than in their suspension; in the repression of illegal rather than in interference with lawful acts. If the Magistrate is satisfied that the exercise of a right is likely to create a riot, he can hardly be ignorant of the persons from whom disturbance is to be apprehended, and it is his duty to take from them security to keep the peace”

In similar vein, in Muthialu Chetti vs. Bapun Saib (1880 ILR 2 Mad. 142) the High Court of Madras held:

“For the preservation of the public peace he (the Magistrate) has a special authority – an authority limited to certain occasionsIf he apprehends that the lawful exercise of a right may lead to civil tumult, and he doubts whether he has available a sufficient force to suppress such tumult, or to render it innocuous, regard for the public welfare is allowed to override temporarily the private right, and the Magistrate is authorised to interdict its exercise.”

12. It is worth emphasizing, in this connection, that these two rulings of the High Court of Madras were quoted with approval by the Supreme Court in the Ayodhya Judgement (M. Ismail Faruqui vs. Union of India, AIR 1995 S.C.605) when it was observed that, even prior to the guarantee of freedom of religion in the Constitution of India, it had been held that all religions were to be treated equally, with the State maintaining neutrality between them having regard to the public welfare. It follows, then, that there is even greater need now, in the light of the Constitutional guarantees that exist, for the State and its agents to act in accordance with that principle.

13. The Commission has had occasion to stress that it is essential to heal the wounds and to look to a future of peace and harmony in Gujarat. The Commission has, however, added that the pursuit of these high objectives must be based on justice and the upholding of the Constitution and the laws of the land.

14. It therefore remains fundamentally important, in such circumstances, that those who are responsible for the promotion of communal harmony and the maintenance of law and order – whether in the political or administrative leadership – should discharge their duties in the present and future in accordance with that Constitution and the relevant statutory provisions, or be answerable for such acts of omission or commission that result in the violation of the law and the rights to life, liberty, equality and dignity of their fellow human beings.

(Justice J.S. Verma)
Chairperson

(Justice K. Ramaswamy)
Member

(Justice Sujata V. Manohar)
Member

(Virendra Dayal)
Member

Surendra Kumar
Joint Secretary (HR)



भारत सरकार
मानव अधिकार आयोग
नयाँ ब्लाक, नई दिल्ली
MINISTRY OF LAW AND JUSTICE
GOVT. OF INDIA
NEW DELHI

D. O. No. 15011/16/2002-HR

dated 17 July, 2002

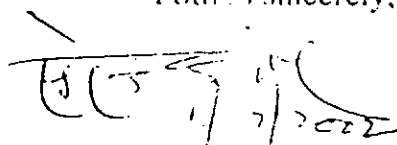
Dear Sir,

Please refer to your D.O. letter No. 1150/6/2001-2002 dated 31st May, 2002 addressed to the Home Secretary enclosing therein a copy of the proceedings dated 31st May, 2002 of the National Human Rights Commission relating to the situation in Gujarat.

2. I am enclosing herewith the response of the Central Government to the proceedings of the Commission dated 31st May, 2002 and the recommendations made therein, so far as it concerns the Central Government.

With regards,

Yours sincerely,


(SURENDRA KUMAR)

Shri P. C. Sen,
Secretary General,
National Human Rights Commission,
Sardar Patel Bhawan,
New Delhi.



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