

NATIONAL

HUMAN

RIGHTS

COMMISSION

# Annual Report 2004-2005

---







# NATIONAL HUMAN RIGHTS COMMISSION

Annual Report 2004-2005



**National Human Rights Commission**

Faridkot House, Copernicus Marg

New Delhi - 110 001, India

web:[www.nhrc.nic.in](http://www.nhrc.nic.in)





Design & Production by Silverline Communications  
Silverlinecom2003@yahoo.com





# Contents

<b>1 Introduction.....</b>	<b>1</b>
<b>2 Overview.....</b>	<b>3</b>
<b>3 Civil Liberties.....</b>	<b>9</b>
A] Protection of Human Rights in Situations of Terrorism & Insurgency.....	9
B] Custodial Deaths.....	14
C] Encounter Deaths.....	15
D] Torture.....	16
E] Prison Overcrowding.....	17
F] Visit to Prisons.....	17
G] Action Taken Reports relating to Prisons received from States.....	21
H] Sensitization of Prison Staff.....	22
<b>4 Complaints Before the Commission.....</b>	<b>23</b>
A] Pendency.....	23
B] Investigation of Cases.....	26
C] Selective Cases 2004-2005.....	27
<b>a) Human Rights Violations by Custodial Institutions.....</b>	<b>27</b>
1. Death of Sher Mohammad in Police custody by torture: U.P. – Case No. 8924/95-96/NHRC.....	27





## Contents

2. Death of Sh. Kantosh Prahlad Jadhav in Police Custody by torture: Latur, Maharashtra - Case No. 5418/95-96/NHRC.....	28
3. Custodial death of Haji Mohd. Nabuji Tentwala in police custody in Ahmedabad - Case No.7586/95-96/NHRC.....	29
4. Prisoner shot and injured in police lock-up due to negligence by Police Uttar Pradesh - Case No.6454/24/97-98/ 6811/24/97-98.....	32
5. Death of Shri Bajrang Lal, District Bhiwani, Haryana - Case No. 440/7/97-98/FC.....	32
6. Death of Bhaiya Lall in judicial Custody in Uttar Pradesh - Case No. 9161/24/98-99-CD.....	33
7. Death of Shri Kolumbus in judicial custody in Uttar Pradesh - Case No. 20143/24/2002-2003-CD.....	34
8. Death of Smt. Basanti Devi in judicial custody in Bihar - Case No. 2435/4/2001-2002-CD.....	35
9. Death of Chander Prakash in Judicial Uttar Pradesh Custody - Case No. 5237/24/2000-2001-CD.....	35
<b>b) Human Rights Violations by Police.....</b>	<b>36</b>
10. Torture and gang rape by police officers in Tripura - Case No. 5/23/2003-2004-WC.....	36
11. Illegal detention of two Adivasi boys by Kerala Police - Case No. 208/11/97-98.....	37
12. Illegal detention of S/Sh. Ramveer Singh, Surendra Singh Delhi - Case No. 3454/30/2000-2001.....	38
13. Illegal detention and torture of Shri Zamir Ahmed by the police at Sayana, Bulandshahr, Uttar Pradesh - Case No: 14071/24/2001-2002.....	38
14. Suicide by Vinod Kumar Rajput due to police harassment Madhya Pradesh - Case No.1412/12/98-9(FC).....	40
<b>c) Human Rights Violations by Security Forces.....</b>	<b>41</b>



## Contents

15. Killing of two civilians by a BSF Jawan, District Ganganagar, Rajasthan - Case No. 1060/20/2000-2001-PF & 1061/20/2000-2001-PF.....	41
16. Death of Shri Vikram by negligence of R.P.F., Maharashtra - Case No. 21/1/2003-2004.....	42
<b>d) Human Rights Violations by other State Agencies.....</b>	<b>44</b>
17. Death of Dirisam Lajer, an agricultural labourer by electrocution - Case No. 147/1/2001-2002 (FC).....	44
18. Sexual Harassment at work place - Case No. 1775/35/2003-2004-WC.....	45
19. Exploitation of Children by the Great Roman Circus in Gonda District of Uttar Pradesh - Case No.7993/24/ 2004-2005.....	46
20. Atrocities on Adivasi families by forest officials of Wayanad District : Kerala - Case No. 199/11/2002-2003(FC).....	47
21. Allegations of death, rape and torture of tribals as a result of actions of the Joint Task Force set up by the Governments of Tamil Nadu and Karnataka to apprehend Veerappan and associates. Case No. 222/10/97-98, Case No.534/22\97-98, Case No. 795/22/97-98, Case No. 249/10/97-98, Case No. 79/10/99-2000.....	48
22. Merciless beating of Smt. Susheela Devi by landlord and his accomplice, West Champaran District. Bihar - Case No. 1852/4/2002-2003(WC)/FC.....	49
<b>e) Other Important Cases.....</b>	<b>50</b>
23. Punjab Mass Cremation Case.....	50
24. Displacement of farmers and agricultural labourers by construction of a barrage across the river Nagavalli - reief and rehabilitation: Andhra Pradesh - Case No. 667/1/2002-2003(FC).....	50
25. Rehabilitation and Resettlement of tribals : Karnataka - Case No: 505/10/97-98(FC).....	51

## Contents

26. Suicide of farmers in Andhra Pradesh and Kerala - Case No.208/1/2004-2005(FC)(LF 444/1/2001-2002 & 488/1/2004-2005).....	52
27. Suicide by farmers: Karnataka - Case File No.180/10/2003-2004(FC)(LF No.213/10/2003-2004).....	54
28. Devastation caused by tsunami in coastal areas of South India – Case No. 1054/22/2004-2005-FC.....	58
29. Death of Nazia Kouser by beatings given by ultras in District Poonch, Jammu & Kashmir - Case No. 68/9/2003-2004(WC)/FC.....	59
30. Throwing of bleaching powder solution on the face of Ms. Jeena Kumari, resident of Tamil Nadu - Case No: 103/22/2003-2004(WC)/FC.....	60
31. Denial of visas to certain Sikh NRIs - Case No: 6/99/2003-2004.....	60
32. Deportation of Pakistani Nationals after undergoing imprisonment - Case No.2218/30/2003-2004.....	61
33. Guidelines for Protection of Human Rights of Mentally ill under-trial prisoners / released persons .....	62
D] References received from the Supreme Court and the High Courts and NHRC initiatives in approaching the Courts.....	67
E] Action taken on cases reported in the Annual Report for the year 2003-2004 and earlier reports.....	70
<b><i>Custodial Death</i></b>	
1. Death of Chhigga in the Police custody at P.S. Sirsi, District Guna : Madhya Pradesh Case No. 1800/12/2000-2001-CD.....	70
2. Death of Sanjay Sharma in District Jail, Mathura: Uttar Pradesh Case No: 41373/24/2000-2001-CD.....	71
3. Death of an under-trial prisoner, Tachi Kaki : Arunachal Pradesh Case No. 14/2/2002-2003-CD.....	71
4. Custodial death of under-trial prisoner, Harjinder alias Jinda, due to negligence : Uttar Pradesh Case No. 8437/24/1999-2000-CD.....	71





## Contents

### ***Custodial Torture***

1. Custodial torture of Zamir Ahmed Khan : Uttar Pradesh  
Case No. 14071/24/2001-2002..... 72
2. Harassment and Torture of Jagannath Shaw by the RPF Staff:  
West Bengal Case No: 118/25/2002-2003..... 72

### ***Police Harassment***

1. Complaint from Sarita Sahu, resident of Ranchi : Jharkhand  
Case No. 974/34/2001-2002..... 73
2. Harassment, Misbehaviour and injury caused to U.K. Vajpayee, ANM. :  
Uttar Pradesh Case No: 29929/24/2000-2001..... 73

### ***Illegal Detention and Torture***

1. Unlawful detention of Manoharan : Tamil Nadu  
Case No:213/22/2001-2002..... 73
2. Illegal detention and torture in police Station, Shikarpur :  
Uttar Pradesh (Case No. 17171/24/1999-2000)..... 74
3. Police high-handedness against a Teacher in Kota :  
Rajasthan Case No: 1603/20/2001-2002..... 74
4. Negligence of police personnel leading to wrongful confinement of  
Ikram-ud-din: Uttar Pradesh Case No. 23239/24/1999-2000..... 74

### ***Violation of Rights of Children/ Women***

1. Kids slogged 12 hours a day paid @ Rs. 5/- a week:  
Delhi Case No. 1868/30/2001-2002..... 75
2. Alleged illegal detention of a girl child : Orissa  
Case No: 80/18/2003-2004(WC)..... 75
3. Rape of 17 women, including complainant and her mother: Gujarat  
(Case No: 256/6/2003-2004(WC)..... 76

### ***Negligence of Authorities***

1. Death of Dirisam Lajer due to electrocution: Andhra Pradesh  
Case No. 147/1/2001-2002 (FC)..... 76
2. Death in firing by Armed Forces, Manipur  
(Case No. 25/14/1999-2000)..... 77



## Contents

3. Case of Jalil Andrabi, Advocate : Jammu & Kashmir Case No. 9/123/95-LD.....	77
4. Atrocities on inmates by the Superintendent of Probation Home : Jharkhand Case No. 177/34/2001-2002.....	78
5. Exploitation of child labourers in Tonk : Rajasthan Case No. 817/20/2001-2002.....	78
6. Harassment of Shri Kumpampadom Thomas Skaria, by an Immigration Officer at the Mumbai Airport : Maharashtra Case No. 263/13/2000-2001.....	78
7. Measures to prevent deaths due to starvation : Orissa Case No. 37/3/97-LD(FC).....	79
8. Bonded Labourer in the powerloom factory, Distt. Periyar, Tamil Nadu Case No. 22/212/96-LD(FC).....	79
9. Death in custody of former Sarpanch of Gogon Village, Chuhur Singh due to negligence : Punjab Case No. 431/19/2000-2001.....	79
10. Bonded Child Labour : Andhra Pradesh Case No. 443/1/2001-2002(FC).....	80

## **ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

<b>5 Rights of the Disabled.....</b>	<b>83</b>
<b>6 Food Security.....</b>	<b>93</b>
<b>7 Right to Health.....</b>	<b>99</b>
A] Emergency Medical Services [EMS].....	99
B] Public Hearings on Right to Health Care.....	102
C] Plan of Action to tackle Fluorosis. ....	104
D] Human Rights and HIV / AIDS.....	105
E] Female Foeticide .....	106





## Contents

F] Quality Assurance in Mental Health [NIMHANS Report).....	107
G] Mental Hospitals in Agra, Gwalior and Ranchi .....	108
H] Visit to Mental Hospitals.....	110
I] Core Group on Mental Health.....	113
<b>8 Rights of Women and Children.....</b>	<b>115</b>
<b>I Rights of Women</b>	
A] Trafficking in Women and Children.....	115
1. Judicial Handbook on Combating Trafficking of Women and Children for Commercial Sexual Exploitation.....	115
2. Trafficking of Women and Children: Effective Rescue and Post-Rescue Study.....	117
3. Role of National Human Rights Institutions in Prevention of Trafficking of Women and Children.....	118
4. Prevention of Sex Tourism and Trafficking.....	119
B] Combating Sexual Harassment of Women at the Work place.....	120
C] Combating Sexual Harassment of Women in Trains.....	121
D] Rehabilitation of Marginalised / Destitute Women in Vrindavan.....	122
E] Population Policy : Development and Human Rights.....	123
<b>II Rights of Children.....</b>	<b>123</b>
A] Guidebook for the Media on Sexual Violence against Children.....	123
B] Prevention of Employment of Children by Government Servants : Amendment of Service Rules.....	124
C] Child Labour – Efforts in the States of Rajasthan, UP, MP, Maharashtra, Punjab, Bihar and Jharkhand.....	124





## Contents

D] Child Labour - The need for a new legislation.....	132
<b>9. Scourge of Bonded Labour.....</b>	<b>133</b>
A] Abolition of Bonded Labour.....	133
B] Bonded Labour - Efforts in the States of Rajasthan, UP, MP, Maharashtra, Punjab, Bihar and Jharkhand.....	133
C] Efforts in the States of Andhra Pradesh, Karnataka Kerala and Tamil Nadu.....	140
D] Workshops on Bonded Labour.....	141
E] Manual on Bonded Labour.....	142
<b>10. Rights of Vulnerable.....</b>	<b>143</b>
A] Human Rights of Scheduled Castes.....	143
B] Manual Scavenging.....	145
C] Rights of the Elderly.....	147
a] National Old Age Pension Scheme	
b] Security of Senior Citizens	
<b>11. Internally Displaced Persons.....</b>	<b>149</b>
A] National Policy on Resettlement and Rehabilitation.....	149
B] Visit of the APF team to India on issue of IDPs.....	149
C] Human Rights Situation in Natural Disasters.....	150
a] Tsunami	
b] Monitoring of Cyclone Reconstruction Work in Orissa	
c] Monitoring of Post-earthquake Measures in Gujarat	
d] Rehabilitation of Gujarat Riot Victims	
<b>12. Research Studies and Projects.....</b>	<b>155</b>
<b>I] Completed</b>	





## Contents

A] Action Research on Trafficking in Women and Children in India.....	155
B] Operation Oasis - A Study Related to Mentally Ill Persons in West Bengal.....	157
<b>II] On-going Studies</b>	
A] Study of the Implementation of the Juvenile Justice Care and Protection of Children Act, 2000.....	157
B] Current Trends in Child Labour in Beedi Industry.....	158
C] Freedom Mortgaged and Future Abandoned : Bonded Child Labour in Karnataka's Silk Industry.....	159
D] Pilot Study of the Socio-Economic, Political and Cultural Status of Dalit Women in Haryana.....	159
E] Feminization of Poverty and Impact of Globalization – A Study of Women Construction Labourers.....	160
F] Research Study on Domestic Violence against Women in India: Nature, Causes and Response of Criminal Justice System.....	161
G] Study on the Complaints made by Women at Police Stations at Bangalore.....	162
H] A Study to Assess the Degree of Realization of Economic, Social and Cultural Rights in India.....	162
I] Action Research Project on 'Land, Labour and Human Rights Violation in Bundelkhand and Sonbhadra Region of Uttar Pradesh.....	163
J] A Study of the Status of Tendu Leaf Pluckers in Orissa.....	163
K] A Study of the Human Rights Status of Denotified and Nomadic Communities of Delhi, Gujarat and Maharashtra.....	164
L] Programmatic Intervention in Mental Hospitals in India : Efforts Towards Humanizing Institutions and Community-based Rehabilitation.....	165
M] CHRC - NHRC - IGNOU Linkage Projects on Disability.....	165





## Contents

N] Estimating Precise Costs and providing level playing field to persons with Disabilities (PWDs) both as consumer (users of Social Services) and as Producers (Contributors to Economy) - a case study by National Association for the Blind.....	166
O] A Study on the Efficacy of a District Level Mechanism for Securing the Rights and Entitlements of People with Disabilities as guaranteed in the National Trust Act, 1999.....	167
P] Source Material on Human Rights Education for Indian Universities.....	167
Q] Status on Human Rights Education in India at the University Level.....	168
<b>13. Promotion of Human Rights Literacy and Awareness.....</b>	<b>169</b>
A] National Action Plan on Human Rights Education.....	169
B] UN Decade of HR Education and the National Action Plan of Human Rights Education.....	169
C] Rights Education for Youth.....	170
D] Human Rights Training.....	170
E] Para-Military and Armed Forces.....	174
F] National Institute of Human Rights.....	174
G] The Media and Legal Issues of Freedom of the Press.....	175
H] List of Publications.....	175
<b>14. International Co-operation.....</b>	<b>177</b>
A] Meetings of the International Coordination Committee (ICC) and the Commission on Human Rights.....	177
B] Annual Meeting of the Asia Pacific Forum.....	177
C] International Conference of National Human Rights Institutions.....	178
D] Coordination and Cooperation with other APF Member Institutions.....	178
E] Other Visits, Seminars and Workshops abroad.....	179





## Contents

.....	179
F] Exchanges and other Interactions.....	179
<b>15. Non-Governmental Organisations.....</b>	<b>181</b>
<b>16. State Human Rights Commissions.....</b>	<b>183</b>
<b>17. Review of Laws, Implementation of Treaties and Other International Instruments on Human Rights.....</b>	<b>185</b>
A] Review of Laws.....	185
1. Child Marriage Restraint Act, 1929.	
2. Protection from Domestic Violence Bill, 2002	
3. Protection of Human Rights Act, 1993	
4. Food Safety and Standard Bill – 2005	
B] Implementation of Treaties and other International Instruments.....	188
1] Convention Against Torture	
2] The 1977 Protocol additional to the Geneva Convention of 1949	
3] Optional Protocols to the Convention on the Rights of the Child	
<b>18. Administration and Logistic Support.....</b>	<b>191</b>
A] Special Rapporteurs.....	191
B] Core Groups.....	192
C] Use of Official Language.....	193
D] Library.....	194
E] Manavadhikar Bhavan.....	194
<b>19. Summary of Principal Recommendations and Observations.....</b>	<b>195</b>
• General	
• Right to Life and Civil Liberties	
• Custodial Deaths	
• Jail Reforms	
• Complaints Before the Commission	
• Human Rights of the Mentally Ill Prisoners	
• Rights of the Disabled	





## Contents

---

- Food Security
- Right to Health
- Public Hearings on Right to Health Care
- Plan of Action to Tackle Fluorosis
- Human Rights and HIV/AIDS
- Female Foeticide and Infanticide
- Quality Assurance in Mental Health (NIMHANS Report)
- Visit to Mental Hospitals
- Mental Health
- Trafficking in Women and Children
  - Judicial Handbook on Combating Trafficking of Women and Children for Commercial Sexual Exploitation
  - Trafficking of Women and Children: Effective Rescue and Post-Rescue Strategy
  - Role of National Human Rights Institutions in the Prevention of Trafficking in Women and Children
  - Prevention of Sex Tourism and Trafficking
- Combating Sexual Harassment of Women at the Workplace
- Combating Sexual Harassment of Women in Trains
- Rehabilitation of Marginalised and Destitute Women including Widows in Vrindavan
- Population Policy - Development and Human Rights
- Rights of Children
  - Guidebook for the Media on Sexual Violence against Children
- Rights of Vulnerable
  - Human Rights of Scheduled Castes
  - Manual Scavenging
  - Tsunami
- State Human Rights Commissions
- Review of Laws
  - Child Marriage Restraint Act, 1929
  - Protection of Human Rights Act, 1993
- Implementation of Treaties and Other International Instruments on Human Rights







## Contents

- Convention against Torture:
  - The 1977 Protocol additional to the Geneva Convention of 1949
  - Optional Protocols to the Convention on the Rights of the Child
- Manavadhikar Bhavan

## Annexures – Charts and Graphs

### Annexures

1. Statement Showing State wise Number of Cases/Intimations Registered During the Year 2004-2005 (Paras 3.29 & 4.3).....	211
2. Statement Showing State-wise Disposal of Cases during the Year 2004-2005 (Para 4.1).....	212
3. State/Union Territory-wise Statement of Category of Report Cases Disposed of During the Year 2004-2005 (3 (a) (b) & (c)) (Para 4.1) .....	213
4. Statement Showing State-wise Number of Cases Pending as on 31.3.2005 (Para 4.2).....	216
5. Statement showing State-wise Number of Cases Pending as on 1.4.2004 (Para 4.2).....	217
6. Letter dated 20 <sup>th</sup> February 2004 from Chairperson, NHRC to the Chief Justice of Delhi High Court regarding plight of the undertrial prisoners in Tihar and reply dated 19 <sup>th</sup> May 2004 from the Chief Justice of Delhi High Court to the Chairperson, NHRC (Paras 4.12 & 4.13).....	218
7. Letter dated 12 <sup>th</sup> May 2004 to Chief Secretaries of all States/UTs Regarding Emergency Medical Care (Para 7.10).....	224
8. Recommendations of Regional Public Hearings on Right to Health Care and National Action Plan (Para 7.16).....	225
9. Letter of the Chairperson of the Commission dated 6 <sup>th</sup> September 2004 to the Chief Ministers of all States/UTs Regarding Protection of Human Rights of Children Infected/Affected by HIV/AIDS (Para 7.24).....	256
10. Recommendations of the National Workshop to Review the Implementation of Laws and Policies Related to Trafficking: Towards an Effective Rescue and Post-Rescue Strategy (Para 8.9).....	258





## Contents

11. Letter of the Chairperson of the Commission dated 3 <sup>rd</sup> August 2004, to the Prime Minister of India, Regarding Prevention of Atrocities Against Scheduled Castes (Para 10.7).....	265
Letter of the Chairperson of the Commission dated 3 <sup>rd</sup> August 2004, to the Union Ministers Regarding Prevention of Atrocities Against Scheduled Castes (Para 10.7).....	266
Letter of the Chairperson of the Commission dated 3 <sup>rd</sup> August 2004, to the Chief Ministers of all States/UTs Regarding Prevention of Atrocities Against Scheduled Castes (Para 10.7).....	267
12. Recommendations and suggestions of the Action Research on Trafficking in Women and Children in India (Para 12.6).....	269
13. List of Training Programmes Conducted During 2004-05, Alongwith Other Details (Para 13.18).....	304
14. Statement of Chairperson, NHRC to the 60 <sup>th</sup> Session of the Commission on Human Rights, Geneva, April 2004 (Para 14.1) .....	308
15. Concluding Statement of the Ninth Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions, Seoul, South Korea on 13 <sup>th</sup> September 2004 (Para 14.5).....	314
16. Statement of Chairperson, NHRC on ‘Combating Terrorism with Focus on Human Rights’ delivered at the Seventh International Conference of National Human Rights Institutions, Seoul from 14-17 April 2004 (Para 14.8).....	317
17. The Seoul Declaration (The Seventh International Conference of National Human Rights Institutions, Seoul from 14-17 April 2004) (Para 14.9).....	324
18. Letters from Chairperson, NHRC to the Minister of Human Resource Development, Government of India and the Chief Ministers/Administrators of all States/Union Territories Regarding Campaign Against Child Marriage (Para 17.5).....	331
19. Letters from the Secretary General, NHRC to the Secretaries, Ministry of Panchayati Raj and the Department of Women and Child Development as well as to the Chief Secretaries and Secretaries of the Department of Women and Child Development/Social Welfare of all States and Union Territories Regarding Campaign Against Child Marriage (Para 17.5).....	333





## Contents

### Charts & Graphs

1. List of Cases Registered During the Last Three Years..... 336
2. State-wise List of Cases Registered during 2004-2005..... 337
3. State-wise List of Intimations Registered Relating to Custodial Death/  
Rape During the Year 2004-2005..... 338
4. Nature and Categorization of Cases Disposed of by the Commission  
during the Year 2004-2005..... 339
5. Cases Disposed of/Pending Disposal by the Commission during the  
Year 2004-2005..... 340
6. Cases Dismissed in limini during the Year 2004-2005 - States/UTs  
with a Dismissal Rate of More Than 1%..... 341
7. Cases Disposed of with Directions during the Year 2004-2005-States/UTs  
with a Dismissal Rate of More Than 1%..... 342



# Introduction

**1.1** This is the Twelfth annual report of the National Human Rights Commission covering the period April 1, 2004 to March 31, 2005.

**1.2** The Eleventh annual report of the Commission, for the period from April 1, 2003 to March 31, 2004 was forwarded to the Central Government on November 22, 2004 for placing the same before the Parliament. But at the time of writing the present annual report, the Eleventh annual report together with the Memorandum of Action Taken still remains to be placed before each House of Parliament, in accordance with the procedure envisaged under section 20(2) of the Protection of Human Rights Act, 1993.

**1.3** The Tenth annual report of the Commission, for the period 1<sup>st</sup> April 2002 to 31<sup>st</sup> March 2003 was forwarded to the Central Government on 14<sup>th</sup> November, 2003. It was tabled in the Lok Sabha and the Rajya Sabha together with the Memorandum of Action Taken on 21.12.2004 and 22.12.2004 respectively. References to the communications/reports/letters, subsequent to 1.4.2005, wherever made, have been done as the same were received during the preparation of the report.

**1.4** The annual reports of the Commission serve as an essential sources of information on the human rights situation in the country. The Commission, therefore, expresses its deep concern over the delay in placing the annual report before the Parliament. The delay in tabling the report leads to further delay in getting a feed back about the action taken by the Government, and denies timely and comprehensive information on the work and concerns of the Commission, to the Members of Parliament and an opportunity to discuss its contents at the earliest and most appropriate time. The Commission urges the Central Government to

## Introduction

expeditiously place the annual report 2003-04 before Parliament, together with the Memorandum of Action Taken, so that information about the initiatives and activities of the Commission for the preceding year could be made available to the public without undue delay.\*

**1.5** The Commission had also forwarded copies of the Tenth annual report to all the State Governments/Union Territories as required under Section 20(2) of the Protection of Human Rights Act, 1993, for tabling the report in the State Legislature, along with a Memorandum of Action Taken or proposed to be taken on the recommendations of the Commission and the reasons for non-acceptance of the recommendations, if any. The Action Taken Report has been received from the States of Karnataka & Gujarat only. Other state Governments have not sent the Action Taken Reports. The confirmation regarding laying the annual report in the State Assemblies, is still awaited.

**1.6** In the year 2003-2004 72,990 complaints had been received by the Commission, while 45,512 complaints were pending with the Commission. In all, the Commission disposed of 57,694 complaints during that year. In the current year under review, 74,401 complaints were received by the Commission while 85,661 cases were disposed off during the year. The Commission, thus, took effective steps to deal with the pending cases.

**1.7** During the period under review Dr. Justice A.S. Anand continued to serve as the Chairperson with Mr. Justice Y. Bhaskar Rao, Shri R.S. Kalha and Shri P.C. Sharma as members. Dr. Justice Shivaraj V. Patil, Former Judge, Supreme Court of India assumed office as Member on 3<sup>rd</sup> February, 2005.

**1.8** As regards those who are “deemed to be Members of the Commission” under the provisions of Section 3(3) of the Act, Dr. Tarlochan Singh continued in office as the Chairperson of the National Commission for Minorities. Dr. Poornima Advani, Chairperson of National Commission for Women demitted office on 24.1.2005 and Smt. Girija Vyas assumed office as Chairperson on 16.2.2005 and thus, becoming, a deemed member with effect from that date.

**1.9** Shri P.S.S. Thomas demitted office as Secretary General on 15.12.2004 and in his place Shri Nirmal Singh, IAS (TN :1970) assumed office as Secretary General on 24.12.2004.

Sd/-  
(A.S.Anand)  
Chairperson

Sd/-  
(Shivaraj V.Patil)  
Member

Sd/-  
(Y.Bhaskar Rao)  
Member

Sd/-  
(R.S.Kalha)  
Member

Sd/-  
(P.C.Sharma)  
Member

New Delhi  
12<sup>th</sup> January, 2006

*\*At the time of printing of this report, the Ministry of Home Affairs apprised that the Annual Report 2003-04 has been tabled in the Parliament on 7 and 8 March 2006 together with the Memorandum of Action Taken.*



# An Overview

---

**2.1** The National Human Rights Commission was established on 12th October, 1993 under the legislative mandate of the Protection of Human Rights Act, 1993.

**2.2** Over the past eleven years the Commission has endeavoured to give a positive meaning and a content to the objectives set out in the Protection of Human Rights Act, 1993. It has moved vigorously and effectively to use the opportunities provided to it by the Act to promote and protect human rights in the country. While undertaking the tasks set out in the Protection of Human Rights Act, 1993, the Commission has noticed several lacunae in the Act over the years. This has been mentioned in earlier reports and it is emphasized, once again, that there is a need to review and amend the Act for the proper and effective functioning of the Commission.

**2.3** The Universal Declaration of Human Rights adopted by the General Assembly on 10th December, 1948, was followed by two Covenants – International Convention on Economic, Social and Cultural Rights (ICESCR) and International Convention on Civil and Political Rights (ICCPR) in 1966. India signed both these International Conventions in 1979.

**2.4** The UN Committee on Economic, Social and Cultural Rights (CESCR) is taking a robust attitude towards the practical implementation of these rights under the ICESCR. This was recognized by the United Nations in 1986 when it acknowledged the right to development as a human right. The right to development as formulated in the 1986 U.N. Declaration is a synthesis of the two sets of rights.

**2.5** In democratic societies fundamental human rights and freedoms are put under

## An Overview

the guarantee of law and therefore, their protection becomes an obligation of those who are entrusted with the task of their protection. These rights are broadly classified into civil and political rights on the one hand and economic, social and cultural rights on the other. While the former are more in the nature of injunction against the authority of the State from encroaching upon the inalienable freedoms of an individual, the latter are demands on the State to provide positive conditions to capacitate the individual to exercise the former. The object of both sets of rights is, to make an individual an effective participant in the affairs of the society. Unless both sets of rights are available, neither full development of the human personality can be achieved nor true democracy can be said to exist.

**2.6** The Commission, consistent with its mandate, took up issues involving human rights that are of significance, either suo motu, or when brought to its notice by the civil society, the media, concerned citizens, or expert advisers. Its primary focus is to strengthen the extension of human rights to all sections of society, in particular, the vulnerable groups.

**2.7** The Commission's purview covers the entire range of civil and political, as well as economic, social and cultural rights. Areas facing terrorism and insurgency, custodial death, rape and torture, reform of the police, prisons, and other institutions such as juvenile homes, mental hospitals and shelters for women have been given special attention. The Commission has urged the provision of primary health facilities to ensure maternal and child welfare essential to a life with dignity, basic needs such as drinking water, food and nutrition, and highlighted fundamental questions of equity and justice to the less privileged, namely the Scheduled Castes and Scheduled Tribes and the prevention of atrocities perpetrated against them. Rights of the disabled, access to public services by disabled, displacement of population and especially of tribals by mega projects, food scarcity and allegation of death by starvation, rights of the child, rights of women subjected to violence, sexual harassment and discrimination, and rights of minorities, have been the focus of the Commission's action on numerous occasions.

**2.8** Terrorism and more particularly the counter measures which one takes to meet this menace is a matter of great concern and relevance today. Terrorism has been the subject of a huge debate over the years but as yet there is no universally acceptable definition of what is "terrorism", against which we have to fight. It is common knowledge that systemic human rights violations for long periods of time are often the root cause of conflicts and terrorism. When there is tyranny and wide spread neglect of human rights and people are denied hope of better future, it becomes a fertile ground for breeding terrorism. The existence of social, economic and political disparities in a large measure contribute to the eruption of conflicts within the State and beyond. The importance of promoting Economic, Social and Cultural Rights to contain such conflicts must, therefore, be realized and appreciated. The protection and promotion of Economic, Social and Cultural Rights must go hand in hand with protection of Political Rights for giving Human rights a true meaning. The neglect of Economic, Social and Cultural Rights gives rise to conflicts and emerging forms of terrorism which are threatening the democratic societies worldwide. It cannot be denied that disillusionment with a society where there is exploitation and massive





inequalities and whose systems fail to provide any hope for justice are fertile breeding grounds for terrorism, which, more often than not, thrives in environments where human rights and more particularly Economic, Social and Cultural Rights are denied by the State and Political rights are violated with impunity, both, by the State and non-State actors. Systemic denial of Economic, Social and Cultural Rights, like Right to food, health, education etc. are causative factors of conflict and terrorism. Any worthwhile strategy to resolve conflicts and terrorism will have to ensure enjoyment of the full range of Economic, Social and Cultural Rights.

**2.9** While inquiring into complaints of serious injuries or death due to electrocution as a result of victim coming into contact of live transmission wire hanging at a low level or fallen on the ground, the Commission while applying rule of strict liability observed that a State professing to be a welfare State is expected to ensure liberal constructions of benefits and benevolent legislation like Section 18(3) of the Protection of Human Rights Act, 1993, to promote the philosophy of the Constitution and the statute. The Commission also observed that the loss of human life by fact other than natural death is not capable of being calculated in term of Rupees. The Commission emphasized that object of granting “immediate interim relief u/s 18(3) of the Act of Constitutional Human Rights – right to life – is only in the nature of an immediate help to the next of the kin, in their hour of distress, by applying balm to their wounds. The grant of immediate relief is only a palliative for the act of instrumentalities of the State, which result in infringement of the fundamental rights of the citizen. Grant of relief is only a step to enable the State and its instrumentality to repair the damage done to the rights of the victim.

**2.10** The National Human Rights Commission firmly believes that protection and preservation of Civil and Political Rights is possible only if there is an efficient and effective criminal justice delivery system in the country, which enables fulfillment of the mandate in Part-III of the Constitution. With a view to evolve some effective guidelines to ensure fair trial as well as proper protection to the victims and the witnesses of the crime, the Commission approached the Hon’ble Supreme Court of India by way of Special Leave Petition (which was later on converted by the Supreme Court in Writ Petition) against the judgement dated 27.6.2003 passed by the trial court in the famous case, known as, Best Bakery Case acquitting all the 21 accused, as a result of witnesses turning hostile due to external pressure, resulting in mis-carriage of justice. The details of the case from the stage of filing SLP and other appeals in the case, till passing of the order dated 12.04.2004 by the Supreme Court allowing the criminal appeals and setting aside the order of the acquittal of all 21 accused, have been reported by the Commission in its Annual Report for the year 2003-2004. The Supreme Court further directed re-trial of the case outside the State of Gujarat. The trial of the case before the trial court in Mumbai is at an advanced stage, at present. The larger issues touching upon the credibility of criminal justice delivery system, such as, protection of witnesses and victims of the crime and the need to lay down guidelines on account of witnesses turning hostile at the trial, are still under consideration of the Hon’ble Supreme Court of India in Writ Petition of 109 of 2003.

**2.11** Major events in Gujarat, court proceedings and the Commission’s orders in Case No. 256/6/2003-2004-WC (Case of Ms. Bilkis Yakoob Rasul) leading to the orders passed by the



## An Overview

Supreme Court of India for fresh investigation into her complaint by the CBI have already been reported in the previous Annual Reports for the year 2002-2003 and 2003-2004. The Supreme Court had also transferred the trial of the case from Ahmedabad to a Court in Mumbai in the “interest of justice”. In the meantime, the Commission also received a request from Ms. Bilkis Yakooob Rasul for assistance from the Commission during the trial of the case in Mumbai. The Commission acceded to her request and also undertook to bear the expenses for engagement of a competent lawyer on her behalf. The trial of the case is still continuing before the Trial Court in Mumbai and, is at an advanced stage.

**2.12** Growing concern in the country and abroad about issues relating to human rights and, the rights embodied in the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights, 1966 are substantially protected by the Constitution. Nevertheless their changing social realities and emerging trends that require the government to review the existing laws, procedures and the system of administration of justice, with a view to bringing about greater accountability and transparency in them, and devising efficient and effective methods of dealing with the situation.

**2.13** As Child labour practice still continues in most parts of the country, the Commission has been examining the draft legislation on child labour prepared by an institution under the Ministry of Labour. The Commission also continues to monitor the implementation of the Bonded Labour System (Abolition) Act, 1976 as directed by the Supreme Court. The Commission is also sensitizing and educating District Magistrates, Police, NGOs and other field functionaries involved in the implementation of this Act.

**2.14** It is observed that inspite of the provision in the Persons with Disabilities Act, 1995, most of the States have neither instituted the mechanism nor have they used the existing arrangement to undertake systemic review of the service rules, building bylaws etc. The situation is comparatively better in the states having Commissioners of persons with disability. Although Disability is a state subject, but, not even a single state in the country has embarked upon a disability policy or, plan of action despite the fact that Disability Act mandates the central and the state coordination committee to develop a national/ state policy to address issues faced by the persons with disabilities. The NHRC, Canadian Human Rights Commission and Indira Gandhi National Open University had collectively undertaken the project on human right of persons with disability. The aim of the project is to increase the capability and strengthen both the Commission and their associated partners to cooperatively address major human rights issues in relation to persons with disabilities.

**2.15** The Commission has been deeply concerned about the violation of human rights of the communities designated as Denotified Tribes and Nomadic Tribes. An advisory group was also constituted by the Commission to examine the issue. Detailed recommendations were suggested by the group, to improve the conditions of the communities. The Commission referred the



recommendations suggested to the Central and the State Governments. The Commission is monitoring the response.

**2.16** For the sake of the protection of human life of the mentally ill prisoners, the Commission moved a criminal writ petition before the High Court of Delhi praying for quashing of the trial of Charanjit Singh whose condition had deteriorated despite prolonged treatment in various hospitals/institutions. The High Court while quashing the charge sheet against Shri Charanjit Singh observed that it had been clear that the under-trial prisoners cannot be tried as there was no chance of reversal of his deteriorating mental and physical condition. The High Court commended the role played by the Commission in taking up the case of desolate and destitute person Shri Charanjit Singh as well as for framing guidelines to be followed in such cases.

**2.17** The Commission is concerned about the discrimination faced by the persons belonging to Scheduled Castes. In this regard, the Commission is of the firm view that there is need to combat age-old biases and entrenched attitudes through education and through public information campaign.

**2.18** The Commission has also reviewed the provision of the National Policy on Resettlement and Rehabilitation and noted that the rehabilitation policy has not been made a part of Land Acquisition Act of 1894. The Commission is of the view that the resettlement and rehabilitation be incorporated in the proposed legislation itself so that it becomes justiciable.

**2.19** The Commission firmly believes that death by starvation and other distress conditions constitutes the gravest violation of the human rights of a citizen and calls for all-out state and civil society ameliorative action. With a view to formulate a programme of action for making right to food a reality in the country, the Commission approved the constitution of a Core Group on the Right to Food. The Core Group will advise the Commission on the issues referred and also suggest appropriate programmes which could be undertaken by the Commission.

**2.20** Trafficking in women and children, both male and female, is a grave violation of human rights and there is a great need to deal with this problem in a comprehensive way. The Commission is organizing training programmes for judicial, police and government officers to sensitize and spread awareness among different stakeholders on the problem of trafficking in women and children. To sensitize the subordinate judiciary to the entire gamut of trafficking and other protective laws, the Commission in collaboration with Government of India, National Law School of India University, Bangalore and UNICEF prepared a judicial handbook on the issue. The Commission also continued to monitor the implementation of the guidelines issued by the Supreme Court in Vishaka v/s State of Rajasthan case. The Commission also continues to remain engaged in improving the status and upholding the rights of the destitute and marginalized women including widows living in Vrindavan.

**2.21** The primary obligation to protect human rights is with the State and the Commission works as a facilitator to achieve that end. It is with this objective in view, that the Commission



## An Overview

holds a meeting, annually, with the top bureaucracy of the States, both on the civil and police side. A wide range of issues are discussed spanning the entire gamut of human rights. The meet provides the State government functionaries to present their side of the difficulties faced as well as clear any misconceptions with regard to any directions of the Commission. It is the Commission's belief that more often than not, it is a lack of sensitivity that compounds a situation. These meetings, therefore, afford an opportunity to reinforce and reiterate, both, the Commission's seriousness and intent to ensure the "better" protection of human rights.

**2.22** The Commission has also, as part of its efforts for dissemination of information on issues of human rights awareness, brought out a series of eight booklets on different themes on which the Commission is currently working on such as Human Rights and HIV/AIDS, Rights of persons with disabilities, Child labour etc.

**2.23** The problem of child marriage has continued to be a great concern to the Commission. The Commission, as a preventive measure, wrote to the Union Minister for Human Resources Development and Chief Ministers/Administrators of all States/UTs to organize mass scale awareness programmes/campaigns on Akha Teej through print and electronic media all over the country to sensitize and educate the people.

**2.24** Intrinsic to the dignity and worth of the human person is the enjoyment of the right to health. The International Covenant on Economic, Social and Cultural Rights, to which India is a State Party, specifically recognizes that 'the enjoyment of the highest attainable standard of health' is the right of every human being. It must therefore be treated as a State responsibility, with the obligation to ensure that this right is respected.

**2.25** The Commission had constituted an Expert Group on Emergency Medical Care in April, 2003. The report of the Expert Group revealed the lacunae, existing in the present EMS and made a number of recommendations for implementation in the short and the long term. The Commission also organized five regional and one national public hearings on the right to health care in which the civil society representatives deliberated and suggested ways and means for offsetting structural deficiencies in the health care system. A national action plan was also evolved during the national public hearing containing several recommendations to Government of India and States/UTs.

**2.26** Over the years, the Commission has realized that unless equal attention and urgent consideration is given to the implementation, promotion and protection of Economic, Social and Cultural rights as is being given to Civic and Political rights, Right to development would not be realized. It is in this view of the matter that the focus of the Commission, during the year under review, has been on various dimensions of Economic, Social and Cultural Rights so that a citizen can live with dignity.

---

*References to the communications/reports/letters, subsequent to 1.4.2005, wherever made, have been done as the same were received during the preparation of the report.*



# Civil Liberties

## A] Protection of Human Rights in Situations of Terrorism & Insurgency

**3.1** Throughout the year under review, Governments, International bodies and Civil society members across the globe focused on ways of combating the scourge of terrorism. Sadly, the international community is still unable to find a universal consensus on the definition of “terrorism”, thereby further postponing the adoption of the comprehensive Convention against Terrorism.

**3.2** India has been very active in promoting the universal acceptance of the Convention against Terrorism. Its experience of this scourge, including cross border terrorism, has been longer than that of other countries. Over the years, only too often, India has had to fight its battle alone.

