Submissions to the Election Commission on the Elections in Gujarat

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I. ON THE PRECIPITATION OF THE CRISIS

(A) The Crisis

1.1 Although it is not directly within the ambit of the Election Commission to inquire into the political circumstances by which the present crisis was perpetuated by the Chief Minister and Governor of Gujarat, those antecedent circumstances need to be mentioned in brief to contexualise both the 'crisis' and the possible solution.

1.2 The present crisis arose because the Gujarat Assembly last met in April 2002. Article 174 of the Constitution prescribes a minimum frequency for a 'live' Assembly to ensure that Assemblies are summoned, at least, twice a year.

1.3 Since February-March 2002 Gujarat faces a very severe crisis as a consequence of which the very secular and rule-of-law foundations of the Constitution have been threatened. This is self-evident from the large number of reports available, including those of NHRC, order dated 1.4.2002, Case No. 1150/6/2001-2002, and order dated 31.5.2002, Case No. 1150/6/2001-2002, and also from various reports of 2002 like:
(a) 'Genocide Gujarat 2002', March-April 2002 issue of Communalism Combat;

(b)'Gujarat Carnage 2002' prepared by an independent fact- finding mission led by Dr. Kamal Mitra Chenoy;
(c) Report by Amnesty International titled 'A memorandum to the Government of Gujarat on its duties in the aftermath of the violence';
(d) A report on women's perspectives on the violence in Gujarat by PUCL Vadodara and Shanti Abhiyaan, 'Genocide in Rural Gujarat: Experience of Dahod District', prepared by Forum against Oppression of Women and Aawaaz e-Niswaan;
(e) A comprehensive report dealing with atrocities on women titled 'Survivors Speak' by a women's panel comprising of Syeda Hameed, Ruth Manorama, Malini Ghose, Sheba George, Farah Naqvi and Mani Thekachara;
(f) Report for the Fraternity and Reconciliation Forum titled 'Gujarat four months down the road' by Muchkund Debey and Syeda Hameed;
(g) Report by Editors Guild Fact-Finding Mission, 'Rights and Wrongs' by Aakar Patel, Dileep Padgaonkar and B.G. Verghese;
(h) Report on the impact of the Gujarat pogrom on children and young titled 'The Next Generation: In the wake of the Genocide' by an independent team of citizens comprising Kavita Punjabi, Krisha Bandopadhyay and Bolan Gangopadhyay;
(i) 'At the Receiving End' which focusses on the experiences of women in Vadodara and is prepared by the PUCL Vadodara and Shanti Abhiyan;
(j) Report by a Sahmat fact-finding team titled 'Ethnic Cleansing in Ahmedabad. A Preliminary Report';
(k) 'We have no orders to save you', a report on state participation and complicity in the communal violence in Gujarat prepared by the human rights watch team;
(l) (l) 'State Sponsored Carnage in Gujarat', a report by AIDWA, March 2002;
(m) 'Report of the Committee constituted by the National Commission for Women to Assess the Status and Situation of Women and Girl Children in Gujarat in the wake of the Communal Disturbance';
(m) 'Maaro! Kaapo! Baalo! State, Society and Communalism in Gujarat', a report by PUDR, Delhi.

(B) Dissolution contrary to, and subversive of constitutional principles

1.4 When the crisis started, the Assembly was summoned in April 2002. Consistent with the principle of Cabinet responsibility whereby the Council of Ministers is responsible to the legislature (article 164(2)), it was the duty of Mr. Modi to continually be collectively responsible to the Assembly. There is nothing in the Constitution about fixing limits to the length of an Assembly in point of time. No less, there is nothing in article 174 which states that an Assembly cannot be called before 6 months.

From these three factors flow:
(i) The principle of accountability to the legislature which required that the Gujarat Assembly remain in session or be recalled.

(ii) The principle of democracy which required that in response to the continuing crisis, it was necessary to call the Assembly; Mr. Modi was obliged to do so to hear democratic voices.
(iii) The principle of continuing accountability which required that the Assembly be kept alive for the longest period possible. Dissolution-as we shall see-is not a pre-condition for holding elections.

1.5 In not adhering to these principles, Mr. Modi violated the very basis of democratic accountability on which the political democracy of the Constitution is based.
In doing so, he precipitated a crisis.

(C) Governor's agreeing to dissolution wrong

1.6 There is no doubt that the Governor has the power to dissolve a legislature. But dissolution is the exception not the norm.
Thus, valid reasons must exist for granting a dissolution.