**3.3** In the course of the year 2004-2005, vicious acts of terrorism continued to be perpetrated in various parts of the country. In the State of Jammu & Kashmir innocent people continued to suffer at the hands of terrorists becoming victims of violence / bomb blasts etc. As per newspaper report, 13 civilians including women and children were massacred at Tiali Katha in Ssurankote on the night of 25 – 26<sup>th</sup> June 2004. National Conference leader Farooq Ahmad Zargar was shot dead by unidentified terrorists in Srinagar on 29<sup>th</sup> December 2004. 26 persons including four police personnel were injured when militants fired two grenades in Pampore town on 22<sup>nd</sup> January 2005.

**3.4** During the year 2004 (till December 2004), as many as 147 militants were



## Civil Liberties

killed and 21 nabbed by the police and the Army from Udhampur-Doda Range of Jammu & Kashmir while 55 militants surrendered.

**3.5** The World Conference in Vienna (1993) was a significant landmark in recognizing terrorism as a threat to human rights. It stated that:

*“The acts, methods and practice of terrorism in all its forms and manifestations... are activities aimed at the destruction of human rights ... The international community should take the necessary steps to enhance cooperation to prevent and combat terrorism”.*

**3.6** Different aspects of terrorism have been a concern of world community. The problem of hijacking was dealt with in the 1963 Tokyo Convention, 1970 Hague Convention and 1971 Montreal Convention. Though there have been as many as 12 conventions and a declaration dealing with the subject but it was the killing of Israeli athletes at the Munich Olympics which led to the inscribing of international terrorism on the agenda of the United Nations General Assembly in 1972 at the request of the then Secretary General of United Nations and the problem of international terrorism was confronted both politically and legally and in its entirety rather than concentrating on any specific acts of terror.

**3.7** The Commission firmly believes that the acts of terrorism damage the socio-economic fabric of the society besides causing injuries to the victims, often fatal. Terrorism has to be distinguished from ordinary violence, which has been a part of human behaviour since the advent of human society. Terrorism is most vicious, irrational and senseless kind of violence, which aims at achieving personal, religious or political ends through acts of terror. The main aim of such acts is not to kill or harm a particular person or persons but to create a sense of terror and fear among the people generally and senselessly violate human rights of innocent citizens. Every violation of human rights wherever it occurs is a threat to the welfare of the entire human family.

**3.8** The Commission strongly affirms that there is a clear and emphatic relationship between national security and the security and integrity of the individuals who comprise the State. Between them, there is a symbiosis and no antagonism. The nation has no meaning without its people. John Stuart Mill emphasized that the worth of a nation is the worth of the individuals constituting the nation. This is the emphasis laid in the Constitution of India, which holds out the promise to secure both the nation and the individuals, simultaneously.

**3.9** The Commission endorsed the views of Ms. Mary Robinson, the United Nations Commissioner for Human Rights who had cautioned against the violation of human rights in the global ‘fixation’ with the war against terrorism and said:

*“What must never be forgotten is that human rights are no hindrance to the promotion of peace and security. Rather they are an essential element of any strategy to defeat terrorism.”*





**3.10** In the wake of attacks on the World Trade Centre and the Pentagon on September 11, 2001, the Security Council, on 12 September, adopted Resolution 1368, which stated in the preamble, in a general way, that terrorist acts cause threats to international peace and security (by implication, all of them, no longer some of them) and expressed determination to combat them “by all means”, which implies the use of armed force as well. Secondly, by recognizing the inherent right of individual or collective self-defense in accordance with the Charter, the resolution, for the first time, recognized military self-defense as applicable against terrorist acts perpetrated by non-state actors, again in a general way and not only in respect to 9/11. This automatically legitimized unilateral military strikes against another country, at least until the Security Council takes its measures, something that occurred earlier but was never given the stamp of approval by the United Nations.

**3.11** The Security Council Resolution 1373 of 28 September 2001 reaffirmed that 9/11 acts, “like any act of international terrorism”, constitute a threat to international peace and security. It also established new international legal obligations on States to take a number of specific measures, and to cooperate, against terrorism. In far-reaching proceedings dealing with the implications of this resolution, the Human Rights Committee stressed, inter alia, that legislation enacted pursuant to Security Council resolution 1373 must be in ‘full conformity’ with the ICCPR, and that ‘fear of terrorism does not become a source of abuse’ of human rights. Finally, on 12 November, 2001, the Council adopted Resolution 1377, dealing mainly with the assistance to States to fulfil the requirements of Resolution 1373. In it, the Council declared that acts of international terrorism constitute “one of the most serious threats to international peace and security in the twenty-first century”, as well as “a challenge to all States and to all of humanity”. Further strengthening of these formulations can only depend on the ingenuity of the present and future members of the Council. The resolution also affirms a sustained and comprehensive approach to combat international terrorism.

**3.12** The Commission is of the firm view that though nothing justifies terrorism, far too many people live in conditions where it can breed. It is a common knowledge that systemic human rights violations for long periods of time are often the root cause of conflicts and terrorism. It cannot be denied that disillusionment with a society where there is exploitation and massive inequalities and whose systems fail to provide any hope for justice are fertile breeding grounds for terrorism, which more often than not thrives in environments where human rights and more particularly Economic, Social and Cultural rights are denied by the State and Political rights are violated with impunity both by the State and non-State actors. Any worthwhile strategy to resolve conflicts and terrorism will have to ensure enjoyment of the full range of Economic, Social and Cultural rights.

**3.13** Terrorism poses a serious challenge for law enforcement authorities as well as the courts. Many of the terrorists have superior weapons and communication facilities than the security forces. Some of them are powerful enough to pose physical harm to judicial officers, prosecutors, witnesses



## Civil Liberties

etc. The security forces who risk their lives are bound by the Constitution, laws, executive directions, and are answerable to their Superiors, Judiciary, Human Rights Commissions, Legislatures and Politicians, but the terrorists are answerable to none. A man in “khaki” does not shed off his basic human right to life on wearing a “khaki” - violation of his human rights at the hands of the terrorists is as much condemnable as the assault on human rights of other citizens. Attack on BSF convoy in Jammu & Kashmir in April 2004 resulted in killing of 31 persons including 14 BSF personnel and 17 of the family members, two Fidayeen attacks on CRPF camps in Srinagar, on 27<sup>th</sup> July 2004 resulted in death of five CRPF personnel and attack on 4<sup>th</sup> August 2004 resulted in killing of 9 CRPF personnel. Indeed, the security forces engaged in combating terrorism need full support from the society.

**3.14** The repeated killings of innocent citizens in various parts of J&K, from time to time, bomb blasts in sensitive areas and attacks on security forces and their camps by terrorists including suicide squads, is a phenomenon, which adds a dangerous dimension to terrorist activities all over and particularly in India. Terrorism and proxy war which continued during the year 2004-2005 have claimed thousands of lives of citizens including security forces and damaged property worth more than Rs. 2,000 crore. There is therefore, the need to deal with terrorist activities in a concerted manner.

**3.15** To check terrorism, the State sometimes adopts counter-terrorism measures, which may also be violative of human rights of those engaged in such activity. State Terrorism, however is no answer to combat terrorism. It may, on the other hand, provide legitimacy to terrorism, for the citizen would not know who violates whose human rights. An excessive and unplanned response by the security forces to provocation by terrorists constitutes violation of human rights. It is bad for the society, the State and the Rule of Law. The need to foster a climate of discipline and adherence to democratic values cannot but be emphasized.

**3.16** The menace of terrorism has to be curbed and the war against terrorism has to be fought relentlessly but in doing so, no democratic society can be permitted to chill civil liberties of the citizens. In the fight against terrorism, sensitisation level of human rights cannot be allowed to be sacrificed. A terrorist who violates human rights of innocent citizens must be punished but his human rights should not be infringed except in the manner permitted by law. A critical task of striking a fair balance by way of security concerns and human rights is to be performed and need of proportionality must not be ignored. While fighting war against terrorism relentlessly, the State cannot be permitted to be either selective in its approach or to go over board and in effect declare a war on the civil liberties of people because the rationale of anti-terrorism measures is aimed at protecting human rights and democracy. Counter terrorism measures should, therefore, not undermine democratic values or subvert the rule of law. It is during anxious times when care has to be taken to ensure that the State does not take recourse to bend the rule of law. Proper observance of human rights is not a hindrance to the promotion of peace and security. Rather, it is an essential element in any worthwhile strategy to preserve peace and security and to defeat terrorism. The purpose of anti-terrorism measures must therefore, be to protect





democracy, rule of law and human rights, which are fundamental values of a civilized society and the core values of the Indian Constitution.

**3.17** In *D.K. Basu Vs. The State of West Bengal [1997 (1) SCC 416]*, The Supreme Court of India said:

*“Challenge of terrorism must be met with innovative ideas and approach. State terrorism is no answer to combat terrorism. State terrorism would provide legitimacy to ‘terrorism’. That would be bad for the State, the community and above all for the Rule of Law. The State, therefore, must ensure that various agencies deployed by it for combating terrorism act within the bounds of law and not become law unto themselves. That the terrorist has violated the human rights of innocent citizens may render him liable for punishment but it cannot justify the violation of his human rights except in the manner permitted by law”.*

**3.18** During the year 2004-2005, the Commission continued to monitor developments in respect of matters of which it had taken cognisance earlier. Thus, in regard to the killing of 24 Kashmiri pandits at Pulwama on the 24<sup>th</sup> March, 2003, the Commission was informed that an amount of Rupees Twenty Four lakhs had been disbursed as ex-gratia relief to the next of kins of the 24 victims, apart from the payment of Rupees Five thousand each to the injured persons.

**3.19** The Commission was informed of a case of attack by three unidentified armed terrorists in the accommodation of Junior Commissioned Officers and other ranks, causing heavy casualties on the 14<sup>th</sup> May, 2002, at Kaluchak, J&K, the Government of J&K had granted ex-gratia relief amount of Rupees One lakh to the next of kin of the deceased, Premwati Yadav as well as Rupees Seventy five thousand and Five thousand respectively to the two injured.

**3.20** As regards the case of five persons who were killed in Patrival by the security forces in the aftermath of the Chittisinghpura tragedy, as mentioned in the Annual Report for the previous years, the Commission was informed that a Commission of Inquiry headed by Justice G. A. Kuchai had been appointed to look into the matter and to fix responsibility on the delinquent public servant responsible for the wrong doing. On the basis of the recommendations contained in Justice G.A. Kuchai Commission’s report, the State Government of J&K initiated action against the erring police personnel as well as the medical personnel. The matter had ultimately been entrusted to the CBI for detailed investigation.

**3.21** The Commission continued to monitor closely the situation relating to human rights in North-Eastern region. The Commission received a complaint from the Director, Asian Centre for Human Rights, New Delhi alleging the killing of one civilian and injury to four others including two Manipur Rifles Personnel during an attack by unidentified militants upon the security forces at Yuremban Nagasepam, Imphal West District of Manipur on 10<sup>th</sup> January 2005. Response to the notice issued to the Chief Secretary and Director General of Police, Manipur is as, however, still awaited.



## Civil Liberties

**3.22** Despite the provocation of terrorists acts, the Commission remained true to the duties entrusted to it under the Protection of Human Rights Act, 1993. It thus initiated and pursued action in respect of 67 complaints that it received alleging the violation of human rights by personnel of the army and 60 complaints of such violations by personnel of the para-military forces.

### B] Custodial Deaths

**3.23** Custodial violence and death in the lockup due to it strikes a blow at the Rule of Law, which demands that the powers of the executive should not only be derived from law but also that the same be limited by law. It is the considered view of the Commission that custodial violence is a naked violation of human dignity and degradation which destroys to a large measure, the individual personality. It is a calculated assault on human dignity which no civilized state tolerates. The curbing of custodial violence has, therefore, been a major objective of the Commission ever since it was established. The Commission had, on as early as 14<sup>th</sup> December 1993, issued instructions that it must be informed of every incident of custodial death or rape, whether in judicial or police custody, within 24 hours of its occurrence. It was added that the failure to report promptly would give rise to the presumption that an attempt was being made to suppress the incident. In subsequent instructions, it was stated that information on custodial deaths was to be followed by a post-mortem report, a videography report on the post-mortem examination, an inquest report, a magisterial enquiry report, a chemical analysis report, etc.

**3.24** In order to avoid delays in the scrutiny of such cases, the Commission issued additional guidelines in December 2001 asking the States to send the required reports within two months of the incident; it was underlined, inter alia, that the post mortem report should be submitted in accordance with a new format that had been devised by the Commission and circulated to the various State Governments.

**3.25** The Commission has noted, over the years, that its instructions have, by and large, been followed by the agencies in the State Governments. It has also been observed, however, that when there have been delays in reporting such incidents, the Commission has had good reason to draw an adverse inference as to the conduct of the public servants involved. In such instances, it has often proven necessary to probe further, to see as to whether the death has been caused by custodial violence or negligence, and to take the matter to its logical conclusion.

**3.26** In order to curb the tendency of the State agencies to conceal the truth or underplay the responsibility of those involved for the death in custody due to custodial violence or negligence, the Commission had proposed an amendment in section 36 (1) of the Protection of Human Rights Act, 1993 for obviating the efforts made by the State agencies to block the jurisdiction of the Commission by asserting that another Commission has taken cognizance of the custodial death prior to the National Human Rights Commission. The amendment is, however, still under consideration with the Central Government at the end of the year.



**3.27** In keeping with the guidelines issued by the Commission, the State Government Authorities have been reporting all deaths in custody, police as well as judicial, natural or otherwise, to the Commission. In the year 2004-2005, out of total of 1493 custodial deaths reported to the Commission, 136 deaths in police custody and 1, 357 deaths in judicial custody. While the number of deaths in judicial custody has to be viewed in the context of the total number of prison inmates during a given period, the figures confirmed the view of the Commission that there is a need for better custodial management including increase in the space for upkeep of prisoners, better health care and medical attention and the quality of diet.

**3.28** As regards the deaths which occurred in the police custody in the course of the year 2004-2005, the report indicated that there was a noticeable decline in such cases vis-à-vis the previous year in the States of Bihar, Gujarat, Maharashtra, Uttar Pradesh, Assam, Rajasthan, Tamilnadu and West Bengal. There was, however, an increase in the deaths in police custody in the States of Andhra Pradesh, Karnataka, Kerala, Orissa, Delhi, Jharkhand and Uttranchal. Similarly, there was a decline in deaths in judicial custody in the States of Assam, Maharashtra, Orissa, Punjab, Tamilnadu and Chattisgarh but an increase in such deaths in the States of Andhra Pradesh, Bihar, Gujarat, Himachal Pradesh, Madhya Pradesh, Uttar Pradesh, West Bengal, Delhi and Jharkhand.

**3.29** The State-wise position indicating the number of custodial deaths reported to the Commission in 2004-2005 may be seen in 'Annexure-1'.

**3.30** During the year, the Commission considered and disposed of 117 cases relating to death in police custody and 748 cases relating to death in judicial custody. Moreover, show cause notices were issued in 22 cases of death in police custody and 14 cases of death in judicial custody. The Commission considered it essential to recommend the payment of interim relief under section 18 (3) of the Protection of Human Rights Act, 1993 in respect of 14 cases of custodial death including 9 cases of deaths in police custody and 5 cases of deaths in judicial custody, awarding an amount of Rupees Twelve lakhs, on account of proven violation of human rights in custody that is either custodial violence or medical negligence or foul play etc.

## C] Encounter Deaths

**3.31** In the light of the revised guidelines issued by the Commission on 2<sup>nd</sup> December, 2003, 122 intimations were received from the various State Governments about killings in encounters during the year 2004-2005. These included 66 such intimations from the State of Uttar Pradesh, 18 intimations from Andhra Pradesh, 9 from Delhi and 5 each from Maharashtra and Madhya Pradesh. Separately, the Commission also received 84 complaints about alleged killings in fake encounters. In all these cases, the Commission sought reports through adoption of the procedure prescribed under the guidelines in carrying out investigation of these encounter killings for



## Civil Liberties

ascertaining the genuineness or otherwise of the encounters. The Commission disposed of 46 cases after considering the reports received from the State authorities.

### D] Torture

**3.32** *“Torture is wound in the soul so painful that sometimes you can almost touch it, but it is also so intangible that there is no way to heal it. Torture is anguish squeezing in your chest, cold as ice and heavy as a stone, paralysing as sleep and dark as the abyss. Torture is despair and fear and rage and hate. It is a desire to kill and destroy including yourself”*

.....Adriana P. Bartow

The protection of an individual from torture and abuse by the police and other law enforcing officers is a matter of deep concern in a civilized society. The word ‘torture’ has become synonymous with the darker side of human civilization. We must remember what was said in *D.K. Basu vs. State of West Bengal* [1997 (1) SCC 416] – *“whenever human dignity is wounded, civilization takes a step backward – flag of humanity must on each such occasion fly half-mast.”*

**3.33** The Commission expressed itself strongly about the need for India to accede to the Convention against Torture and other Cruel, Inhuman and Degrading treatment or punishment as early as in 1994-95. Subsequently, it submitted a comprehensive memorandum to the Prime Minister of India followed by a high level meeting. Commission’s memorandum, it appears, contributed to a large measure for India signing the Convention on 14<sup>th</sup> October, 1997.

**3.34** More than 8 years have gone by since India signed the Convention, but so far ratification, despite repeated urgings of the Commission, is still awaited. The Commission has been continuously urging the Government of India for ratification of the Convention against Torture. In October, 2003, the Commission was informed by the Government of India, in response to its communication, that a draft Cabinet Note for ratification of the Convention against Torture was under consideration. Subsequently, on a reminder being sent by Commission in April 2004 and again in 2005, the Ministry of Home Affairs vide its letter dated 19<sup>th</sup> September 2005, informed the Commission that Ministry of External Affairs had constituted an Inter-Ministerial Group under the Chairmanship of AS (UN), comprising of representatives from the MHA, Ministry of Law and L&T Division of the MEA to go into the question of early ratification of the Convention and for steps required to be taken in that behalf. The Ministry of Home Affairs informed the Commission that ratification of the Convention could be taken only after the recommendations of the Inter Ministerial Group are received.

**3.35** The Commission urges the Central Government for an early ratification of this important Convention to fulfil not only its obligation under the international humanitarian law but also to honour the promise made by the Permanent Representative of India to the United Nations, at the time of signing the Convention, namely, that India would “uphold the greatest values of Indian





civilization and our policy to work with other members of the international community to promote and protect human rights.”

## E] Prison Overcrowding

**3.36** The Commission continued to compile and analyse prison statistics on biannual basis. During the period of report, the Commission analysed data relating to prison population as of 31 December 2003 and 30 June, 2004. The salient points of the analysis are provided in the succeeding paragraphs.

### Analysis of prison population as of 30 June, 2004.

**3.37** The total prison population was 3,36,151 which indicated an overcrowding of 41.47% against the authorised capacity of 2,37,617. 11 States/ UTs, namely, Bihar, Chhattisgarh, Gujarat, Haryana, Jharkhand, Madhya Pradesh, Orissa, Sikkim, Tripura, Uttar Pradesh, and Delhi experienced overcrowding ranging from 52% to 224%. Delhi continues to hold the most overcrowded jails (224%) followed by Jharkhand (195%) Chhattisgarh (111%) and Gujarat (104%). Jails had idle capacities in 6 States and 4 Union Territories, namely Jammu & Kashmir, Manipur, Nagaland, Rajasthan, Uttaranchal, West Bengal, Chandigarh, Daman & Diu, Dadra & Nagar Haveli and Lakshdeep.

**3.38** Undertrial prisoners constituted 71.14% of the total prison population in the country. 11 States/UTs have undertrial prisoners exceeding 80% of the total prison population. These are: Dadra & Nagar Haveli (100%), Meghalaya (94.71%), Manipur (92.51%), Jammu & Kashmir (88.90%), Bihar (85.66%), Daman & Diu (84.15%), Nagaland (83.31%), Uttar Pradesh (82.47%), Delhi (81.45%), Chandigarh (80.42%) and West Bengal (80.20%). Chhattisgarh is the only State which has less than 50% undertrial prisoners (48.57%).

**3.39** Women constituted 3.97% of the total prison population in the country. Uttaranchal (11.69%) tops the list followed by Mizoram (10.45%), Tamil Nadu (9.25%), Chandigarh (6.47%), Andhra Pradesh (5.77%), West Bengal (5.71%) and Punjab (5.68%).

**3.40** A total of 1544 children were in jails with their mothers. U.P. with 385 accounted for the largest, followed by West Bengal (163), Maharashtra (143), Jharkhand (142) and Madhya Pradesh (127).

## F] Visit to Prisons

**3.41** The Commission intensified its efforts to improve prison conditions in the various States during the period under review. A number of jails were visited by the Commission's officials to study the living conditions in discharge of the obligations set out in Section 12 (c) of the Protection of Human Rights Act 1993. The Special Rapporteur of the Commission and Chief Coordinator of Custodial Justice Cell carried out a study of jail conditions in Tripura, Kerala, Andhra Pradesh,

## Civil Liberties

Goa and Chandigarh. The Commission considered the study reports, which highlighted the state of infrastructure and various aspects of Jail Administration from human rights' angle and issued appropriate recommendations.

**3.42** Justice Y. Bhaskar Rao, Member, NHRC, accompanied by the Special Rapporteur of the Commission and Chief Coordinator, Custodial Justice Cell visited the Central Jail, Agartala; Female Jail, Agartala; and District Jail, Udaipur in Tripura from 10 – 13 June, 2004. The team visited Central Jail, Cherlapali Women Jail, Hyderabad and Sub-jail Bhongir from 4 - 6 December, 2004. The Chief Coordinator, Custodial Justice Cell, visited Central Jail, Thiruvananthapuram; Women Prison, Neyyattinkara; Open Jail, Thiruvananthapuram; District Jail, Kollam; and Sub-Jail, Petnanithitla in Kerala from 29 October to 2 November, 2004. He visited all the five Jails in Goa (30 January to 2 February, 2005) and Central Jail, Chandigarh (10 February, 2005).

**3.43** The reports of the above visits covering all aspects of jail administration relevant to human rights bring out the following broad picture of the jail conditions in these States:

### Prisons in Tripura

**3.44** Tripura is experiencing overcrowding of nearly 80% against the national average of about 40. The NHRC team noticed an alarming high overcrowding at Central Jail (105%) and District Jail (143%). It is, however, heartening to note that promised steps have been taken for opening new jails and creating additional capacity in the existing jails under the modernization plan funded by the Central Government. Health cover needs to be upgraded by providing full time doctors in all District Jails and ensuring presence of a qualified Pharmacist at each Sub-Jail. The systems of parole and pre-mature release of lifers need to be rationalized in accordance with the directions of the Supreme Court and guidelines issued by the NHRC. The system of free legal aid to the poor prisoners needs a thorough scrutiny and evaluation as a number of prisoners were found deprived of the basic right. Vocational training facilities and works programme at the Women Jail are utterly inadequate. There is need for greater involvement of NGOs in education, recreation and welfare of prisoners.

### Prisons in Kerala

**3.45** Although the overall overcrowding is less than 10% in Kerala against the national average of about 40%, overcrowding is a major problem at Central Jail, Thiruvananthapuram and District Jails, Kollam and Kozhikode because of uneven distribution of jail population. Out of a total of the 14 districts, six districts, namely Pathananathitta, Iduki, Ernakulam, Mallapuram, Wynad and Kozhikode are without proper District Jails. The state of jail buildings in Kerala are pathetic. The situation of undertrial prisoners, administration of parole, management of Open Jail and execution of works programme provided at the Central prisons present a good picture of jail administration in Kerala. Inadequacy of health cover, poor standard of sanitation and hygiene and want of recreational facilities are its glaring deficiencies. Poor living conditions for women prisoners, with hardly any medical facilities are also a matter of concern. The system of pre-mature release of lifers needs to be





rationalized in accordance with the recommendations of the NHRC. There is a good scope for involvement of NGOs in education recreation and welfare of prisoners.

### Prisons in Andhra Pradesh

**3.46** Overcrowding is being experienced in most jails. The modernization grant received from the Government of India is being utilized efficiently to create additional accommodation. As many as 22 districts do not have regular District Jails.

**3.47** The State Government has taken a commendable initiative in introducing the video linkage between the jails and the courts in as many as 14 Prisons. This has brought about significant improvement in the situation of Under-trial prisoners in recent years.

**3.48** Prisoners' education has been made an essential ingredient of the institutional treatment in the Central Prisons and the District Prisons. An efficient functioning of the institution of Welfare Officers is helping in liberal operation of Parole Rules. The arrangements for providing vocational training and paid work to convicts are also notable features of jail administration. Inadequacy of health cover can be mentioned as a major deficiency of jail establishment in Andhra Pradesh. Regular jail doctors are available only at Central Jails and in 7 out of a total of 9 District Jails. Sub Jails numbering 120 are without any medical cover. They do not have even the First Aid facility. High mortality rate of prisoners in jails is also a cause for concern. A number of instances of non-compliance with the Commission's instructions regarding the death of prisoners were detected.

**3.49** The recreational facilities are poor and need improvement. The plight of women prisoners especially UTPs present another prominent weaknesses of the jail administration in Andhra Pradesh. The legal aid system meant to serve the poor prisoners also needs a critical evaluation to see whether it is functioning effectively. A number of Under-trial prisoners were found not being provided with any legal aid. The system of premature release of lifers needs to be streamlined following the guidelines issued by the NHRC.

### Prisons in Goa

**3.50** While Goa is relatively free from overcrowding except the Sub Jail Sada, living conditions are dismal as most of the jail buildings are in a state of advance decay and beyond any economical repair. The utilization of modernization grant received from the Government of India for improving the infrastructure is inefficient and slow. Prisoners' education, recreation and general welfare are not receiving proper attention. Works programmes being run in jails are in a state of neglect and cover not even 10% of the convict population. The arrangement of supply of food through private contractors at the judicial lock-ups calls for a review. Medical facilities are highly inadequate. It is shocking that even the sole Central jail in the State is without a regular Medical Officer. The plight of women prisoners especially the under-trial prisoners presents a glaring deficiency of the jail administration. NGOs have been involved in jail matters. The jail department does not have any independent status of its own and it is functioning as part of the Collectorate



## Civil Liberties

with DM North as ex-officio I.G. Prisons. Even jail Superintendents at all places including the Central Jail Aguada are ex-officio Superintendents provided from the General Administration who cannot ensure efficient functioning of the Department as per the legal obligations.

### Prisons in Chandigarh

**3.51** Conditions in Central Jail, Chandigarh are satisfactory with actual population averaging around 55% of created capacity. Central Jail, Chandigarh has always remained free of the problem of overcrowding. However, the state of undertrial prisoners is pathetic, with a large number of them languishing for long periods. The progress of trial is found to be slow in most cases.

**3.52** Established as a Model Jail, this jail had, over the years evolved a liberal system of administration by balancing the custodial and treatment aspects of prison management. The infamous jail break of 2004 involving the killing of a former Chief Minister of Punjab gave a serious blow to this approach with the result that the jail is now being administered with tightened security and harsh methods by an over cautious staff. The jail break cannot be attributed to administration of liberal provisions which had made this jail a 'Model Jail'. A detailed examination of the incident would leave no one in doubt that the escape was made possible by negligence and even connivance of a section of staff. It is unfair that a number of law-abiding prisoners of good conduct are made to suffer a strict regime after the incident. Educational activities established under the arrangements of IGNOU need to be restored and useful activities such as yoga, meditation and cultural programme re-started.

### Prisons in Orissa and Jharkhand

**3.53** The Special Rapporteur for Orissa and Jharkhand visited the District Jail Keonjhar, Sub Jail-Deoghar Orissa, on 22 April, 2004, Sub Jail Pallahara (Orissa) on 23.4.04, District Jail Phulbani (Orissa) on 24 August, 2004, Central Jail Hazaribagh (Jharkhand) on 17.9.04, District Jail Koraput (Orissa) on 13.1.05, Special Sub Jail Bhanjnar and Sub Jail Aska (Orissa) on 28.3.05. Most of the jails were found overcrowded and lacking in sanitation, hygiene and medical facilities. The Special Rapporteur made a special mention on the incidence of mental illness showing an alarming rise in jails.

**3.54** All the above reports were considered by the Commission and forwarded to the authorities concerned with appropriate recommendations which are being monitored on continuing basis. The recommendations include:

- The NHRC team noticed alarmingly high overcrowding in most of the jails visited by the team.
- Health cover needs to be upgraded by providing full time doctors in all District Jails and ensuring presence of a qualified Pharmacist at each Sub-Jails.
- The systems of parole and pre-mature release of lifers need to be rationalized in accordance with the directions of the Supreme Court and guidelines issued by the NHRC.





- The system of free legal aid to the poor prisoners needs a thorough scrutiny and evaluation as a number of prisoners were found deprived of the basic right.
- Vocational training facilities and works programme at the Women Jail are utterly inadequate.
- There is need for greater involvement of NGOs in education, recreation and welfare of prisoners.
- Poor living conditions for women prisoners, with hardly any medical facilities is also a matter of concern.
- High mortality rate of prisoners in jails is also a cause for concern.
- A number of instances of non-compliance with the Commission's instructions regarding the death of prisoners were detected.
- The arrangement of supply of food through private contractors at the judicial lockups calls for a review.

## G] 'Action Taken Reports' relating to Prisons Received from States

**3.55** During the period under review, 'Action Taken Reports' were received from the State Governments concerned on the Commission's directions in respect of the District Jail, Meerut (UP) visited on 18 March, 2002, Central Jail, Buxar (Bihar) visited on 13 January, 2003, Model Jail Beur, Bihar visited on 1st February 2003, Central Jail Yervada, Maharashtra visited on 12.6.03, Presidency Correctional Home, Kolkata and District Correctional Home, Howrah (West Bengal) visited on 17-18 September 2003, Model Central Jail Kandla, Sub Jail Shimla, Sub Jail Bilaspur and Open Jail Bilaspur (Himachal Pradesh) visited on 21-24 September 2003, Central Jail Ambala (Haryana) visited on 17-18 October 2003, Central Jail Jaipur, Women Jail Jaipur, District Jail Tonk, Open Jail Sanganer and Sub Jail Mallapura, (Rajasthan) visited from 16-18 February, 2004; references to which can be seen in previous reports.

**3.56** The ATRs were duly considered by the Commission after scrutiny by the Custodial Justice Cell. The level of compliance with the Commission's directions was found to be, by and large, satisfactory. Only in respect of Himachal Pradesh, the J.S. (Home) and the Additional DG Prisons had to be called for discussion on some unattended matters and directed to send a revised ATR. The Commission has noticed with satisfaction that the State Governments have initiated action on the Commission's major recommendations. Prison infrastructure is being steadily upgraded at most places. Welfare of prisoners is now receiving greater attention. Problems of under-trial prisoners are being addressed with seriousness and efforts are being made to involve NGOs in activities meant for prisoners' welfare.

## H] Sensitization of Prison Staff

**3.57** The sensitization programme for Jail Superintendents, Jailers and Officers of Correctional Services which the Commission started in 2000-01 continued during the period under review. One-day workshops were held at Shimla, Himachal Pradesh (16 September 2004), Jaipur, Rajasthan (8 October, 2004), Bangalore, Karnataka (16 October, 2004), Raipur, Chhattisgarh (8 January, 2005) and Guwahati, Assam (30 March, 2005). These workshops were conducted by the Chief Coordinator of the Custodial Justice Cell in collaboration with the DG/IG Prisons of the State concerned.

**3.58** The workshop held at Shimla was attended by three Superintendents, 4 Deputy Superintendents and 7 Assistant Superintendents of Jails besides the DIG Prisons and three officers of the Prison HQ., Shimla and Medical Officer, Modern Central Jail, Kanda. Shri R.L. Verma, Vice Chancellor, Himachal Pradesh University inaugurated the workshop. Shri J.N. Borowalia, Principal Secretary to the Chief Justice of Himachal Pradesh was also associated as a resource person.

**3.59** Dr. Justice A.S. Anand, Chairperson inaugurated the sensitization workshop conducted at Jaipur on 8.10.04 for the jail staff of Rajasthan. 10 Superintendents and 12 Deputy Jail Superintendents including 4 Lady Officers participated. Justice Shri A.S. Godara, Chairperson, State Human Rights Commission and Shri R.K. Ankodia, Member State Human Rights Commission were also associated. Justice Shri V.S. Dave (Retired) was associated as a resource person.



# Complaints Before the Commission

Chapter-4

## A] Pendency

### Number and Nature

**4.1** During the year under review, the Commission had a total number of 1,35,209 cases to consider which included cases brought forward from previous years as well as fresh institution during the current year. During the period from 1 April 2004 to 31 March 2005, the Commission disposed of 85,661 cases (**Annexure 2**). The State-wise and Category-wise details of cases are shown in **Annexures 3 (a) to (c)**.

**4.2** At the end of the reporting period i.e. as on 31 March 2005, the total number of cases pending with the Commission was 49,548, which included 2,288 cases awaiting preliminary consideration and 47,260 cases in respect of which reports were either awaited from the authorities concerned or the reports had been received and were pending further consideration within the Commission itself (**Annexure 4(a)**). At the beginning of the year i.e. 1 April 2004, 60,808 cases were pending before the Commission (**Annexure 4 (b)**)

**4.3** The total number of cases registered in the Commission during 2004-2005 was 74,401, while the corresponding figure for the year 2003-2004 was 72,990. Of the cases that were registered during the year under review, 72,775 cases were complaints of alleged human rights violations besides 1500 cases related to intimations of custodial deaths, 4 cases of custodial rapes and 122 related to police encounters. In accordance with the guidelines issued by the Commission, every death in police and judicial custody is to be reported to the Commission for its

## Complaints Before the Commission

scrutiny irrespective of such death being natural or otherwise. Of the custodial deaths that were reported in the course of the year 2004-2005, 7 deaths allegedly occurred in the custody of defence / para-military forces, 136 deaths occurred in police custody, while 1357 in judicial custody. Most of the latter resulting from illness, old age or similar factors. (**Annexure 5**).

**4.4** The details in respect of complaints registered last year again confirm the assessment made by the Commission in the preceding annual reports that, after successive years of rapid increase, the number of complaints received by the Commission now appears to have stabilized. As in the past, the largest number of complaints registered was from the State of Uttar Pradesh; they numbered 44,351 or 59.6 percent of the total number of complaints registered by the Commission. Delhi followed Uttar Pradesh, with 5,221 complaints while Bihar coming third with 3,917 complaints. It would again appear that the establishment of State Human Rights Commissions has not so far led to any significant reduction in the number of complaints being received by the National Human Rights Commission from Uttar Pradesh.

**4.5** Of the total number of 85,661 cases disposed of in 2004-2005, 38,448 were dismissed 'in limini', while 21,465 were disposed of with directions to the appropriate authorities for remedial measures. 766 intimations relating to custodial deaths, 46 cases of encounter deaths and 24,936 other cases were also disposed of after calling for reports from the concerned authorities. In the latter group, 24 cases pertained to alleged disappearances, 1086 cases to illegal detention/ illegal arrest, 1213 cases of alleged false implication, 16 cases of alleged custodial violence, 84 cases of alleged 'fake encounters', 6833 instances related to failure to take appropriate action and 6488 complaints related to other alleged police excesses. During the period under review, the Commission dealt with a number of complaints relating to rights of women. 196 cases of allegations of violating the dignity of women, 320 cases alleging sexual harassment of women, 634 cases alleging abduction, rape and murder, 1115 cases relating to dowry deaths, 708 cases of dowry demand, 279 cases alleging exploitation of women and 392 cases alleging rape of women were disposed of. The Commission also disposed of 30 cases concerning child labour, 19 cases relating to child marriages and 102 cases of bonded labour. The Commission also dealt with complaints relating to conditions in prisons. 179 cases alleging harassment of prisoners, 51 cases alleging lack of medical facilities in jails and 164 cases relating to other aspects of conditions in jails were disposed of by the Commission with appropriate recommendations. In addition to the above, 593 cases alleging atrocities against members of the Scheduled Castes/Scheduled Tribes were disposed of by the Commission, as also 9 cases of communal violence and 4401 cases of other categories. The State-wise position in respect of these cases may be seen at **Annexure 3 (a) to (c)**.

**4.6** The Supreme Court of India, vide its order dated 12/12/1996 had referred the Punjab Mass Cremation case to the National Human Rights Commission. Previous reports of the Commission have provided full details of the proceedings conducted by the Commission in respect of the said case. During the period of reporting, the Commission heard the matter from time to time and vide its proceedings dated 11/11/2004, it awarded compensation @ Rs. 2.50



## Complaints Before the Commission

lakhs to the next of kin of each of the deceased persons who were in the custody of Punjab police at the time of their death.

**4.7** Since its establishment in October 1993, the Commission has directed that interim relief to the extent of Rs. 10,07,12,634/- to be paid in 617 cases. During the year 2004-05, the Commission recommended that interim relief amounting to Rs. 23,27,000/- be paid in 46 cases, including 12 cases of deaths in police/judicial custody.

**4.8** The Commission would like to reiterate that it is of utmost importance that both the Central and State Governments respond promptly to requests for reports made by the Commission. Further, they need to act without delay on its varied recommendations in respect of individual cases. The Protection of Human Rights Act 1993 is based on the premise that the fullest cooperation will be extended to the Commission by both the Central and State Governments. It is therefore, incumbent on them to assist the Commission in its efforts to dispose of cases promptly and efficiently, in order to ensure that the better protection of human rights, as envisaged under the Act, is achieved.

**4.9** In the course of the year 2004-2005, the Commission has come across a large number of cases complaining of avoidance on the part of the police station officers to register complaints of cognizable offence or a tendency to minimize the gravity of the offence while registering a case. This indeed is a violation of statutory obligations imposed on the police station incharge by the provisions of Chapter XII, Code of Criminal Procedure, in particular, section 154 CrPC.

**4.10** Such deviant act on the part of the police officers, in the opinion of the Commission, does have an adverse effect on Criminal Justice Delivery System. Accordingly, it is recommended that Central Government, all State Governments and all the Government of UTs should issue necessary instructions to all the concerned police officers to meticulously adhere to provision of section 154 CrPC in the matter relating to registration of cases.

**4.11** During a visit by a team of officials from the Commission to the Central Women's Jail, Tihar, the Commission found that out of the 456 under-trial prisoners in the jail, 39 had completed more than 3 years in the prison. The under-trials made a common complaint to the team about the delay in commencement of their trials, slow progress of the trial for various reasons as well as delay in pronouncement of sentence by the court even after hearing arguments. Apart from a list of 19 specific complaints received by the team, it was reported that 9 under-trial prisoners who have been granted bail by the trial court were found to be still languishing in jail because of their inability to furnish surety.

**4.12** Concerned with the glaring and systemic violation of basic human rights of a prisoner to a speedy trial, which is a Constitutional imperative in Article 21 of the Constitution, the Chairperson of the Commission requested the Hon'ble Chief Justice of High Court of Delhi



## Complaints Before the Commission

to look into the plight of the undertrial prisoners in Tihar in general and the unfortunate women in particular, and to issue appropriate directions as deemed fit. A copy of letter dated 20/2/2004 addressed by Chairperson, NHRC to the Chief Justice of Delhi High Court is submitted as **Annexure 6**.

**4.13** The Hon'ble Chairperson was informed by the Hon'ble Chief Justice of High Court of Delhi that, after calling for report from the learned public prosecutor and hearing the matter by a Division Bench, appropriate orders had been passed in a number of such cases. A copy of the letter dated 19/5/2004 addressed by Hon'ble Chief Justice of Delhi High Court to the Hon'ble Chairperson, NHRC is submitted as **Annexure 6**.

**4.14** Thus, by the intervention of the Commission, many poor people got justice and many sick and infirm and aged male and female accused could be released.

### B] Investigation of Cases

**4.15** In its crusade to ascertain truth in the allegations in a complaint, investigations ordered by the Commission are carried out by the Investigation Division of the Commission which is headed by an officer of the rank of Director General of Police. He is assisted by a DIG, three senior Superintendents of police and 21 other investigators of various ranks. The Investigation Division, acting under directives of the Commission collects facts in respect of complaints received by the Commission and to place those facts before the Commission. The Division also monitors cases in respect of which the Commission has ordered investigation by the CID or CBI.

**4.16** The investigation of cases by the team from Investigation Division of the Commission helps it in ascertaining the facts in respect of complaints received by it directly in the shortest possible time. This is an invaluable information to the Commission in the discharge of its duties and allows the Commission to gain public confidence by the impartial and independent handling of the matters.

**4.17** During the year 2004-2005, the Commission directed its Investigation Division to look into 2805 cases, as compared with 3538 cases during the year 2003-2004. Of these cases 2747 related to the collection of facts from different parts of the country. In 58 instances, however, the Commission directed the teams to conduct inquiries on the spot. These inquiries were conducted mainly in Uttar Pradesh, Delhi, Bihar, Haryana and Jharkhand.

**4.18** Investigation Division also continued to assist the Commission in the onerous task of processing and scrutinizing the large number of cases of custodial deaths reported to it over the years. The details of that effort are provided in Chapter III of this report. Further, the analysis and advice of the Investigation Division was frequently requested by the Commission in respect of complaints alleging deaths in fake encounters, or the violation of human rights





## Complaints Before the Commission

resulting from false implication in cases, illegal detention, torture, and other acts of wrong-doing by the police.

**4.19** That the Commission has been making certain recommendations through its annual reports for strengthening the Investigation Division by sanctioning additional posts and bringing about changes in the conditions of service of its personnel with a view to facilitate the appointment of well qualified and trained man power. The Commission is still awaiting the Government to fulfill its assurance.

### C] Selective Cases 2004-2005

**4.20** As in the previous year, the Commission received a wide range of complaints relating to human rights violation from the various parts of the country. The complaints included cases alleging custodial deaths, torture, police high-handedness, violations committed by security forces, prison conditions, rights of women and children and other vulnerable sections, bonded labour, negligence of public authorities etc. The Commission has also taken up suo-motu cognizance of many important incidents of violation of human rights which received media attention. The Commission has frequently been issuing press releases in respect of the more prominent cases, information concerning such cases which is often also included in the monthly Newsletter and placed on the website. The summaries of 32 such representative cases follow :

#### a) Human Rights Violations by Custodial Institutions

##### **1. Death of Sher Mohammad in Police custody by torture: Uttar Pradesh – Case No. 8924/95-96/NHRC**

**4.21** The Superintendent of Police, Badaun, Uttar Pradesh vide his communication dated 23 February 1996 intimated the Commission about the death of Sher Mohammad s/o Abdul Rashid, an under trial prisoner, who was arrested on 22<sup>nd</sup> February 1996 in case No. 29/96 u/s 25 of Arms Act and case No. 20/96 u/s 364 IPC by the police from the Binowar police station. It was reported that the under trial, Sher Mohammad fell ill and he died while on the way to the District Hospital, Badaun on 23 February 1996.

**4.22** In response to the notice issued by the Commission, the post mortem report and the magisterial enquiry report were sent to the Commission. A perusal of the Magisterial Inquiry Report showed that the said under trial prisoner was beaten up by the SHO, while being interrogated in the two cases registered against him, and died as a result of police torture. A criminal case was registered against the SHO and a charge sheet was filed in court u/s 302/323 IPC.

**4.23** While considering the matter on 14<sup>th</sup> January 2004 the Commission agreed with the magisterial inquiry, that it was a case of custodial death which was caused as a result of severe



## Complaints Before the Commission

beating of the under trial while in custody of the police. The Commission, therefore, directed the issuance of notice to the Chief Secretary, State Government of U.P. to show-cause why “immediate interim relief” of Rupees One lakh u/s 18(3) of the Protection of Human Rights Act, 1993 not be given to the next of kin of the deceased. However, since no response was received from Chief Secretary to the show cause notice, on further consideration of the matter, the Commission on 21 April 2004, directed the State Government of U.P. to pay an interim relief of Rs. 1 lakh to the next of kin of the deceased. The Commission also observed that death in police custody is one of the worst kind of crimes in a civilized society governed by the rule of law and poses a serious threat to an orderly civilized society. Torture in custody flouts the basic rights of the citizens and is an affront to human dignity. Police excesses and torture in custody of the detainees/ under trial prisoners or suspects tarnishes the image of a civilized nation and it is necessary to take stern measures to check the malady. The National Police Commission in its 4th Report of June 1980, almost a quarter of a century ago, noticed the prevalence of custodial torture and observed that nothing is “so dehumanizing” as the conduct of police in practicing torture of any kind on the person in their custody.

**4.24** The National Human Rights Commission having been constituted under the 1993 Act for better protection of human rights and civil liberties of the citizen has not only the jurisdiction but also an obligation to grant relief in appropriate cases to the victims or the heirs of the victims whose right to life under Article 21 of the Constitution has been flagrantly infringed by the State functionaries by calling upon the State to repair the damage done by its officers to the human rights of the citizen. The State, in all such cases, is vicariously liable for the wrongful acts of its officers. When the State is called upon to grant monetary relief to the next of kin of the deceased or the victims of torture as the case may be, by the Commission it is because the doctrine of strict liability of duty of care on the part of the State is attracted to such cases. It is reiterated that the State is vicariously responsible, if the person in the custody of the police is deprived of his life except according to the procedure established by law, to recompense the heirs of the victims.

**4.25** The Government of Uttar Pradesh submitted its compliance report in respect of the payment of Rupees One lakh to the next of kin of the deceased.

### **2. Death of Sh. Kantosh Prahlad Jadhav, in Police Custody by torture: Latur, Maharashtra - (Case No. 5418/95-96/NHRC)**

**4.26** The Commission received an intimation dated 28.10.1995 from the District Superintendent of Police (DISPOL), Latur, Maharashtra stating that one Kantosh Prahlad Jadhav aged 22 years was arrested on 28.10.1995 in PS MIDC, Latur Cr. No. 93/95 u/s 324,504 IPC & 135 Bombay Police Act. He had further stated that the accused, while in custody, committed suicide by hanging himself to the iron rod of the ventilator of the police lock up with the help of torn part of ghangadi (blanket) provided to him.





## Complaints Before the Commission

**4.27** In response to the Commission's notice dated 3.11.1995, the inquest report received showed no signs of beating either on the front side or back side of the body. The report further stated that post-mortem report indicated no external or internal injuries on the body of the deceased and the cause of death was opined as "asphyxia due to hanging". The SDM in his enquiry report concluded that on the basis of statements of witnesses and on examination of the post-mortem report, the death of the Kantosh was due to suicide committed by him by hanging. However, he observed that there were other factors also such as, negligence and lack of responsibility on the part of police officials, which resulted in the incident.

**4.28** The Government of Maharashtra submitted an Action Taken Report on the magisterial enquiry, which indicated that the accused police officials were placed under suspension and departmental enquiry had been initiated against the delinquent officials.

**4.29** The Commission vide its proceedings dated 2.8.2004, while considering the Magisterial Enquiry Report and the departmental action taken against the police officials, directed Chief Secretary, Government of Maharashtra to show cause why interim relief should not be paid to the next of kin of the deceased.

**4.30** In response, the Home Department, Government of Maharashtra vide communication dated 7.10.2004 informed the Commission that the State Government has decided to grant relief of Rs. 50,000/- to the next of kin of the deceased, Kantosh Prahlad Jadhav and after obtaining approval of the Commission, further action for disbursement of relief will be taken.

**4.31** The Commission vide its proceedings dated 20.10.2004 considered the case and approved the grant of Rs. 50,000/- as "interim relief" to be paid to the next of kin of the deceased Kantosh Prahalad Jadhav. Compliance report from the Government of Maharashtra is still awaited.

### **3. Custodial death of Haji Mohd. Nabuji Tentwala in Police Custody in Ahmedabad, Gujarat - Case No.7586/95-96/NHRC**

**4.32** The Commission on 19.1.1996 received an intimation dated 18.1.1996 from the Commissioner of Police, Ahmedabad City, Gujarat regarding death of Haji Mohd. Nabuji Tentwala in police custody on 12.7.1995. It was stated that he was arrested in connection with Cr.Case No.106/95 u/s 302/342/34 IPC and S. 135 B.P.Act. by the police who tied him with rope, beat him with sticks, fists and kicks to death. The report further indicated that two of the accused police persons namely PSI J.V.Surela & PC Bharkumar were arrested and bailed out on 31.10.1995 and 2.1.1996 respectively.

**4.33** In response to the notice issued by the Commission, the Commissioner of Police, Ahmedabad City submitted the post-mortem, inquest and magisterial inquiry reports. As per the



## Complaints Before the Commission

post mortem report the body of the deceased was having 23 ante-mortem injuries and the cause of death was indicated as “due to shock as a result of injuries present on the body”. The inquest report conducted by the Sub-Divisional Magistrate, Ahmedabad City indicated that there were signs of blunt weapon blows on various parts of the body. The magisterial inquiry conducted by the Sub-Divisional Magistrate, Ahmedabad City blamed the PSI Surela and ACP Brahm Bhatt and other police personnel for the death of Haji Mohd. Tentwala and recommended investigation to pin point the responsibility of the death and to ascertain the actual culprits from the police staff.

**4.34** A separate report dated 20.7.1996 submitted by the District Magistrate, Ahmedabad, Gujarat indicated that a case No.19/95 u/s 302/323/504/114, IPC had been registered by the Crime Branch against PSI Surela and 4-5 police personnel and another case No.20/95 was registered u/s 330/342 against the main accused PSI Surela, PCs Navneet, Bharat Rathore, Raju and ACP Brahm Bhutt and four other police personnel.

**4.35** On consideration of the records of the case, the Commission held that the deceased was wrongfully arrested by the police for interrogation in a criminal case and was brutally thrashed to extract confession. Consequently, he suffered as many as 23 injuries, which resulted in his death. It is a case of gross violation of human rights. Accordingly, the Commission directed to issue notice to the Chief Secretary, Government of Gujarat to show cause as to why the Commission should not recommend payment of interim relief u/s 18(3) of the Protection of Human Rights Act, 1993 to the next of kin of the deceased.

**4.36** In response to the show cause notice, the Secretary, Home Department, Government of Gujarat, vide letter dated 19.6.2004 submitted that criminal offences had been registered against the police personnel responsible for beating up the accused and departmental action had also been initiated and are pending final outcome. It was acknowledged that human rights violation had taken place and the State Government had taken appropriate action against the concerned accused police personnel. The report further mentioned that for the violation of human rights, both criminal and departmental proceedings had already been initiated and awaiting final outcome. In the circumstances the Home Secretary requested that the show cause notice may be withdrawn and further action may be considered after the outcome of the criminal proceedings pending before the Court.

**4.37** The Commission considered the response received from the State Government on 22.9.2004. While referring to the observations of the Hon'ble Supreme Court of India in the case of Neelbati Behra vs. State of Orissa, 1993 (2) SCC 746, it observed and ordered as under:

- (a) This Commission has taken a consistent stand that the obligation of the State to ensure safety of persons while in its custody is strict and absolute and admits of no exception.



## Complaints Before the Commission

The infeasible right to life of every citizen, including convicts, prisoners or under-rials, cannot be taken away except in accordance with the procedure established by law, while the citizen is in the custody of the State. Violation of that right renders the State vicariously liable for its acts of commission and omission and such liability is not contingent upon determination of the ultimate guilt of the offenders in a criminal court. Besides, death in police custody as a result of torture is perhaps the worst type of crime in civilized society.

- (b) It is now an established law that the failure of the State to take all possible steps to protect the life of the citizens while in its custody makes the State vicariously liable for its action/ omission.
- (c) Immediate interim relief envisaged in Section 18 (3) of the Act has to be correlated to the injury / loss which the victim or members of his family have suffered owing to the violation of human rights by public servants. By no stretch of imagination can it be argued that award of this immediate interim has to be dependent upon the strict establishment of criminal liability after a full dress court trial. If this view is accepted, the relief will then neither be immediate nor interim. A meaningful and harmonious construction of this clause would leave no doubt that the Commission is entitled to invoke its benevolent sweep on a prima-facie view of the matter irrespective of whether there is any litigation – civil or criminal relating to the matter.
- (d) The idea of immediate interim relief does not therefore, presuppose the establishment of criminal liability of the offender in a court of law as a precondition for the grant of the relief nor does it depend on whether any civil litigation is either pending or prospective. A welfare state must recognize its obligation to afford relief to its citizens in distress, particularly those who are victims of violations of their human rights by public servants. The limiting of such statutory relief only to cases in which criminal liability of the offending public servant is established in a court of law beyond reasonable doubt is, to thwart an otherwise civilized piece of legislation by importing totally irrelevant limitations. The Commission desires to point out that the ground urged by the Government in this case, when it has been acknowledged by the State itself that there has been violation of human rights of the citizen, is misconceived.

**4.38** Accordingly, the Commission recommended to the State Government of Gujarat to pay a sum of Rupees One lakh by way of interim relief to the next of kin of the deceased and to submit compliance report to the Commission within four weeks.

**4.39** Vide communications dated 13/5/2005 and 14/9/2005, the State Government has informed that it has implemented the recommendations of the Commission and submitted proof of payment of Rs. One lakh to the widow of the deceased. Accordingly, the case was closed by the Commission.



## Complaints Before the Commission

### **4. Prisoner shot and injured in police lock-up due to negligence by Police, Uttar Pradesh Case No.6454/24/97-98/6811/24/97-98**

**4.40** The Commission received a complaint from Shri Rajesh Saini, resident of District Muzaffarnagar, Uttar Pradesh alleging that on 28<sup>th</sup> August, 1996 he was taken away from his house by the police of Kotwali Shamli, U.P. District Muzaffarnagar to the police station where he was abused, beaten up and tortured. On the next day, two young persons, namely Lokender and Dilbagh were brought by the police and kept in the same cell. After sometime, Dilbagh fired at him, as a result of which he received injuries but the police did not take any steps to save him.

**4.41** The Commission by its proceeding dated 6.12.2001, came to the conclusion that, due to the negligence of S.O. and the concerned Head Constable, Dilbagh Singh gained access to the service revolver with which he fired at the complainant, Rajesh Saini and injured him. The Commission, therefore, directed issuance of notice to the Chief Secretary, State Government of U.P. to show-cause why 'immediate interim relief' of Rupees One lakh u/s 18(3) of the Protection of Human Rights Act, 1993 not be given to the complainant.

**4.42** Upon consideration of the reply from SSP, Muzaffarnagar to the show cause notice, the Commission on 25.5.04, directed the State Government of U.P. to pay a sum of Rs. 1 lakh as immediate interim relief to victim, Shri Rajesh Saini. The Compliance report from the State Government is awaited.

### **5. Death of Shri Bajrang Lal, District Bhiwani, Haryana - Case No. 440/7/97-98/FC**

**4.43** The Commission received a complaint dated 2.07.1998 from Shri Mahesh Kumar resident of District Bhiwani, Haryana alleging that his brother Bajrang Lal, who was travelling by Mumbai Janta Express on 26.6.1998 was allegedly beaten up to death by daily passengers. It was further alleged that the Government Railway Police on duty did not take care and he was not provided with any medical aid, rather they dumped him in the same compartment on his reserved berth. One passenger Shri Balwan Singh who witnessed the incident informed the TT on duty who did not take any action. As a result, by the time the train reached Bharatpur, Rajasthan, his brother Bajrang Lal had died. The railway police took out the dead body.

**4.44** In response to the notice, a report submitted by the DIG, Railway & Commando, Haryana indicated that the death of Bajrang Lal was caused due to the head injury inflicted by the daily passengers and sheer negligence of GRP personnel in not providing him timely medical help.

**4.45** The Commission vide its proceedings dated 5.6.2002 considered the report and directed the Chairman, Railway Board and Chief Secretary and DGP, Haryana to show cause u/s 18(3) of the Protection of Human Rights Act, 1993, as to why an 'immediate interim relief' should not be granted to the next of kin of the deceased.



## Complaints Before the Commission

**4.46** In response to the show cause notice, the Railway Board, inter alia, contended that the claimant or his unauthorized agent should have moved the Railways Claims Tribunal for seeking compensation on account of unfortunate death of Shri Bajrang Lal. While rejecting the aforesaid plea and recommending interim relief the Commission held that the interim relief envisaged u/s 18(3) of the Protection of Human Rights Act, 1993 is independent of the right of the victim or his next of kin to claim compensation under Civil/Law of Torts or any other forum. The recommendation of the Commission would not in any way affect the right of the claimant to seek compensation by filing a claim before Railways Claims Tribunal. The Commission accordingly, recommended for payment of Rs. 1 lakh as interim relief u/s 18 (3) of the Act, to the mother of the deceased Smt. Kalabati, by the Railways.

**4.47** Pursuant to the Commission's directions, the Director, Traffic Commercial Claims, Railway Board, Ministry of Railways vide letter dated 1.7.2004 intimated that a compensation of Rs. 1 lakh has been paid as interim relief to Smt. Kalabati, the mother of the deceased.

**4.48** Accordingly, vide proceedings dated 15.9.2004 the report was taken on record and the case was closed.

### **6. Death of Bhaiya Lal in Judicial Custody in Uttar Pradesh - Case No. 9161/24/98-99-CD**

**4.49** The Commission received an intimation dated 25/8/98 from the office of the DG (Prisons), UP, Lucknow about the death of undertrial prisoner Bhaiya Lal S/o Dhanraj Yadav while undergoing treatment at Swaroop Rani Hospital on 1/8/98.

**4.50** In response to the notice issued to the Home Secretary, Government of UP, a magisterial inquiry report was received which indicated that the victim was subjected to custodial violence. There was evidence of custodial violence as well as negligence in providing treatment to Shri Bhaiya Lal which resulted in his death. The cause of death disclosed was heavy bleeding from the anus.

**4.51** Upon consideration of the report, the Commission held that there was violation of human rights of Bhaiya Lal while in the custody of police and jail authorities. The Commission, accordingly, directed to issue notice to Chief Secretary, Government of UP to show cause as to why immediate interim relief u/s 18 (3) not be granted to the next of kin and also recommended action against errant officials.

**4.52** As no response was received from the Government of UP to the show cause notice, the Commission recommended an interim compensation of Rs. 1 lakh to the next of kin of the deceased. Compliance report called for in respect of payment of interim relief as well as the status of action taken against the errant public servant is still awaited.

## Complaints Before the Commission

### **7. Death of Shri Kolombus in Judicial Custody in Uttar Pradesh Case No. 20143/24/2002-2003-CD]**

**4.53** The Commission received an intimation dated 10/9/2002 from the Superintendent, District Jail Lucknow stating that one Shri Kolombus S/o Sudama, aged 26 years, an undertrial prisoner, allegedly lodged in Session lock up at Lucknow was assaulted with knife and razor allegedly by three co-prisoners in lock up. Kolombus received serious injuries and was referred to KGMC hospital, Lucknow on 8/9/2002 where he succumbed to his injuries during the course of treatment.

**4.54** The Commission obtained a report from the Superintendent, Lucknow Jail which indicated that Kolombus was injured by his co-prisoner while he was in the session lock up and though no jail officer or staff was responsible for the incident, the injuries were received by Kolombus due to negligence of the concerned police personnel of the Session's lock up. The magisterial inquiry report also concluded that the UTP, Kolombus died due to injuries sustained by him in an attack by his co-prisoners while he was in jail custody in session's lock up.

**4.55** The report further mentioned that a crime No. 365/2002 had been registered against the accused co-prisoner and charge sheet filed against them.

**4.56** Upon consideration of the report, the Commission observed as under:-

**4.57** The attack on the UTP Kolombus by his co-prisoners was with sharp-edged weapons like knife and razor. The co-prisoners had these weapons available to them in the lock-up is a matter of serious concern and discloses lapse on the part of the authorities responsible for maintenance of the lock up. The incident must have taken some time as the deceased suffered multiple injuries as per post-mortem report and during all this period no attempt was made by the police officials in charge of the lock-up to save the deceased from being attacked. This also shows a very callous attitude, and is prima facie evidence of negligence of the concerned police personnel, besides dereliction of duty on their part. This prima facie, establishes the negligence on the part of the State machinery and dereliction of duty of the concerned police personnel.

**4.58** In response to the show cause notice issued to the DGP, UP, he informed that the guilty police personnel had been placed under suspension and appropriate action is being taken against them in accordance with the law. No response was, however, received to the show cause notice from the Chief Secretary, UP, inspite of reminders. The Commission, therefore, recommended to the State Government to pay a sum of Rs. 50,000/- to the next of kin of the deceased as interim relief u/s 18 (3) of the Protection of Human Rights Act, 1993. Compliance report from the State Government was still awaited.





## Complaints Before the Commission

### **8. Death of Smt. Basanti Devi in judicial custody in Bihar [Case No2435/4/2001-2002-CD]**

**4.59** The Commission received an intimation dated 27/10/2001 from the Superintendent District Prison, Purnia, Bihar about the death of Smt. Basanti Devi, an undertrial prisoner, during treatment in Sadar Hospital, Purnia on 26/10/2001.

**4.60** In response to the notice issued to the Home Secretary, Government of Bihar, a magisterial inquiry report was received which indicated that Smt. Basanti Devi was arrested by officials of Excise Department on 26/9/2001 and was brutally thrashed. She was produced before the Magistrate after two days, treated in jail and died on 26/10/2001 during treatment in Sadar Hospital. The post-mortem report indicted the cause of death as septicemia which was due to injuries inflicted by the officials of the Excise Department.

**4.61** Upon consideration of the report, the Commission held that there was violation of human rights of the deceased not only by the officials of Excise Department but also by the jail staff who were negligent in performance of their duties as no timely medical treatment was given to her. In response to the show cause notice issued u/s 18 (3) of the Protection of Human Rights Act, 1993, the State Government of Bihar informed the Commission that sanction had been issued for providing ex-gratia relief of Rs. 1 lakh to the next of kin of the deceased. Subsequently, proof of payment to the next of kin (two minor children) of the deceased was also received. In view of the above report, the case was closed.

### **9. Death of Shri Chander Prakash in Judicial Custody in Uttar Pradesh-Case No. - 5237/24/2000-2001-CD**

**4.62** The Commission received an intimation from the Superintendents District Jail Bareilly about death of Shri Chander Prakash aged 25 years in District Jail Bareilly. A news item was also published in the Daily Telegraph dated 30/5/2000 stating that prisoner was allegedly beaten to death in the district jail and a complaint was also received from Smt. Ram Piari, mother of the deceased.

**4.63** In response to the notice issued to the Home Secretary, Government of UP, a report received from the DGP, Prisons indicated that magisterial inquiry into the matter found that the deceased was taken to the jail on 23/5/2000 and at that time he had no injury. He was brutally beaten by jail warden in the presence of jail authorities and shifted to District Hospital on 27/5/2005 where he succumbed to his injuries. The report further mentioned that departmental action had been initiated against the erring officials and a case u/s 302 IPC also registered against them.

**4.64** Upon consideration of the report, the Commission concluded that the deceased was inflicted



## Complaints Before the Commission

injuries by the jail staff which resulted in his death and therefore it was a clear case of violation of human rights. Accordingly, a notice was issued to the Chief Secretary, Government of UP to show cause as to why immediate interim relief u/s 18 (3) of the Protection of Human Rights Act, not be granted to the next of kin of the deceased.

**4.65** In response to the show cause notice, a report received from the DG, Prisons indicated that the investigation of the case was conducted by CB/CID and a charge sheet u/s 302 IPC was submitted against erring jail wardens. The case was pending trial. The then Superintendent Jail and 10 other officials were proceeded against departmentally and had been punished. The Commission considered the above report and being convinced that the deceased was brutally beaten by the jail authorities which resulted in his death, the Commission observed that the award of interim relief u/s 18 (3) of the Act is not dependent on strict establishment of criminal liabilities after a full dress court trial. The benevolent provision can be invoked irrespective of the fact that any litigation, civil or criminal is pending in the court. The Commission, therefore, directed the State of UP to pay Rupees One lakh as immediate interim relief to the legal heirs of the deceased and to submit compliance. The compliance report is still awaited.

### *b) Human Rights Violations by Police*

#### **10. Torture and gang rape by police officers in Tripura - Case No. 5/23/2003-2004-WC**

**4.66** The Commission received a complaint from Shri Suhas Chakma, Director, Asian Centre for Human Rights, New Delhi alleging that Ms. Reang, a 17 year old girl was tortured and gang raped by a group of three Special Police Officers of the State Government of Tripura on 26/5/2003. The victim girl's family complained to the police station naming the three guilty SPOs but their complaint was not recorded.

**4.67** In response to the notice, a report received from the DGP, Tripura indicated that a case No. 6/2003 u/s 366 (A), 376, 326 and 34 IPC was registered in Police Station Raishyabari against the three named persons on 28/5/2003. The medical report confirmed that the victim, aged 17 years was sexually assaulted and raped. The three SPOs had been discharged from the service, arrested and sent to jail. In view of the gravity of the allegation of sexual brutality committed on a hapless girl by the three SPOS, the Commission directed to issue a notice to the Chief Secretary, Government of Tripura to show cause as to why interim relief not be granted to the victim.

**4.68** The Government of Tripura informed the Commission that it had paid an amount of Rs. 15,000/- as compensation to the victim Ms. Mithirung Reang. However, the Commission observed that the offence of rape not only amounts to violation of the human rights of the victim,





## Complaints Before the Commission

but it also tends to violate the mind and scar the psyche of a person permanently. Besides, it carries a social stigma for the victim and her family. The Commission, therefore, directed the Government of Tripura to pay an amount of Rupees Fifty thousand as immediate interim relief to the victim after adjusting Rupees Fifteen thousand already paid. As the State Government submitted its compliance report in respect of payment of an amount of Rupees Thirty five thousand, the case was closed on 10/1/2005.

### **11. Illegal detention of two Adivasi boys by Police - Kerala -Case No. 208/11/97-98**

**4.69** The Christian Cultural Forum, Kollam, Kerala, submitted a complaint alleging that police officials of Agali in Attappaddi in Palakkad district in Kerala arrested three Adivasis, Manikandan, Parameswaran and Kuppamma on 25.5.1997 and kept them in illegal custody for 23 days. During detention, one of the detenu Kuppamma, an Adivasi woman was beaten black and blue by the police and chilli powder was stuffed into her vagina. According to the complainant, the Circle Inspector had falsely implicated around 100 adivasis in a fabricated case and as a result adivasis had left their houses.

**4.70** In response to the notice issued by the Commission, a report dated 18-12-97 was received from SP, Palakkad which revealed that an enquiry into the matter was conducted by SP, CB/CID and it was found that police at Agali Police Station detained two boys, namely, Manikandan and Parameshwaran illegally on 27-5-97 till 17 June 1997, without any complaint having been registered against them. It was further mentioned that the Circle Inspector, ASI and two Constable who were involved in the incident had been suspended and criminal cases were instituted against them. The report also stated that Kupamma, the mother of Parmeshwaran did not make any allegations of torture, when she was produced before the Court in a criminal case.

**4.71** While considering the matter on 20-5-03, the Commission directed to issue a show cause notice u/s 18(3) of the Protection of Human Rights Act, 1993 to the Chief Secretary, Government of Kerala to show cause as to why an immediate interim relief not be granted to Manikandan and Parameshwaran for their illegal detention. In response to the show cause notice a letter dated 26-6-03 was received from Government of Kerala contending that the State Government is not in a position to make any payment till disposal of criminal cases, pending before the court, since the alleged delinquent officers are liable to pay compensation, if any, awarded by the court. The Commission considered the matter further on 20/5/2004 and while recommending a sum of Rs. 10,000/- to each of the victims as immediate interim relief, held that proceedings u/s 18(3) of the Protection of the Human Rights Act 1993 are independent and the pendency of criminal case is no impediment to the award of immediate interim relief.

**4.72** Pursuant to the directions of the Commission, the Government of Kerala vide their communication dated 14-7-04 informed that the interim relief of Rs. 10,000/- each to Manikandan



## Complaints Before the Commission

and Parameshwaran has been disbursed to the incumbents on 2-7-04. In view of compliance of the recommendations of the Commission, the case was closed.

### **12. Illegal detention of Shri Ramveer Singh, Surendra Singh Delhi - Case No. 3454/30/2000-2001**

**4.73** The Commission received a complaint from Shri Ramveer Singh, resident of District Etah, Madhya Pradesh alleging that he and Shri Surendera Singh S/o Bhai Lal were picked up on 5.1.2001 for interrogation in a murder case, illegally detained at the PS, Mayapuri where they were beaten and subsequently released on 8.1.2001.

**4.74** In response to Commission's notice, a report received from the DCP(Vigilance) stated that complainant and Surendra Singh were brought to the PS, Mayapuri by special staff without any legal notice and verification and detained there till 7.1.2001. The report further stated that an inquiry was held against the Inspector, Bishan Mohan of Special Staff/SWD, in which he was found guilty and was 'censured' for the serious lapse committed by him.

**4.75** On consideration of the aforesaid report, the Commission vide its proceedings dated 14.5.2003 directed to issue a notice to the Commissioner of Police, Delhi to show-cause as to why immediate interim relief u/s 18(3) of the Protection of Human Rights Act, 1993 not be awarded to the victims.

**4.76** The Commission vide its further proceedings dated 21.1.2004 considered the report received from the office of the Commissioner of Police and held that there had been illegal detention of the complainant and Surendra Singh from the night of 5/1/2001 till the morning of 7/1/2001 in violation of their human rights. It directed Commissioner of Police, Delhi to pay a compensation of Rs. 5000/- to each of them.

**4.77** In compliance, a communication received from the Dy. Commissioner of Police(Vig.), Delhi dated 26.5.2004 indicated that an amount of Rs. 5000/- had been paid by way of interim relief as recommended by the Commission to each of the two victims. In view of the compliance report received, the case was closed.

### **13. Illegal detention and torture of Shri Zamir Ahmed by the police at Sayana, Bulandshahr, UttarPradesh- Case No: 14071/24/2001-2002**

**4.78** The National Commission for Minorities on 25.7.2001 referred a complaint, regarding illegal detention and torture of Shri Zamir Ahmed by the police of PS Syana, District - Bulandshahr, UP.

**4.79** The Commission obtained reports from the SSP, Bulandshahr, the DM, Bulandshahr



## Complaints Before the Commission

and the SP (HR), HQ DGP, UP. The magisterial inquiry found that the allegations of custodial torture was proved on the basis of evidence including the medical report and Shri Lal Singh, In-Charge of the police outpost was identified as the delinquent public servant.

**4.80** Upon consideration of the reports, the Commission vide its proceedings dated 16.01.2002 held that a strong prima facie case of violation of human rights was made out. The Commission therefore directed to issue a notice to the Government of Uttar Pradesh to show cause as to why 'immediate interim relief' u/s 18(3) of the Protection of Human Rights Act, 1993 not be granted to the victim.

**4.81** In spite of a show cause notice, no reply to the show cause notice was received from the UP administration as well as the SSP, Bulandshahar. Vide proceedings dated 22.05.2002, the Commission therefore directed Government of UP to pay an amount of Rs.20,000/- as immediate interim relief to victim Zamir Ahmed Khan for the custodial torture inflicted on him. The Commission also directed the SSP, Bulandshahar to send report about the disciplinary action taken against the delinquent police personnel within four weeks.

**4.82** In response to the above direction of the Commission, reports dated 31.5.02 and 3.8.02 respectively received from the SSP, Bulandshahar and the Government of U.P. indicated that though the magisterial inquiry in the matter indicated beating of the victim Zamir Ahmed by the police, there was no serious injury to victim which had come to the notice and therefore, payment of financial relief in this matter would not be proper. In addition to this, it was also submitted that in view of the serious financial problems being faced by the State Government, it would not be appropriate to give financial relief in such type of matters.

**4.83** Upon consideration of the above reports received from the Government of Uttar Pradesh, the Commission vide its proceedings dated 9.9.2002 held that the custodial torture is the clear finding reached in the magisterial inquiry itself. The insensitivity depicted in the letter of the Government of Uttar Pradesh where it says that the payment of the amount does not appear to be proper because there was no serious injury caused to the victim, is disturbing. Custodial torture even without inflicting any visible injury would justify award of some compensation and disciplinary action against the delinquent police personnel. It is not necessary to say anything further in this connection except to reiterate the recommendation for payment of the above amount to the victim.

**4.84** The Commission considered a further response received from the Secretary, Government of UP vide fax message dated 20.1.2003 which indicated that (i) disciplinary action had been initiated against the delinquent police officials: and (ii) there was no justification to award interim relief to the victim on the grounds that the victim did not receive any serious injury by police as per Magisterial Inquiry Report.



## Complaints Before the Commission

**4.85** Vide proceedings dated 20.5.2003, the Commission observed as under:

**4.86** The Commission, therefore, reiterated its recommendations and called upon the State of Uttar Pradesh to immediately make payment of Rs.20,000/-, as ordered by the Commission by its proceedings dated 3/4/02 April, 2002 and reiterated on 9/9/02.

**4.87** In response, the SSP, Bulandshahar vide letter dated 11.2.2004 submitted compliance report indicating that an amount of Rs.20,000/- had been paid to the victim on 7.11.2003. The case was therefore, closed.

### **14. Suicide by Vinod Kumar Rajput due to police harassment Madhya Pradesh Case No.1412/12/98-99(FC)**

**4.88** The Commission received a complaint dated 22/10/1998 from Mrs. Deepa Rajput alleging that, while her husband, Vinod Kumar Rajput was returning from the bank to his shop on 30.7.98 alongwith a cash of Rs.2.5 lacs, some miscreants attacked him with a sword and snatched the entire money from him. Despite lodging a report with the Police, no action was taken to apprehend the culprits. On the other hand, her husband was repeatedly called by the Police to the Police station and was tortured by them. As a result, he committed suicide on 6.9.98. She prayed for an appointment on compassionate grounds and compensation.

**4.89** Pursuant to the direction dated 10/03/1999, the State Government of M.P. forwarded a report of Collector, Bhopal alongwith an enquiry report of the Jt. Collector, Bhopal. The District Collector, in his report, stated that since the husband of the complainant was not in Government service, no Government service could be offered to the complainant on compassionate ground as per the administrative rules. The enquiry report disclosed that Shri Rashid Khan, ASI had threatened Shri Vinod Kumar of defaming his father and his wife if he did not disclose everything. Shri Vinod Kumar swallowed two tablets of sulphur on the way, due to which he died in Hameedia Hospital. This version also finds support from the dying declaration of Vinod. The Inquiry Officer concluded that the suicide committed by Shri Vinod Kumar was not a result of police action but due to fear of defamation that may affect his family members. The IO held ASI Rashid Khan guilty of threatening Shri Vinod Kumar and recommended departmental action against him.

**4.90** The Commission considered the afore mentioned reports on 30/08/2001 and held that the deceased was forced to commit suicide due to the threat of the ASI. Accordingly, it issued show-cause notice to the State Government u/s 18(3) of the Protection of Human Rights Act, 1993 to show cause as to why compensation of Rs.1 lakh be not awarded to the complainant

**4.91** In reply to the above show cause notice, the State Government of Madhya Pradesh, vide letter dated 7/8/2002, submitted that necessary instructions were issued by the SP Bhopal to recover an amount of Rs. 50,000/- @ Rs. 2,000/- per month from the salary of the guilty police



## Complaints Before the Commission

official, i.e. ASI Rashid Khan and to pay the same to the complainant. ASI Rashid Khan was also punished by stopping his increment for one year.

**4.92** Considering the above reply, the Commission, on 07/07/2003 recommended interim relief of Rs.1 lakh to the complainant and called for compliance report from the State Government of M.P. within six weeks. The compliance report has since been received.

### *c) Human Rights Violations by Security Forces*

#### **15. Killing of Two Civilians by a BSF Jawan, District Ganganagar, Rajasthan Case No. 1060/20/2000-2001-PF & 1061/20/2000-2001-PF**

**4.93** The Commission took cognizance of two complaints both dated 4-9-2000 of Smt. Laxmi Devi and Smt. Savitri Devi widows of Shri Om Prakash and Shri Gopi Ram respectively, who were residents of District Ganganagar, Rajasthan, alleging that their husbands namely Shri Om Prakash and Shri Gopi Ram were killed by Jamil Iqbal, Constable, BSF on 15-8-2000.

**4.94** In response to the Commission's notice, a report submitted by the Ministry of Home Affairs indicated that on the night of 15-16<sup>th</sup> August, 2000, Constable Jamail Iqbal of the 38 Battalion BSF, while on duty had killed two civilians namely Shri Om Prakash and Gopi Ram in front of their "Dhani" by firing three rounds from his personal weapon under the influence of liquor. The report further stated that the accused Constable Jamil Iqbal was arrested by police on 16 August 2000 and a charge-sheet had been filed on 18-10-20 in the court of Tehsil Gharsana, District Ganganagar.

**4.95** On consideration of the report on 8/10/02 the Commission issued show-cause notice to the Ministry of Home Affairs, Government of India on the liability of the State to give immediate interim relief under section 18(3) of the Protection of Human Rights Act, 1993 to the next of kin of the two innocent persons, who had lost their lives at the hands of the BSF Constable.

**4.96** In response to the show cause notice, the Ministry of Home Affairs, disputed the liability of the State to give immediate interim relief u/s 18(3) of the Protection of Human Rights Act, 1993. The Commission, while considering the reply, asked the Ministry of Home Affairs to depute representatives from the Ministry and BSF for discussion.

**4.97** Pursuant to the directions of the Commission, the Inspector General, BSF and Director (HR), MHA appeared before the Commission. They submitted that, in view of Section 19 of the Protection of Human Rights Action 1993, the Commission could not make any recommendation in terms of Section 18(3) of the Act.

## Complaints Before the Commission

**4.98** While considering the aforesaid submission, the Commission, analyzed the various provisions of the Protection of Human Rights Act, 1993 and held that the provisions of Section 19 of the Act are specific provisions to deal with the complaints of violations of human rights by members of the Armed Forces and prescribes specified procedure, which is somewhat different than the procedure prescribed u/s 17 for inquiry into complaints of violation of human rights in general. Whereas, the Commission while inquiring into the complaints of violation of human rights generally, may call for information or report from the Central Government or any State Government or any other authority/organization subordinate thereto within such time as may be specified by it and initiate an inquiry and take any of the steps prescribed in Section 18 of the Act, whereas in cases of complaints of violation of human rights by members of the Armed Forces, the Commission shall not conduct an inquiry, but it may, either on its own motion or on receipt of a petition, seek a report from the Central Government and after the receipt of the report, it may, either not proceed with the complaint or make its recommendations to the Government. The Parliament in its supreme wisdom did not place any restrictions on the jurisdiction of the Commission to make its recommendations after the receipt of a report from the Central Government u/s 19 of the Act. The power u/s 19(1)(b) of the Act is wide in its amplitude and it would include, without any doubt, the power to recommend to the concerned Government grant of such compensation including grant of “interim relief” to the victims or the members of their family as the Commission may consider appropriate in the nature of “immediate interim relief” envisaged u/s 18(3) of the Act.

**4.99** The Commission further emphasized that the payment of compensation in cases like the present one is in the nature of an order of making monetary amends for the wrong done due to breach of public duty of not protecting the human rights of the citizen. The Commission has, thus, not only the power and jurisdiction to make recommendations u/s 19(1)(b) but also an obligation to grant interim relief, in the nature of what is envisaged by Section 18(3) of the Act, while exercising its powers of 19(1) (b) of the Act in deserving cases.

**4.100** In view of the above analysis, the Commission recommended that Rs. 2 Lakhs be paid to each of the next of kin of the deceased. The Ministry of Home Affairs submitted their compliance report regarding the payment of compensation amount.

### **16. Death of Shri Vikram by negligence of R.P.F., Maharashtra - Case No. 21/1/2003-2004**

**4.101** The Commission received a complaint from Shri Bhaskar Mahadeorao bringing to the notice of the Commission a news item published in the “Daily Maharashtra Times” on 8-1-2003. It was reported in the newspaper that one Shri Vikram, a samosa vendor, was pushed down from running train by the Police as he was travelling without a ticket. He lost his hand and a leg.





## Complaints Before the Commission

**4.102** In response to the Commission's directions dated 1.5.2003, transmitting the complaint to the Secretary, Railway Board, Ministry of Railways for taking appropriate action and submitting Action Taken Report; a report received from SP, GRP, Secunderabad stated that on 6.1.2003 one boy aged 12 years, an unauthorized hawker wanted to board train at Cherlapalli Railway Station. He was picked up by RPF personnel who after extorting money released him from the outpost. The boy tried to board the train, which was in motion, slipped and fell under the running train. As a result, his left hand and right leg were chopped off. The Station Manager lodged a report at the GRP Police Post and a case crime No. 7/03 was registered. The boy was taken to the hospital where he died on 7.1.2003. The report also indicated that the postmortem revealed that death was due to injuries and "Cardio respiratory arrest due to polytrauma".

**4.103** The Commission also considered the report received from the Chief Security Commissioner, South Central, Railways which indicated that the Court of Inquiry had found that head constable Mohd. Usman Ghani and constable P. Sudhakar Rao of RPF, after apprehending the boy, failed to take adequate precaution to secure the unauthorized hawker, as a result he ran and tried to get into the running train and fell. A case crime No. 7/03 u/s 304 A IPC had been registered against the constable by the police. Both the errant officials have been placed under suspension pending inquiry.

**4.104** In view of the prima facie violation of human rights of the boy made out, the Commission directed the Secretary, Ministry of Railways to show cause as to why the next of kin of the deceased be not granted immediate interim relief u/s 18(3) of the Protection of Human Rights Act 1993.

**4.105** Pursuant to the Commission's directions, the Chief Security Commissioner, RPF, South Central Railways, Secunderabad stated that a case u/s 304A IPC read with section 175 Railway Act 1989 was registered against the erring constables and after investigation, the chargesheet had been submitted in the court and the case was pending trial. A departmental inquiry which had been initiated against both the constables was completed but decision had been kept in abeyance, pending the criminal case.

**4.106** On consideration of the aforesaid response, the Commission vide its proceedings dated 15.12.2004 held that the boy had died due to negligence of the RPF staff. The Commission can invoke the benevolent provisions irrespective of civil or criminal litigation or a departmental inquiry. The immediate interim relief is to be correlated to the loss / injury which the victim had suffered due to violation of his human rights by the public servants. The pendency or the outcome of the departmental inquiry or the criminal proceedings is not a bar to the grant of immediate interim relief. The Commission, therefore directed the Railway Board, Government of India to pay a sum of Rs. 50,000/- as immediate interim relief to the next of kin of the deceased. The Compliance report is awaited.



## Complaints Before the Commission

### d) Human Rights Violations by Other State Agencies

#### 17. Death of Shri Dirisam Lajer, an agricultural labourer by electrocution - Case No. 147/1/2001-2002(FC)

**4.107** The Commission received a complaint dated 19-1-2001 from Smt. Dirisam Swarooparani w/o Late Dirisam Lajer resident of Krishna District, Andhra Pradesh, an agricultural labourer, having three children and no landed property, alleging that on 24-5-1999 her husband Shri D. Lajer, while cutting grass in the fields of a farmer, came in contact with a live electrical wire lying under the grass and died due to electric shock.