1.7 Normally an old legislature can co-exist whilst a new legislature is being elected. Thus, in my article in The Hindu in 1989, I recounted the manner in which Lok Sabha elections were held.
"The elections to the second Lok Sabha were held in March 1957 even though the first Lok Sabha was dissolved on April 14, 1957. Elections to the third Lok Sabha were held in February 1962 but the previous House was dissolved on March 31, 1962. Again, while elections to the fourth Lok Sabha were held on February 15 to 21, 1967, Parliament was dissolved on March 3, 1967. These were the only elections following a full completion of term by the Lok Sabha. The fourth Lok Sabha was prematurely dissolved on December 27, 1970, Elections followed in March 1971 with the Lok Sabha convening on March 15, 1971. Likewise, the fifth Lok Sabha (which spawned and spread over the Emergency) was dissolved on January 18, 1977, and elections held on March 16 to 20, 1977, which brought the Janata Party to power. The sixth Lok Sabha was dissolved in August 1979 and elections were held in December 1979 ushering Mrs. Gandhi's triumphant return to the seventh Lok Sabha which commenced on January 22, 1980. The seventh Lok Sabha was itself dissolved in December 1984 (a few days before it was to complete its term), with elections bringing Rajiv Gandhi's government to the eighth Lok Sabha on January 16, 1985. A section of the 1951 statute visualises the possibility of elections before the end of term"
[See R. Dhavan, Indian Post, 27 October 1989]

Thus, holding an election and continuing an Assembly are not mutually exclusive. This could, and should, have been done in Gujarat. But for our purposes it is important to stress that if the six-month rule in Article 174(1) controlled the timing of the first meeting in Article 172 the two legislatures could not have coexisted.

1.8 There is no inherent right on a dissolution. The Sarkaria Committee in 1988 (See Report p 119) has remarked:
"Various Governors have adopted different approaches in similar situations in regard to dissolution of the Legislative Assembly. The advice of a Chief Minister, enjoying majority support in the Assembly, is normally binding on the Governor. However, where the Chief Minister had lost such support, some Governors refused to dissolve the Legislative Assembly on his advice, while others in similar situations, accepted his advice and dissolved the Assembly. The Assembly was dissolved in Kerala (1970) and in Punjab (1971) on the advice of the Chief Minister whose claim to majority support was doubtful. However, in more or less similar circumstances in Punjab (1967), Uttar Pradesh (1968), Madhya Pradesh (1969) and Orissa (1971) the Legislative Assembly was not dissolved. Attempts were made to instal alternative Ministries".
This does not mean that the Governor's discretion is absolute.

1.9 The correct principles governing dissolution were rightly stated in Halsbury (Fourth edition, Volume 8, p 542 pr, 819 fn. 5).
"The minimum criteria which are likely to be met before the Sovereign would consider refusing such a request from the Prime Minister are (1) belief that the existing Parliament was still vital, viable and capable of doing its job; (2) belief that a general election would be detrimental to the national economy; and (3) an alternative Prime Minister could be found who would be capable of commanding a working majority in the House of Commons and thus able to form a government for a reasonable period. A clear distinction must be drawn between the existence of the prerogative to refuse a request for a dissolution and the question whether in any particular set of circumstances the Sovereign would regard it as in the best interests of the nation to refuse a dissolution".
These principles should be applied to Gujarat, with the addition on point (2) that an election should not be detrimental not just to the national economy but also governance.
1.10 The Governor erred, in not making a principled decision.
The option open to him was to call the Gujarat Assembly; and in the failure of the Chief Minister to do so, to recommend President's rule.
After all, there was a government with a stable majority; and there were many reasons to call the Assembly to sustain democratic accountability and not plunge Gujarat into further chaos.
If Mr. Modi persisted in his claim and sought to sabotage the calling or working of the recalled assembly , a fit case would have been made for the imposition of President's rule on the grounds of a breakdown of the Constitution. Indeed, one argument not germane to the present situation is that President's rule should have been imposed in March 2002 after it became clear that Mr. Modi could not cope with the situation and was exacerbating it. What is relevant is that the crisis created by Mr. Modi is self-induced for

the purposes of reaping electoral benefits.

(D) Constitutional irresponsibility and political opportunism

1.11 There is only one answer to the question as to why the Assembly was dissolved by the Governor on the advice of his Chief Minister.
The BJP led by Mr. Modi feels that they would get an edge by calling an election early.
What happened was gross constitutional irresponsibility and sheer political opportunism.