**4.108** Taking cognizance, the Commission issued a notice to the Secretary, Department of Power, Government of Andhra Pradesh and Chairman, Andhra Pradesh Electricity Board and called for a report. In response, it was admitted in the report received from the Chief Engineer, Southern Power Distribution Company of Andhra Pradesh Limited that the wire lying under Katuru Sub Station-II snapped due to heavy gale and rain and had fallen on sugarcane plant without touching the ground. The victim while passing through the sugarcane field came in contact with the snapped live electrical wire and got electrocuted. The Southern Power Distribution Company of A.P. Ltd. had sanctioned an ex-gratia amount of Rs. 10,000/- to the legal heirs of the deceased.

**4.109** The Commission considered the response from the State Government and in the light of the rule of strict liability propounded in the celebrated case, *Rylands Vs. Fletcher* – LR 3 HL 330:19LT 220 and followed by the Hon'ble Supreme Court of India in *M.P. Electricity Board Vs. Shail Kumari and others* AIR 2002 SC 551, considered it a fit case for award of interim compensation u/s 18(3) of the Protection of Human Rights Act 1993, to the widow of the deceased. Accordingly, a show cause notice was issued on 20-11-2003 to the Chairman and Managing Director, Southern Power Distribution Company of A.P. Limited.

**4.110** In response to the show-cause notice, the Chairman and Managing Director of the Company vide his communication dated 29-12-2003, reiterated that Shri D. Lajer had died accidentally as a result of coming in contact with a live wire which had snapped due to heavy gale and rain, and there was no negligence on the part of any public servant.

**4.111** Vide its proceedings dated 5-3-2004, the Commission observed that a precious life had been lost due to electrocution. The Commission invoked the principle of “strict liability” and also observed that a State is liable not only for the negligent act of its public servants in such like situations, but also for the failure on the part of the public servants to take care to prevent such foreseeable risks, which are inherent in the very nature of such activity. The Commission noted that the payment of an ex-gratia amount of Rs.10,000/- to the widow of the deceased by the Company was grossly inadequate. The Commission therefore





## Complaints Before the Commission

recommended to the Chairman & MD of Southern Power Distribution Co. of A.P. Ltd. to personally look into the matter and consider what further ex-gratia amount could be given to the widow.

**4.112** A communication dated 22/6/2004 received from the Southern Power Distribution Co. of A.P. Ltd. indicated that the Company had paid an additional amount of Rs. 20,000/- in addition to Rs. 10,000/- already paid to the wife of the deceased. The report was taken on record and the case was closed.

### **18. Sexual Harassment at work place - Case No. 1775/35/2003-2004-WC**

**4.113** The Commission took cognizance of a complaint, dated 12-3-2004 referred by Ms. K. Geeta, Programme Coordinator of SAKSHI, an NGO alleging sexual harassment of Ms. Asha Rajora, Technical Assistant in the Herbal Research and Development Institute, Gopeshwar, Uttaranchal by the Director of the Institute. Allegations of further harassment by way of non-renewal of her job contract with effect from 1-5-2004 were also levelled.

**4.114** The Commission directed the Chief Secretary, Uttaranchal and District Magistrate, Dehradun to submit their reports in the matter. The Commission also directed the State Authorities to inform (i) whether the Vishakha Guidelines are being followed in letter and spirit, while holding the inquiry; and (ii) whether any protection has been given to the complainant in the meanwhile.

**4.115** An interim report received from the Chief Secretary, Government of Uttaranchal indicated that the Commissioner, Garhwal Circle, has been requested to inquire into the matter as he was heading the Divisional Vigilance Committee. The interim report was however silent about the constitution of Divisional Vigilance Committee and whether it is in conformity with the guidelines laid down by the Supreme Court of India in Vishakha's case, which requires that the Complaints Committee should be headed by a woman and not less than half of its members should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment. The Chief Secretary, Uttaranchal was therefore requested to clarify as to whether the Divisional Vigilance Committee is in conformity with Vishakha Guidelines.

**4.116** The Principal Secretary, Government of Uttaranchal informed the Commission that on the basis of the recommendations made by the Vigilance Committee, which was constituted in accordance with the guidelines in Vishakha case, the services of Dr. J. S. Rawat, Director, HRDI, Gopeshwar were terminated with effect from 4.10.2004. Since action had been taken by the Government in the case of sexual harassment the case was closed on 17-1-2005.



## Complaints Before the Commission

### **19. Exploitation of Children by the Great Roman Circus in Gonda District of Uttar Pradesh – Case No.7993/24/2004-2005.**

**4.117** The Commission received a complaint, dated 15.6.2004 from the General Secretary, Global March Against Child Labour, New Delhi – an NGO, alleging assault on its members and parents of children during investigation of alleged atrocities on children including sexual harassment at Great Roman Circus in Golonelganj, District Gonda, U.P.

**4.118** The Commission got the matter investigated through its team of officers and also obtained a report from the Chief Secretary, State of U. P.

**4.119** In response to the notice issued to the Government of Uttar Pradesh, the State Government informed that three criminal cases – one u/s 147/148/325/323/352/5045/506/107 IPC and Section 3/5 of the Bonded Labour Act had been registered against the owner of the circus and other persons; the other u/s 376 IPC was registered against Raza Mohd., owner of the Circus in respect of alleged rape by him on Kumari Neeta Lama. A third case u/s 354 IPC was also registered against unknown persons. Apart from Neeta Lama, no other woman employee had complained of sexual harassment/other exploitation.

**4.120** The Government of Uttar Pradesh informed the Commission that in the first two criminal cases, charge sheets had been filed before the court. In the absence of evidence about sexual exploitation of the girls, final report had been filed in the court in cases No. 283B to 283A u/s 354 IPC registered in this regard.

**4.121** Twenty two girls (10 Indians and 12 Nepalese) were recovered on 22.6.2004 by the SDM in the presence of NHCR team. Nepalese girls were handed over to the Nepal authorities by the District Authorities of Gonda on 25.6.2004 taking them from the circus. Action for their rehabilitation would be taken by the Nepal Government. The remaining 10 Indian girls were sent to the Nari Niketan.

**4.122** A writ petition had also been filed in the Hon'ble High Court, Lucknow Bench, Lucknow – *Sharmila and others vs Raza Mohd etc.* The girls sent to Nari Niketan were to be produced before the Hon'ble Court on 23.7.2004 as per its directions. Further action will be taken accordingly on the directions of the Hon'ble Court. 7 girls working with the said circus belonged to District Darjeeling, West Bengal who of their own after closure of the circus went back to Darjeeling as per their wish along with their guardians.

**4.123** The Commission, vide its proceedings dated 9.2.2005, directed SP (HR) in the office of DGP, U.P., to send a copy of the writ petition pending before the High Court at Allahabad together with any order made therein. The response is still awaited.



## Complaints Before the Commission

### **20. Atrocities on Adivasi families by forest officials of Wayanad District: Kerala - Case No. 199/11/2002-2003(FC)**

**4.124** The Commission received a complaint from Ms. Nirmala Deshpande and others alleging that on 19-2-03 the police, forest officials and personnel of Kerala Armed Police opened fire at a gathering of over 1100 Adivasi families who were protesting against the non-implementation of the agreement reached between the Adivasis and the Kerala Government for delivery of the promised land at the Muthanga Forest region of Wayanad District. It was alleged that 16 Adivases died and a large number of Adivasis including children and women received injuries in the incident.

**4.125** In response to the notices issued to the Chief Secretary and DGP, Kerala, the reports submitted by the State Government of Kerala justified the action of the police firing on the ground that the Adivasis had blatantly violated the law and had murdered a policeman after taking him as hostage. The reports also stated that the police used all possible restraint and minimum force to deal with the situation. It was further mentioned that there was only a single death, as against the allegations of the complainant that 16 persons had died as a result of police firing. The report “concluded” that there was no question of any departmental action being taken against any police personnel as they did not violate any law at any point of time and had acted very much within the parameters of law under the supervision of their superiors.

**4.126** While considering the reports, the Commission directed the Chief Secretary, Kerala to furnish documents relating to the delivery of land to the Adivasis ousted from the forest and the plan, if any, for their rehabilitation. The Commission also recommended to the State Government to hand over the investigation of the incident of police firing and the related incidents, including allegations of torture which took place in Muthanga forest region on 19-2-2003 to an independent agency, preferably the C.B.I.

**4.127** In light of the information furnished by the Government of Kerala about registration of seven cases by the CBI in connection with the incidents of Muthanga forest, the Commission directed the Chief Secretary, Government of Kerala to communicate the status of the investigation in the seven cases and also to inform the Commission of the steps taken for re-settlement of the tribal families.

**4.128** The Government of Kerala vide letter dated 20-11-2004, submitted a copy of the report of the CBI in case No. PE 2 (S)/2003/CBI/SCB/Chennai in which the CBI concluded that the use of force and the firing by police at Muthanga on 19-2-2003 was clearly necessitated by the turn of events and was fully justified and lawful. The inquiry conducted by CBI did not reveal any lapse on the part of the police while dealing with the situation in Muthanga and as such no action was recommended against any of the officials.

## Complaints Before the Commission

**4.129** Baby Vineetha (minor) represented by her father, Balan, along with seven others filed a Writ Petition (C) No. 35533/2004 before the High Court of Kerala against the NHRC, the Director, CBI, New Delhi and six other respondents praying for issue of a writ of Mandamus directing the NHRC to invoke its powers under section 13 and 14 of the Protection of Human Rights Act, 1993, to constitute a special investigation team to entrust the investigation of incidents pertaining to the atrocities committed by the Kerala Police personnel against the petitioner and other tribal children in Wyanad District on or after 19-2-2003, to book the culprits and to prosecute them in accordance with law. A further prayer had been made for issue of Writ of Mandamus for awarding Rs. 10 lakhs as compensation under public law remedy and to recover the amount of compensation from the guilty police personnel.

**4.130** While considering the matter on 28/3/2005, the Commission observed that since the report of the CBI was under consideration by the Hon'ble High Court, the Commission could not examine the report and it was not possible to carry out any further investigation by the Commission in accordance with the procedure prescribed under the Code of Criminal Procedure and the scheme of the Protection of Human Rights Act, 1993. The matter was still pending consideration before the High Court at the time of writing of the Annual Report.

**21. Allegations of death, rape and torture of tribals as a result of actions of the Joint Task Force set up by the Governments of Tamil Nadu and Karnataka to apprehend Veerappan and associates. (Case No.222/10/97-98, Case No.534/22/97-98, Case No. 795/22/97-98, Case No. 249/10/97-98, Case No. 79/10/99-2000)**

**4.131** The Commission in its Annual Report for the year 1999-2000 had reported about a number of communications, both from individuals and from NGOs, concerning activities of the sandal wood smuggler, Veerappan and efforts of the Joint Special Task Force (JSTF) of the States of Tamil Nadu and Karnataka to apprehend him. A constant theme in the communications and complaints received by the Commission had been the harassment caused to the villagers and tribals in the area of operation of the JSTF and the violation of their human rights.

**4.132** The Commission, while expressing serious concern about the efforts to apprehend Veerappan resulting in frequent complaints that innocent villagers and tribals, living in the area of operation of the JSTF, were subjected to serious violations of their human rights, felt the need for the constitution of a panel of two eminent persons and accordingly, vide proceedings dated 28-6-99, constituted a panel comprising of Justice Shri A. J. Sadashiva, former judge of the High Court of Karnataka and Shri C. V. Narasimhan, former Director of CBI as member of the panel.

**4.133** On 02.12.03, Justice Shri A.J. Sadashiva Panel submitted its report to the Commission.



## Complaints Before the Commission

**4.134** As the requisite response from the State Government. functionaries were not received despite follow up action, the Commission vide its proceedings dated 7-3-05, observed as under :-  
“The Commission expresses its serious concern over its long delay in sending the comments/ remarks to the Justice Sadashiva Panel report. It was sent to the State Governments more than a year ago. Final opportunity is, therefore, granted to the State Governments of Tamil Nadu and Karnataka to send their comments/remarks in respect of the various recommendations made by Justice Sadashiva Panel within six weeks. In case response is not received in that period, the Commission shall be constrained to exercise its powers u/s 13 of the Protection of Human Rights Act, 1993.”

*Note: The reports from the two State Governments were received after 31-3-05 (on 2-5-05) coinciding with the writing of this Annual Report.*

### **22. Merciless beating of Smt. Susheela Devi by landlord and his accomplice, West Champaran District. Bihar - Case No. 1852/4/2002-2003 (WC)/FC**

**4.135** The Commission received a complaint from Smt. Susheela Devi, a landless Scheduled Caste labourer, Distt. West Champaran, Bihar alleging that on asking for wages she herself and other labourers were mercilessly beaten and attacked with fire-arms and stripped off and forced to sit naked for 4-5 hours by the landlord and his accomplice. When the matter was reported to the Inspector of Police, PS Subhadra, no action was taken.

**4.136** In response to the Commission’s notice, SP, West Champaran, Bihar sent a report stating that a Cr. No. 35/2002 u/s 147, 148, 149, 324, 448, 379, 427, 120-B IPC & 3(1) (x) of the Scheduled Caste/ Scheduled Tribe (Prevention of Atrocities) Act, 1989 was registered against 12 persons by name and 40-50 unknown persons. All the named accused persons surrendered before the court and were subsequently granted bail.

**4.137** The Commission vide its proceedings date 11-8-2003 considered the above report and directed DM, West Champaran to furnish information about the payment of compensation envisaged under the Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act, 1989.

**4.138** Pursuant to the Commission’s directions, DM, West Champaran, Bihar vide his report dated 14-12-2004 has informed the Commission that payment of compensation of Rs.25,000/- under the provisions of the Scheduled Caste/Scheduled Tribe Act/Rules had been made through cheque to the victim and the charge-sheet against the accused persons has also been filed in the concerned court.

**4.139** On consideration of the aforesaid report, the Commission vide its proceedings dated 20-12-2004, took the report on record and closed the case.



## Complaints Before the Commission

### e) Other Important Cases

#### 23. Punjab Mass Cremation Case

**4.140** The Commission received a remit, from the Supreme Court of India to examine 2097 cremations of dead bodies as un-identified by the Punjab Police in the Police District of Amritsar, Majitha and Tarn Taran, Punjab during the period w.e.f. 1984 to 1994. While remitting the matter to the Commission, the Hon'ble Supreme Court of India directed the CBI to take further action into the matter and register the cases where necessary, hold investigations and proceed in accordance with the law on the basis of material collected through investigation. For the remaining issues the Hon'ble Supreme Court of India requested the Commission to examine the matter.

**4.141** In furtherance of the remit, the Commission considered the matter from time to time and vide its proceedings dated 11.11.2004, it unhesitantly held that human rights of 109 persons, who were admittedly in the custody of the police immediately prior to their death, stood invaded and infringed when they lost their lives, while in custody of the police thereby rendering the state vicariously liable. There was a very great responsibility on the part of the police and other authorities to take reasonable care so that citizens in their custody were 'safe' and not deprived of their right to life as in such cases "the duty of care on the part of the State is strict and admits of non-exception." The State of Punjab was, therefore, held accountable and vicariously responsible for the infringement of the indefeasible right to life of those 109 deceased persons as it failed to "safeguard their lives and persons against the risk of avoidable harm."

**4.142** The Commission found itself totally justified and, in the facts and circumstances of the case, duty bound and obliged to redress and grievances of the next of kin of the deceased by award of monetary compensation for infringement of the indefeasible right to life of deceased and apply balm to their wounds.

**4.143** The Commission awarded a total compensation of Rs.2,72,50,000/- @ Rs.2.50 lakhs to the next of kin of each of 109 deceased persons who were admittedly in the custody of the Punjab Police at the time of their death. The Commission is in the process of examining the claims in relation to the remaining cremations and grievances raised by the next of kin of the other deceased.

#### 24. Displacement of farmers and agricultural labourers by construction of a barrage across the river Nagavalli – relief and rehabilitation: Andhra Pradesh – Case No. 667/1/2002-2003(FC)

**4.144** Shri V. Kishore Chandra S. Deo, former Union Minister vide his reference dated 4-2-2003 invited attention of the Commission towards the misery and suffering which had occurred





## Complaints Before the Commission

on account of the proposed construction of a barrage across the river Nagavalli near Thotapalli village of Vizianagaram District in Andhra Pradesh. According to the complaint, a large number of farmers who are dependent upon the present regulator for irrigation would be seriously affected. Besides, the agricultural labourers would also lose their jobs.

**4.145** Having regard to the likely effect on the right to shelter, food and work of hundreds of farmers, the Commission called for a factual report from the Chief Secretary, Government of Andhra Pradesh and directed him to inform the Commission whether there was any relief and rehabilitation (R&R) package proposed for the persons who would be affected, and the nature of the relief and rehabilitation package.

**4.146** In response, the State Government of Andhra Pradesh submitted a report vide letter dated 27-8-2003 giving details of relief and rehabilitation programme to be undertaken in respect of displaced persons or those who would lose their land in the project. The report stated that the total number of affected persons who were required to be resettled worked out to 3287 families and the total amount required for relief and rehabilitation package was Rupees 92.79 crores. The report, however, did not indicate the time frame within which the relief and rehabilitation programme would be implemented. A detailed report relating to relief and rehabilitation package proposed by the State Government for the displaced is still awaited.

### **25. Rehabilitation and Resettlement of tribals : Karnataka - Case No: 505/10/97-98(FC)**

**4.147** The Commission received a complaint from Shri G. Mohan of Swami Vivekananda Youth Movement, Karnataka in respect of the rehabilitation and resettlement of the tribals of H.D. Kote Taluk District, Mysore, Karnataka who were affected by the construction of the Kabini Reservoir in early 1970s and the formation of Bandipur Project Tiger National Park in 1973-74.

**4.148** The Commission on 13-01-03, deliberated upon the issue of earmarking suitable land for rehabilitation of the displaced 154 tribal families and directed the State Government of Karnataka to send a formal proposal for diversion of forest land for rehabilitation purpose to the Union Ministry of Forest & Environment for its approval. The Commission also found it appropriate that, in order to facilitate a speedy and proper rehabilitation of the displaced tribal families, the process of rehabilitation be monitored by a Committee.

**4.149** In response, the State Government accorded necessary sanction for diversion of 200 hectares of forest land in favour of the Revenue Department for rehabilitation of 154 tribal families displaced by the formation of Bandipur National Park and construction of the Kabini Reservoir in Mysore District. It also constituted a Committee with Shri Chaman Lal, Special





## Complaints Before the Commission

Rapporteur, NHRC as a Member to monitor the rehabilitation of the displaced tribal families as well as to consider the facilities to be extended to the tribal families for their rehabilitation like housing, medical aid, etc. and ensure that their rehabilitation process is completed expeditiously.

**4.150** Upon consideration of the report, the Commission expressed hope that the Committee would take expeditious steps for proper rehabilitation of the displaced tribal families. It requested the State Government to keep the Commission informed of the various steps being taken in that direction and to submit a progress report. As the requisite progress report was not received, the Commission directed the Chairman of the Committee viz., Dy. Commissioner, Mysore to expedite the rehabilitation process and submit a status report to the Commission. The report however, is still awaited.

### **26. Suicide of farmers in Andhra Pradesh and Kerala - Case No.208/1/2004-2005 (FC) (LF 444/1/2001-2002 & 488/1/2004-2005)**

**4.151** The Commission took suo-motu cognizance of various news items reporting incidents of suicide by farmers in Andhra Pradesh due to crop failure and mounting debt burden. It was alleged in the report that since 1998 more than 1000 farmers had committed suicide while the non-official sources put the deaths at over 3000. The Commission also received a petition from Dr. Y.S. Rajasekara Reddy the then leader of opposition, alleging negligent attitude of the State Government in formulating a policy to tackle the situation arising out of suicide being committed by the farmers in the State.

**4.152** The Commission got the matter examined through its Special Rapporteur, who submitted a detailed report containing various recommendations. The gist of the suggestions made by the Special Rapporteur are as under: -

- (a) Necessary measures like generation of employment through public works, social security measures, old-age pension, etc. have to be taken by up the State Government
- (b) Cancellation of debt incurred with public institution and banks in all cases of suicide deaths
- (c) Ex-gratia relief of minimum Rs. 2 lakhs to the families of each suicide victim. In addition, a further amount not exceeding Rs.1 lakh for each family to settle the debts
- (d) Review of policy in regard to regulation of the private trade in seeds and pesticides and fertilizer pricing as well as the Credit Policy.

**4.153** In their comments on the recommendations made by the Special Rapporteur, NHRC,



## Complaints Before the Commission

# Chapter-4

the State Government of Andhra Pradesh submitted that a Cabinet Sub-Committee had considered the recommendations of the Commission and decided to take certain “short term” and “long term” measures to deal with the situation, namely -

### a. Short Term Measures

1. Constitution of Agricultural Technology Mission
2. Constitution of Cabinet sub-committee to examine the existing situation and submit their recommendations
3. Supply of seeds, fertilizers and pesticides at subsidized cost
4. Free power to all agricultural connections, waiving of power dues worth Rs.1200 crores
5. Ex-gratia payment of Rs.1.00 lakh to the family of deceased farmers and a further Rs.50,000/- towards liquidation of farm debt
6. Another Rs.50,000/- from PM's Relief Fund as ex-gratia to the family of each victim
7. Admission of children in Social Welfare Schools and Hostels
8. Allotment of houses under IAY scheme
9. Economic support under Government Schemes
10. Pensions etc.
11. Provision of self-employment to at least one member of each family
12. Bill on Moratorium for 6 months on private money lenders
13. Two years of moratorium on institutional credit recovery
14. Sanction of additional food grains for generation of employment in rural areas
15. Commission of Judicial Enquiry by a retired Judge
16. Proposal for a separate bill called Moneylenders Bill for protection of interest of farmers including fixing the upper limit of interest rate



## Complaints Before the Commission

### b. Long Term Measures

1. Initiation of cloud seeding
2. Planning for plantation of Jatropha and Pongamia for production of bio-diesel
3. Establishment of help lines for distressed farmers
4. Establishment of State level and District level cells to monitor the cases of farmer's suicide and extension of relief on time

**4.154** While submitting that the number of suicides of farmers have come down drastically, the State Government has also intimated the Commission about various measures taken by it for the welfare of the farmers including setting up of Farmers' Welfare Commission to go into the causes of suicides by farmers and to suggest remedial measures.

**4.155** The Commission has called for a copy of the report of the Farmers' Welfare Commission. The same is awaited.

### **27. Suicide by farmers: Karnataka - Case File No.180/10/2003-2004(FC) (LF No.213/10/2003-2004)**

**4.156** The Commission received a complaint from Shri P. Kodanda Ramaiah, Ex. M.P., Sh. B.R. Patil, Ex. Vice Chairman, Legislative Council, Sh. K. Sharananna, Ex. MLA, Kushtagi and Sh. Srishailappa Bidarur, Ex. MLA, Ron alleging that the farmers in Karnataka are committing suicide due to hunger caused due to drought resulting in failure of crops.

**4.157** The Commission considered the matter and got it investigated by its Special Rapporteur. The Special Rapporteur, NHRC visited the affected areas and submitted a detailed report dated 10-01-2004 with the following broad recommendations: -

- (a) In all cases of suicide deaths, the debts incurred with public institutions like cooperatives and banks should be ordered to be cancelled, after a thorough verification;
- (b) Payment of ex-gratia relief of Rs.2 lakhs to the affected families. In addition, depending on the debts incurred by the victim, a further amount not exceeding Rs.1 lakh be provided to each family towards settlement of the debts with the assistance of the village community, so as to end the entire trauma being experienced by these families;
- (c) A complete scrutiny of the functioning of the Public Distribution System (PDS) in



## Complaints Before the Commission

Karnataka by the Development Commissioner including the implementation of PDS at the district and village level;

- (d) A credible rural employment programme based on productive public works with a guarantee of at least 100 to 120 days of employment with guaranteed minimum wages;
- (e) The programme of providing 5 kg. of rice as “take home” ration should be restarted by the Karnataka Government and nutrition programmes must also be strengthened.

**4.158** The above recommendations of the Special Rapporteur, NHRC were forwarded to the State Government of Karnataka as well as Union Ministries of Agriculture and Rural Development for obtaining their comments and the Chief Secretary, Karnataka and the Secretaries of Union Ministries of Agriculture and Rural Development were requested to submit Action Taken Report.

**4.159** In response, the State Government of Karnataka vide letter dated 17/6/2004 submitted the Action Taken Report on the various recommendations indicating inter alia, the following measures taken by the State Government: -

- (a) Distribution of additional food grains to 68,000 beneficiaries under Annapoorna Scheme
- (b) Issue of 35 kgs. of food grain per BPL family per month
- (c) Beneficiaries under Anthyodaya Anna Yojana have been increased to 7,119,700 from 4,79,700
- (d) Providing 100 days of employment to the needy and willing rural poor
- (e) As on 31.03.2004, 12.20 lakhs Kissan Credit Cards have been issued to the farmers in the Co-operative Sector for obtaining loan
- (f) An Act, namely, “The Karnataka Prohibition of Charging Exorbitant Interest Act, 2004” has been implemented in the State. Under the said Act, where a debtor or any member of his family commits suicide and if it is shown that immediately prior to such suicide, the debtor or any member of his family was subjected to molestation by any person, the person who has advanced loan shall, unless the contrary is provided, be deemed to have abetted the commission of such suicide and notwithstanding anything contained in the Karnataka Money Lenders Act 1961, no action against debtor who is a farmer or agricultural labourer to recover loan shall be taken for a period of one year from the date of commencement of the Ordinance



## Complaints Before the Commission

- (g) The Report also contains several recommendations made by the Expert Committee for 'Study on Farmers' Suicides' vis-à-vis comments of the concerned departments of the State Government of Karnataka on the recommendations made by the Expert Commission.

**4.160** The Union Ministry of Agriculture also indicated some measures initiated by the Union Government for the welfare of farmers, namely,

- (i) that the Finance Minister announced on 18<sup>th</sup> June 2004, a special package to provide relief to farmers in distress due to the problem of indebtedness. Some of the salient features of the package are: -
- Total flow of agricultural credit to be enhanced to about Rs.105,000 crore in 2004-05 representing a 30% increase over the flow of credit in the previous year;
  - Commercial banks will bring into their fold at least 100 new farmers at each rural and semi - rural branch during the current year to enlarge borrowing from banks by about 50 lakh;
  - Each rural and semi-urban branch of commercial banks will take up two to three new investment projects in the area of plantation and horticulture, fisheries, organic farming, agro-processing, live stock, micro-irrigation, sprinkler irrigation, watershed management, village ponds development and other agricultural activities;
  - In every district, all commercial banks put together will finance 10 agri-clinics during the current year;
  - In order to provide credit to tenant farmers and oral lessees, NABARD will facilitate formation and financing of self-help groups;
  - Scales of finance will be reviewed to meet the realistic credit needs of farmers, especially capital-intensive agricultural operations;
- (ii) that the Reserve Bank of India has issued standing guidelines to the Banks for providing relief to farmers in areas affected by natural calamities. These guidelines envisage inter- alia: -
- Conversion/rescheduling of loans in the event of natural calamity for periods ranging from 3 to 9 years depending upon successive crop failures/intensity of damage to crops;
  - Grant of fresh crop loans to affected farmers;

- Conversion of principal as well as interest due on the existing loans;
  - Grant of consumption loans;
  - Not to compound interest in respect of loans converted/rescheduled etc.;
  - Not to charge penal interest in respect of current dues in cases of default;
- (iii) that the RBI has asked the Public Sector Banks to step up their disbursement to small and marginal farmers and Private Sector Banks have also been urged to formulate Special Agricultural Credit Plans from the next financial year;
- (iv) that all the Public Sector Banks have been advised to reduce their lending rate for agriculture to not more than 9% p.a. on crop loans upto a ceiling of Rs.50,000. The Banks have also been advised to waive margin/security requirements for agricultural loans upto Rs.50,000. NABARD has also issued guidelines on schemes for redemption of debts of farmers from non-institutional sources;
- (v) that in order to protect the farmers from the adverse effect of natural calamities leading to failure of crops, the National Agricultural Insurance Scheme has been in place since Rabi 1999-2000. The Department of Agriculture and Cooperation has also formulated a scheme titled Farm Income Insurance Scheme to provide income protection to the farmers by integrating the mechanism of insuring production as well as market risks. The scheme has been implemented during Rabi 2003-04 in 19 selected districts of 13 States for wheat and paddy;
- (vi) that the Minimum Support Price and Market Intervention Scheme are being implemented to ensure remunerative prices to the farmers. Further drought relief assistance is also given to the States both in the form of financial assistance and food-grains based on norms;
- (vii) that during 2003-2004, a total quantity of 7,29,370 MTs of food grain were released to the State free of cost for drought relief employment. Release of food grains under the special component of 'Sampoorna Grameen Rozgar Yojana' was made by the Ministry of Rural Development on the recommendations of Department of Agriculture & Cooperation. Further a sum of Rs.298.16 crores was released to the State from National Calamity Contingency Fund for the drought of 2003-04 which inter-alia included assistance for Special Nutrition Programme;

**4.161** In their comments, the Union Ministry of Rural Development informed the Commission that the 'Sampoorna Grameen Rozgar Yojana' (SGRY) as a wage employment programme

## Complaints Before the Commission

envisaged provision of additional wage employment in the rural areas as also food security along side the creation of durable community, social and economic infrastructure in the rural areas. Details about allocation of cash component and food grains for the State of Karnataka during the year 2003-2004 were mentioned. A reference was also made that a new scheme namely, National Food For Work Programme (NFFWP) has been launched in 150 most backward districts in the country from November 2004 to generate additional supplementary wages employment and to create productive assets in these districts. Under NFFWP, three districts of Karnataka namely, Chitradurga, Devangere and Bidar have been included. It is further stated that the Government has introduced a Bill in Lok Sabha on 21.12.2004 namely, National Rural Employment Guarantee Bill, 2004 to provide at least 100 days of guaranteed wage employment work to every poor rural household whose adult members volunteer to do unskilled manual work. This will ensure more number of days employment opportunities to the rural poor.

**4.162** The matter is still under consideration by the Commission.

### **28. Devastation caused by tsunami in coastal areas of South India – Case No. 1054/22 2004-2005-FC**

**4.163** Taking suo-motu cognizance of the calamity that arose from devastating tsunami waves which hit large areas of coastal India, including Andaman & Nicobar Islands, Pondicherry, Tamil Nadu, Andhra Pradesh and Kerala on 26.12.2004, the Full Commission, vide its proceedings dated 13/01/2005, observed

- (i) that it is essential that the Government machinery involved in rehabilitation is able to take all necessary steps for an equitable distribution of both relief as well as rehabilitation measures while maintaining transparency and ensure that the poor, destitute women, destitute children and all persons, who would be in greater need of the relief and rehabilitation measures, are not deprived or made to suffer and are well taken care of;
- (ii) that in order to ensure smooth process of relief, the concerned State Governments/Union Territories must at the earliest prepare and publicize a computerized list of persons, dead or missing, because of tsunami disaster as also list of the totally/partially destroyed properties, as such an authentic list would help in smooth settlement of insurance and other claims of the victims and expedite the rehabilitation process and also help the families to trace the missing persons;
- (iii) that to ensure that young widows and children were not sexually or otherwise exploited by unscrupulous elements, the State Governments/Union Territories should evolve a mechanism towards that end and to prepare a computerized list of such widows and children who were victims of tsunami disaster which would help the authorities to guard against their exploitation.





## Complaints Before the Commission

**4.164** The Commission called for responses from the Secretary, Ministry of Home Affairs, Chief Secretaries of Governments of Andhra Pradesh, Kerala and Tamil Nadu as also the Administrators, Andaman & Nicobar Islands and Pondicherry. Responses were received by the Commission from the Government of Andhra Pradesh, Administrator, Andaman Nicobar Islands, Government of Kerala, Administrator UT of Pondicherry, the Ministry of Home Affairs, besides an interim reply from the Government of Tamilnadu.

**4.165** The Commission also received several petitions from various individuals/NGOs alleging (a) eviction of fishermen from coastal areas by the State Government of Tamil Nadu in the name of rehabilitation and thus endangering their livelihood, and (b) discrimination against dalits in distribution of relief and rehabilitation works by the administration. Response in the matter was called for from the Government of Tamilnadu, which is still awaited.

### **29. Death of Nazia Kouser by beatings given by ultras in District Poonch, Jammu & Kashmir Case No. 68/9/2003-2004(WC)/FC**

**4.166** The Commission received a reference dated 11-8-2003 from Dr. Poornima Advani, Hon'ble Chairperson, National Commission for Women inviting attention to a newspaper report published in "The Tribune" dated 2-8-2003 captioned "Two girls reportedly beaten to death by ultras" in the State of Jammu & Kashmir. A prayer was made to the Commission for getting a joint investigation conducted by it along with the National Commission for Women and the National Minority Commission. Pursuant to the directions of the Commission, a report was called from the Chief Secretary and Director General of Police, Jammu & Kashmir. The report submitted by the Home Department, Government of Jammu & Kashmir indicated that the girls were beaten with gun butts/lathis by the ultras for which a case FIR No. 113/03 had been registered at P.S. Thanamandi and that the investigation was in progress. The report further indicated that one of the girls Nazia Kouser, died on the spot whereas the other girl, Shazia Kouser was first taken to Rajouri Hospital and then shifted to the Government Medical College, Jammu.

**4.167** A further communication from the DGP, Jammu & Kashmir indicated that the investigation in the case FIR No. 113/03 had been closed as untraced. The Commission directed the DGP, Jammu & Kashmir to inform whether any compensation/ex-gratia relief had been given to the next of kin of the deceased, Nazia Kouser and about the condition of Shazia Kouser.

**4.168** A report dated 19/5/2004 submitted by the DGP, Jammu & Kashmir indicated that the District Magistrate, Rajouri paid an ex-gratia relief of Rs. 1,00,000/- (Rupees one lakh) to the next of kin of the deceased, Ms. Nazia and a compensation of Rs. 5,000/- (Rupees five thousand) to Shazia for her treatment. The girl, Shazia was now living with her family in Rajouri Town, Jammu & Kashmir. The report was taken on record and the case closed on 23/6/2004.



## Complaints Before the Commission

### **30. Throwing of bleaching powder solution on the face of Ms. Jeena Kumari, resident of Tamil Nadu - Case No: 103/22/2003-2004(WC)/FC**

**4.169** The Coordinator, Human Rights Promotion Cell, Rural Uplift Centre, Tirunelveli District, Tamil Nadu forwarded a complaint alleging that on 14.1.2003 one Mr. Jones and his accomplice Stephen had thrown bleaching powder solution on the face of Ms. Jeena Kumari, a student of Bachelor of Pharmacy, belonging to SC community. The girl suffered injuries and was hospitalized. On complaints at Thuckalay Police Station, Kanyakumari District, a FIR was registered against the accused under the IPC. Later, provisions of SC/ST (Prevention of Atrocities) Act, 1989 were added. After the investigations were completed, a charge sheet was filed in the court of Judicial Magistrate. It was alleged that again on 31.3.2003, when the victim, Ms. Jeena Kumari got down from the bus in front of her college, Jones threw acid on her face. Consequently, her face as well as both the hands were disfigured. On the basis of her statement Police at Koondankulam Police Station registered a case No. 77/03 under various sections of Indian Penal Code as well as SC/ST (Prevention of Atrocities) Act, 1989.

**4.170** Pursuant to the directions of the Commission, DGP, Tamil Nadu sent a report which indicated that Criminal Case Nos. 43/2002 and 77/2003 were registered against accused persons who were arrested and remanded to judicial custody. The cases were pending trial. The report further stated that pursuant to the recommendations of the Collector, Kanyakumari District, the State Government of Tamil Nadu had accorded sanction for financial assistance to the tune of Rs. 50,000/- to the victim for her medical treatment and the said amount was disbursed to her on 10.7.2003. The mother of the victim had deposed before the Tehsildar, Thovalai, Tamil Nadu that the scars on the face of her daughter, caused due to throwing of acid, were disappearing under some Ayurvedic treatment. The District Collector, Kanyakumari, after considering the statement given by the mother of the victim had reportedly recommended that there was no necessity for the corrective plastic surgery, as proposed by the Commission earlier.

**4.171** On consideration of the aforesaid report, the Commission vide its proceedings dated 10 January 2005 took the compliance report on record and closed the case.

### **31. Denial of visas to certain Sikh NRIs - Case No: 6/99/2003-2004**

**4.172** The Commission received a reference dated 28-4-2003 from the Chairman, National Commission for Minorities in respect of large number of sikh Non-Resident Indians (NRIs) who had been black-listed by the Ministry of Home Affairs for their emotional outbursts and raising of slogans outside Indian Embassies in protest of the Golden Temple episode of 1984. These NRIs had been denied visas even in the most compassionate and humane situations when they were required to be by the side of their dying parents or were to attend the religious ceremonies in their family. A request was, therefore, made by the Minority Commission to get the list totally scrapped.



## Complaints Before the Commission

**4.173** Upon consideration of the matter, the Commission sought information from the Secretary, Ministry of Home Affairs, Government of India on the black-list prepared by the Ministry, particulars about the last revision of the list, its current status and the possibility of its expeditious revision. A copy of the communication received from Shri Simranjit Singh Mann, MP concerning the case of Dr. Hajinder Singh Dilgeer, a citizen of Norway, was also referred to the Ministry of Home Affairs for its comments.

**4.174** In response, the Ministry of Home Affairs submitted a report indicating that in the negative list of 1989-1999 there were 489 names of persons of Indian origin holding foreign citizenship, who had come to adverse notice and were to be denied visas for visiting the country. It was further stated that the list was reviewed from time to time, and that on 28-7-2003 the last deletion circular was issued whereby the names of 55 persons were deleted. The number of such persons on the negative list as on 6-8-2003, was stated to be 134. The Report also stated that the name of Dr. Hajinder Singh Dilgeer @ Doctor was deleted from the negative list on 10-4-2003. The Commission took the report on record and closed the case on 12-11-2003.

### **32. Deportation of Pakistani Nationals after undergoing imprisonment - Case No.2218/30/2003-2004**

**4.175** The Commission received a complaint dated 18-9-2003 from four Pakistani Nationals confined for more than one and a half months in Restricted Foreigners Camp Lampur, Delhi, on release from Tihar Jail after undergoing imprisonment in connection with different cases under IPC and Foreigners Act for entry in India without valid documents. They alleged that no action had been taken by the authorities for their deportation to Pakistan. A prayer was, therefore, made for intervention by the Commission for their deportation.

**4.176** The Commission on 5-11-2003 called for the comments from the Secretary, Ministry of External Affairs and the Secretary, Ministry of Home Affairs, Government of India.

**4.177** The Ministry of External Affairs vide their letter dated 29-4-2004, indicated that Sh. Mohd. Shaheen was repatriated to Pakistan on 14-11-2003 and Shri Sana-ul-lah, Faisal Hussain and Maqsood Ahmad were repatriated on 19-12-2003 by Delhi Police.

**4.178** With reference to a communication addressed by the Commission to the Secretary, Ministry of Home Affairs, Government of India to confirm whether the four persons had actually been repatriated to Pakistan, along with the dates on which the repatriation took place, the Deputy Secretary, Ministry of Home Affairs vide letter dated 21-2-2005 informed that Mohd. Shaheen s/o Mohd. Ashraf was deported on 14-12-2003 and Maqsood Ahmad S/o Abdul Rashid, Mohd. Sanna-U-llah s/o Mohd. Khaliq and Mohd. Faisal Hussain s/o Modh. Hussain were deported on 19-12-2003.

## Complaints Before the Commission

**4.179** Since appropriate relief, after intervention by the Commission had been granted to the four Pakistani Nationals, no further action by the Commission was considered necessary and the case was closed on 25-4-2005.

### **33. Guidelines for Protection of Human Rights of Mentally ill under-trial prisoners/ released persons.**

**4.180** The Commission had in its Annual Report for the year 2003-2004, reported the case of one under-trial prisoner Charanjeet Singh who had continued to remain in judicial custody since 1985, without facing trial on account of unsoundness of mind. In accordance with the provisions of Chapter XXV of the Code of Criminal Procedure, his trial stood deferred till he was capable of understanding the nature of charges against him to defend himself properly.

**4.181** The Commission received an intimation dated 26-2-2002 from the office of DG (Prisons), Delhi about prisoner Charanjit Singh S/o Tula Ram who was facing trial before the court of Shri T.D. Keshav, ASJ, Tis Hazari Court in case FIR No. 854/85 under section 302 IPC, Police Station Adarsh Nagar. The under-trial was ordered to be released by the Hon'ble Delhi High court on 6-7-2000 on his furnishing a personal bond but was sent back to jail by the court on 29-11-2000 as there was no one to stand surety for him. He had already undergone around 16 years in jail and even if convicted, his case would require to be placed before the Government for premature release. Deeply concerned about the need to protect the human rights of the under-trial prisoner, the Commission, filed an intervention application before the Delhi High Court under section 482 Cr.P.C. in a matter Criminal Writ Petition No. 729/2002 (Charanjit Singh vs. State of NCT of Delhi and Another) already pending consideration before the High Court, seeking the quashing of the trial in view of the inordinate delay in the case. The High Court allowed the intervention application. Vide order dated 22-4-2003, the Hon'ble High Court directed the Commission to find out a place where Shri Charanjit Singh could be kept. As a result of the initiative by the Commission, offers were made by the VIMHANS for extending medical facilities and treatment free of cost and by the Help Age India to take over the patient and accommodate him in their half way home or old-age home after the VIMHANS certified that the condition of the patient was stable. Accordingly, orders for shifting of the patient to VIMHANS were pronounced by the High Court on 31-7-2003.