II. THE ELECTIONS

(A) The six month-rule in Article 174 does not control the timing of the first meeting in Article 172

2.1 An strong argument has been advanced by the BJP and some parties that the in accordance with the requirements of Article 174, the elections must be completed by September 2002 so that there is no gap between the old assembly held in February-April 2002 and the new Assembly which is still to be elected.

2.2 It is relevant to quote Article 174 which reads as follows:
174. Sessions of the State Legislature, prorogation and dissolution. -
(1) The Governor shall from time to time summon the House or each House of the Legislature of the State to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.
(2) The Governor may from time to time -
(a) prorogue the House or either House;
(b) dissolve the Legislative Assembly.
Article 172 is a separate article which reads
172. Duration of State Legislatures. -
(1) Every Legislative Assembly of every State, unless sooner dissolved, shall continue for (five years) from the date appointed for its first meeting and no longer and the expiration of the said period of (five years) shall operate as a dissolution of the Assembly:
Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by Law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.
(2) The Legislative Council of a State shall not be subject to dissolution, but as nearly as possible one-third of the members thereof shall retire as soon as may be on the expiration of every second year in accordance with the provisions made in that behalf by Parliament by law.
These articles occupy different fields and serve different functions. The

concept of 'first' meeting in Article 172 is not controlled by the six-month rule in Article 174(1). Indeed as we have shown two legislatures can co-exist. Thus the six-month rule applies to 'live' legislatures.

2.3 This division was not always the case. In the Draft Constitution of 1948, these two articles were combined in a single Article 153 which read "153. Sessions of the State Legislature, prorogation and dissolution. (1) The House or Houses of the Legislature of the State shall be summoned to meet twice at least in every year, and six months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session.
(2) Subject to the provisions of this article, the governor may from time to time --
(a) summon the Houses or either House to meet at such time and place as he thinks fit;
(b) prorogue the House or Houses;
(c) dissolve the Legislative Assembly.
(3) The functions of the Governor under sub-clauses (a) and (c) of clause (2) of this article shall be exercised by him in his discretion".
It is important and significant to point out that the Draft Article 153(2) began with the words
"Subject to the provisions of this Article ....."
This meant that the 'dissolution' power was to be subject to the six-month rule. But, the importance of all this lies in the fact that this phrase "subject to the provisions of this article ... " was deleted from the final Constitution.

2.4 Three significant changes took place in the Draft Article 153
(a) Article 153(1) became Article 174 (dealing with the six-month rule)
(b) Article 153(2) became Article 174(2) (the dissolution rule)
(c) The removal of the "Subject to the provisions of this article ...." is a clear indication that the 'six-month' rule no longer governed the 'dissolution' rule.
The significance of this is to be appreciated. The major debate on this on 2 June 1949 does not shed light on this aspect (1949) VIII CAD 554 ff.

2.5 It is self-abundantly clear that the final Constitution of 1950 which governs the situation today clearly stipulates that
(a) Article 172 is a distinct power dealing with the "Duration of the legislature including the first meeting"
(b) Article 174(1) deals with the six-month rule which does not control the timing of the first meeting in Article 172.
(c) Article 174(2) deals with the power of the Governor to prorogue and dissolve the legislature, but neither article 172 nor Article 174(2) is subject to the six-month rule.

2.6 The reason for this is to make the Constitution workable Article 174 with a 'live' legislature. Its purpose is to ensure that the legislature meets at least two times a year.
The second part of Article 174 (i.e. Article 174(2)) also deals only with a 'live' legislature. It is only a 'live' legislature that can be prorogued or dissolved.
Thus, Article 174 is a complete code in itself dealing with a live legislature.

2.7 In Udai Narain Sinha v. State AIR 1987 ALL. 203, the High Court was dealing with two legislatures. The old legislature continued to exist and the new legislature was constituted under Section 73 of the Representation of People's Act 1951. Two observations which form the basis of the judgement are important:
(i) (at pr. 9 p. 206)
"Our Constitution does not prohibit an interregnum between the dissolution of an existing House of the People and the State Assemblies and coming into existence of a new House or Assembly and the functioning of a new House or Assembly"
(ii) "The conclusion is inevitable that Article 174(1) contemplates dissolution of the Legislative Assembly the life of which commenced within the meaning of Article 172(1)"
Article 174(1) including the regime of six months imbricated in it deals with a live Assembly. The dissolution power in Article 174(2) also deals with a live assembly (The Kerala decision (K. K. Aboo v. Union AIR 1965 229 -- although at variance with the Allahabad decision on a different aspect, once again emphasizes the distinctness of the 'dissolution' power).

2.8 Article 174 is concerned with the power of the
(a) Governor
(b) Chief Minister
(c) the Speaker
(d) the legislators of a 'live' legislature
It does not involve the Election Commission which is neither concerned with, or bound by it.

2.9 The Election Commission is concerned with the aftermath of dissolution. But a very anomalous situation can arise if the six-month rule in Article 174 binds the Election Commission. This can be illustrated by an example.
Example
A live legislature meets on 1 January 2002. Under Article 174(1), it must meet again on 1 June 2002. But, suppose a dissolution takes place on 20 May or 30 May 2002, can the election be organized by 1 June 2002? The simple answer is 'No'.
Likewise, in Gujarat, if the legislature had been dissolved in September, the election could not have taken place in a few days.

2.10 The real limit on the election commission is that it must complete the election in five years. Thus in Ramdeo Bhandari v. Election Commission Of India (1995) 2 SCC 153, the case concerned was whether the state had fulfilled its obligation of issuing photo identity cards. They could not be insisted on because the elections had to be held within five years. The court observed:
" Article 168 of the Constitution provides that every state shall have a legislature and Article 172(1) provides that every legislative assembly of every state, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and not longer and the expiration of the said period of five years shall operate as a dissolution of assembly. Under this article the five-year term of the legislative assemblies of two states, namely, the states of Bihar and Orrisa will expire on 15-3-1995. It is obvious that on the expiration of the said term of five years on 15-3-1995, the assemblies of the said two states will stand dissolved. To satisfy the mandate of Article 168 it is necessary that elections should be held in the aforesaid two states in a manner that election results are declared before 15-3-1995. The latest press note issued by the election commission on 8-12-1994 states that the elections in the states of Bihar and Orissa would be completed before 10-3-1995. Ordinarily no objection can be raised by either of the states to the schedule of elections fixed with a view to completing the same before 15-3-1995".
The court then observed that the election cannot be withheld due to the absence of photo identity cards (also Para 8)
" The Election Commission will however be free to take such other steps which it considers necessary and permissible to ensure free and fair poll".
Within a five-year period a proper electoral roll and peaceful conditions are a pre-requisite.

2.11 The importance of a proper electoral roll cannot be underestimated, this is critical in a disturbed Gujrat. Once a final
electoral roll is made and declared preceding nomination, challenge to it in the courts is not possible (Subhash Desai v. Sharad J. Rao(1994) Supp 2 SCC 446.).

2.12 We need not dwell on those aspects of Article 174 that have already been dealt with. Although a legislature has a normal life of five years, it can be dissolved earlier. But it is necessary to add that where a premature and unwarranted dissolution takes place which is not set aside by a court, the election must be held as soon as possible within six months of the dissolution. In this six months is not a requirement but a marker of what might be reasonable. But, there is no right to dissolution. The Governor can refuse and should have refused dissolution in the Gujarat case. But, it is not necessary to dwell on that for the purposes of this submission.

2.13. Article 172 does concern the Election Commission to the following extent

a. The Election Commission must hold free and fair elections.
b. Consistent with the principles of democracy, the election should be held "as soon as possible".
c. The term "as soon as possible" means a reasonable period consistent with the concept of a free and fair election.
d. There is no limit of six months. The outside limit is five years except for emergencies for which special provisions would, perhaps, have to be made.

2.14 While considering the Constitution both principles and practicalities are important. Cardinal to a democracy is the idea of free and fair elections. Nothing is gained if the unconstitutional imposition of the six-month rule generates a sham election.

(B) The Election Commission's Constitutional role

2.15 The Constitution provides very important independent functions to the Election Commission. Under the Government of India Act 1935, governments were responsible for election. Creating an independent Election Commission was one of the significant cornerstones of the Constitution so that governments could not dictate the terms, timing or conduct of elections. This is precisely what Mr. Modi is seeking to do in Gujarat.
The historical background to the creation of an independent Election Commission is well known and documented in B. Shive Rao: The Framing of India's Constitution (1968) pp. 459-466

2.16. The importance of this cannot be underestimated; and has been underlined in many judgments whilst interpreting Article 324 of the Constitution which reads as follows:
"324. Superintendence, Direction and control of elections to be vested in an Election Commission. - (1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission)".
This provision has been interpreted extensively.