**4.182** The Commission received communication from Helpage India indicating the problems expressed by various old age homes in keeping Sh. Charanjit Singh. It was mentioned that in view of his physical condition, the best alternative would be to keep him under medical care. A request was made before the Commission for making arrangements for Shri Charanjit Singh in any medical institute. Meanwhile an application was filed on behalf of VIMHANS before the High Court stating that the undertrial Shri Charanjit Singh had stabilised and as per the order passed by the High Court he could be shifted to Helpage India / old age home. In response a notice issued to the Helpage India, the Hon'ble High Court was informed that Sh. Charanjit



## Complaints Before the Commission

Singh was now in a stable condition and could be shifted to Jan Kalyan Trust, an old age home at Noida where appropriate arrangement had been made. However, the trust later backed out from their commitment. While the matter stood thus, for the sake of the protection of human rights of the mentally ill prisoner, and in the light of the directions by the High Court, the Commission moved a Criminal Writ Petition No. 1278/04 before the High Court of Delhi and prayed for quashing of the trial of Charanjeet Singh whose condition had deteriorated despite prolong treatment at various hospitals/institutions.

**4.183** During the course of hearing the High Court requested the Commission to suggest guidelines to ameliorate the hardships faced by accused persons of unsound mind, and to ensure that their human rights are respected. The Commission accordingly submitted draft guidelines to be followed by all officials concerned. The High Court, while observing that it had become clear that the undertrial prisoner cannot be tried as there was no chance of reversal of his deteriorating mental and physical condition and no scope of improvement in his condition, quashed the charge sheet against Shri Charanjeet Singh.

**4.184** The High Court commended the role played by the Commission in taking up the case of desolate and destitute person Charanjeet Singh as well as the framing of the guidelines to be followed in such cases. It appreciated the positive response by the Government. of NCT of Delhi and directed the State Government to prepare necessary schemes for rehabilitation of released mentally ill persons, within three months and also to take steps for establishment of half way homes for such destitute people taking into account the guidelines suggested by the Commission which are reproduced below :-

- i) Psychological or psychiatric counselling should be provided to prisoners as required in order to prevent mental illness and/or to ensure early detection. Collaborations of this purpose should be made with local psychiatric and medical institutions as well as with NGOs.
- ii) Central and District jails should have facilities for preliminary treatment of mental disorders. Sub-jails should take inmates with mental illness to visiting psychiatric facilities. All jails should be normally affiliated to a mental hospital.
- iii) Every central and district prison should have the services of a qualified psychiatrist who should be assisted by a psychologist and a psychiatric social worker.
- iv) Not a single mentally ill person who is not accused with committing a crime should be kept in or sent to prison. Such people should be taken for observation to the nearest psychiatric centre, or if that is not available to the Primary Health Centre.
- v) If an undertrial or a convict undergoing sentence becomes mentally ill while in prison, the



## Complaints Before the Commission

State has an affirmative responsibility to the undertrial or convict. The State must provide adequate medical support. As such appropriate facilities should be provided in State assisted hospitals for undertrials who become mentally ill in prison. The person should be placed under the observation of a psychiatrist who will diagnose, treat and manage the person. In case such places are not available, the State must pay for the same medical care in a private hospital. In either case care must be provided until recovery of the undertrial/convict.

- vi) When a convict has been admitted to a hospital for psychiatric care, upon completion of the period of his prison sentence, his status in all records of the prison and hospital should be recorded as that of a free person and he should continue to receive treatment as a free person.
- vii) Mentally ill undertrials should be sent to the nearest prison having the services of a psychiatrist and attached to a hospital, they should be hospitalized as necessary. Each such undertrial should be attended to by a psychiatrist who will send a periodic report to the Judge/Magistrate through the Superintendent of the prison regarding the condition of the individual and his fitness to stand trial. When the undertrial recovers from mental illness, the psychiatrist shall certify him as 'fit to stand trial'.
- viii) All those in a jail, with mental illness and under observation of a psychiatrist should be kept in one barrack.
- ix) If a mentally ill person, after standing trial following recovery from the mental illness is declared guilty of the crime, he should undergo term in the prison. Such prisoners, after recovery should not be kept in the prison hospital but should remain in the association barracks with the normal inmates. The prison psychiatrist will, however, continue to periodically examine him for reviewing his treatment and suggesting him other activities.
- x) The State has a responsibility for the mental and physical health of those it imprisons. While some of the recommendations below may appear to be of a general nature, they would help prevent people becoming mentally ill after entering jail. Each jail and detention center, therefore, should ensure that it provides the following:
  - i) An open environment, lawns, kitchen gardens and flower gardens, daily programmes for prisoners should include physical and mental activities that reduce stress and depression including organized sport and meditation.
  - ii) A humane staff that is not unduly harsh;
    - (a) Officers of the institution shall not, in their relations with the prisoners use force except





## Complaints Before the Commission

- in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. Officers who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the director of the institution.
- (b) Prison officers shall be given special physical training to enable them to restrain aggressive prisoners.
  - (c) Except in special circumstances, staff performing duties which bring them into direct contact with prisoners should not be armed. Furthermore, staff should in no circumstances be provided with arms unless they have been trained in their use.
- (iii) Effective grievance redressal mechanisms.
- (a) Every prisoner on admission shall be provided with written information about the regulation governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorized methods of seeking information and making complaints, and all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution.
  - (b) If a prisoner is illiterate, the aforesaid information shall be conveyed to him orally.
  - (c) Every prisoner shall have the opportunity each weekday of making requests or complaints to the director of the institution or the officer authorized to represent him.
  - (d) Every prisoner shall be allowed to make a request or complaint, without censorship as to substance but in proper form, to the central prison administration, the judicial authority, or other proper authorities through approved channels.
  - (e) Unless it is evidently frivolous or groundless, every request or complaint shall be promptly dealt with and replied to without undue delay.
- (iv) Encouragement to receive visitors and maintain correspondence, interview facilities; access to the more important items of the news by any means authorized by the administration; access for foreign nationals to their diplomatic representatives.
- (v) Overseeing bodies including members from civil society to ensure the absence of corruption and abuse of power in jails.
- (xi) Regarding those undertrials whose trial has been suspended for even a single day due to





## Complaints Before the Commission

mental illness, report should be sent to the relevant District and Sessions Judge as well as the Magistrate on a quarterly basis i.e. every three months, as per proforma prescribed by the High Court.

- (xii) As soon as it comes to the notice of the trial court that an undertrial is mentally unsound and cannot understand the nature of proceedings against him, the trial court must follow the procedure under Chapter 25 CrPC and ensure strict compliance of Mental Health Act 1987, relating to progress report of undertrial. In this regard the trial court must ask for periodic report of the progress of the undertrial as detailed by the proforma.
- (xiii) The Delhi Judicial Academy could include short-term capsule course to sensitize judicial officers likely to deal with mental health cases and to orient such officers to the Mental Health Act, 1987. These short-term courses could be institutionalized and provided to each batch of judicial officers.
- (xiv) When the trial of a mentally ill person is suspended for a period longer than 50% of the possible sentence (subject to a maximum of three years) the matter should be reported to the Registrar of the High Court of Delhi to be put up to the Hon'ble Chief Justice for information and appropriate action. A copy of this report should be sent to the NHRC. Such reports should be made on a six-monthly basis, by filling the prescribed proforma.
- (xv) The State Government must strengthen legal aid services; they should extend beyond representation before magistrate when the case is taken up. Given the record of mentally ill persons not being produced for years before the court, preventive legal aid is required to check the abuse of law and dumping the mentally ill in prisons. Rejection by the family means that no one would be approached to provide help to the jailed person. Legal aid, in the person of duty counsel at police stations, can help enforce procedures and screen out the vagrant mentally ill from the criminal justice process even at the point of entry. Duty counsel in courts can ensure that no mentally ill person is unrepresented.
- (xvi) The state must assume responsibility also for those persons who have been discharged from prison and hospital and no longer require full time care for mental illness, but are unable to take care of themselves. According to Help age India, the Department of Social Welfare, Government of the National Capital Territory of Delhi plans to establish some additional old age homes. Ideally, some of these would be earmarked for older persons, who have been subjected to social injustice eg. those like Mr. Charanjeet Singh who have suffered unnecessary incarceration. The Government's running of such establishments has left much to desired due to bureaucratic management, an attachment to rules and procedures rather than sensitive provision of support; the state of existing old age homes run by the government in Delhi makes this clear.



## Complaints Before the Commission

- (xvii) Those in the above category of persons should not be sent to Homes that treat them as sub-human, but rather be provided with humane, community-based alternatives where full time care is required. Semi-independent, protected community houses would need to be established where such people could be rehabilitated and gainfully employed in some income generating activities with the objective of helping them lead as normal a life within society. A number of government schemes already exist to provide community-based rehabilitation and should be implemented. However, appropriate medical care must be provided with periodic visits by qualified psychiatrists. Such homes should be run by grass root NGOs and overseen and financed by the Government.
- (xviii) At the same time there should be a shift in focus from institutionalizing vulnerable people (such as the old and mentally ill) if it is possible for the person to be taken care of at home, institutional support of families should be provided in order to make the rehabilitation more successful.

### D] Reference Received from the Supreme Court and High Courts and NHRC Initiatives in Approaching the Courts

**4.185** Since its inception in the year 1993, the Commission has been maintaining complimentary relationship with the Supreme Court and the High Courts in India. Recognizing the credibility and effectiveness of the Commission, the Supreme Court and various High Courts in India have been remitting matters relating to preservice and promotion of human rights to the Commission for inquiry/investigation and for submitting reports as well as recommendations.

**4.186** One of the functions assigned to the Commission u/s 12 (b) of the Protection of Human Rights Act is to intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court. In keeping with its role for better protection of human rights, the Commission has been intervening, from time to time, in the matters concerning human rights in the proceedings pending in the Supreme Court or the High Courts in India with a view to put forth its point of view before the court and also to assist the court for consideration.

**4.187** A brief mention may be made of some of the important references received from the Supreme Court/High Courts or interventions made by the Commission in some important areas concerning human rights before the aforesaid courts during the year 2004-2005.

**4.188** The Indian Council of Legal Aid and Advice and others had filed a Writ Petition (civil) No. 42/97 before the Supreme Court of India inviting attention to starvation deaths in Orissa despite the direction of the Apex court in an earlier case reported as 1989 Supp. (1) SCC 258. On the basis of information furnished by the petitioner before the Supreme Court about an

## Complaints Before the Commission

intervention of the Commission on a complaint, the Supreme Court vide its order dated 28-4-97 and 26-7-97 directed the petitioner to submit suggestions before the Commission for further consideration of the matter.

**4.189** In order to deal with the scourge of starvation, the Commission considered short term and long term measures in key areas of health, employment, poverty alleviation, drinking water supply etc. in the State of Orissa and their implementation is being monitored by the Commission. [Case No. 37/3/97-LD(FC)]

**4.190** The Hon'ble Supreme Court of India vide its order dated 31/1/2003 referred the subject matter of investigation in Special Leave to Appeal (Civil) No. 7436/99 arising from the judgement and order dated 24-12-98 of the High Court of Guwahati filed by Ms. Romila Hazarika against Union of India and others for tracing out her missing brother Dambarudhar Hazarika after his alleged release from custody by army personnel. The court directed that the matter may be referred to the Commission for further investigation. Accordingly, the Commission directed spot investigation by a team of its officers. However, despite best efforts by the team, the whereabouts of Dambarudhar Hazarika could not be traced and he continued to be missing. The Commission informed the Apex Court accordingly. [30/3/2003-2004-AF]

**4.191** The Supreme Court of India, vide its order dated 12-12-1996 had referred the Punjab Mass Cremation case to the National Human Rights Commission for examining the matter relating to 2097 cremations of dead bodies by the Punjab Police in the Police District of Amritsar, Majitha and Tarn Taran of District Amritsar, Punjab as unidentified during the period w.e.f.1984 to1994. The Commission heard the matter from time to time and vide its proceedings dated 11-11-2004, it awarded compensation @ Rs. 2.50 lakhs to the next of kin of each of the 110 deceased persons who were admittedly in the custody of Punjab police at the time of their death.

**4.192** The State of Jammu & Kashmir challenged before the Supreme Court an order dated 6-9-2002 of J & K High Court extending all migrants from militancy affected areas, the same benefits as has been given to the migrants from Kashmir Valley in Special Leave to Appeal (Civil No.34 of 2003). The Hon'ble Supreme Court of India vide its order dated 28-1-2004 referred the aforesaid matter to the Commission for its disposal.

**4.193** The Commission while considering the matter on 10-8-2004 observed that it could not sit in appeal over the judgement and order of the High Court and it is only the Supreme Court which has jurisdiction to decide the appeal. Accordingly, the reference was returned to the Hon'ble Supreme Court to decide the SLP on the judicial side. [Case No. 41/9/2004-2005]



## Complaints Before the Commission

**4.194** Shri Gulab Saha R/o District Bhagalpur filed a LPA No. 6/2004 in CWJC No. 10452/2003 before the Patna High Court regarding non-payment of pre and post retrial dues to the petitioner by the Bihar State Road Transport Corporation. The matter was referred to the National Human Rights Commission vide order dated 10-12-2003 by the Division Bench of the High Court at Patna for consideration by the Hon'ble Chairperson so that the nation may see an ugly facet of state government companies and State Public Sector Undertaking of Bihar, the grounding of them and the effect on the workers who may have retired in the last 25 years.

**4.195** Since the LPA was directed against an order of the learned single judge, the Commission observed that it was unable to sit in appeal over the judgement of the Learned Judge of the High Court and in that view of the matter unable to make any recommendation in the case under the Act. Suitable communication in this regard was sent to the Registrar General of the High Court. **[Case No. 2423/4/2004-2005]**

**4.196** During his visit to Central Jail, Ambala on 18-10-03, the case of a mentally ill prisoner Jai Singh came to the notice of the Chairperson, NHRC. It appeared that, after his admission to jail in case FIR No. 28 dated 3.3.76 u/s 302/ 34 IPC, he was transferred to Mental Hospital, Amritsar on 9-5-1979 for treatment. He had not been able to stand the trial, presumably because of his mental condition. He was never produced in the trial court for trial in the said case and continued as an under-trial prisoner for over 26 years.

**4.197** The NHRC, in order to achieve the object of protecting and promoting human rights and to prevent further violation of human rights of life and liberty of the under trial prisoner Jai Singh, approached the Hon'ble High Court of Punjab & Haryana for appropriate orders/directions in the interest of justice. Subsequently, the Commission came to know that the case of under trial prisoner Jai Singh is already being considered along with similar other persons by the Hon'ble High Court in CWP 10791/2002. However, the intervention application filed on behalf of the Commission on 23-8-2004 was allowed by the Hon'ble High Court during its hearing on 5-10-2004 and the matter is under consideration by the High Court.

**[Case No. 736/19/2003-2004]**

**4.198** The Commission received an intimation from the office of DG (Prisons), Delhi about languishing in jail since 28-10-1985 of a mentally ill prisoner Charanjit who was accused in a murder case bearing FIR No. 854/85 registered at P.S. Adarsh Nagar. Deeply concerned about the need to protect the human rights of the under-trial prisoner, the Commission, filed an application before the Delhi High Court under section 482 Cr.P.C. seeking the quashing of the trial in view of the inordinate delay in the case. The High Court allowed the intervention application. As a result of the initiative taken by the Commission, offers were made by the

## Complaints Before the Commission

VIMHANS for extending medical facilities and treatment free of cost and by the Help Age India to take over the patient and accommodate him in their half way home or old-age home after the VIMHANS certified that the condition of the patient was stable. Accordingly, orders for shifting of the patient to VIMHANS were pronounced by the High Court on 31-7-2003.

**4.199** Subsequently, the Commission moved a Criminal Writ Petition No. 1278/04 before the High Court of Delhi and prayed for quashing of the trial of Charanjeet Singh whose condition had deteriorated despite prolong treatment at various hospitals/ institutions. The High Court vide its order dated 4/3/2005 quashed the trial of the mentally ill prisoner. The High Court commended the initiative and the promise by the Government of NCT of Delhi for taking care of medical need of Charanjit Singh after quashing of the trial. Guidelines proposed by the NHRC for considering the cases of such mentally ill under-trial was accepted by the court and suitable direction issued to the Government of Delhi in this regard.

[Case No. 3628/30/2001-2002]

### **E] Action Taken on Cases Reported in the Annual Report for the Year 2003-2004 and Earlier Reports**

#### **Custodial Death**

##### **1. Death of Chhigga in the Police custody at P.S. Sirsi, District Guna : Madhya Pradesh (Case No. 1800/12/2000-2001-CD)**

**4.200** This case relating to the custodial death of Chhigga in police custody was earlier reported in the Annual Report for the year 2003-2004.

**4.201** The Commission recommended an interim relief of Rs. 20,000/- to the next of kin of the deceased on the ground that the negligence of the concerned public servants in not providing timely medical treatment during police custody was the immediate and proximate cause of death. The Commission also asked the Chief Secretary to look into the functioning of the hospital and take such remedial measures as deemed necessary.

**4.202** Pursuant to the Commission's directions, the Government of Madhya Pradesh informed that the payment of Rs. 20,000/- has been made to the next of the kin of the deceased. The Commission closed the case expressing a hope that the State Government has taken remedial measures in respect of the conditions prevailing in the civil hospital, Guna, to avoid a repetition of such incidents in future.



## Complaints Before the Commission

# Chapter-4

### **2. Death of Sanjay Sharma in District Jail, Mathura: Uttar Pradesh (Case No: 41373/24/2000-2001-CD)**

**4.203** This case relating to death of under trial prisoner, Mr. Sanjay Sharma, was earlier reported in the Annual Report for the year 2003-2004.

**4.204** Upon consideration of the response to the show cause notice received from the Government of UP, the Commission held that there had been prima facie violation of human rights relating to the life of the deceased and recommended (i) grant of interim relief of Rs.50,000/- and also called for status of disciplinary proceedings already initiated against the concerned officials.

**4.205** The State Government of UP informed the Commission that the amount of interim relief had been paid to the mother of the deceased. The State Government submitted proof of payment and also informed that disciplinary action had been taken against the guilty medical officer Dr. A. K. Yadav and SI, Deshpal Singh. The matter was accordingly closed.

### **3. Death of an under-trial prisoner, Tachi Kaki : Arunachal Pradesh (Case No. 14/2/2002-2003-CD)**

**4.206** This case relating to death of an under trial prisoner in police firing was earlier reported in the Annual Report for the year 2003-2004.

**4.207** Agreeing with the opinion of the Judicial Magistrate that the escape of the under trial prisoner was preventable, and there was no necessity to fire at him by the accused ASI, A. Bharali, it held that human rights of the accused were violated by the police personnel, and issued a show cause notice u/s 18(3) of the Protection of Human Rights Act, 1993 to the Chief Secretary, Government of Arunachal Pradesh.

**4.208** The Joint Secretary (Home) Government of Arunachal Pradesh informed the Commission vide its letter dated 11-10-2004 that a payment of Rs. 50,000/- has been paid to the next of kin of the deceased. The Commission took the report on record and closed the case.

### **4. Custodial death of under-trial prisoner, Harjinder alias Jinda, due to negligence: Uttar Pradesh (Case No. 8437/24/1999-2000-CD)**

**4.209** This case of the death of an under-trial prisoner was earlier reported in the Annual Report for the year 2002-2003.

**4.210** On consideration of various reports, the Commission held that Mr. Harjinder had died in judicial custody due to negligence and callousness on the part of police personnel, and recommended a sum of Rs. 1,00,000 as immediate interim relief to the next of kin of the deceased.





## Complaints Before the Commission

**4.211** In response to aforesaid directions, the State Government, submitted that there was no justification for grant of immediate interim relief to the next of kin of the deceased, since allegations of torture were not substantiated during CB CID inquiry.

**4.212** While referring to the law laid down by the Hon'ble Supreme Court of India in Nilabati Behera vs. State of Orissa – 1993 (2) SCC 746, the Commission held that the police official escorting the undertrial did not take reasonable care to prevent avoidable harm and there was dereliction of duties to take care on their part. The State was, therefore, vicariously liable. The Commission, therefore directed for payment of Rupees One lakh to the next of kin of the deceased. The Government of U.P. complied with the recommendations of the Commission. The case was, accordingly, closed.

### Custodial Torture

#### **1. Custodial torture of Zamir Ahmed Khan : Uttar Pradesh (Case No. 14071/24/2001-2002)**

**4.213** This case relating to torture of Mr. Zamir Ahmed Khan in police custody was earlier reported in the Annual Report for the year 2002-2003.

**4.214** Upon consideration of the magisterial inquiry report and the report received from the Senior Supdt. of Police, Bulandshahar, UP, the Commission held that the allegations of custodial torture of Zamir Ahmed Khan stood substantiated during the magisterial enquiry. Accordingly it recommended an amount of Rs. 20,000/- as immediate interim relief to the victim. The said amount was paid to the victim on 7-11-2003 by the State Government. The case was, therefore, closed on 12.7.2004.

#### **2. Harassment and Torture of Jagannath Shaw by the RPF Staff: West Bengal (Case No: 118/25/2002-2003)**

**4.215** This case was earlier reported in the Annual Report for the year 2003-2004. On the basis of the findings arrived at by the Divisional Railway Manager, Asansol that the police personnel were involved in the incident and that a charge sheet for imposing a major penalty under rule 153 of the RPF Rules, 1987 had been issued to the two errant police personnel. The Commission issued a show cause notice to the Eastern Railways, Calcutta to show cause as to why immediate interim relief under section 18(3) of Protection of Human Rights Act be not given to the victim.

**4.216** In response, the concerned Railway authorities informed that the errant officials were already being dealt within the Department for which a major penalty was also likely to be imposed on them and that there was no provision under the Railways Act. to grant interim relief in such cases. The Commission, while rejecting the aforesaid plea of the Railway Authorities on 31-3-2004 recommended that Rs. 10,000/- be paid as immediate interim relief to the victim u/s 18 (3) of the Protection of Human Rights Act, 1993. The compliance report is still awaited.





## Complaints Before the Commission

# Chapter-4

### Police Harassment

#### **1. Complaint from Sarita Sahu, resident of Ranchi : Jharkhand (Case No. 974/34/2001-2002)**

**4.217** This case relating to police harassment of the complainant along with two others was earlier reported in the Annual Report for the year 2003-2004. Upon consideration of a report from the Director General & Inspector General of Police, Ranchi, the Commission held that Ms. Sarita Sahu and her family members were subjected to mental agony, harassment and humiliation by the police. It recommended payment of Rs. 1 lakh as immediate interim relief u/s 18(3) of the Protection of Human Rights Act, 1993 to be paid by the State Government to the victim.

**4.218** Pursuant to the direction of the Commission, the Government of Jharkhand has issued a sanction for payment of Rs.1,00,000/- (Rupees One Lakh only) to the complainant as “interim relief”. However, the factum of payment and the outcome of departmental proceedings initiated against the errant police officials are still awaited.

#### **2. Harassment, Misbehaviour and injury caused to U.K. Vajpayee, ANM.: Uttar Pradesh (Case No: 29929/24/2000-2001)**

**4.219** This case relating to harassment and injury inflicted by the police resulting in amputation of one of the legs of the victim, Ms. Usha Kiran Vajpayee was earlier reported in the Annual Report for the year 2003-2004.

**4.220** The Commission vide its proceedings dated 21-5-2003, while rejecting the plea of the State Government of U.P. that the amount of Rs. 5,00,000/- recommended by the Commission was excessive, reiterated its stand that the award of Rs. 5 lakhs as “immediate interim relief” to the victim was meant as an application of balm on the wounds of the lady and asked the State Government to comply with the directions.

**4.221** The State Government vide its letter dated 14-/6-2004 conveyed to the Commission that the amount of Rs. 5 lakhs has been paid to the victim. Accordingly the case was closed.

### Illegal Detention and Torture

#### **1. Unlawful detention of Manoharan: Tamil Nadu (Case No:213/22/2001-2002)**

**4.222** This case relating to unlawful detention of Mr. Manoharan was earlier reported in the Annual Report for the year 2003-2004.



## Complaints Before the Commission

**4.223** On the basis of a report received from the Superintendent of Police, Tiruchirapalli confirmed that the complainant's husband Manoharan was unlawfully arrested by the Deputy Superintendent of Police, Jayashree and Constable G. Rajasekaran and detained at the police station, Tiruchirapalli without any valid reason, the Commission directed the State Government of Tamil Nadu to pay a sum of Rs.50,000/- as immediate interim relief to Manoharan and initiate a departmental enquiry against erring police officials for his wrongful confinement.

**4.224** While the amount of interim relief was paid to the victim and proof of payments submitted to the Commission, disciplinary action initiated against the errant police personnel was under process.

### **2. Illegal detention and torture in police Station, Shikarpur: Uttar Pradesh (Case No. 17171/24/1999-2000)**

**4.225** This case relating to illegal detention and torture of Prahlad Swaroop and Satish was earlier reported in the Annual Report for the year 2003-2004. Upon consideration of the enquiry report submitted by Additional Superintendent of Police, District Khurja that the allegations of illegal detention and torture stood substantiated, the Commission awarded a sum of Rs.10,000/- as interim relief to each of the two victims viz. Prahlad Swaroop and Satish. As the Government of UP paid the amount through cheque on 23.9.2004, the case was closed.

### **3. Police high-handedness against a teacher in Kota : Rajasthan Case No: 1603/202001-2002)**

**4.226** This case relating to illegal detention of Prem Chand was earlier reported in the Annual Report for the year 2002-2003. The Commission vide its proceedings dated 14-2-2003, held that the complainant was kept under illegal detention and accordingly it issued a show cause notice u/s 18(3) of the Protection of Human Rights Act, 1993 to the State of Rajasthan. While the matter rested thus, the Commission was informed that a case had been registered against the erring SI, and on the basis of the report received from the State Human Rights Commission disciplinary proceedings were initiated against him and he had been censured. The matter relating to grant of interim relief was also under consideration by the State Human Rights Commission. As the State Human Rights Commission was already seized of the matter, the case was closed.

### **4. Negligence of police personnel leading to wrongful confinement of Ikram-ud-din: Uttar Pradesh (Case No. 23239/24/1999-2000)**

**4.227** This case relating to wrongful confinement of Mr. Ikram-u-din was earlier reported in the Annual Report for the year 2002-2003. The Commission vide its proceedings dated 11.10.02



## Complaints Before the Commission

held that the complainant had suffered great financial loss and mental agony due to wrongful confinement on account of negligence of police official and after considering response to the show cause notice issued by it, awarded Rs. 50,000/- as immediate interim relief to the complainant. Compliance report in respect of payment made to the victim has been received along with the proof of payment. The case has therefore, been closed.

### Violation of Rights of Children/ Women

#### 1. Kids slogged 12 hours a day paid @ Rs. 5/- a week: Delhi (Case No. 1868/30/2001-2002)

**4.228** This case relating to employment of child labourers by a private employer and non-payment of minimum wages to them, was earlier reported in the Annual Report for the year 2003-2004. The matter was enquired into by a team of the Commission and the allegations were substantiated. The Government of National Capital Territory of Delhi submitted a response based on the Investigation Report of the Commission, that two cases were registered against the owner of the factory and the challans had been filed in the court. The Commission, while noting that the children were handed over to their biological parents, asked the State Government to inform about the steps being taken for recovery of the minimum wages.

**4.229** The Joint Labour Commissioner, Labour Department, Government of NCT of Delhi informed that the claim for minimum wages could not be filed before the Claim Authority u/s 20 of the Minimum Wages act, as at the time of inspection by the Inspectorate of the Department, the children were not found working in the establishment, which was lying closed, but efforts will be made to file a case u/s 21 of the Delhi Shops & Establishment Act. 1954.

**4.230** The Joint Labour Commissioner, vide his letter dated 18.6.2004 informed that proceedings for recovering of wages of the children and prosecution of the employer are still pending. Since the matter became subjudice, the Commission closed the case.

#### 2. Alleged illegal detention of a girl child : Orissa (Case No: 80/18/2003-2004(WC))

**4.231** This case relating to non-compliance with the provisions of the Juvenile Justice (Care & Protection of Children) Act 2000 in the State of Orissa, was earlier reported in the Annual Report for the year 2003-2004.

**4.232** While considering the matter on 19.5.2003, the Commission called upon the Chief Secretaries of all States and Union Territories to furnish the detailed information about implementation of the provisions of Juvenile Justice (Care & Protection of Children) Act, 2000 (for short 'Act') in their respective States.

## Complaints Before the Commission

**4.233** While considering the matter on 3.01.05 the Commission found that 15 States / UTs have implemented the provisions of Juvenile Justice (Care and Protection of Children) Act, 2000 namely, Haryana, Manipur, Rajasthan, West Bengal, Gujarat, Maharashtra, Uttar Pradesh, Karnataka, Orissa, Tamil Nadu, Goa, Chandigarh, Dadar and Nagar Haveli, Delhi and Pondicherry. The remaining 20 States have not taken complete steps to implement the Act. The Commission continues to monitor the implementation of the provisions of the Act by these States.

### **3. Rape of 17 women, including complainant and her mother: Gujarat (Case No: 256/6/2003-2004(WC))**

**4.234** This case relating to allegations of improper investigation, lack of confidence of the complainant in the functioning of the local police and filing a final report before the court was earlier reported in the Annual Report for the year 2003-2004.

**4.235** The Commission acceded to her request to provide assistance to pursuing legal remedies in her case to be filed in Supreme Court. Thereafter, she moved a writ petition in the Supreme Court for setting aside order dated 25.3.2003 passed by the Judicial Magistrate vide which a final report in the case submitted by the police was accepted.

**4.236** Pursuant to the orders of the Supreme Court, the CBI undertook the investigation and arrested 14 persons including some police officials.

**4.237** The Commission vide its proceedings dated 24.03.04 also acceded to her request seeking assistance for appointment of a lawyer during the forthcoming trial and directed its Special Rapporteur to take appropriate steps for engagement of a competent lawyer, for which the Commission shall bear the expenses. It also requested its Special Rapporteur to apprise it of further developments in the case from time to time.

## Negligence of Authorities

### **1. Death of Dirisam Lajer due to electrocution: Andhra Pradesh (Case No.147/1/2001-2002) (FC)**

**4.238** This case relating to payment of inadequate amount of ex-gratia by the State of Andhra Pradesh to the victims of electrocution was earlier reported in the Annual Report for the year 2003-2004.

**4.239** The Commission vide its proceedings dated 3.3.2004, while holding that the rule of strict liability must apply to the cases of deaths of electrocution due to negligence on the part of supplier of electricity in maintaining the services in safe conditions, observed that an ex-gratia



## Complaints Before the Commission

compensation of Rs.10,000/- given to the widow of the deceased for the loss of her husband, was grossly inadequate and was a clear case of negligence on the part of the supplier of electricity in maintaining the services in safe conditions.

**4.240** The Commission persuaded the Chairman & MD of Southern Power Distribution Co. of A.P. Ltd. to personally look into the matter by overlooking the technicalities and legalities and see what further ex-gratia amount could be given to the widow. Accordingly, the company paid a further amount of Rupees Twenty thousand to the widow of the victim. The case was, therefore, closed.

### **2. Death in firing by armed forces, Manipur. (Case No. 25/14/1999-2000)**

**4.241** The case relating to indiscriminate firing by CRPF resulting in the death of 3 civilians and a fireman and injuries to four persons, was earlier reported in the Annual Report for the year 2001-2002.

**4.242** The Commission on consideration of “on the spot” study report received from the Manipur Human Rights Commission, directed an immediate interim relief of Rs. 2 lakhs to be paid to the next of kin of each of the deceased and Rs.25,000/- to each of the four injured.

**4.243** Pursuant to the Commission’s directions, the Ministry of Home Affairs issued a sanction order for the payment of Rs. 10,75,000/- as interim compensation to the next of kin of the five deceased civilians and four injured persons. However, the factum of payment is still awaited.

### **3. Case of Jalil Andrabi, Advocate : Jammu & Kashmir (Case No. 9/123/95-LD)**

**4.244** This case relating to alleged abduction and subsequent killing of Mr. Jalil A Andrabi, an advocate in Srinagar, by the Security Forces had earlier been reported in the Annual Reports for the years 2002-2003 and 2003-2004.

**4.245** During the course of hearing the Head of the Special Investigation Team informed the High Court that challan, after investigation, had been filed before the trial court against Major Avtar Singh. The trial court acceded to the request of the Army for sending the case to Army authority (court martial) for trial against which criminal revision No. 4/2001 was filed before the High Court by the brother of the deceased.

**4.246** The High Court disposed of the review petition on 9.6.2004 with the observation that the committal court had to hand over the accused only after considering the provision of section 549 Cr.PC. While the matter rested thus, the Commission called for the status of the criminal case pending in the Court of Chief Judicial Magistrate, Budgam along with a copy of order under section 549 CrPC, if any, passed after 9.6.2004. The information called for from CJM,



## Complaints Before the Commission

Budgam is however, still awaited.

### **4. Atrocities on inmates by the Superintendent of Probation Home : Jharkhand (Case No. 177/34/2001-2002)**

**4.247** This case was earlier reported in the Annual Report for the year 2002-2003. The Commission received a complaint dated 6.05.01 from Kumari Sita alleging mal-administration in the Probation Home, Devghar where girls were lodged. It was alleged that the girls were not being looked after properly and that they were being deprived of food, clothing and medicines. As a result, a girl inmate reportedly died on 02.02.01. The complaint also alleged that during April 2001, some of the inmates were beaten by the staff of the Probation Home and that, as a result, one of the girls had escaped from the Home.

**4.248** Having regard to the serious mal-administration in the probation home and the resultant violation of human rights of the inmates pointed out in the report received by the Commission, the Commission issued notice to the Chief Secretary, Government of Jharkhand, asking him to show cause as to why immediate interim relief be not granted to the inmates named in the report.

**4.249** Response from the Government of Jharkhand is, however, still awaited.

### **5. Exploitation of child labourers in Tonk: Rajasthan (Case No. 817/20/2001-2002 )**

**4.250** This case relating to violation of Sec. 3 of the Child Labour (Prohibition & Regulation) Act, 1989 was earlier reported in the Annual Report for the year 2002-2003. Having regard to the employment of a number of child labourers by the accused in contravention of the provisions of Section 3 of the Child Labour (Prohibition & Regulation) Act, 1989 and the institution of cases in the court against the offending employer, by its proceedings dated 02.05.02 the Commission directed the District Magistrate, Tonk, Rajasthan to prepare a list of child labourers who were employed by carpet weaving unit and to recover a sum of Rs. 20,000/- per child from the offending employer, and to deposit that sum in a fund to be known as the Child Labour Rehabilitation cum Welfare Fund. The State Government was also directed to contribute Rs. 5,000/- per child to the said fund in accordance with the directions of the Apex Court.

**4.251** The District Collector, Tonk submitted a report indicating that 11 cases were pending in respect of the 37 child labourers and notices for recovery of Rupees Twenty Thousand per child labour had been issued to the employer. The Commission vide its proceedings dated 29.6.05 directed the DM to furnish latest status report of recovery of Rs. 20,000/- per child labour from the defaulting employer. The requisite report is still awaited.

### **6. Harassment of Shri Kumpampadom Thomas Skaria, by an Immigration Officer at the Mumbai Airport: Maharashtra (Case No. 263/13/2000-2001)**





## Complaints Before the Commission

**4.252** This case relating to harassment of a citizen of the United States of America of Indian origin by the Immigration Officer at Mumbai Airport was earlier reported during 2002-2003.

**4.253** In response to the show cause notice, the Ministry of Home Affairs informed the Commission that instructions have been issued to the Immigration Authorities for preventing recurrence of such unfortunate incidents and that two complimentary return air tickets were being offered to the complainant and his wife to visit his native place and relatives in India. As the Commission received confirmation from the Ministry about handing over of the complimentary air tickets, the case was closed.

### **7. Measures to prevent deaths due to starvation : Orissa [Case No. 37/3/97-LD(FC)]**

**4.254** Earlier annual reports of the Commission have dealt, in great detail, with the efforts of the Commission since 1996 to deal with the allegations of deaths by starvation in the KBK districts of Orissa and the remit of the Supreme Court to the Commission to pursue and monitor this matter.

**4.255** In the course of the year 2004-2005, on consideration of the compliance report submitted by the Government of Orissa, the Commission directed the State Government to submit status report both with regard to short term and long term measures and steps in the pipeline for meeting the situation. Regarding the progress made with regard to the amendment of Orissa Relief Code, the Commission noted that the State Government had constituted a committee headed by Agriculture Production Commissioner -cum- Additional Chief Secretary and amendments to the Orissa Relief Code notified on 30.03.05. Dr. Amrita Rangasami, Director, Centre for Study of Administration of Relief (CSAR) was also requested to forward the note of suggestions relating to calamity relief expeditiously for further consideration by the Commission.

### **8. Bonded labourer in the powerloom factory, Distt. Periyar, Tamil Nadu (Case No. 22/212/96-LD(FC)]**

**4.256** The case relating to bonded labourer was earlier reported in the Annual Report for the year 2003-2004. The Commission being dis-satisfied with the report of DGP, Government of Tamil Nadu, referred the matter to its Special Rapporteur Shri K.R. Venugopal, who submitted a detailed report substantiating the allegations of bonded labour of Mr. Thenmozhi. As a result of the initiative taken by the Commission, the State Government decided to pay a total amount of Rupees One Lakh, (including Rupees Twenty five Thousand already paid) to Mr. Thenmozhi. The case was closed after full compliance was received.

### **9. Death in custody of Mr. Chuhur Singh due to negligence : Punjab (Case No. 431/19/2000-2001)**





## Complaints Before the Commission

**4.257** This case related to the death of a former Sarpanch of Gogon Village, Mr. Chuhur Singh, while in police custody on 10.09.2000.

**4.258** In its order dated 22.05.02 the Commission over-ruled the objection of the Government of Punjab that the question of compensation be kept in abeyance till the finalization of the enquiry.

**4.259** The Commission by its proceedings dated 22.5.2002 rejected the stand taken by the State Government and directed the State Government to comply with the directions. The compliance report is still awaited despite reminders. The matter is being pursued by the Commission.

### **10. Bonded child labour : Andhra Pradesh (Case No.443/1/2001-2002(FC)]**

**4.260** This case relating to existence of child labour and the exploitation of minor girls through their employment in hazardous work in cotton seed farms, tiles units, quarries and bidi manufacturing units in the districts of Mehaboob Nagar, Krishna and Nizambad in Andhra Pradesh was earlier reported during 2002-2003.

**4.261** On consideration of a detailed report dated 19.07.02 received from the Government of Andhra Pradesh stating that it was implementing an action plan to eradicate child labour in the State by the year 2004 in a time-bound manner, the Commission asked the State Government to forward a copy of its plan to the Commission alongwith the details of the follow-up steps taken by them.

**4.262** The matter is being pursued by the Commission.



# **Economic, Social and Cultural Rights**





# Rights of the Disabled

**5.1** A distinction is frequently drawn between Civil and Political Rights – seen as justiciable and forming the starting point of any democratic state and its political and civic life – and Economic, Social and Cultural Rights that are seen as non-justiciable and whose realisation is believed to be possible over a period of time due to the resources required for their implementation. However, traditional ideas about the nature of rights and the corresponding obligations have been under challenge for a long time, and a more sophisticated understanding of the nature of the rights and the attached obligations has emerged within the United Nations and in various countries including India. For example the *Committee on Economic, Social and Cultural Rights (CESCR)* has clarified that some aspects of economic, social and cultural rights especially the obligation of non-discrimination is directly implementable. Whereas the jurisprudence on social, economic and cultural rights in India over the last two decades has gone much beyond the concerns of non-discrimination. In many cases the Supreme Court has established a harmonious relation between the fundamental right to life and the so-called, non-justiciable rights under the directive policy of the State. Infact the logic of economic capacity has been put to defence paving the way for the protection of all life related rights without distinction of immediate or progressive nature of realisation.

**5.2** This trend is best demonstrated through the laws enacted by the Government of India for the protection and promotion of rights of persons with disabilities. During the 1970s a distinct self-advocacy movement of people with disabilities started a sustained campaign demanding protection and recognition of their human rights. Towards this end, it sought enactment of a comprehensive legislation

## Rights of the Disabled

having a rights based approach with special emphasis on social, economic and cultural rights. The enactment of the *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995* (referred to as *Persons with Disabilities Act*) is a signal achievement of the Indian disability movement. Preamble to this Act clearly delineates its objective of promoting and ensuring equality and full participation of persons with disabilities. The Act aims to protect and promote economic and social rights of people with disabilities. The Act covers seven disabilities.

**5.3** Long and persistent discrimination in access by persons with disabilities to education, housing, adequate necessities of life such as food and health care, work and participation in the recreation and cultural activities has given birth to an impressive legal and policy framework which seeks to equalize opportunities for full participation. In concrete terms three enactments have been brought in force. These also provide mechanisms for planning, monitoring and redressal of grievances. The enactments include:

- The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995
- National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999
- The Rehabilitation Council of India Act, 1992

These historic legislations are a corner stone of evolution of jurisprudence on the rights of persons with disabilities in India. As a result, disability concerns have come into sharp focus.

**5.4** There is a lack of systematic data collection and research regarding the efficacy of these laws, policies, programmes and the institutions established to safeguard the rights of persons with disabilities. Over last two years the Commission has made a number of attempts to monitor the level of awareness and readiness of various institutions in fulfilling their mandatory obligations under these enactments. Outcome of these initiatives along with recommendations for disability inclusive systems and programmes were reflected in Chapter 2 of the annual report for last year.

**5.5** During the period under review the Commission introduced a number of proactive initiatives. These have been beneficial in building the capacity of the key functionaries and institutions of democracy. Obviously, for effective realization of rights by the disabled, right kind of sensitivity, skills, and knowledge is required to determine how to apply, when to apply and what kind of knowledge to apply to eradicate vicissitudes of injustices resulting in exclusion of persons with disabilities.

**5.6** In the year 2003 the NHRC launched a project in partnership with the Canadian Human Rights Commission (CHRC), which possesses vast experience in the protection and promotion of the rights of persons with disabilities in Canada, and the Indira Gandhi National Open University (IGNOU), the leading distance education provider in India.

**5.7** The overarching aim of the NHRC-CHRC-IGNOU Linkage Project was to increase the capabilities and strengths of both the Commissions and their associated partners to cooperatively address major human rights issues in relation to persons with disabilities. To realize this encompassing objective, a programme to improve technical capabilities and awareness of the NHRC staff, legal practitioners, and disability and human rights advocates was undertaken.

**5.8** A key component of the project was the *'Training of Trainers Programme'*, which has prepared a small cadre of human rights trainers in disability who are capable of serving formal and non-formal programmes of legal studies. The Programme was offered in four phases during 2004-2005. Phase I included face-to-face training in a participatory mode, which was conducted at National Law School of India University, Bangalore from 5<sup>th</sup> to 10<sup>th</sup> July 2004.

**5.9** In Phase II the participants undertook individual studies using desk research and field investigations. Phase III included a national seminar in which participants shared findings of their studies. This seminar was convened at NALSAR University of Law at Hyderabad from 28<sup>th</sup> October to 30<sup>th</sup> November, 2004. In Phase IV, the participants facilitated five training workshops for a group of law faculties, and disability rights and human rights advocates.

**5.10** Between January and March 2005, these master trainers facilitated five outreach-training workshops for the members of law faculties from more than fifty universities and a number of disability and human rights advocates. In order to sustain the momentum on human rights education and awareness in the programmes of legal studies these workshops were also organized in the premises of leading law schools and universities. The schedule of the workshops is outlined in the following table:

## Rights of the Disabled

S. No.	Region	Date	Venue
1	North-Eastern & Eastern region	19-21 January 2005	National University of Juridical Sciences, NUJS Bhawan, 12 LB Block, Sector-3, Salt Lake City Kolkata-700 098
2	Central region	1-3 February 2005	National Law Institute University, Bhadbhada Road Barkheri Kalan Bhopal-462002
3	Southern region	10-12 February 2005	Cochin University of Science and Technology, Deptt. of Law, Cochin, Eranakulam, Kerala-680022
4	Western region	19-21 February 2005	ILS College, Law College Road Pune-411004
5	Northern region	25-27 February 2005	Deptt. of Law, University of Punjab, Chandigarh

**5.11** In addition, during the period under review, the Commission provided Disability input in a number of programmes offered by Institute of Secretarial Training and Management. Likewise a series of workshops have been facilitated by the Commission to raise awareness of the disability sector about the procedure of elaborating UN Convention and its importance in the protection and promotion of rights and dignity of persons with disabilities. These workshops were organized at Bangalore, Ahmedabad and Delhi. A set of recommendations emerging out of these workshops has also been communicated to the M/O-SJ&E, Government of India who is participating actively in the UN Ad Hoc Committee elaborating the Disability Convention.

**5.12** On the global scale the debate on disability and human rights is gaining momentum, and is likely to result in a new Human Rights Treaty on the theme of disability. The very nature of disability – and the inherent systemic discrimination and social exclusion that accompanies it – means that many governments have very limited expertise in disability. In this respect, a single comprehensive treaty would enable the Governments to recognize their obligations in understandable terms and it would set clear targets for the development of disability-inclusive systems and processes. Adding a new treaty would also complement existing international standards for the rights of the disadvantaged.

**5.13** Acknowledging the useful contribution by the NHRC during the second, third and fourth session of the UN Ad Hoc Committee, the International Coordinating Committee of National Human Rights Institutions nominated the NHRC as its global representative. During the period under review the Special Rapporteur, Disability on behalf of the Commission performed this role in fifth and the sixth session. The pre-sessional preparations involved wide consultations with the civil society organizations and preparation of technical papers on the issues, which require



legal and moral clarifications from the standpoint of international human rights law. During the session, the Commission's nominee networks with other participating national institutions, convenes coordination meetings, presents well researched proposals and prepares daily reports for circulation among the National Institutions. In addition she also participates in the side events organized by the inter-governmental regional groupings, NGOs and other stakeholders.

**5.14** The pace intensity and the level of negotiations during the sixth session point to the fact that the process is heading towards completion. The Committee has made considerable progress and a large measure of agreement has been reached. There are a number of issues on which wide support is available. However, sharp differences continue to persist regarding:

- a. The current state of jurisprudence relating to the nature of economic, social and cultural rights and the issue of progressive and immediate realization of those rights;
- b. The definition of "discrimination" under international law and how it relates to disability (including the issue of intersectionality, or multiple discrimination under existing human rights law);
- c. Private freedoms and obligations of the State.
- d. Elaboration of rights incorporating treaty body interpretations through General Comments.

**5.15** Despite international and domestic actions taken, however, the physically and mentally challenged persons in our country continue to face several obstacles in leading their life with dignity. During the reporting period a questionnaire was circulated to the ministries and departments in Government of India, States and UT Administrations to ascertain the number of schemes and affirmative action programmes introduced by them to guarantee right to health, housing, assistive devices, education, vocational training, employment and social security benefits. From the responses received it was difficult to draw any authoritative conclusion, as they were generally evasive, hiding more than revealing.

**5.16** It seems disability continues to be treated as a unidimensional subject with major responsibilities being shared by the Ministry of Social Justice and Empowerment and its counter parts in the States. The relative indifference of a number of ministries and departments is a major obstacle in the overall development and mainstreaming of disability. Likewise the function of the Central and the State Coordination Committees is far from satisfactory. Disabilities Act in Sections 8 (2)(b) & (c) and in Sections 18(2) (b) & (c), requires the Central and the State Coordination Committees to develop a National/State Policy to address issues faced by persons with disabilities and advise the Government on the formulation of policies, programmes, legislation and projects with respect to disability. It is a pity that even after ten years of the enactment of the Disabilities Act the mechanisms responsible to evolve a disability policy have failed to do so.

## Rights of the Disabled

**5.17** Since January 2003 the Commission has made repeated efforts to encourage both the Government of India and the State Governments to adopt a disability policy with clear targets and a plan of action. We have also advised that the policy must be a rights based instrument which should enable persons with disabilities to live in ways that are personally satisfying, socially useful, economically viable and meet national and international standards of social well being, human rights and citizenship. Such a Policy should also not only aim at integration of persons with disabilities but should lay down a framework for combating problems of prejudice, discrimination and exclusion. It should encourage optimum utilization of resources for ensuring full participation of persons with disabilities in all walks of life. Above all, it should translate the statutory entitlements into reality.

**5.18** As an outcome of a sustained effort of the Commission, the Ministry of Social Justice and Empowerment in Government of India has engaged a number of Civil Society Organizations and other stakeholders in exploring the framework of a National Policy. This is a very positive development. However, parallel efforts have not been reported by any of the State Government.

**5.19** The Commission has noted that the States having an independent Commissioner for Persons with Disabilities have performed relatively well. But unfortunately a large number of States have appointed a junior officer with additional charge on this post. Consequently obstacles to full realization of rights by persons with disabilities are persisting. The Government of India should consider offering a matching grant to support the establishment of an independent office of State Commissioner for Persons with Disabilities. This investment would go a long way in protecting the disabled against acts of neglect, abuse, exclusion, and ultimately would prevent violations of their rights.

**5.20** Some of the most insidious forms of discrimination against the disabled come with the imposition of physical and social barriers – the root cause of their exclusion and marginalization. To undo this historical wrong the Disabilities Act, 1995, has compiled provisions concerning barrier free physical and transport environments in a Chapter entitled ‘Non-Discrimination’. These measures draw on Articles 15 and 16 of the Constitution, which guarantee access to public places and employment without discrimination of any kind.

**5.21** Unfortunately, implementation of these arrangements has been lopsided and States often attribute this to a lack of economic capacity. The important question here is: whether discrimination can be allowed against one section of the society when the cost of access can be reduced by simply modifying building bylaws and the standards that regulate fabrication of transport and information systems? The inertia simply points to a lack of imagination and the will to create a genuinely inclusive society.

**5.22** The Government should seek assistance of the Chief Commissioner for persons with disabilities and the independent State Commissioners for hosting a multisectoral task force which

should elaborate National/State policies on accessible infrastructure in order to ensure barrier-free access to the built environment, the transport system, telecommunications, information and broadcasting and public facilities.

**5.23** Such a policy would also go a long way in fulfilling the commitments of the Government of India under the Biwako Millennium Framework towards an inclusive, barrier-free and rights based society for persons with disabilities in Asia and Pacific. Target 13 under priority area E of the framework calls upon the governments to “*adopt and enforce accessibility standards for planning of public facilities, infrastructure and transport, including those in rural/agricultural contexts.*”

**5.24** Target 18 of priority area F requires that the “*Governments should adopt, by 2005, ICT accessibility guidelines for persons with disabilities in their national ICT policies and specifically include persons with disabilities as their target beneficiary group with appropriate measure.*”

**5.25** The Commission does not view the exercise of policy formulation from standpoint of generating a new set of paper rules. Rather it is looked upon as an exercise towards capacity building. The production of a policy framework should ideally generate a dialogue within civil society about the requirements under the laws, the application of the legal provisions to local conditions, assessment of shortfalls in compliance, priorities for redress, and the design of a plan of action. A cycle of pre-policy consultation followed by post-policy review is supposed to generate practical solutions for full participation of the disabled. The efforts by Ministry of Railways, Civil Aviation, the Science And Technology Project under Ministry of Social Justice and Empowerment, GOI in this regard are encouraging but there is a serious need to further energize these initiatives to effect real change in the ground conditions. The public web sites, information services, television, buses, bus stands, side walks, public places and telecommunication systems are still out of the reach of the disabled not on account of their impairments but due to the persistence of barriers to participation.

**5.26** While the process of reform is important, it cannot substitute arrangements by which evolution of disability inclusive law and policy in future is ensured. The Commission believes that Ministry of Law and Company Affairs in the GOI and in the States should designate a nodal officer on disability assisted by a panel of experts comprising representatives of concerned ministries and of disabled people’s organizations to undertake the task of advising disability specific elements. The absence of such an arrangement was felt more acutely when the Commission found that proposals for the Rural Employment Guarantee Bill and Right to Information Bill were silent on disability. The very nature of disability requires some enabling provisions to deal with the discrimination and the barriers to access opportunities on equal basis. A brief set of recommendations on the Rural Employment Guarantee Bill was communicated to the Government.

**5.27** In the previous Reports the Commission has already pointed out some shortcomings

## Rights of the Disabled

from a disability rights perspective in the Hindu Marriage Act of 1955, the Hindu Adoption and Maintenance Act of 1956, and the Indian Contract Act of 1872. During the reporting period, yet another deficiency in the Hindu Marriage Act surfaced when a media report, confirmed that a senior psychiatrist at the Agra Mental Institute and Hospital, on the payment of bribes by husbands, fabricated at least 10 certificates of mental illness of their wives, for securing divorce who were otherwise perfectly normal. Taking in view the gravity of the offences and the ease with which they had been committed, the Commission issued notices to the Home Secretary, Uttar Pradesh Government, and the Director of the Agra Mental Institute.

**5.28** In order to suspend abusive use of the Hindu Marriage Act and other similar legislations it has become almost urgent for the Government of India to consider systematic review of all the laws including administrative rules, regulations and instructions.

**5.29** During the period under report, a study was commissioned to review the periodic reports submitted by Government to the International Human Rights Bodies under ICCPR, CRC, and CEDAW. The reports display a lack of sensitivity in reporting on the rights of persons with disabilities.

**5.30** The Commission notes with concern that no effort has been made so far, to remove disparities in the family laws although the Human Rights Committee in General Comment No. 19 urged the States to report “whether there are restrictions or impediments to the exercise of the right to marry based on special factors such as degree of kinship or mental incapacity.” Rule 9 of the UN Standard Rules on Equalization of Opportunities for Persons with Disabilities, 1993, also reflects a similar concern when it call upon the states to “ensure that laws do not discriminate against persons with disabilities with respect to sexual relationships, marriage and parenthood. This instrument has assumed far greater importance since the resolution 2000/51 of the UN Human Rights Commission considers, “*any violation of the fundamental principle of equality or any discrimination or other negative differential treatment of persons with disabilities inconsistent with the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities is an infringement of the human rights of persons with disabilities.*” (para 1)

**5.31** In view of the treaty obligations and the clarification offered by international monitoring bodies, the Government must modify outmoded provisions of the Hindu Marriage Act and the Hindu Adoption and Maintenance Act must be modified in light of the treaty norms.

**5.32** In the meeting of Chief Secretaries and Directors General of Police with the Commission, held on 14.12.04, the representatives of Government of Karnataka pointed out that when disabled persons are produced in the court, they are made to remove their shoes, fitted in their artificial legs, which cause serious difficulties to them. The Hon’ble

Chairperson vide letter dated 25.02.05 communicated to all the Chief Justices of the High Court to take necessary steps ensuring that such a practice is suspended immediately. This request was responded to in a most positive manner by all including the High Court of Karnataka. There are serious barriers to access justice by the disabled. The Government needs to proactively remove these obstacles to guarantee equal protection of law to persons with disabilities.

**5.33** The Commission is currently involved in a number of activities that would enable it to understand the intersection of disability with gender, caste and poverty. There is an acute need to mainstream disability in all efforts aimed at these vulnerable groups.

**5.34** At the time of writing of the report, the Commission has also finalized the recommendations of the National Conference on Disability and Human Rights held on 23.06.05, which was the culmination of the NHRC-CHRC project. The recommendations, which are detailed below have been referred to the various authorities for action:-

#### Government of India/State Governments:

- The Government may consider instituting a National Task Force on accessible infrastructure by persons with disabilities ensuring all public places, transport systems, media and public information are redefined and delivered on disability inclusive norms.  
**[Union Ministry of Social Justice & Empowerment]**
- To keep disability under the spotlight, the GOI may consider instituting an independent Department of Disability and Development (DDD) on the lines of Department of Women and Child with the Union Minister having an independent charge.  
**[Union Ministry of Social Justice & Empowerment]**
- The Central Coordination Committee and the State Coordination Committees under the Disability Act, 1995 in pursuance of their mandatory obligations should elaborate a National/State Disability Policy and Action Plan to enable persons with disabilities effectively enjoy all rights and benefits guaranteed under the law and at the same time it should enable the Government at all levels to perform its mandatory functions and effectively utilize budget allocated for the disability sector.  
**[Union Ministry of Social Justice & Empowerment/ All States/UTs]**
- Developmental ministries and departments in GOI, State Governments and UT Administrations including training institutions should designate a nodal officer on disability assisted by a panel of experts from the disability sector to ensure inclusion of a disability perspective in all aspects of their functioning such as planning, executive and monitoring keeping in view the human rights perspective.

## Rights of the Disabled

**[Union Ministries of Social Justice & Empowerment, Human Resource Development, Health & Family Welfare, Rural Development, Urban Affairs, Deptt. of Personnel & Training, Tribal Affairs, Women and Child Development / All States/UTs]**

- The Government of India and their counter parts in the States should introduce a disability component in all their training initiatives aimed at public administrators and all the field functionaries.

**[Union Ministry of Personnel & Training, All States/UTs]**

### Bar Council, Law Schools / Universities:

- Bar Council, the Law Schools and the leading Universities should urgently coordinate action towards incorporating disability perspective in all the formal and non-formal courses in law and human rights. Simultaneously, an optional paper in Disability, Human Rights and Law should be introduced at the graduate level.

**[Bar Council of India, UGC, VC of Universities]**

### Educational / Training Institutes:

- UGC, RCI, NCTE and NCERT should actively assist the institutions under their jurisdiction to reform the course curriculum in the fields of law, management, social work, education, architecture, medicine, nursing, engineering, statistics, history, sociology, developmental economics etc. with a view to incorporating a disability component keeping in view the human rights perspective.

**[UGC, RCI, NCTE and NCERT]**





# Food Security

**6.1** Death by starvation constitutes the gravest violation of the Human Rights of an individual. That is the reason why the Commission has always taken serious note of starvation deaths occurring anywhere in the country. The problem of starvation deaths arising out of drought conditions in Koraput, Bolangir and Kalahandi districts of the State of Orissa have attracted special attention of the Commission since 1997. The Commission has also been concerned with the general conditions of hunger, destitution and poverty that are responsible for suicides, particularly, by the farmers and other forms of physical and psychological degradation that arises on account of lack of freedom from hunger and denial of right to food.

**6.2** The Commission believes that persons living in conditions of poverty and destitution have often been found to be suffering from prolonged hunger and malnutrition. Even when their deaths cannot, in strictly clinical terms be related to starvation, the tragic reality reminds that they often die of prolonged malnutrition and continuum of distress which has, inter-alia, rendered them unable to withstand common diseases such as malaria and diarrhoea. Thus, destitution and continuum of distress should be viewed as the necessary condition for the prevalence of starvation.

## Starvation Death Petition

**6.3** The Commission in its second order on Starvation Death Petition (Case No. 37/3/97-LD) dated 17.01.03 had underscored the basic commitment of the State and the Civil Society to eradicate poverty and hunger that constitutes an affront to the dignity and worth of human person and that is why the Heads of the State had in the United Nations Millennium Development Goals (MDGs) pledged to halve the proportion of

Chapter-6





## Food Security

World's poor and people who suffer from hunger, by the year 2015. The Commission reiterated that *"India has a special responsibility in this regard. The prevalence of extreme poverty and hunger is unconscionable in this day and age, for not only does it militate against respect for human rights, but it also undermines the prospects of peace and harmony within a State. For all these reasons the Commission will continue to be deeply involved with the issues raised in these hearings in the period ahead."*

**6.4** The Commission conducted eleven hearings, on the Starvation Death Petition, between September 1997 to January 1998, twelve hearings between April 1998 to October 2002, one hearing in 2003 and in April 2004 the Commission directed the State of Orissa to file up-to-date status report till 31.3.04 both with regard to short-term and long-term measures and steps in the pipe-line for meeting the situation. The two dozen hearings were based on the field enquiries made by the investigations of the Commission, interactions with concerned State officials and experts on the subject. In their first Order (of 1998) and second Order (of 2003) the Commission had recommended several short term and long term measures for coping with the harsh reality of starvation deaths. Particularly notable are short-term measures like Emergency Feeding Programmes, Old age pensions, and long term measures such as Employment Generation, Land Reform and a need for paradigm shift in Public Policies and Relief Codes relating to public relief.

**6.5** In view of the significance of freedom from hunger, the Commission felt the need to formulate a program of action for making the 'Right to Food' a reality in the country. With this end in view, a preliminary meeting was organized in January 2004, with leading experts on the subject, to discuss issues relating to the 'Right to Food'. The Commission approved the constitution of a Core Group on the 'Right to Food' under the chairmanship of the Hon'ble Chairperson. The issues that emerged from the meeting of experts include:

1. The Government should frame a long-term policy in order to ensure that every citizen in the country has access to adequate food.
2. Accountability while implementing government programmes must be made central to issues connected with starvation.
3. The systems of delivery need to be firmed up by bringing Panchayats within the ambit of the delivery system.
4. Purchasing power of the rural people could be increased by rationalizing employment generation programs, increase in minimum wages and taking up food-for-work programs.
5. Both the political leadership and the bureaucracy be held responsible for deaths due to starvation. The Rural Development Department and the Departments of Food and Agriculture of all States be made accountable.



6. The State Governments be asked to initiate timely advance action in the areas where food scarcity occurs as a yearly phenomenon.
7. The monitoring system needs to be instituted. All the monitoring agencies could coordinate with the NHRC.
8. NHRC could consider intervention in the implementation of the mid-day meal scheme.
9. Relief bonds could be issued by the Government, which may be purchased by the State Governments and lead banks so as to ensure availability of adequate funds for implementation of the programs.

**6.6** The Commission received, as a follow up measure, the compliance report submitted by the Government of Orissa and the Commission directed the Government to submit status report with regard to the short-term and long-term measures. As a sequel to the Commission's recommendations the State of Orissa constituted a Committee to suggest amendments to the Orissa Relief Code in March, 2005.

### Responding to Suicides by Farmers in Karnataka and Andhra Pradesh

**6.7** The Commission was apprised of the problem of suicides by farmers through joint petitions from concerned individuals and a complaint by the South India Cell for Human Rights Education and Monitoring that drew attention to the crop failures, mounting debts and droughts in the State of Karnataka (Case No. 180/10/2003-2004). The Commission directed its Special Rapporteur to conduct "an on-the-spot enquiry" and for his comments and also directed the Chief Secretary, Karnataka and the Secretaries of the Union Ministries of Agriculture and Rural Development for comments and appropriate action.

**6.8** The Commission conducted several hearings pertaining to the aforesaid petition and motivated the parties to resort to action with a view to minimizing the possibilities of extreme action by distressed farmers. The Commission considered the report of the Special Rapporteur Shri K.R. Venugopal who is appreciative of the Karnataka State Government's initiative relating to opening of pre-school education centres, seeking expansion of the ICDS Scheme, release of additional food grains under the Annapurna Scheme, issue of food-grains to the Anthyodaya Anna Yojana Beneficiaries and formulate a draft Employment Guarantee Scheme etc.

**6.9** The Commission finally disposed the case on the recommendations of Special Rapporteur and also recommended that the material generated in the case be used as background material for work in relation to 'Right to Food' for which Core-Group has already been constituted in 2004.

**6.10** The issue of suicides by farmers of Andhra Pradesh was picked up suo-motu by the Commission on the basis of a news items appearing in "The Hindu" in February 2004 reporting



## Food Security

the incidents from the State of Andhra Pradesh. The news reports revealed that since 1998 over 1000 farmers have resorted to suicides due to crop failure and debt burden. The issue of mass suicides in Andhra Pradesh was also raised in a petition by the then Leader of the Opposition. The Commission directed the Special Rapporteur to conduct investigations regarding the incidents of suicide which were confirmed by the Rapporteur. The Commission took cognizance and the case was registered as Case No. 193/1/2004-2005 and linked with earlier Case No. 985/1/2003-2004 and the Report of the Special Rapporteur was forwarded to the Chief Secretary of Andhra Pradesh for his response. While the two cases were receiving the attention of the Commission, a newspaper report relating to starvation death of an eight year old in Medak District appeared in a local daily. The Commission took suo-motu cognizance and directed issue of notice to the Chief Secretary, Andhra Pradesh Government for his response.

**6.11** The Commission has received Action Taken Report from the various concerned authorities in respect of all the cases of suicide or starvation death taken-up for action. In respect of Smt. Dharawath Kamili of Lilathanda's death (Case No. 985/1/2003-2004), the authorities expressed doubts about her death due to starvation. However, after her death her family was issued a ration card and 10 kgs of rice per month and 50 kgs of rice was issued to the family immediately. In addition to this, the family was granted a sum of Rs. 5,000/- under the National Family Benefit Scheme and action was initiated to admit the daughter of the deceased to the Social Welfare Hostel. In respect of the starvation death of Shri Mamidi Ambadas of Jogaiahpalli in Thimmapur Mandai, Karimnagar District (Case No. 193/1/2004-2005), the District Magistrate of Karimnagar District reported the State Government taking the following relief measures :-

1. Allotment of house site and sanction of a house under IAY Scheme with estimated cost of Rs. 25,000/- to Smt. Mamidi, w/o the victim.
2. Grant of Rs. 25,000/- to Smt. Mamidi for purchase of two milk animals for livelihood.
3. Investment of Rs. 25,000/- in favour of two minor children in post office under NSS.
4. Admission of elder girl in the Social Welfare Hostel so that her future education and food needs are taken care of.

In respect of starvation death of an eight year old in Medak District (Case No. 302/1/2004-2005), the Commission was informed by the Commissioner for Disaster Management and Ex-officio Secretary to Government about the following relief provided to the mother of the victim:-

- (a) An amount of Rs. 5000/- was sanctioned under the National Family Benefit Fund
- (b) Widow Pension has been sanctioned at the rate of Rs. 50/- per month. Furthermore,



the family is provided a white ration card to be entitled to receive subsidized rice under the Public Distribution System.

**6.12** The Commission got the matter examined through its Special Rapporteur who submitted a detailed report containing various recommendations. The gist of the suggestions made by the Special Rapporteur are as under:-

- (a) Necessary measures like generation of employment through public works, social security measures, old-age pension, etc. have to be taken by the State Government.
- (b) Cancellation of debt in all cases of suicide deaths incurred with public institutions and banks.
- (c) Ex-gratia relief of minimum of Rs. 2 lakhs to the families of each suicide victim. In addition, a further amount not exceeding Rs.1 lakh for each family to settle the debts.
- (d) Review of policy in regard to regulation of the private trade in seeds and pesticides and fertilizer pricing as well as the Credit Policy.

**6.13** In their comments on the recommendations, the State Government of Andhra Pradesh submitted that a Cabinet Sub-Committee had considered the recommendations of the Commission and decided to take certain “short term” and “long term” measures to deal with the situation, which are as under :-

#### **Short Term Measures**

1. Constitution of Agricultural Technology Mission.
2. Constitution of Cabinet sub-committee to examine the existing situation and submit their recommendations.
3. Supply of seeds, fertilizers and pesticides at subsidized cost.
4. Free power to all agricultural connections waiving of power dues worth Rs.1200 crores.
5. Ex-gratia payment of Rs.1 lakh to the family of deceased farmers and a further Rs.50,000/- towards liquidation of farm debt.
6. Another Rs.50,000/- from PM’s Relief Fund as ex-gratia to the family of each victim.
7. Admission of children in Social Welfare Schools and Hostels.

## Food Security

8. Allotment of houses under IAY scheme.
9. Economic support under Government Schemes.
10. Pensions etc.
11. Provision of self-employment to at least one member of each family.
12. Bill on Moratorium for six months on private money lenders.
13. Two years of moratorium on institutional credit recovery.
14. Sanction of additional food grains for generation of employment in rural areas.
15. Commission of Judicial Enquiry by a retired Judge.
16. Proposal for a separate bill called 'Moneylenders Bill' for the protection of interest of farmers including fixing the upper limit of interest rate.

### Long Term Measures

1. Initiation of cloud seeding.
2. Planning for plantation of Jatropha and Pongamia for production of bio-diesel.
3. Establishment of help lines for distressed farmers.
4. Establishment of State level and District level cells to monitor the cases of farmer's suicides and extension of relief of time.

**6.14** While submitting that the number of suicides of farmers have come down drastically, the State Government has also intimated the Commission about various measures taken by it for the welfare of the farmers including setting up of Farmers' Welfare Commission to go deep into the causes of suicides by farmers and to suggest remedial measures.

**6.15** The Commission seeks compliance report from states regarding measures taken and continues to emphasize compliance of its recommendations.



# Right to Health

**7.1** The Commission has identified the issue of ‘Right to Health’ as one of its major concerns.

**7.2** The World Health Organisation (WHO) endorses “*health as a state of physical, mental and social well being.*” The Right to Health has been enshrined in the Universal Declaration of Human Rights under Article 25 stating, “*Everyone has a right to standard of living, adequate for the health and well being of himself and of his family including food, clothing, housing and medical care and right to security in the event of sickness and disability.*”. Moreover, the International Covenant on Economic, Social and Cultural Rights (ICESCR) too under Article 12 recognizes “*The right of everyone to the enjoyment of highest attainable standard of physical and mental health.*”.

**7.3** Further, for taking appropriate care of ‘Right to Health’ it is essentially relevant to view it from the point of view of Economic, Social and Cultural Rights (ESCR). In this vein, the Commission has taken cognizance of Right to Health primarily due to the fact that it needs to be relooked into as there are several shortcomings in the present health care system.

## **A] Emergency Medical Services [EMS]**

**7.4** The Commission is deeply concerned about the prevailing unsatisfactory system of emergency medical care in the country, which results in loss of many lives. To look into this issue, the Commission constituted an Expert Group headed by Dr. P.K.Dave, former Director, All India Institute of Medical Sciences in April 2003 with the following terms of reference:



## Right to Health

- To study the existing Emergency Medical Care System (EMS).
- To study the existing system of emergency medical care (Central Accident & Trauma Services [CATS]) set up by the Ministry of Health & Family Welfare in the National Capital Territory of Delhi.
- To suggest appropriate models of emergency medical care which should be developed by different States/Union Territories and also their essential components.

**7.5** In the wake of Upahar tragedy, the Commission felt that the constitution of such a group would lead to concrete recommendations to address this issue which could then be sent to policy makers in the Government.

**7.6** The Group of Experts deliberated on various facets of emergency medical care and submitted a report on 7-04-2004. It reviewed the existing scenario and Centralized Accident and Trauma Services (CATS). In its report, the Group stated that nearly 4,00,000 persons lose their lives every year due to injuries caused by accidents, nearly 75,00,000 persons are hospitalized and 3,50,00,000 persons with minor injuries receive emergency care at various places in India. The present EMS in the country is functioning sub-optimally and requires up-gradation. The report revealed various lacunae existing in the present EMS and made a number of recommendations for implementation on short and long term basis. These include enunciation of a National Accident Policy, establishment of Centralized Accident and Trauma Services in all districts of all States/Union Territories etc.

**7.7** While pointing out a number of deficiencies in the existing Emergency Medical Care System (EMS) of the country, it has suggested a number of short-term as well as long-term measures to address the lacunae.

**7.8** Short-term measures to be undertaken within one year:

- Need to enunciate a National Accident Policy.
- Establish a central coordinating, facilitating, monitoring and controlling committee for EMS under the aegis of Ministry of Health and Family Welfare.
- Designate 3-4 districts for attachment to Medical colleges, which will act as referral centres in each state and Union Territories.
- Need for establishment of Centralized Accident and Trauma Services in all districts of all the States and Union Territories in the country.





- Develop a computerized information base at all levels of health care to help in perspective policy planning and networking.
- Government could set-up a National Trauma Registry for data collection and analysis.
- Information dissemination to all of the existing facilities for EMS health care utilization.
- States develop proposals for up-gradation of EMS.
- Training in EMS be organized in the Medical Colleges and other regional areas.

**7.9** Long-term measures that need to be taken up within 5 years:

- Implementation of the proposed recommendations of the National Accident Policy.
- Setting-up a well-equipped trauma centre with trained staff at the regional and national level.
- All District Hospitals should have specialized multidisciplinary trauma care facilities.
- Establishment of Emergency Medicine as a speciality.
- Dedicated communication—toll free number to respond in case of emergency, which should be common for the entire nation.
- A communication call centre as well as an ambulance equipped and staffed to be stationed every 30 kms on the Golden Quadrangular Road Project. Emergency care centres manned by paramedical staff should be established every 50 kms. All the National Highways should also have the same facilities.

**7.10** These recommendations were sent to Health Secretary, Director General of Health Services, Government of India and Chief Secretaries of all States/Union Territories on 12-05-2004 (**Annexure-7**) for taking necessary action thereon. The responses from the States/Union Territories of Kerala, Rajasthan, Mizoram, Haryana, Punjab, Pondicherry, Gujarat, Tripura, Uttaranchal, Daman & Diu and Dadra & Nagar Haveli, Maharashtra, Karnataka, Madhya Pradesh, Goa, Sikkim, Himachal Pradesh, Arunachal Pradesh and Delhi have been received.

**7.11** All these State Governments have accepted the recommendations of the Expert Group to have a comprehensive medical care system. Some State Governments have established and many State Governments are in process of establishing the Trauma Care Units in their



## Right to Health

respective State's hospitals. The State Governments have also initiated steps to enhance the skill of medical and para-medical personnel in Emergency Medical Care. Some State Governments have also established a computerized information system. Besides which, the Government of India, during the Ninth Five Year Plan, had initiated a pilot project for strengthening of emergency facilities in 18 hospitals/medical institutions in 13 States/Union Territories.

**7.12** A proposal on National Highway Trauma Care Project is submitted to 12<sup>th</sup> Finance Commission. The project aims to up-grade and strengthening of existing hospitals alongwith Golden Quadrilateral and North-South-East-West corridor.

### **B] Public Hearings on Right to Health Care**

**7.13** In the month of November 2003, the Commission approved a proposal received from the Jan Swasthya Abhiyan (Peoples Health Movement-a network of 1000 NGOs working in the health sector) to hold public hearings on Right to Health Care in five regions of the country followed by one at the National level in New Delhi. Subsequently, the Western Region hearing was held at Bhopal on 29-07-2004, followed by the Southern Region at Chennai on 29-08-2004 and the Northern Region in Lucknow on 26-09-2004, Eastern Region in Ranchi on 11-10-2004 and the North Eastern Region public hearing was held in Guwahati on 28-11-2004. During the day-long public hearings, selected cases or instances, wherein individuals or groups who have suffered denial of right to health care and have not received mandated health care from a public and private health facilities were presented. In these public hearings, the Commission brought victims, NGOs and concerned authorities on the same platform, which helped in the resolution of individual problems, identification of systemic problems and forging of partnerships. Over 1000 victims from marginalized sections presented their testimonies. Their complaints are being redressed by the Commission and the concerned authorities. Systemic improvement in health care have been suggested to all concerned authorities. The active participation of NGOs and State Governments have contributed considerably to the success of this programme.

**7.14** The National Public Hearing was held in New Delhi on 16<sup>th</sup> – 17<sup>th</sup> December, 2004, in which the civil society representatives presented structural deficiencies noted in various regional public hearings, followed by delineation of state-wise systemic and policy issues related to denial of health care. Special presentations were made on issues such as women's right to healthcare, children's right to healthcare, mental health rights, right to essential drugs, health rights in the context of the private medical sector, health rights in situations of conflict and displacement, health rights in the context of the HIV/AIDS, and occupational and environmental human rights. In addition, the National Action Plan to operationalize the 'Right to Health Care' was proposed.



7.15 The Objectives of the National Action Plan are as follows:

- **Explicit recognition of the Right to Health Care**, to be enjoyed by all citizens of India, by various concerned parties: Union and State Governments, NHRC, SHRCs and civil society and other health sector civil society platforms.
- **Delineation of essential health services and supplies** whose delivery would be assured as a right at various levels of the Public Health System.
- **Delineation of citizen's health rights related to the Private medical sector** including a Charter of Patients Rights.
- **Legal enshrinement of the Right to Health Care** by enacting a Public Health Services Act, Public Health Services Rules and a Clinical Establishment Regulation Act to regulate the Private Medical Sector.
- **Operationalization of the Right to Health Care** by formulation of a broad time table of activities by Union and State Governments, consisting of the essential steps required to ensure availability and accessibility of quality health services to all citizens, which would be necessary to operationalize the Right to Health care. This may include a basic set of Health Sector reform measures essential for universal and equitable access to quality health care, and guidelines regarding the budgetary provisions to be made available for effective operationalization.
- **Initiation of mechanisms for joint monitoring** at District, State and National levels involving health departments and civil society representatives, with specified regularity of monitoring meetings and powers to monitoring committees. In parallel with this, an institutionalised space needs to be created for regular civil society inputs towards a more consultative planning process. These should be combined with **vigilance mechanisms** to take prompt action regarding illegal charging of patients, unauthorized private practice, corruption relating to drugs and supplies etc.
- **Functional redressal mechanisms** to be put in place at District, State and National levels to address all complaints of denial of health care.

7.16 Detailed recommendations on 'Right to Health Care' were made in the National Action Plan to the Ministry of Health & Family Welfare, Government of India, State Governments and Union Territories, NHRC, State Human Rights Commissions and NGOs and health service networks. The recommendations of Regional Public Hearing and National Action Plan was communicated to all States/Union Territories on 11-03-2005 (**Annexure-8**). The responses from the States/Union Territories of



## Right to Health

Chhatisgarh, Gujarat, Haryana, Karnataka, Maharashtra, Orissa, Rajasthan and Tripura have been received.

**7.17** The Commission proposes to closely monitor the situation.

### **C] Plan of Action to Tackle Fluorosis**

**7.18** The Commission is deeply concerned about the health dimensions of fluorosis, which affects nearly 66 million persons in 196 districts in 19 States of the country. The Commission had therefore sought information related to fluorosis from 19 endemic States. There is a need for a concrete Policy to deal with it in all its dimensions – prevention/detection/diagnosis/treatment.

**7.19** Prof. A.K.Susheela, Executive Director, Fluorosis Research and Rural Development Foundation, Delhi, informed the Commission that it was basically a health problem, which is not diagnosed correctly. She added that none of the State Governments instituted facilities for its prevention, detection and treatment and fresh medical graduates were ignorant of this disease. She observed that as a result of inaccurate diagnosis, fluorosis is being treated wrongly. Its early detection is the key solution to the problem. She emphasized the need for educating the doctors and making diagnostic facilities available in all districts.

**7.20** A meeting to discuss the human rights issues relating to fluorosis was convened by the Commission. The Secretary, Health, Government of India; Director General Health Services; Director, National Institute of Communicable Diseases; Deputy Director General, Indian Council of Medical Research; and Prof. (Dr.) A.K.Susheela from the Fluorosis Research and Rural Development Foundation, Delhi participated in this meeting. After a detailed discussion, Department of Health, Ministry of Health and Family Welfare, agreed to take action on the following:

- Mount a National Programme covering endemic states affected by fluorosis.
- Prepare a Plan of Action in consultation with the Director General Health Services, ICMR and Dr. Susheela within a month.
- Take up the issue of fluorosis in its various manifestations and dimensions in the next meeting of the Central Council of Health and Family Welfare scheduled in December 2004, which will be attended by all Health Ministers and Health Secretaries of all States.
- Department of Health to give a directive to the Medical Council of India (MCI) to include



fluorosis in the training of medical interns, which will enable MCI in turn to send a circular to all medical colleges.

- Creation of awareness about treatment among the general public
- ICMR and NICD to develop a standardized treatment

**7.21** The Commission proposes to monitor the situation closely in the coming year.

## **D] Human Rights and HIV/AIDS**

**7.22** Deeply concerned about violations of human rights of those affected/infected by HIV/AIDS, the Commission made detailed recommendations to all concerned authorities based on the National Conference organized by it in New Delhi on 24<sup>th</sup> – 25<sup>th</sup> November 2000, in collaboration with the National AIDS Control Organization, Lawyers Collective, UNICEF and UNAIDS. The recommendations cover areas such as: consent and testing, confidentiality, discrimination in health care, discrimination in employment, women in vulnerable environments, children and young people, people living with or affected by HIV/AIDS and marginalized populations.

**7.23** Acting on a press report regarding significant increase in the prevalence of HIV positivity among pregnant women attending antenatal clinics in Andhra Pradesh, the Commission made recommendations to all authorities on the prevention of mother-to-child transmission of HIV/AIDS. The Commission is also taking steps to spread awareness about Human Rights and HIV/AIDS. It has published an info kit on HIV/AIDS and Human Rights for wide dissemination amongst the general public. The Commission has also taken up the issue of production of six video spots with NACO and Prasar Bharti Corporation and offered technical assistance in this regard.

**7.24** Deeply concerned by the plight of children affected by HIV/AIDS, the Chairperson of the Commission addressed letters to the Union Minister for Human Resource Development, Health Minister and Chief Ministers of all States/Union Territories on 6-09-2004 (**Annexure-9**) urging them to take steps to prevent discrimination of such children in access to education and healthcare. In particular, the Commission asked them to

- Enact and enforce legislation to prevent children living with HIV/AIDS from being discriminated against, including being barred from school.
- Address school fees and related costs that keep children, especially girls, from going to school.



## Right to Health

- Provide care and protection to children whose parents are unable to care for them due to HIV/AIDS.
- Provide all children, both in and out of school, with comprehensive, accurate and age - appropriate information about HIV/AIDS.

**7.25** The 'Action Taken Report' has been received from the States/Union Territories of Punjab, Manipur, Maharashtra, Himachal Pradesh, Jammu & Kashmir and Tamil Nadu whereas other States/Union Territories viz, Assam, Nagaland, Delhi, Bihar, Uttaranchal, Madhya Pradesh and Haryana have only acknowledged the receipt of the letter at the level of Chief Minister stating that the necessary instruction has been issued in the matter. Maharashtra Government has a policy of Child Welfare, 2004 under which a child with HIV/AIDS cannot be denied entrance in the school. Sensitization programmes are being carried out in many states. Anti Retroviral therapy has been provided to AIDS patients.

## E] Female Foeticide

### Female Foeticide and Infanticide

**7.26** The issue of female foeticide and infanticide was examined in detail in the Commission's annual reports for the year 1995-1996, 1999-2000 and 2000-2001. In these reports, it confirmed the persistence of patterns of discrimination against the girl child, both before and after birth, despite the vision of the Constitution, which under Article 14, expressly proclaims equality before the law and, under Article 15, unequivocally prohibits discrimination on grounds of religion, race, caste, sex or place of birth. Analysing the 'Human Rights Dimensions' of Census 2001 in the annual report covering 2000-2001, it also called for a concerted effort to end the misuse of sex-determination tests which had encouraged the evil practice of female foeticide, for it not only violated the right to life but happened to be one of the worst possible forms of discrimination based on sex. Prior to this, commenting on the proceedings and recommendations made by the Committees pertaining to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC) before which India had presented its country reports, the Commission in the annual report covering 1999-2000 had simultaneously made its own recommendations concerning the steps that Government of India should take to end gender discrimination.