2.17 These words have been given the widest amplitude. In the recent case of Election Commission of India v. Ashok Kumar AIR 2000 SC 2979 the Supreme Court have affirmed (at pr. 13) that the words "superintendence, direction and control" have a wide connotation so as to include therein such powers which though not specifically provided but are necessary to be exercised for effectively accomplishing the task of holding elections to their completion"
In fact, although Parliament and the State Legislature's have the power to legislate on elections (Article 327 and 328) and these laws will normally

prevail (see A.C. Jose (1984) 3 SCR 74 at 77, 79, 81 and 83), it has been suggested that because the power of parliament is subject to the Constitution, the legislature cannot undermine the constitutional powers and duties of the Commission (see Sadiq Ali (1972) 2 SCR 326 at 342-3).

2.18 The Commission is a composite body which acts in a collegiate way (see T.N. Seshan (1995) 4 SCC 611)
It is no one's case, that the Election Commission is above the law. It is free to perform and fulfill its constitutional role subject to natural justice - if needs be (see Mohinder Singh Gill AIR 1978 SC 851) and must generally act reasonably (see Election Commission v. AIADMK (1994) Supp. 2 SCC 689 at 692 (the loudspeaker case); see also Ramdeo Bhandari v. Election Commission Of India. (1995) 2 SCC 153(the photo identity card case)
But, within the area of responsibility, the Commission must be given the respect and responsibility of fulfilling its constitutional function without interference.

2.19 The import of this is
(i) The Election Commission replaced the Governments so that an independent machinery was set up to take charge of the electoral process.
(ii) The Government cannot dictate the terms of an election
(iii) The Commission must devise 'free and fair election' as an independent body
(iv) Its wide constitutional responsibility and discretion cannot be arbitrary or without due process but must be widely construed
(v) There is authority for the proposition that even Parliament cannot undermine the constitutional duties of the Election Commission

(C) The Commission's duty to assess the situation for a fair election

2.20. There is little point in having an Election Commission, creating an independent status for it and giving it wide powers if a free and fair election cannot take place.
The Election Commission has the right and duty to assess whether free and fair elections are possible.(See Ramdeo Bhandari v. Election Commission Of India. (1995) 2 SCC 153(the photo identity card case)

2.21 In the case of Election Commission of India v. State of Haryana AIR 1984 SC 1406, the Court considered whether an election was possible in the context of the turbulent conditions in Haryana (and Punjab). It is important to quote the observations of the Court (at pr. 8 p. 1409)
"The Government of Haryana is undoubtedly in the best position to assess the situation of law and order in areas within its jurisdiction and under its control. But the ultimate decision as to whether it is possible and expedient to hold the elections at any given point of time must rest with the Election Commission. It is not suggested that the Election Commission can exercise its discretion in an arbitrary or mala fide manner.

Arbitrariness and mala fides destroy the validity and efficacy of all orders passed by public authorities. It is therefore necessary that on an issue like the present, which concerns a situation of law and order, the Election Commission must consider the views of the State Government and all other concerned bodies or authorities before coming to the conclusion that there is no objection to the holding of the elections at this point of time. On this aspect of the matter, the correspondence between the Chief Secretary of Haryana and the Chief Election Commissioner shows that the latter had taken all the relevant facts and circumstances into account while taking the decision to hold the by election to the Taoru Constituency in accordance with the proposed programme. The situation of law and order in Punjab and, to some extent, in Haryana is a fact so notorious that it would be naive to hold that the Election Commission is not aware of it. Apart from the means to the knowledge of the situation of law and order in Punjab and Haryana, which the Election Commission would have, the Chief Secretary of Haryana had personally apprised the Chief Election Commissioner as to why the State Government was of the view that the elections should be postponed until the Parliamentary election. We see no doubt that the Election Commission came to its decision after bearing in mind the pros and cons of the whole situation. It had the data before it. It cannot be assumed that it turned a blind eye to it. In these circumstances, it was not in the power of the High Court to decide whether the law and order situation in the State of Punjab and Haryana is such as not to warrant or permit the holding of the by-election. It is precisely in a situation like this that the ratio of the West Bengal Poll case (1982) 2 SCC 218 would apply in its full rigor".
It is clear that the ultimate responsibility is that of the Election Commission.