**7.27** One of the recommendations was that 'a vigorous and comprehensive national campaign be undertaken against female foeticide and female infanticide, as these are matters, which need urgent and utmost concern of the Government of India and the State Governments'.

**7.28** Recognizing the crucial linkages between population policy, development and human



rights, the issue of female foeticide and infanticide was indirectly touched upon again when the Commission organized a Colloquium on this subject in January 2003 and in the Declaration adopted therein emphasized the fact that ‘in a situation where the status of women is low and son preference is prevalent, coercive measures further undermine the status of women and result in harmful practices such as female foeticide and infanticide.’ Thereafter, the former Chairperson wrote to the Union Minister of Health and Family Welfare as well as to the Chief Ministers/Administrators of all States/Union Territories to comply with the recommendations and the Declaration that was adopted in the Colloquium. In the said letter written in the month of January 2003, the former Chairperson firmly requested all concerned to take effective measures to prevent female foeticide and infanticide.

**7.29** During 2004-2005, the year under report, the issue of female foeticide and infanticide was again taken up during the course of the Regional and National Public Hearings on Right to Health Care was organized by the Commission in collaboration with Jan Swasthya Abhiyan at Bhopal, Chennai, Lucknow, Ranchi, Gwalior and New Delhi.

**7.30** The Commission notes with concern that despite its recommendations made from time to time, the practice of female foeticide and infanticide continues unabatedly. This undoubtedly has resulted in sharp decline – nation wide – in the sex ratio of the child population in the age group 0-6 years. That ratio fell from 945 in 1991 to 927 in 2001. It was particularly disturbing to note that the sharpest decline was in the comparatively affluent States of Himachal Pradesh, Punjab, Haryana, Gujarat, Uttaranchal, Maharashtra and the Union Territories of Delhi and Chandigarh. The Commission once again reiterates that vigorous and comprehensive measures be taken by all States and Union Territories to put an end to the problem of female foeticide and infanticide.

## **F] Quality Assurance in Mental Health (NIMHANS Report)**

**7.31** With a view to preparing a plan of action for improving conditions in mental hospitals in the country and enhancing awareness of the rights of those with mental disabilities, the Commission entrusted a research project on “Quality assurance in Mental Health” to the National Institute of Mental Health & Neuro Sciences (NIMHANS) at Bangalore. Dr. S.M. Channabasavanna, Professor Emeritus completed the project under the overall supervision of Justice V.S. Malimath, former Member of NHRC and handed over the report to the Commission in June, 1999.

**7.32** On the direction of the Commission, copies of the report were sent to all the mental hospitals in the country and also to the State Health Secretaries for necessary following up action. The States/Mental Hospitals were requested on 20-06-2001 to intimate the action taken in this regard. The response received from the Mental Hospitals as also from the States/Union Territories was very poor and hence, it was decided that the NIMHANS be requested to



## Right to Health

indicate if they have any information regarding the implementation of recommendations made by the NIMHANS study team and give suggestions regarding ensuring proper compliance by the States.

**7.33** In reply NIMHANS apprised that it has not yet officially received any implementation reports from any Centre. NIMHANS is of the view that the State Human Rights Commissions and the State Mental Health authorities could be involved for overseeing the implementation of the recommendations. Some strategies have also been suggested for consideration of the Commission.

**7.34** The Commission was about to launch its own monitoring programme through SHRCs and Special Rapporteurs regarding the action taken by the State Governments on the recommendations of the Commission on “Quality Assurance in Mental Health”. It was, then, found that Ministry of Health & Family Welfare has already constituted three appraisal teams under their Scheme of upgradation/modernization of Mental Health Institutes in the country. The details of the scheme was sought from the Ministry of Health & FW vide the Commission’s letter dated 13-10-2004 which is still awaited.

### **G] Mental Hospitals in Agra, Gwalior and Ranchi**

**7.35** The Commission continued to oversee the functioning of the Ranchi Institute of Neuro-Psychiatry and Allied Sciences (RINPAS), Ranchi, the Institute of Mental Health and Hospital (IMHH), Agra and Gwalior Mansik Arogyashala, (GMA), Gwalior, under the Supreme Court order dated 11-11-1997, reference to which has been made in the previous reports. The Commission has been monitoring the performance of these institutions in regard to clearly specified tasks given by the Supreme Court while granting autonomy to these institutions:

**7.36** Chairperson, Dr. Justice A.S. Anand accompanied by the Special Rapporteur visited the RINPAS on 19-03-2005. He carried out a review of the working of the Institution for the year 2004-05. The Special Rapporteur visited IMHH, Agra and GMA, Gwalior on 7-8 March, 2005.

**7.37** RINPAS is making steady strides towards realization of the objectives set by the Supreme Court by improving the diagnostic and therapeutic facilities, developing the social and occupational rehabilitation facilities and expanding the community services and research activities. Although half-way homes have started functioning, both in male and female sections within the campus, this ad-hoc and temporary arrangement needs to be strengthened by establishing a proper half-way home a little away from the hospital and run by an NGO. A credible NGO – Sanjeevni Gram Trust has been identified for setting up a Half-way Home for 25 family patients and a proposal formulated under a scheme of the Union Ministry of

Social Justice and Empowerment is under consideration in the Ministry. The staffing pattern has been strengthened and rationalized to make this Institution realise its potential of becoming a centre of excellence in the field of training and research in Mental Health. RINPAS is running regular M.Phil and Ph.D courses in clinical psychology and psychiatric social work with affiliation to Ranchi University. While appreciating the lab. and library facilities, the Chairperson pointed out the need for development of computer facilities with access to Internet. RINPAS has also been selected as a Nodal point for District Mental Health at Dhumka (Jharkhand). The Chairperson advised the Management Committee to make use of its autonomous character and speed up the development facilities for training of medical and para-medical personnel.

**7.38** The Institute of Mental Health (IMHH), Agra has shown significant progress in the period of report in improving therapeutic facilities, patients' care and recreation facilities. The staffing pattern has been improved with creation of additional posts in all disciplines. A number of long stay patients have been restored to their families through special efforts of the staff and volunteers of Action Aid India. However, inadequacy of occupation therapy facilities remains a pronounced weakness of this Institute. The reach of community health programme needs more attention. Pace of development of training facilities is also found to be slow.

**7.39** The Commission has also been greatly concerned about a news report of an incident in the Mental Hospital, Agra. According to the report, a psychiatrist, on the payment of bribes from husbands, fabricated nearly ten false certificates of mental illness of their wives for the purposes of securing divorce. Newspaper reports had brought forth the issue of languishing of healthy persons in mental institutes, due to the wrong practices of some psychiatrists. The Commission has issued notices to the Home Secretary, Uttar Pradesh, and the Director of the Mental Hospital, Agra. The Commission is regularly monitoring the rehabilitation of mentally cured patients and such instances reveal the insensitivity of persons vested with the responsibility of care of the patients under their charge.

**7.40** The progress of GMA, Gwalior in achieving the objectives set by the Supreme Court is far from satisfactory. There has been no significant improvement in the diagnostic and therapeutic facilities. Treatment remains mainly medical confined to drugs and modified ECT with hardly any psycho-social input or use of behavioral techniques. While occupational therapy facilities on a moderate scale have been developed for female patients, male patients remain deprived of this essential facility. No progress has been made in developing facilities for training of medical and para-medical personnel. The Institute remained without a regular director and a number of key posts in staffing pattern created under the directions, of the Supreme Court remained vacant. In disregard of the Commission's directions that the Institute should be headed by a Psychiatrist even in a lower rank until the post of the Director is filled, the charge of Director, GMA was entrusted to the Dean, Medical College, Gwalior as an additional responsibility.

## Right to Health

**7.41** A proposal for the establishment of a half-way home by an NGO—Akhil Bhartiya Samajik Sansthan Sangh, Gwalior—an NGO of high reputation, has been pending with the Union Ministry of Social Justice and Empowerment for more than three years. This NGO led by a dynamic social worker Mrs. Meera Dawar has been running an adhoc half-way home adjacent to the G.M.A since May, 2001 without getting any grant from the Centre or State Governments.

### H] Visit to Mental Hospitals

#### GB Pant Hospital, Agartala

**7.42** NHRC Team comprising of Justice Y. Bhaskar Rao, Member and the Special Rapporteur visited the G.B. Pant Hospital Agartala on 12-06-2004 to study the Hospital infrastructure, available facilities and treatment and care of patients and their living conditions. The report of the team was considered by Full Commission in its meeting on 30-07-2004 and a copy of the same was sent to the Chief Secretary, Government of Tripura on 11.8.04 with the following recommendations:

1. The hospital authorities should carry out periodical death reviews as a measure of self-check.
2. Newly developed tele-medicine facility should be extended to other Districts and Sub Divisional HQ. Hospitals of the State in order to make it more profitable.
3. Diagnostic and therapeutic facilities need to be upgraded in the Psychiatry Unit by providing Clinical Psychologist and Psychiatric Social Worker. The pace of execution of the National Mental Health Programme launched in two Districts of the State should be speeded up.
4. Immediate steps should be taken to procure i) an Incinerator for waste disposal, ii) A fully Automated Haematology Analyser and iii) Mechanised Laundry.
5. The State should carry out periodic checks to ensure that BPL patients are fully exempted from the fee charged for diagnostic tests. Data in support of this claim was requisitioned for the last three years.
6. Remedial measures taken by the State Government to tackle the Gastroenteritis epidemic reported from several parts of the State during the period March to May, 2004.

**7.43** The ATR received from the Government of Tripura in December 2004 indicated satisfactory level of compliance on all points except i) strengthening of the National Mental Health Programme: and ii) upgradation of Psychiatry Unit. These are being pursued.

### Government Mental Hospital, Indore, Amritsar and Tezpur.

**7.44** The Commission has enlarged the scope of its monitoring of the Quality Assurance in Mental Health (NIMHANS Report) on the state of Government Mental Hospitals, reference to which was made in the last annual report. The Special Rapporteur visited the Government Mental Hospital, Indore on 03-08-2004, Institute of Mental Health, Amritsar on 08-02-2005 and LGB Institute of Mental Health, Tezpur on 31 March and 1<sup>st</sup> April, 2005 for this purpose. The Commission is pleased to note a good deal of improvement in all aspects of functioning of these Institutions.

### Mental Hospital, Indore

**7.45** The NIMHANS report on Mental Hospital, Indore makes a very dismal reading with a specific mention of neglect of the human rights of patients. All the wards were then (1998) found as Closed Wards and admissions were 100% involuntary. Infrastructure was utterly inadequate, and the standard of sanitation and hygiene was pathetic. The toilets in the female wards had no doors. Less than 50% of the total number of patients were provided cots but with no mattresses and blankets. Food served at the fixed scale of Rs. 14 per day was insufficient in quantity and poor in quality. Diagnostic and therapeutic facilities were primitive. A lot of improvement has been effected as a result of the enforcement of Commission's directions issued through its report— 'Quality Assurance in Mental Health (NIMHANS REPORT)' and the active interest taken by the Madhya Pradesh Human Rights Commission. The state of buildings has improved with repairs of wards and construction of a new male ward. All Cell structures have been closed and closed wards have been converted into open wards. Round the clock water supply has been ensured and additional toilets and bathrooms have been constructed. The percentage of voluntary admissions which was nil when the NIMHANS study was made rose to 10.8 % in 2002 and is nearly 50% now. The average duration of stay of voluntary patients is less than 60 days. Beds with mattresses have been provided in sufficient numbers. The diet scale has been increased from Rs. 14 to Rs. 26 per patient per day to ensure a scale of food of required caloric value. Mortality rate which was very high until 2001 has come down considerably. However, not much could be done about the long stay patients who are still languishing in large numbers, most of them abandoned by their families. Escape of patients remains a major problem. While the hospital has 5 qualified psychiatrists, it has no post of clinical psychologist or psychiatric social worker. Although the level of compliance with the recommendations of the NIMHANS report can be broadly considered satisfactory with visible improvement seen in hospital management and patients-care, the Institution still lacks in infrastructure and modern diagnostic and therapeutic facilities. Occupational therapy is yet to be evolved in the hospital in real sense. While some efforts have been made to identify and associate a credible NGO in the activities of the hospital, there is a definite need and good scope for greater involvement of NGO sector in working for the rehabilitation of long stay patients.

## Right to Health

### Institute of Mental Health, Amritsar

**7.46** The NIMHANS report on the Government Mental Hospital, Amritsar makes adverse comments under important heads like infrastructure, staffing, outpatients and inpatient services and the procedure of admissions and discharge. The report shows that admissions were 100% involuntary and all wards were closed wards locked all the time. Sanitation and hygiene were lacking and the scale and quality of food served to patients were poor. The report reveals almost total absence of essential components of mental health care, such as Rehabilitation Services, Community Services and Rights consciousness.

**7.47** Following the recommendations of the Punjab State Human Rights Commission, which took NIMHANS report as the basis of their initiative, this Institution has been totally revamped and transferred along with its buildings, land, assets and liabilities to the Punjab Health System Corporation (PHSC) with a new name—the Institute of Mental Health, Amritsar. The PHSC raised a loan of Rs. 40 crore and constructed a new 450 bedded hospital building after demolishing the major portion of the old building.

**7.48** Most of the recommendations made in the NIMHANS Report have been implemented. The staffing pattern has been rationalized and strengthened. Admission and discharge procedure has been streamlined. Occupational therapy facilities have been developed. However, the extent of psycho-social inputs to diagnosis is still inadequate and needs to be increased. The techniques of psycho-social and behavioral therapy are yet to be introduced. Barring a few individuals, the entire staff needs to be trained and sensitised in the matter of the human rights of inmates. The absence of psychiatric social workers is adversely affecting the patients' care and rehabilitation. Rehabilitation of long staying cured patients, possible only with the involvement of NGO sector, remains totally neglected. The recommendations of the NIMHANS Committee about the sensitization of judiciary made specifically in regard to female patients need to be addressed.

### LGB Institute of Mental Health

**7.49** The NIMHANS report has described this hospital as one that “ranks among the better Government Hospitals in India” and commented favourably on the hospital services, living conditions and spirit of team work of the senior staff. The report makes a number of recommendations to upgrade the diagnostic and therapeutic facilities, improve treatment and care of patients, initiate rehabilitatory measures and start professional courses for medical and para-medical personnel. Some of these recommendations have been implemented satisfactorily. Hospital's infrastructure has been improved; emergency and day-care services have been opened; pathology lab. has been up-graded, modified ECT facility has been introduced and teaching facilities have been developed. However, some major deficiencies persist. Admissions are still totally closed type and open ward facility is at the proposal stage as part of a project report. Occupational therapy, an essential component of Mental Health Care is yet to evolve in a real sense. Recreation facilities remain inadequate as before. Very little has been achieved in the field of training and research although infrastructural facilities in staff and equipment have been set



up to a great extent. Matters concerning criminal patients received from jails need greater care and concern.

**7.50** Special Rapporteur has brought to the Commission's notice cases of mentally challenged prisoners languishing in the jails/hospitals for periods ranging from 28 to 54 years even after being declared fit for discharge. The Commission's intervention has resulted in discharge of three of them and also their restoration to their families. The family of the fourth has also been contacted and found willing to take her back. The case of Machang Lalung deserves specific mention. He was admitted on 14.4.1951 at the age of 23 years as a UTP of Guwahati Jail u/s 326 IPC. His file shows that the Board of Visitors had written to the Magistrate, Kamrup Guwahati on 9.8.67 informing that Machang Lalung was fit to stand trial and defend himself. On 10.8.67, the Medical Superintendent wrote to the Secretary to the Government of Assam saying that he was fit for trial and should be taken back to the jail. The Secretary wrote back on 5.9.67 asking for full particulars of his case. No reply was sent and the matter was forgotten. On 3.11.94 he was declared fit in a letter addressed to the CJM, Guwahati. Nothing happened. The file then shows a letter dated 2.2.02 from the Secretary to the Government of Assam to the Superintendent, Jail, Guwahati asking him to go through the jail records and produce the UTP before the Magistrate. Nothing was heard from that end until the Special Rapporteur saw this man quietly working in the hospital garden on 31-03-2005. Medical Superintendent informed that he was not on any psychotropic medicines for the past several years and is free of any active signs of mental illness. No one had come to see him during the last 40 years. Pursuant to a notice 198 issued to the I.G. Prisons and the Chief Secretary, Government of Assam by the Commission on 31-5-05, Machang Lalung was transferred from Mental Hospital to the Central Jail Guwahati on 27-6-05 and produced before the Chief Judicial Magistrate, Kamrup for trial. On 1-7-05, CJM Kamrup released him on personal bond of Rupee one and handed him to the custody and care of his nephew Badan Pato.

## I] Core Group on Mental Health

**7.51** The Management of the mental hospitals at Ranchi, Agra and Gwalior came under the scrutiny of the Hon'ble Supreme Court through Writ Petitions (C) No.339/96, No.901/93, No.80/94 and No.448/94 filed by Social activists. The Hon'ble Supreme Court in its order dated 11-11-1997 requested the National Human Rights Commission to be involved in the supervision of the functioning of these three hospitals. In pursuance of the Order of the Hon'ble Supreme Court, the Commission has been monitoring the functioning of these hospitals through its Special Rapporteur.

**7.52** As mentioned in the preceding reports, the Commission had constituted an Expert Group on 31-12-2001 for rehabilitation of long stay patients who are languishing in the mental hospitals at Agra, Gwalior and Ranchi even after having been cured of mental illness. These patients





## Right to Health

are either having no families or they have been abandoned by their families and have nowhere to go. In a meeting of the Expert Group held on 12-07-2004, the Directors of the three Institutes gave upto-date status of long stay patients with an account of rehabilitation activities initiated by them with the help of Action Aid India volunteers. The pendency of two proposals for the establishment of half-way homes, one at Gwalior and another at Ranchi was pointed out to the representative of the Ministry of Social Justice and Empowerment. The meeting discussed a proposal of Action Aid India to set up a National Pension Scheme for those mental patients who are fit to be discharged but whose families are not willing to accept them due to economic constraints. Action Aid India also suggested foundation of a Protective Community Life Scheme for looking after those cured patients whose families are either not traceable or cannot be trusted for taking their proper care. The meeting decided that the Ministry of Health and Family Welfare should first ascertain from all the 37 Government Mental Hospitals in the country, the number of long stay patients in their respective hospitals who would be eligible for benefits under these schemes. Although some information could be collected during the period of report, it was found to be wanting in some vital details. Efforts are on to formulate the two schemes.





# Rights of Women and Children

---

**8.1** During the year 2004-05, Dr. Justice Shivaraj V. Patil was appointed in the Commission as a Member on 03-2-2005 and subsequently nominated by the Chairperson to serve as the focal point on Human Rights of Women, including Trafficking, in place of Justice (Smt.) Sujata V. Manohar, who completed her tenure as Member in the Commission on 27-08-2004.

**8.2** During the course of the year under review, the activities carried out by the Commission relating to rights of women and children were as follows:

## I RIGHTS OF WOMEN

### A] Trafficking in Women and Children

#### 1] **Judicial Handbook on Combating Trafficking of Women and Children for Commercial Sexual Exploitation**

**8.3** Trafficking in human beings is a complex and global phenomenon having serious visible and invisible impact on women and children. This inherent complexity necessitates action at various levels by State actors to prevent and combat trafficking on the basis of a detailed understanding of the players and mechanisms involved in a particular trafficking situation. In this context, as reported in the earlier annual report, the Department of Women and Child Development, Ministry of Human Resource Development, Government of India approached the Commission with a proposal of preparing a Handbook under the joint aegis of the Commission and the Department of Women and

## Rights of Women and Children

Child Development, for usage of the judicial officers dealing with cases of trafficking in women and children. A Committee was also constituted under the chairmanship of Justice (Smt.) Sujata V. Manohar, former focal point on Human Rights of Women, including Trafficking, with a representative each from the Department of Women and Child Development, Ministry of Home Affairs, National Commission for Women, UNICEF, UNIFEM, Lawyers' Collective and the Joint Women's Programme to work out the structure of the Handbook. As reported earlier this Committee had recommended that the National Law School of India University (NLSIU), Bangalore be commissioned to prepare the Handbook.

**8.4** The main objective of the Handbook was to sensitize the judicial officers to the overall issue of trafficking and to realize how women and children experience the process of law relating to trafficking and the functioning of related support services so as to enable them to proactively safeguard the rights of victimised women and children through sensitive interpretation of the law. In order to achieve this objective, the Committee decided that the NLSIU should convene State level consultations with judicial officers, public prosecutors, police and representatives of NGOs as this would enable them to prepare the draft Handbook. It was also decided that information be elicited from judicial officers through a mail questionnaire in order to assess their overall understanding on issues related to trafficking. The States where the consultations were decided to be convened were: Andhra Pradesh, Delhi, Goa, Karnataka, Madhya Pradesh, Maharashtra, Orissa, Rajasthan, Tamil Nadu and West Bengal.

**8.5** In the preceding annual report, it was also reported that State level consultations in all the identified States were completed by the NLSIU in collaboration with the Commission, the Department of Women and Child Development, Government of India and UNICEF. Based on the interaction with all the stakeholders as well as data collected through the mail questionnaire from judicial officers and the information obtained from custodial homes, both governmental and non-governmental, the draft of the Handbook was prepared by NLSIU under the overall guidance of the former Focal Point of the Commission.

**8.6** During the year under report, a National Consultation was organised by the Department of Women and Child Development in collaboration with the Commission and the UNICEF at Vigyan Bhawan, New Delhi on 20-04-2004. The main objective of this consultation was to pre-test the overall contents of the draft Handbook, which was discussed threadbare among the participants comprising Registrar Generals/Registrars of the High Courts, Judicial Officers, Directors of Judicial Academies and National Law Schools, senior officials of the Commission, UNICEF, UNIFEM and the Department of Women and Child Development, Government of India. The Members of the Committee constituted for the purpose were also invited. Based on the deliberations and suggestions that were put forth during the course of the National Consultation, suitable amendments were made in the draft Handbook. The draft Handbook was subsequently approved by the Registrar



## Rights of Women and Children

(Law) and the former Focal Point on Human Rights of Women, including Trafficking. The final text of the same was then forwarded to the Department of Women and Child Development for printing.

**8.7** The Commission is hopeful that the Department of Women and Child Development would expedite the printing of the Judicial Handbook on Combating Trafficking of Women and Children for Commercial Sexual Exploitation so that it is widely disseminated to the concerned Judicial Officers for their usage and the victims of trafficking are saved from the clutches of traffickers.

### **2] Trafficking of Women and Children: Effective Rescue and Post-Rescue Strategy**

**8.8** While dealing with the problem of trafficking in women and children, the process of rescue and post-rescue are two major challenges faced by the personnel of law enforcement and welfare agencies. Keeping this in view, the Commission had organized a two-day National Workshop to Review the Implementation of Laws and Policies Related to Trafficking: Towards an Effective Rescue and Post-Rescue Strategy in collaboration with PRAYAS (A Field Action Project of the Tata Institute of Social Sciences) on 27 and 28 February 2004 in Mumbai. The focus of the Workshop was to review the effectiveness of the provisions of the Immoral Traffic (Prevention) Act, 1956; the Juvenile Justice (Care and Protection of Children) Act, 2000; the Indian Penal Code, 1860 and other laws relating to rescue and post-rescue work so as to work out a uniform policy, scheme and plan for effective rescue and post-rescue work concerning trafficked women and children.

**8.9** The recommendations that emanated from this workshop were accepted in principle by the Commission in its meeting held on 6-08-2004 and may be seen at (**Annexure 10**). The Commission desired that these recommendations be sent to the concerned Ministries/Departments of the Government of India and the State Governments for necessary follow-up and action. The report of the Workshop was released to the general public on 25-08-2004 by Dr. Justice A.S. Anand, Hon'ble Chairperson, National Human Rights Commission and copies of the same were forwarded to the Union Department of Women and Child Development (Ministry of Human Resource Development), Directors General of Police of all the States and concerned Secretaries of the Department of Women and Child Development/Social Welfare of all States/Union Territories for effective implementation. They were also requested to send their Action Taken Reports.

**8.10** The Commission would monitor the implementation of the recommendations of the National Workshop on Effective Rescue and Post-Rescue Strategy organized by it with all concerned and trusts that they would respond to it in a positive manner. This would to a large extent facilitate in mitigating the scourge of trafficking.

### **3] Role of National Human Rights Institutions in the Prevention of Trafficking in Women and Children**

**8.11** It was reported in the preceding annual report that the Advisory Council of Jurists of the Asia Pacific Forum of National Human Rights Institutions, that met in New Delhi in the year 2002, had deliberated on the issue of trafficking at its Seventh Annual Meeting. The Advisory Council of Jurists later forwarded its Final Report on the issue of trafficking to the Commission. In this report, it made a number of recommendations for preventing and combating trafficking that was adopted by the Commission. The Commission desired that the report be forwarded to the Department of Women and Child Development, the nodal Department in the Government of India (Ministry of Human Resource Development) dealing with issues pertaining to women and children, and the Ministry of Home Affairs for appropriate action. Accordingly, the report was sent to the concerned Ministries with the request that action taken on the recommendations be reported to the Commission.

**8.12** At the time of writing this report, the Commission had not received any response from the Ministry of Home Affairs. However, the Department of Women and Child Development vide their letter dated 4-10-2004 informed the Commission about the initiatives taken by them to combat trafficking in women and children. These were as follows:

- (i) Ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organised Crime (the UN Trafficking Protocol) was under process in consultation with the Ministry of External Affairs.
- (ii) The Immoral Traffic (Prevention) Act, 1956 was being amended to make it more stringent for traffickers and humane to victims.
- (iii) The State Governments had been requested for effective implementation of the Plan of Action and regularly reviewing State action.
- (iv) The officers of the level of Inspector and above in the Central Bureau of Investigation have been notified as Trafficking Police Officers for investigation of inter-state trafficking cases.
- (v) A scheme called SWADHAR had been started for women in difficult situation. The same was made applicable to victims of trafficking also. The scheme provides for shelter, counselling, medical assistance and vocational training to the rescued victims.
- (vi) The Department had formulated a model grant-in-aid scheme for assistance to NGOs to combat trafficking in source areas, transit areas and destination areas through prevention, rescue and rehabilitation. Emphasis was being placed on awareness



## Rights of Women and Children

generation, networking amongst various stakeholders, counselling, non-formal education and vocational training for prevention of trafficking.

- (vii) The Department has requested the Ministry of Tourism to implement the Global Code of Ethics for Tourism which prohibits sexual exploitation of children for purpose of sex tourism. In addition, Chief Secretaries of all the States/Union Territories and Directors General (Tourism) have also been requested to make it legally binding for the hotels, lodging/boarding houses to prominently display at the reception counter anti-trafficking messages and penal provisions against sexual exploitation.
- (viii) The State Governments of Tamil Nadu, Andhra Pradesh and Karnataka had enacted legislation to prohibit Devadasi and Jogin traditions of sexual exploitation.
- (ix) The Department was preparing manuals for sensitization of the judiciary, medico-legal officers and police personnel in dealing with the victims of trafficking, which were at the stage of finalization. National Consultations in this regard were also being held.
- (x) A study on 'Women in Prostitution in India' was being carried out by Gram Niyojan Kendra, Ghaziabad with financial assistance from the Department of Women and Child Development.
- (xi) The Department had started the process of bi-lateral dialogue with neighbouring countries like Nepal and Bangladesh on cross border trafficking in consultation with the Ministry of External Affairs.

**8.13** On examination of the initiatives taken by the Department of Women and Child Development, the Commission pointed out to the Department that barring serial numbers (vi), (vii), (x) and (xi), which were new initiatives, the others were already in existence. As such, the Department was once again requested to send the Action Taken Report on those recommendations for which no initiatives had been taken so far. It is hoped that the Department of Women and Child Development as well as the Ministry of Home Affairs would take appropriate action on the recommendations made in the Final Report on the Issue of Trafficking by the Advisory Council of Jurists of the Asia Pacific Forum of National Human Rights Institutions and inform the Commission about those at the earliest.

### **4] Prevention of Sex Tourism and Trafficking**

**8.14** The Commission is conscious of the fact that trafficking in women and children is a complex and multifaceted phenomenon interwoven with sex tourism, labour migration, forced marriages, bonded labour and other similar practices. The NHRC's Report on the Action



## Rights of Women and Children

Research on Trafficking in Women and Children in India, the details of which are given in Chapter 12 also highlights the fact that though on the one hand tourism promotes development, on the other it paves the way for various illegal activities. Prominent among these is trafficking of young women and children for gratifying their deviant sexual proclivities. This Report also exemplifies that India was gradually becoming a favoured tourist destination. As tourism industry encompasses a whole range of allied sectors, such as, airlines, hotels, restaurants, travel and tour agencies, the Commission, as was reported in the annual report for 2003-04, had conducted a one-day Sensitization Programme on Prevention of Sex Tourism and Trafficking in the year 2003 in Mumbai in collaboration with UNIFEM and a Mumbai-based NGO. It was also reported that the recommendations that had emanated from this Programme were accepted by the Commission and as per its directions these were also forwarded to the Tourism Secretaries and the Secretaries in-charge of Women Welfare of all the States and Union Territories for taking appropriate action.

**8.15** In this connection, the Commission has received Action Taken Reports from Governments of Sikkim, Jharkhand, Tamil Nadu, Manipur, Punjab, Meghalaya, Union Territory of Andaman & Nicobar Islands and NCT of Delhi. The Commission intends to monitor the compliance of the recommendations made in the above Workshop and is hopeful that all those States/Union Territories who have so far not complied with the Commission's recommendations would do so at the earliest.

### **B] Combating Sexual Harassment of Women at the Workplace**

**8.16** The Commission has been monitoring the implementation of the guidelines to prevent and combat sexual harassment of women at the work place issued by the Supreme Court in *Vishaka v State of Rajasthan case [No. 1997 (6) SCC 241 dated 13.8.1997]*. In pursuance of those guidelines, the Central Government (Department of Personnel & Training) has amended the Central Civil Services (Conduct) Rules, 1964 by inserting a new Rule (Rule 3C – Prohibition of sexual harassment of working women). The Department of Personnel & Training also requested all the State Governments to incorporate similar provisions in their Conduct and Disciplinary Rules. The State Governments and Union Territories were also requested to create an appropriate complaint mechanism, which includes setting up of a Complaints Committee in all Departments. Though most of the State Governments had amended the Government Servants' Conduct Rules and set up Complaint's Committee, some States are yet to report. While Arunachal Pradesh, Karnataka, Manipur and Sikkim have not amended their Conduct Rules; the States of Karnataka, Sikkim and Uttaranchal have not set-up the complaints mechanism.

**8.17** In order to avoid duplication of work involved in having the same complaint examined twice – once by the Complaints Committee and again by the Disciplinary Committee, the Commission continued to follow-up on this issue with the Department of Personnel and Training. It was also reported that the Supreme Court in the case of *Medha Kotwal Lele &*





*Others v Union of India & others [W.P. (Crl.) No. 173-177/1999 dated 26.4.2004]* had directed that Complaints Committee as envisaged in Vishaka judgement would be deemed to be an inquiry authority for the purposes of Central Civil Services (Conduct) Rules, 1964 and the report of the Complaints Committee should be deemed to be an inquiry report under the Central Civil Services Rules. Thereafter the disciplinary authority would act on the report in accordance with the rules.

**8.18** In pursuance of the above direction, the Central Government (Department of Personnel and Training) has amended sub-rule (2) of rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 to incorporate the necessary provision. The Ministry of Home Affairs, Government of India in its Memorandum of Action Taken on the Annual Report of the Commission for the year 2002-03 has categorically stated that the observations of the Commission with regard to its efforts to combat sexual harassment of women at the work place have been noted, the Commission is confident that Vishaka guidelines as enumerated by the Apex Court would be complied with by all States and Union Territories in true spirit so that women are no longer subjected to gender discrimination at the work place. The Commission also hopes that States who have yet to amend their conduct rules and set up the complaints mechanism would do so without any further delay. It was precisely for this reason that the issue was also discussed during the meeting of the Commission with the Chief Secretaries and Directors General of Police of all States and Union Territories held on 14-12-2004.

**8.19** In order to spread awareness about the guidelines issued by the Supreme Court on preventing and combating sexual harassment at the work place, a one-day Workshop on 'Prevention and Redressal of Sexual Harassment of Women at the Work Place' was also organized by the Commission in collaboration with a registered Trust in March 2005. The details of this programme have been given in a separate chapter titled 'Promotion of Human Rights Literacy and Awareness'.

### **C] Combating Sexual Harassment of Women in Trains**

**8.20** The Commission has been working for the eradication of sexual harassment of women passengers in trains in collaboration with the Ministry of Railways and JAGORI, a Delhi based NGO. The action taken by the Railway Board on the recommendations of the Commission was reported in the Commission's Annual Report 2003-04. Since the progress was not satisfactory, a meeting with the representatives of JAGORI was held on 08-06-2004. As per decisions taken in that meeting, JAGORI prepared and submitted to the Commission specimen of graphic designs for display in railway coaches and publicity material for prevention of sexual harassment in trains. Subsequently, the Commission held another meeting on 23-08-2004 with the representatives of the Ministry of Railways to discuss the documents submitted by JAGORI. The Inspector General (Headquarters), Railway Protection Force and Additional Member (Mechanical), Railway Board participated in that meeting. Discussions were held on the following points:





## Rights of Women and Children

- (i) availability of FIR forms in all regional languages,
- (ii) preparation and display of messages in the railway coaches,
- (iii) preparation and display of graphics and other publicity materials at the Railway platforms,
- (iv) printing of the message on the back of the ticket signifying that sexual harassment of women in trains is a crime, and
- (v) preparation of a power point presentation on the problem of sexual harassment in trains and its implications so that the same could be made in a software for public viewing on television.

**8.21** The Action Taken Report from the Ministry of Railways on the same was awaited.

**8.22** The Commission once again notes with concern that the Railway Ministry is yet to implement some of the important recommendations made by it for ensuring safety and security of the women passengers travelling by trains. The Commission intends to follow-up the matter with the Ministry of Railways.

### **D] Rehabilitation of Marginalized and Destitute Women including Widows in Vrindavan**

**8.23** The Commission's recommendations for improving the status and upholding the rights of the destitute and marginalized women including widows living in Vrindavan and action taken thereon by the Government of Uttar Pradesh have been reported in detail in the Commission's annual report for the year 2003-04.

**8.24** Since the Action Taken Report of the Government of Uttar Pradesh was not satisfactory, the Commission took up the matter with the Department of Women and Child Development, Government of India, in particular, the issue of providing suitable accommodation to these women. It was informed by the Department of Women and Child Development vide letter dated 15-07-2005 that a new site for construction of a shelter home under the SWADHAR scheme had been identified at Chaitanya Vihar Yojana, Phase-II under the Mathura-Vrindavan Development Authority. This site had also been inspected by a team of officers from their Department and that the construction on the new site would begin shortly by the Government of Uttar Pradesh. Since the Government of Uttar Pradesh had quoted a staggering figure for the construction of the shelter home, the Department of Women and Child Development expressed that the grant under SWADHAR being limited, the Government of Uttar Pradesh may tap other resources as well viz the schemes for financial assistance given by other Departments/State Governments, including Member of Parliament Local Area Development scheme and private donations. The Department



## Rights of Women and Children

of Women and Child Development subsequently sent to the Commission an inspection report of the tour undertaken by the Joint Secretary and the Director of that Department. The report by and large highlighted the pitiable conditions in which these destitute and marginalized women were living in Vrindavan and how the Government of Uttar Pradesh was violating the recommendations of the National Human Rights Commission and the Department of Women and Child Development, Government of India.

**8.25** The Commission would continue to monitor and follow-up with the Government of Uttar Pradesh and the Department of Women and Child Development to ameliorate the sufferings of the destitute/marginalized women living in Vrindavan and to uphold their dignity and basic rights.

### E] Population Policy – Development and Human Rights

**8.26** In its two preceding annual reports, the Commission had reported that it had organized a Colloquium on the above subject in collaboration with the Department of Family Welfare, Ministry of Health and Family Welfare and the United Nations Population Fund. The objective of the Colloquium was to initiate a dialogue from the perspective of development and human rights in the implementation of effective population policies at the Centre and State levels as well as to deliberate on the mechanisms to achieve the same. It was also reported that the recommendations made and the Declaration adopted in the Colloquium were forwarded to all the State Governments and Union Territories for compliance and sending action taken reports.

**8.27** Prior to this reporting year, Action Taken Reports from the states of Goa, Gujarat, Karnataka, Madhya Pradesh, Sikkim, Uttaranchal, NCT of Delhi and Andaman & Nicobar Islands were received. During the year under report, the Commission received Action Taken Reports from Chhattisgarh, Haryana, Manipur, Rajasthan, Tripura, Uttaranchal, Uttar Pradesh and Lakshadweep only. Action Taken Reports are still awaited from Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Himachal Pradesh, Jammu & Kashmir, Jharkhand, Kerala, Maharashtra, Meghalaya, Mizoram, Nagaland, Orissa, Punjab, Tamil Nadu, West Bengal, Dadra & Nagar Haveli, Daman & Diu and Pondicherry. The Commission is hopeful that all those States and Union Territories who have not sent in their action taken reports on the recommendations that emerged from the deliberations of the Colloquium would expedite sending the same, as this has implications on the vulnerable sections of the society.

## II RIGHTS OF CHILDREN

### A] Guidebook for the Media on Sexual Violence against Children

**8.28** In order to encourage media professionals to address the issue of sexual violence against children in a consistent, sensitive and effective manner, consonant with the rights and best interest



## Rights of Women and Children

of children, the Commission and Prasar Bharati with support from UNICEF jointly prepared a Guidebook for the media on 'Sexual Violence Against Children'. The main aim of the Guidebook is to facilitate media personnel in protecting the rights of children against sexual violence for it provides information and insights, necessary to address these and other related issues in the media. Copies of the Guidebook were forwarded to the Department of Women and Child Development/Social Welfare of all the States Governments/Union Territories for information and necessary action. Copies of the Guidebook were also sent to the State Human Rights Commissions and the Press.

**8.29** One of the guidelines contained in the Guidebook is that the media should not disclose the identity of the rape victim or the victim's family, or any information that leads to the identification of the victim. It was, however, noticed by the Commission that quite a few leading newspapers in Delhi disclosed the identity of the victims. The Commission thus wrote to the Editors of the concerned Newspapers and the Secretary, Press Council of India requesting them to prevent recurrence of such incidents. In response to this, the Press Council of India informed that it had taken note of Commission's direction and had advised the press to refrain from such publications while reporting news on victims of sexual abuse.

**8.30** The Commission reiterates that the contents in the Media Guidebook brought out by the Commission are adhered to by all media personnel while reporting cases of sexual violence against children.

### **B] Prevention of Employment of Children by Government Servants: Amendment of Service Rules**

**8.31** In order to prevent employment of children below the age of 14 years by Government servants, the Commission recommended that the relevant Service Rules governing the conduct of Central and State Government employees be amended. In pursuance of this recommendation, the Department of Personnel and Training, Government of India amended the Central Civil Services (Conduct) Rules, 1964 in October 1999 and the All India Services (Conduct) Rules, 1968 in February 2000. The Central Government also forwarded the amended rules to all States for taking appropriate action.

**8.32** Except for one State (Manipur), all the State Governments have carried out the required amendments in the Conduct Rules of their employees. It is hoped that the Government of Manipur would take expeditious action to amend their Conduct Rules.

### **C] Child Labour**

**8.33** The issues of Child Labour remained major concern of the Commission during the period of report. The Commission has been making State-wise review of Child Labour situation since



## Rights of Women and Children

2000-01. The succeeding paras will deal with the Child Labour situation in the States of UP, MP, Rajasthan, Maharashtra, Punjab, Bihar and Jharkhand.

### Efforts in the States of Rajasthan, UP, MP, Maharashtra, Punjab, Bihar and Jharkhand

**8.34** Dr. Justice A.S. Anand, Chairperson, NHRC assisted by the Special Rapporteur reviewed the Child Labour situation and the enforcement of the Child Labour (Prohibition and Regulation) Act, 1986 in the State of Rajasthan on 7.10.2004. The Special Rapporteur, besides monitoring the enforcement of the Child Labour Act and the functioning of the National Child Labour Project in the carpet belt of UP, carried out reviews of the Child Labour situation in UP, MP, Punjab, Maharashtra, Bihar and Jharkhand. The salient points emerging from the reviews that were undertaken are given below:

#### Rajasthan

**8.35** A total of 3026 children were identified and withdrawn from hazardous work as a result of the survey ordered by the Supreme Court on 10-12-1996. 2504 of them (80%) were admitted to schools. The total number of affected families could not be furnished. Only 223 affected families were provided employment assistance as per the directions of the Supreme Court given in M.C. Mehta vs. State of Tamil Nadu and others (1996). 2701 notices were issued for recovery of Rs. 20,000 for each child from the offending employers. Actual recovery has registered an increase from Rs. 60,000 to Rs. 4.10 lakh during the period under review.

**8.36** A total of 9673 working children in the age group of 5-7, 8-12 and 13-16 years were detected as a result of a survey conducted in Jaipur in September 2000 in order to launch the ILO-IPEC Programme. All the children in 5-7 age group were enrolled in formal and non-formal primary schools through intensive mass awareness campaign. 2000 children of 8-12 age group were enrolled in the Transitional Education Centres (TECs). 572 children of 13-16 age group were imparted skill training under ILO-IPEC programme.