2.22 It follows that where there is a power to fix date of a poll, there is also the power to alter the date of the poll (Mohd Yunus V Shivkumar AIR 1974 SC 1218) The normal presumption will be that the Election Commission has acted in a bonafide manner (A K M Hassan (1982) 2 SCC 218)

2.23 We have already seen that in the Haryana case (supra), the Supreme Court gave the ultimate responsibility to deal with the disturbed conditions to the Election Commission, In the Assam case, (Digvijay Mote V Union of India (1993) 4 SCC 175, the Supreme Court dealt with the situation of disturbed conditions in a state which might hinder free and fair elections. Quoting from Justice Krishna Iyer in Mohinder Singh Gill's case(1978), it observed :
" The concept of democracy as visualised by the Constitution presupposes the representation of the people in Parliament and State Legislatures by the method of election. And, before an election machinery can be brought into operation, there are three requisites which require to be attended to, namely 1) there should be a set of laws and rules making provisions with respect to all matters relating to, or in connection with, elections, and it should be decided as to how these laws and rules are to be made; (2) there

should be an executive charged with the duty of securing the due conduct of elections; and (3) there should be a judicial tribunal to deal with disputes arising out of or in connection with elections. Articles 327 and 328 deal with the first of these requisites, Article 324 with the second, Article 329 with the third requisite".
Again, quoting from Gill's case, it observed :
"A free and fair election based on universal adult franchise is the basic; the regulatory procedures vis a vis the repositories of functions and the distribution of legislative, executive and judicative roles in the total scheme, directed towards the holding of free elections, are the specifics. Part XV of the Constititution plus the Representation of the People Act 1950 (for short the 1950 Act) and the Representation of People Act, 1951 (for short the Act), Rules framed thereunder, instructions issued and exercises prescribed, constitute the package of electoral law governing the parliamentary and assembly elections in the country. The super-authority is the Election Commission, the kingpin is the returning officer, the minions are the presiding officers in the polling stations and the electoral engineering is in conformity with the elaborate legislative provisions."

2.24 Having drawn from its previous authority, in the Assam case, the court observed
"8.The conduct of election is in the hands of the Election Commission which has the power of superintendence, direction and control of elections vested in it as per Article 324 of the Constitution. Consequently, if the Election Commission is of the opinion that having regard to the disturbed conditions of a State or a part thereof, free and fair elections could not be held it may postpone the same. Accordingly, on account of unsettled conditions, the elections in the States of Assam & Jammu and Kashmir could be postponed".
The court stressed that the Election Commission was not a law unto itself. It must take relevant factors into account (See further Digvijay Mote v. Union Of India (1993) 4 SCC 175) on assuming a power not specifically given to it see Election Commission of India v. SBI staff Association (1995) supp 2 SCC 13)

2.25 What flows from the above cases is that the Election Commission has the power and duty to examine the situation and consider in any given situation whether the conditions in that constituency warrant the deferment of an election.

III . CONCLUSION

3.1 The submission broadly states :
a) A grave situation exists in Gujarat which has been created by the Chief Minister and Governor. If the Chief Minister wanted to fulfill the six month rule in Article 174(1), it was more consistent with democracy to have to called the assembly session. Equally, the Governor should have denied a

dissolution to a majority government.
b) The six-month rule in Article 174 does not control the timing of the first meeting in Article 172 to necessitate an election within 6 months of the previous legislature. Article 174 deals with the term of legislature.
c) Elections should be held soon after dissolution, and except in exceptional circumstances within 5 years of the term of the previous legislature
d) The Election Commission was created to be independent to ensure free and fair elections. Earlier this power was vested under the Act of 1935 and before in the Government. Thus the Government cannot directly or indirectly dictate the terms, timing or conduct of elections to force the hand of the Commission.
e) The Commission's power under Article 324 in respect of the elections is to be widely construed subject to its reasonable exercise. Although no Election Commission is a law unto itself, Courts should respect its status and role and be circumspect in interfering with its decisions.
f) Where a law and order situation exists which is not conducive to a free and fair election, following the Haryana and Assam cases, the Election Commission must consult all concerned and take an independent view on the timing or the rescheduling of the Election.

3.2 It follows that the Election Commission is not bound by the 6 month rule; and has both the power and duty to decide when the Election will take place.
Within the five year constraints of Constitution which does not impose the six-month rule on a dissolved legislature from when the previous dissolved legislature last had its meeting.
This is crucial in the case of Gujarat where chaos continues and the Electoral rolls and machinery is precarious.