**8.37** A survey conducted in 2002 at the instance of the NHRC led to detection of 297 children employed in hazardous occupations/processes. However, after contesting the claims of the employers about the age of identified children, the final figure of detection came to 52. 31 notices have been issued in respect of these children for recovery @ Rs. 20,000 per child. While it is not possible for the Commission to effectively monitor at this late stage, the follow-up action in respect of detections of 1996-97 which has remained neglected, the State Government has been informed about the Commission's resolve to monitor such action in respect of the results of the 2002 survey in all respects namely educational rehabilitation of children withdrawn from hazardous work, economic rehabilitation of the affected families, prosecution of employers and recovery of Rs. 20,000 each child from the offending employers.



## Rights of Women and Children

Although prosecution has started receiving some attention after the last review by the Commission in 2002-03, the disposal of cases is slow and conviction rate is low.

**8.38** National Child Labour Project is operating in six Districts of Rajasthan namely, Jaipur, Udaipur, Jodhpur, Tonk, Ajmer & Alwar. A total of 180 schools with capacity of 50 students each are being run by 90 NGOs. The Special Rapporteur visited six NCLP schools in District Alwar. The siting of schools and selection of beneficiaries were found to be as per the norms and guidelines issued by the Union Ministry of Labour. Distinct improvement was noticed in the running of the Supplementary Nutrition Programme. Vocational training has also started receiving more attention since the last visit of NHRC to the schools in District Ajmer in April 2002. However, the health care component has still not received adequate attention.

### Uttar Pradesh

**8.39** The review carried out by the Special Rapporteur at Kanpur on 5-6 November 2004 covers the period from 1-4-03 to 30-9-2004. There has been no identification of child labour in hazardous category during the period of review. Only 4 children were detected and withdrawn from non-hazardous occupations/processes. Enforcement of the provisions of the Child Labour (Prohibition and Regulation) Act, 1986 seems to have been suspended in UP following a Government directive dated 29-08-2003 declaring the end of the 'Inspector Raj' in the State. This had the effect of stopping the statutory inspections/surveys of hazardous factories and establishments which was being effectively done by the Labour Department since 1998-99 with the results shown below:

Identification of Children			
Year	Hazardous	Non-hazardous	Total
1998-99	9185	8349	17534
1999-2000	2021	858	2879
2000-01	762	1290	2052
2001-02	1042	2818	3860
2002-03	448	1159	1607
2003-04	860	3020	3880
2004-05	-	4	4



## Rights of Women and Children

**8.40** The total number of children withdrawn from the hazardous work since the survey of 1996-97 remains unaltered at 29720 given in the previous report. However, the percentage of children admitted to schools has increased from 81.6% to 82.04%. The percentage of affected families rehabilitated in accordance with the provisions of the Supreme Court's directions in M.C. Mehta case has increased from 4672 (19%) to 4965 (20.5%). Recovery from the offending employers has also increased from Rs. 95,19,849 to 99,49,579 with Rs. 4,29,730 collected during the period of review. The prosecution has also started receiving attention. 38 cases were decided in 2004-05 (till 30 September 2004) – 36 in acquittal and 2 in conviction. A total of 8720 cases were pending trial on 30-09-2004.

**8.41** 11 Districts of UP are covered under the NCLP. A total of 530 schools with a capacity of 26,500 have been sanctioned. At the time of review (Nov. 2004), 456 schools holding 20,327 students were in operation. The NCLP was extended to 15 more districts in February 2004. Project societies have been formed and survey work started after receiving funds from the Government of India. Another 21 districts were brought under the NCLP in October 2004. NCLP schools in 5 districts namely Moradabad, Ferozabad, Aligarh, Allahabad and Kanpur were brought under the INDO-US DOL Project. Under the project, a total of 17,985 child labourers have been identified in the age group of 5-8 years, 30735 in 9-13 years and 22302 in 14-17 years age group. The project was operationalized in Moradabad, Aligarh and Ferozabad on 1.9.04 with the opening of 266 schools called Transitional Education Centres (TECs) holding a total of 10,912 children. While the opening of Transitional Educational Centres (TECs) can be taken as satisfactory, no progress was made towards starting the Employment Oriented Vocational Training in the period of report.

### Madhya Pradesh

**8.42** There has been no detection of child labour in the State after the survey of 1997 ordered by the Supreme Court. The results of the survey and follow-up action were mentioned in the Commission's report 2002-03. Except for realizing an additional amount of Rs. 3 lakh from the offending employers, there has been no progress on follow-up during the period of review. The total recovery of Rs. 4.55 lakh against the recoverable amount of Rs. 16.93 crores comes to 27% only.

**8.43** Three districts of MP namely Mandsaur, Gwalior and Ujjain are covered under the NCLP. These districts were sanctioned 40 schools with a capacity of 50 students each. However, only 81 schools are currently being run – 4 in Mandsaur, 37 in Ujjain and 40 in Gwalior holding a total of 4087 students against the sanctioned capacity of 4400. Vocational training is not being imparted in schools in Mandsaur and is available in 26 out of a total of 40 schools in Gwalior. Health check up of students is not regular. Discrepancies have been noticed in the matter of stipends for students.





## Rights of Women and Children

**8.44** NCLP has been extended to 14 more districts in MP – 2 in 2002-03 and 12 in 20003-04. The operationalization is found to be very slow.

**8.45** MP is one of the four States selected for the launching of INDUS Child Labour Project, a cooperative efforts of the Ministry of Labour, Government of India and the United States Department of Labour. Five districts namely Jabalpur, Sagar, Damoh, Satna and Katni which have the highest concentration of beedi-making home establishments in the State has been selected for this project. A total of 4000 beneficiary children are required to be selected in each district. 1000 in the age group 5-8 years are to be enrolled in the Sarva Shiksha Abhiyan (SSA) Schools. 2000 beneficiaries are to be enrolled for Transitional Educational Centres (TECs), 1000 beneficiaries in 14-17 years are to be enrolled in Employment Oriented Vocational Training Centres. A total of 3805 beneficiaries in 5-8 years group have been admitted to SSA Schools, 175 TECs have started functioning with 7500 students. The progress of opening of Vocational Training Centre is however slow. Only two such Centres have been opened in Damoh and 30 (out of 3341) selected beneficiaries admitted.

### Maharashtra

**8.46** A total of 5685 children have been identified as engaged in hazardous occupations in Maharashtra as a result of four surveys starting from 1996-97 reference to which was made in the last annual report. Follow-up action on these surveys as per the directions given by the Supreme Court in M.C. Mehta case has been utterly inadequate. No progress is shown during the period under review in terms of educational rehabilitation of children, economic rehabilitation of the affected families and realization of Rs. 20,000 per child from the offending employers. Moreover, not a single child labour has been detected after the last survey conducted in 2001-02.

**8.47** A total of 440 prosecutions were launched against the employers in regard to 1997 survey. No prosecutions were launched in regard to the survey of 1999-2000. 291 prosecutions were launched with regard to the survey of 2001-02. Out of a total of 731 prosecutions launched since 1996-97, 108 have been disposed of – 93 in acquittal and 15 in conviction. 623 cases are pending trial.

**8.48** In a Review meeting taken by the Justice K. Ramaswamy, former Member NHRC on 19-01-2002, the need for extending the NCLP, covering only two Districts namely Sholapur and Thane, to a few more districts was pointed out. The project has now been sanctioned for 11 additional districts. Districts Nasik, Dhule, Beed, Yotmal and Nanded were sanctioned NCLP from 1.1.2004. The scheme was extended to six more districts namely Ahmednagar, Pune, Sanghi, Kolhapur, Jalgaon and Nandubar on 8.10.2004. However, the operationalization of the new projects sanctioned in January/October 2004 is slow. The project has been operationalized in only two districts – Nanded (10 schools) and Beed (10 schools) till the time of the review (18-02-2005).





## Rights of Women and Children

**8.49** The Special Rapporteur visited five NCLP schools of District Thane on 18-02-2005. NCLP Thane is currently running 40 schools with a sanctioned capacity of 50 students each. These schools are being run by two NGOs. Serious deficiencies have been noticed in the working of the project in terms of selection of beneficiaries and providing of health care. The component of vocational training is totally missing. The stipend, the vital motivational factor is also found to be absent. Discrepancies have also been noticed in providing of supplementary nutrition. This has been brought to the notice of the Union Labour Ministry, which provides funds and oversees the functioning of the project.

**8.50** Five districts of Maharashtra namely Gondia, Aurangabad, Amravati, Jalna and Mumbai Sub-urban District have been selected for the INDUS Child Labour Project which envisages complete elimination of child labour in the identified districts on a priority basis through a multi-sectoral package of services which include the identification, withdrawal and educational rehabilitation with emphasis on vocational training of child labourers and economic advancement of their families. Maharashtra Institute of Labour Studies has been made the nodal agency to execute the project. The selection of 4000 beneficiaries in each district was not finalized till the time of review (18-02-2005). The operationalization of the project is slow. Out of a total of 200 TECs 40, in each district – only 79 were reported to have been opened till the date of review. No Vocational Training Centre has been started yet.

### Punjab

**8.51** Jalandhar, Ludhiana and Amritsar have been identified as Child Labour Prone Districts. In the report for the year 2003-04 mention was made of detection of 91 children in hazardous establishments as a result of the survey ordered by the Supreme Court. The follow-up action in terms of educational rehabilitation of withdrawn children, economic rehabilitation of the affected families and recovery of Rs. 20,000 per child from the offending employers was found to be utterly inadequate. No progress has been achieved during the period of review in this regard.

**8.52** As mentioned in the last report, there has been no detection of child labour in hazardous occupations/processes in Punjab after the initial survey of 1997. The same situation continues.

**8.53** Three districts of Punjab—Jalandhar, Ludhiana and Amritsar are covered under the NCLP. A total of 107 schools of capacity of 50 students each are being run by NGOs – 40 each in Ludhiana and Amritsar and 27 in Jalandhar. The Special Rapporteur visited four schools of District Amritsar. The siting of schools and selection of beneficiaries were found as per norms and guidelines laid down by the Union Labour Ministry. Only 25 schools holding 1221 students are being run in Amritsar against the sanction of 40 schools. The drop out rate is found to be very high at some places. Scheduled Castes account for 68.7%, OBC 25% and others 6.2% of the total strength. Girls numbering 660 account for 54% of



## Rights of Women and Children

the total strength. The results of mainstreaming have shown improvement after the last review of schools by the Special Rapporteur in Jalandhar. However, vocational training is still not receiving adequate attention. Health care aspect is also weak. Supplementary Nutrition Programme is being run excellently. D.C Amritsar was requested to restart 15 schools closed by his predecessor pending inquiry into complaints made against the NGOs which were running these schools regarding their management. These could be properly entrusted to selected NGOs, as the District is still holding a large number of actual potential child labourers.

### Bihar

**8.54** The evil of child labour is rampant in Bihar with children found engaged in both hazardous and non-hazardous occupations/processes. Jamui, Nalanda, Saharsa and Nawada have been identified as Child Labour Prone Districts. Bihar also enjoys the dubious distinction of supplying migrant child bonded labourers to the Carpet industry in UP and Zari industry in Maharashtra. Araria, Khagaria, Saharsa, Supor, Darbhanga, Katihar and Madhubani have been identified as Districts where middlemen lure the poor parents to send their children against petty advances to work at places outside the State.

**8.55** There has been no detection of child labour in Bihar after the survey of 1996-97 ordered by the Supreme Court on 10.12.96 which had resulted in identification of 21,281 children working in hazardous occupations/processes. While 7.8% of the children withdrawn from work were admitted to formal and non-formal schools and 11,265 affected families were provided some kind of rehabilitatory relief, only a nominal amount of Rs. 80,000 out of a total recoverable amount of Rs. 42,56,20,000 (.02%) has been realized from the offending employers. Prosecution has been totally ignored. There has been no systematic survey after 1997 and no detection of child labour in the State.

**8.56** National Child Labour Project is in operation in 3 Districts of Bihar namely Saharasa, Nalanda and Jamui. A total of 105 schools with sanctioned capacity of 6500 students are being run. The schools are running to full capacity. While the NGOs have been associated fully in Jamui and partially in Nalanda, the schools in Saharasa are being run by the Project Society. The review revealed delay in disbursement of stipends to children. Components of Vocational Training and Health Care are not receiving proper attention. The operation of supplementary nutrition programme needs to be physically verified.

### Jharkhand

**8.57** A total of 3570 children were detected in hazardous occupations as a result of the survey of 1996-97 in some districts of Bihar which now fall in Jharkhand. The quality and utility of the survey can be assessed from the fact that 3179 out of a total of 3356 cases reported from 4 major districts namely Hazaribagh, Garhwa, Pakur and Deoghar were later dropped because of legal flaws. The follow-up action in terms of educational rehabilitation of detected children, economic



## Rights of Women and Children

rehabilitation of their families, recovery of Rs. 20,000 each child from the offending employers and the prosecution of employers is found to be poor. No information has been furnished about the educational rehabilitation of withdrawn children. Recoveries from the offending employers remain static at Rs. 1.0 lakh out of the total recoverable amount of Rs. 754 lakh mentioned in the previous report. A total of 1002 affected families have received benefit under the Indira Awas Yojana and 448 under IRDP/SGS.

**8.58** The Commission feels that no useful purpose would be served to pursue the old cases at this stage. Instead the monitoring would concentrate on fresh cases of detection. A total of 59 child labourers including 11 girls children were detected in hazardous occupations/processes as a result of 370 inspections conducted during the period April 2004 to February 2005 in the districts of East Singhbhoom, Jamshedpur, West Singhbhoom, Hazaribagh, Dhanbad, Deoghar, Gondwa and Saraikala. 44 out of a total of 59 children withdrawn from work have been admitted to schools. Families of 8 child labourers have been given benefit under I.A.Y. BPL cards have been provided in 17 cases. 10 families have been given Antyodaya Cards. Families of 2 child labourers have been sanctioned old age pension. Notices for recovery of a total amount of Rs. 11.80 lakh @ Rs. 20,000 per child from the offending employers have been filed in respect of 59 child labourers. Actual recovery has been Nil in the period of review till 28-02-2005. Prosecutions have been launched against 41 employers.

**8.59** Five districts of Jharkhand namely West Singhbhoom, Pakur, Garhwa, Dumka and Sahibganj are covered under the National Child Labour Project. A total of 114 schools with a capacity of 50 students each and actually holding 5697 students are being run. The functioning of the project was reviewed in a meeting with the Principal Secretary, Labour and the DCs cum Chairpersons of the Projects. While the NGOs have been associated in the running of these schools in Garhwa, West Singhbhoom, Dumka (partially), schools in Sahibganj and Pakur are being run by the Project Society.

**8.60** The Special Rapporteur visited six schools in district Chaibasa in September 2004. While siting of the schools and selection of beneficiaries was found to be satisfactory, delay was noticed in implementing the enhancement in the supplementary nutrition scale from Rs. 2.50 to Rs. 5 per head. Health care aspect was also found to be poor. Vocational training arrangements were not satisfactory. The review undertaken in March 2005 has shown improvement in health care and SNP. The results of mainstreaming have also shown progress.

**8.61** The Commission regrets to admit that the results of its efforts together with those of a number of NGOs to end the Child Labour have not been significant and the pernicious practice continues in most parts of the country. The Commission reiterates its recommendations made year after year that the entire issue of child labour must be viewed through the perspective of the rights of the child which demands the reading of Art.24 of the





## Rights of Women and Children

Constitution with Articles 21, 39(f) and 45 as also the provisions of the Convention on the Rights of Child, 1989. The Commission again urges the Union Government to re-enact the Child Labour Act in tune with the constitutional obligations. It also hopes that the operationalisation of the Right to Education for all children until they complete the age of 14 years will receive fullest attention from the authorities concerned.

### **D] Child Labour: The Need for New Legislation**

**8.62** As reported in the previous Annual Report, the Commission has been in the process of examining the Draft Legislation on Child Labour prepared by the V.V. Giri National Labour Institute (NLI)—an Institution under the Ministry of Labour.

A copy of the said draft legislation i.e. ‘The Child Labour Prohibition Bill, 1998’ was obtained from the V.V Giri National Labour Institute and examined in the Commission through a Core Group of Lawyers. The Draft Legislation on Child Labour was prepared by Shri R. Venkataramani and Ms. Sadhna Ramachandran, Senior Advocates of the Supreme Court. They are to make a presentation before the Commission.



# Scourge of Bonded Labour

## A] Abolition of Bonded Labour

**9.1** The issue of Bonded Labour remained a major concern of the Commission during the period of report. The Commission has been making State-wise review of the Bonded Labour situation since 2000-01. The succeeding paras will deal with the efforts made in respect of Bonded Labour in the States namely Rajasthan, UP, MP, Maharashtra, Punjab, Bihar and Jharkhand, Andhra Pradesh, Tamil Nadu, Karnataka and Kerala.

## B] Bonded Labour : Efforts in the States of Rajasthan, UP, MP, Maharashtra, Punjab, Bihar and Jharkhand.

**9.2** The Commission remained fully involved in the monitoring of the implementation of the Bonded Labour System (Abolition) Act, 1976 as directed by the Supreme Court Order dated 11-11-1997 passed in writ petition (Civil) No. 3922 of 1985. The Supreme Court order has the effect of arming the recommendations of the Commission with the force of law. The case came up for hearing before the Hon'ble Supreme Court on 05-05-2004. The following directions have been issued by Hon'ble Chief Justice of India :-

- (a) All States and Union Territories must submit their status report in the form prescribed by NHRC in every six months;
- (b) All the State Governments and Union Territories shall constitute Vigilance Committees at the District and Sub-Divisional Levels in accordance



## Scourge of Bonded Labour

with Section 13 of the Act, within a period of six months from today;

- (c) All the State Governments and Union Territories shall make proper arrangements for rehabilitating released bonded labourers. Such rehabilitation could be on land-based basis depending upon the choice of bonded labour and his/her inclination and past experience. If the States are not in a position to make arrangements for such rehabilitation, then they shall identify two philanthropic organizations or NGOs with proven track record and good reputation with basic facilities for rehabilitating released bonded labourers within a period of six months;
- (d) The State Governments and Union Territories shall chalk out a detailed plan for rehabilitating released bonded labourers either by itself or with the involvement of such organizations or NGOs within a period of six months;
- (e) The Union and State Governments shall submit a plan within a period of six months for sharing the money under the modified Centrally Sponsored Scheme, in the case where the States wish to involve such organizations or NGOs;
- (f) The State Governments and Union Territories shall make arrangements to sensitize the District Magistrate and other Statutory authorities/committees in respect of their duties under the Act.
- (g) The Union and State Governments have been directed to file affidavits delineating the above aspects within a period of 6 months. All other aspects pointed out by the NHRC and other directions sought to be issued by the Amicus Curie would be considered thereafter.

**9.3** The directions were transmitted to all the State Governments and UTs for compliance. The Commission has been monitoring the progress of implementation of the Bonded Labour System (Abolition) Act on the basis of the half-yearly information on identification, release and rehabilitation of bonded labour received from the State Governments/UT Administrations.

**9.4** The Chairperson Dr. Justice A.S. Anand with assistance from the Special Rapporteur reviewed the bonded labour situation in Rajasthan in a meeting held at Jaipur on 07-10-2004. The Special Rapporteur carried out reviews of the Bonded Labour situation in UP, MP, Bihar, Punjab, Jharkhand and Maharashtra during the period of report by visiting the State HQ and holding meetings with the authorities concerned. The salient points emerging from these reviews are given below State-wise.

### Rajasthan

**9.5** 11 districts of Rajasthan, namely Baran, Kota, Barmer, Chittorgarh, Bhilwara, Jhalawar,



Ganganagar, Dongarapur, Alwar, Banswara and Jhunjunu have been identified as 'Bonded Labour Prone Districts'. Vigilance Committees have been formed at all the 32 District HQs and 180 out of a total of 188 Sub-Divisional HQs. The State Labour Committee on Bonded Labour has not been meeting regularly. It has held no meeting after 10-09-2001.

**9.6** Special surveys to detect the incidence of bonded labour were conducted in 9 districts using the grant of Rs. 18 lakh received from the Ministry of Labour, Government of India. A total of 213 bonded labourers were identified in 7 districts, namely Baran, Dholepur, Jodhpur, Barmer, Alwar, Kota and Jaipur. However, after investigation of the results by the DMs, only 5 cases had been confirmed till the time of review (07-10-2004). (Reports of survey of Banswara and Chittorgarh districts were still awaited). The Chairperson expressed his unhappiness over the utilisation of a grant of Rs. 14 lakh in 7 districts ultimately leading to detection of only 5 bonded labourers. The Chief Secretary, Rajasthan agreed to get the findings of the surveys verified personally by the DMs.

**9.7** The last review made on 4-5 April 2002 had revealed 16 pending cases of rehabilitation of released bonded labourers. All of them have been rehabilitated under the Centrally Sponsored Scheme with benefits under the Indira Awas Yojana (IAY) scheme in the period of report. There has been no detection of bonded labour in the State after the last detection reported on 5.2.2002. This evoked an adverse comment from the Chairperson. 57 prosecutions were pending at the time of the last review. 18 cases were filed under the Bonded Labour Act since then. 16 cases have been decided leaving a final pendency of 59 cases.

**9.8** Rs. 2.5 lakh out of a grant of Rs. 10 lakh received from the Union Ministry of Labour in 2001 for 'Awareness Generation Programme' on the evils of bonded labour had been spent till the time of review.

## Uttar Pradesh

**9.9** Vigilance Committees are in position in all the 70 District HQs and 292 out of a total of 297 Sub-Divisional HQs.

**9.10** The previous review made on 16-03-2004 had mentioned 395 pending cases of rehabilitation of released bonded labourers. This figure rose to 398 on 31.3.04. It is heartening that all the 398 cases were cleared by arranging rehabilitation under the Centrally Sponsored Scheme in the period under review.

**9.11** 55 bonded labourers were identified and released in UP in 2004-05 – 15 in Allahabad, 4 in Mirzapur and 36 in Aligarh. All of them were migrant labourers and went back to their native districts. Necessary action for their rehabilitation under the Centrally Sponsored Scheme in their parent States was duly initiated. Prosecution aspect remains totally neglected.



## Scourge of Bonded Labour

**9.12** A grant of Rs. 10 lakh was received from the Union Labour Ministry for survey of bonded labourer in October, 2001. However, the funds were actually made available to the Labour Commissioner towards the end of 2003 with Commission's efforts. The survey work as taken up in districts of Mirzapur, Allahabad, Kannauj, Meerut and Gautambudh Nagar. Only 7 bonded labourers were identified in Mirzapur as a result of these surveys till 30-09-2004. A grant of Rs. 10 lakh released by the Government of India for awareness generation has been utilized properly on Radio/TV programmes, publication of booklets on bonded labour, staging of nukkad natakas etc. as per the guidelines of the Ministry of Labour. A grant of Rs.5 lakh was received from the Government of India for evaluation studies in Varanasi, Chitrakoot, Mathura, Mirzapur and Sonebhadra. Studies were conducted by Giri Vikas Adhyan Sansthan, Lucknow (Varanasi and Chitrakoot), the Academy of Management Studies, Lucknow (Mathura) and the Institute of Tourism Studies Lucknow University (Mirzapur and Sonebhadra). The following findings of these surveys throw useful light on the phenomenon of bonded labour in UP:

- (1) Almost 100% of the released bonded labourers have rural background. Over 80% are landless agricultural labourers.
- (2) Indebtedness was the pre-dominant case of bondage.
- (3) Representation of SC/ST and OBC classes ranges from 83% to 100%. Muslims constitute 12.9% of the total number. All the released bonded labourers were detected at stone-quarries, carpet-looms or brick-kiln.
- (4) The level of illiteracy was found to be ranging from 65 to 81%, and
- (5) The average monthly income before release was Rs. 250 to 300. It is seen to have doubled after rehabilitation. Prosecution of employers of bonded labour has been totally neglected. The rehabilitation grant available under the Centrally Sponsored Scheme is inadequate.

### Madhya Pradesh

**9.13** 25 out of a total of 48 districts of the State are considered 'Bonded Labour-Prone Districts'. District and Sub-Divisional level Vigilance Committees are in place in all the 48 districts except Khargon, Devas and Sheopur.

**9.14** A total of 411 bonded labourers have been identified and released in 10 districts of MP during the period 1999-2000 to 2004-05 (upto 31-12-2004). The review is confined to the period from July 99 onwards when the subject was transferred from the Revenue to Labour Department. The Labour Commissioner informed that the records for the period before 1999 are not available.

**9.15** 188 out of a total of 411 identified and released bonded labourers are migrant labourers belonging to U.P. (17), Chhatisgarh (143) and Bihar (28). Although intimation about their

identification and release along with copies of Release Certificates has been sent to the DMs of the District concerned in their native States, in most cases full address of the migrant labourers have not been mentioned making it impossible for the authorities concerned at the receiving end to arrange their rehabilitation under the Centrally Sponsored Scheme. The Labour Commissioner, MP has been instructed to get the needful done.

**9.16** 216 out of a total of 223 identified and released bonded labourers belonging to MP have been rehabilitated under the Centrally Sponsored Scheme. Seven persons released in December, 2000 from Vidisha are yet to be rehabilitated as they could not be located at their address recorded in the Release Certificates. Their rehabilitation is being persuaded. Besides the rehabilitatory package of Rs. 20,000 under the Centrally Sponsored Scheme, the released bonded labourers have been provided benefits of (a) allotment of residential plots to homeless labourers and (b) allotment of agricultural land to landless labourers, wherever possible. MP offers two excellent examples of rehabilitation of released bonded labourers at Vidisha and Shivpuri, references to which have been made in the Commission's reports for 2002-03 and 2003-04.

**9.17** A total of 22 criminal cases under the Bonded Labour Act/IPC have been registered since 1999-2000. 20 cases are pending trial – 16 with Judicial Magistrates and 4 with Executive Magistrates. The provision u/s 21 of Bonded Labour Act empowering the Executive Magistrates to try offences under the Bonded Labour Act are being used reluctantly. Two cases are still at the investigation stage.

**9.18** The Government of MP has drawn full grant of Rs. 25 lakh released by the Government of India for survey (Rs. 10 lakh), Evaluation Studies (Rs. 5 lakh) and Awareness Generation (Rs.10 lakh) The State has been slow in utilization of funds received from Government of India for the survey work and Evaluatory studies. The grant was made available to the Labour Department in March, 2003. Dr. Babasaheb Ambedkar National Institute of Social Science (BANISS), Mhow was engaged in January, 2004 to carry out the survey of bonded labour in the districts of Vidisha, Chattarpur, Panna, Shivpuri and Raisen. The same Institute was engaged for Evaluatory studies in the same districts. The findings of surveys and reports of Evaluatory studies were not ready till the time of review. The grant for awareness generation has been utilized through an organisation called MADHYAM which has spent the amount on printing of posters, wall calendars, pamphlets besides arranging radio talks and nukkad natak in 23 bonded labour prone districts of MP.

## Maharashtra

**9.19** Vigilance Committees are in place at all the District HQs (35) and Sub-Divisional HQs (109) of the State. However, these Committees are not meeting regularly and the detection of bonded labour is practically nil in the State. Pending rehabilitation of 36 migrant bonded labourers – 3 belonging to Karnataka and 33 to Tamil Nadu was mentioned in the Commission's report for 2003-04. The review has revealed deficiencies in the documents relating to these releases which

## Scourge of Bonded Labour

were sent to the native States. No definite information about their rehabilitation at those ends could be furnished.

**9.20** Five bonded labourers were identified and released in the period under review. Four of them were migrants belonging to Tamil Nadu. All the five were given the minimum interim relief of Rs. 1000 each. The perusal of records shows that the Release Certificates in respect of migrant labourers sent to Tamil Nadu were in Marathi making it difficult for the DMs concerned to take up their rehabilitation. The Labour Commissioner was requested to arrange to send English translations with full details

**9.21** The Government of Maharashtra received (funds to the tune of Rs. 24 lakh) from the Union Labour Ministry, for carrying out the Bonded Labour Survey in 12 districts. The grant released by the Labour Ministry in October, 2003 could not be utilized in 2003-04. The sanction was got revalidated in September, 2004. The earlier idea of entrusting the survey to the Maharashtra Institute of Labour Studies was dropped and the DCs were instructed to conduct the survey using Government staff and Panchayati Raj Institutions. Results could not be furnished during the period of report.

**9.22** The Maharashtra Government has not availed of a grant of Rs. 10 lakh offered by the Union Labour Ministry for the purpose of awareness generation. No information has been furnished on prosecution.

### Punjab

**9.23** Vigilance Committees have been constituted in all the 17 District and 67 Sub-Divisional HQs. There has been no detection of bonded labour in Punjab after the last review made on 09-03-2004. There has been no progress about the pending rehabilitation of 141 bonded labourers either. The review revealed that 142 and not 141 bonded labourers were identified in Punjab during the period of 1999-2004. Only in one case involving identification of 4 bonded labourers in Ferozepur in 2000, the State share of Rs. 10,000 each was paid. In another case involving identification of 108 bonded labourers (65 of Jalandhar in 1999, 42 of Kapurthala in 2001, and one of Ferozepur in 2004), the Central share of Rs. 10,000 each has been received but is lying undisbursed with the Government. The State has not sanctioned the matching grant of Rs. 10,000 each, nor has it released the amount received from the Government of India for the rehabilitation of the released bonded labourers. In the remaining 30 cases relating to 2001, the details of bonded labourers are not available as the identified labourers are reported to have left for their native places without the knowledge of the district administration. The Commission has noted with concern the casualness, if not callousness of the Administration to the issue of rehabilitation.

**9.24** The State Government has obtained a grant of Rs. 10 lakh from the Union Labour Ministry for the survey of Bonded Labour in five districts, namely Amritsar, Jalandhar, Ludhiana, Patiala and Bhatinda. The survey was conducted by two reputed agencies, namely Centre for Research

in Rural and Industrial Development (CRRID) and Ambedkar Centre, Punjab University Chandigarh. The reports could not be furnished in the period of report. Despite advice from the Commission, the State Government does not seem interested in taking up the Awareness Generation Programme, through a grant of Rs.10 lakh, which has been offered by the Union Labour Ministry.

## Bihar

**9.25** 26 out of a total of 38 districts are considered as 'Bonded Labour-Prone Districts'. The northern part of Bihar, constantly afflicted by heavy floods as well as drought-conditions, is known for the largest concentration of poverty, illiteracy and semi-feudal character of society. It has traditionally been fertile ground for the evolution of the Bonded Labour System.

**9.26** Vigilance Committees are in place in all the 38 districts and 101 Sub-Divisions of the State. A total of 350 released bonded labourers were required to be rehabilitated in the year 2004-05. This included the pending rehabilitation of 168 mentioned in the last annual report. 200 of them have been rehabilitated under the Centrally Sponsored Scheme in the period under review. It is heartening to note that the State share of Rs. 15 lakh for the rehabilitation of 150 balance cases has been included in the third Supplementary of 2004-05 State Budget. The Commission was assured that their rehabilitation would also be completed before 31-03-2005.

**9.27** A significant feature of rehabilitation of the released bonded labourers in Bihar is an effective implementation of Principle of convergence ensuring integration of the Centrally Sponsored Rehabilitation Scheme with other on-going Poverty Alleviation Programmes run by the Department of Rural Development. The Commission was informed that all the released bonded labourers have been provided benefits under the Indira Awas Yojana and Social Security Pension of Rs. 100 per month besides receiving the rehabilitation package of Rs. 20,000 per head under the Centrally Sponsored Scheme. However, perusal of information furnished in respect of districts of Purnea, Muzaffarpur, Sitamari and Saharsa did not substantiate this claim totally.

**9.28** No information could be obtained about prosecution as all the detections were made in other States and not in Bihar.

**9.29** Government of Bihar has made full use of the special grant of Rs. 25 lakh released by the Union Labour Ministry for awareness generation (Rs. 10 lakh), survey in five districts (Rs. 5 lakh) and five Evaluatory studies (Rs. 5 lakh). Details of utilization of the grant received for surveys and awareness generation have not been furnished.

**9.30** The Evaluation Studies conducted by A.N. Sinha Institute of Social Studies, Patna in the districts of West Champaran, Mungher, Nalanda, Nawda and Patna provide significant information on the character of bonded labour in Bihar. A total of 811 rehabilitated bonded labourers were contacted and 606 of them were actually interviewed in these studies. The SCs

## Scourge of Bonded Labour

account for 82.03%, STs 4.31% and OBCs 14.4% of the total number. The proportion of landless agricultural labourers is 82.47% for the 5 districts combined. Non-payment of minimum wages was reported in almost 100% of the cases. The average level of illiteracy was 88.39%. 99% of the rehabilitated bonded labourers belong to BPL families. However, the proportion of BPL card holders amongst them ranges from 48.28 % in Nalanda to 84.11 % in Mungher.

**9.31** 49.82% of the rehabilitated bonded labourers had received the benefit of IAY. In Mungher 99.34% reported slight improvement in their financial condition, 100% reported betterment in food consumption, 98.01% enhancement in social prestige and 100% reported increase in voting activity after the release. In Patna 77.85% stated that they were free to work. 46.77% said that there was no pressure and compulsion of work on them. 41.94% felt better than before.

### Jharkhand

**9.32** Vigilance Committees are now in place in all the Districts (22) and Sub-Divisional HQs (35) of the State, which shows significant progress over the situation described in the last report. However, the orders regarding the empowerment of Executive Magistrates to exercise the powers of Judicial Magistrate u/s 21 of the Bonded Labour Act, have not yet been issued in Jharkhand as was mentioned in the last report.

**9.33** A total of 196 bonded labourers were required to be rehabilitated in the State in the period of review for which an amount of Rs. 39.20 lakh was released to the D.Cs concerned. 185 of these have actually been rehabilitated under the Centrally Sponsored Scheme and Rs. 37 lakh utilized. The State has done commendably well in arranging rehabilitation of the released bonded labourers detected and returned from U.P. Besides providing the package of rehabilitation under the Centrally Sponsored Scheme, benefits of IAY and Social Security Pension have been extended to almost all of them.

**9.34** Utilization of a grant of Rs. 30 lakh for survey in 15 districts resulting in identification of only one bonded labour was mentioned in the last Annual Report. The State has utilized the grant of Rs. 10 lakh received from the Union Labour Ministry for awareness generation carefully through the Public Relations Department by arranging publicity through the Newspapers, Nukkad Nataks and Telecast of Audio-Video inputs through Doordarshan in accordance with the guidelines of the Union Labour Ministry. The State has not availed of the grant of Rs. 5 lakh offered by the Union Labour Ministry for Evaluation Studies.

## C] Efforts in the States of Andhra Pradesh, Karnataka, Kerala and Tamil Nadu.

**9.35** Shri K R Venugopal IAS (Retd.), former Secretary to the Prime Minister, continued to assist the National Human Rights Commission, New Delhi as its Special Rapporteur, Hyderabad during the year under review.

**9.36** In furtherance of the efforts at the implementation of the mandate of the Honourable Supreme Court of India in regard to the elimination of Bonded Labour and Child Labour practices in the Southern States of Karnataka, Tamil Nadu and Andhra Pradesh, Shri K R Venugopal, Special Rapporteur, NHRC, Hyderabad undertook, during the year 2004-2005, 3 visits to the State of Karnataka, 5 visits to the State of Tamil Nadu and 9 inspection-cum-study visits in Andhra Pradesh and held review meetings with the Chief Secretaries, nodal Secretaries dealing with Bonded Labour and Child Labour, Commissioners and Heads of Departments concerned and with some of the District Magistrates and field level officers of these States, as also NGOs.

## **D] Workshops on Bonded Labour**

**9.37** The Expert Group on Bonded Labour constituted by the Commission on 22-09-2000 had, in its the report dated 31.12.01, recommended the holding of workshops for sensitizing and educating the District Magistrates, Superintendent of Police, NGOs and other field functionaries involved in the implementation of the Bonded Labour Act. Four such workshops were arranged during the period of report at Delhi, Jaipur, Chennai and Bhopal in collaboration with the State Labour Departments. The Special Rapporteur, assisted by Director, NHRC was involved in conducting the workshops at Delhi, Jaipur and Bhopal. The Director General (Welfare), Government of India, actively participated in the workshops on behalf of the Ministry of Labour.

**9.38** A Sensitization Workshop was held at Jaipur on 25.2.05 in collaboration with the State Labour Department. The workshop was inaugurated by Shri Kirori Mal Meena, Labour Minister, Rajasthan. The Union Labour Secretary Shri K.M. Sahni and Director General, Labour Welfare also attended the workshop. The participants numbering 57 included 8 Collectors, 6 ADMs and 31 officers of the Labour Department. The workshop proved useful in identifying significant issues relating to identification, release and rehabilitation of bonded labour.

**9.39** A Sensitization Workshop was held at Bhopal on 23-03-2005 in collaboration with the State Labour Department. It was inaugurated by Shri Babu Lal Gaur, CM, MP. Besides the DMs/ADMs of the Bonded Labour Prone Districts, a number of social activists working in the field of Bonded Labour and Child Labour attended the workshop. The workshop proved useful in identifying a number of issues relating to identification, release and rehabilitation of bonded labour.

**9.40** The Special Rapporteur was instrumental in conducting the Workshop at Chennai in Tamil Nadu on the 4-5th of March 2005 to further the mandate of the Honourable Supreme Court of India with regard to the abolition of Bonded Labour and Child Labour Practices in Tamil Nadu. The recommendations and decisions of this workshop were subsequently forwarded to all the participants, who included the Union Labour Secretary, the Regional Director of the Reserve bank of India, District Magistrates and several NGOs, as well as several other stakeholders in the field, for their implementation. Their implementation is being monitored.



## Scourge of Bonded Labour

**9.41** The important points that emerged from these Sensitization Workshops include

- (a) Need for fresh, comprehensive survey to determine the magnitude of the bonded labour,
- (b) Constitution of District and Sub-Division level Vigilance Committees,
- (c) Prosecution against the offending employers,
- (d) Deputy Commissioner to act as Centre of Convergence between Government Departments & NGOs,
- (e) District Magistrates to have positive attitude and exercise their powers under Section 10, 11 and 12 of the Act.

## E] Manual on Bonded Labour

**9.42** The Ministry of Labour & Employment has brought out a Comprehensive Manual on Identification, Release and Rehabilitation of Bonded Labour in the country. The Commission had furnished its comments on the draft Manual to the Ministry of Labour and Employment. The Manual, on the whole, is a useful document for all concerned, working in the field of bonded labour. The Commission had offered some general suggestions for overall modification of the Manual.





# Rights of the Vulnerable

Chapter 10

## A] Human Rights of Scheduled Castes

**10.1** Despite elaborate provisions in the Constitution and other laws, it is an unfortunate reality that social injustice and exploitation of Scheduled Castes and Scheduled Tribes and other weaker sections persist. There are reports in the press about atrocities against persons belonging to these groups and the frequency with which they occur is a cause for disquiet. The humiliation which persons belonging to the Scheduled Castes in general and the Dalits in particular suffer even today, more than half a century after India proclaimed itself to be a Republic, is a matter of shame.

**10.2** For the National Human Rights Commission, the protection of human rights is essential for defence of democracy itself – a democracy that is inclusive in character and caring in respect of its most vulnerable citizens. The Commission holds the view that human rights must be made the focal point for good governance. The Commission has been quite vocal and outspoken in defence of human rights particularly of the vulnerable sections of the society. The Commission draws inspiration in its work for defence of human rights from Mahatma Gandhi's very potent observation:

*'It has always been a mystery to me how men can feel themselves honoured by the humiliation of their fellow beings.'*

**10.3** The Commission has been concerned about the violation of the human rights of communities designated as Denotified Tribes (DNT) and Nomadic Tribes (NT). They had, earlier in pre-Independence India, been identified as "Criminal Tribes". Though the Criminal Tribes Act, 1871 was annulled soon after independence,



## Rights of the Vulnerable

prejudice against them persisted. The police, as well as members of the public, frequently treat persons belonging to these communities as “born criminals” and “habitual criminals.”

**10.4** The Commission constituted an Advisory Group to examine the matter, which submitted its report in August, 1998 which made several recommendations to improve the condition of the communities. Following are the main recommendations:

- A retired senior police officer of high reputation may be appointed in every state by the Commission to watch the cases of atrocities against DNCs and to report them to the Commission. Where there is a concentration of an old settlement existing, a separate officer may be appointed at the district level;
- Since the police training is still faulty in this respect, the National Police Academy and other institutions imparting training to police officers may be advised to reorient their syllabi;
- NHRC may take the necessary steps leading to the repeal of the Habitual Offenders Act;
- Central/State Governments may be directed to make proper enumeration of the DNCs;
- The DNCs may be provided educational, employment and other infrastructural facilities;
- State Governments may be asked to work out action plans for DNCs with specific provisions in the plans. The Planning Commission may be advised in this regard;
- To launch a massive information campaign aimed at bringing about change in the general attitude towards the DNCs;
- The National Sample Survey Organization should be directed to make a special survey of the socio-economic conditions of the DNCs.

**10.5** The Commission is monitoring the response from the State Governments/UTs on the recommendations. Further, with a view to ascertain the socio-economic conditions of the DNTs/NTs, the Commission has approved a research project on “A Study of the Human Rights Status of Denotified and Nomadic Communities of Delhi, Gujarat and Maharashtra” received from the DNT/NT People’s Action Group headed by Shri G. N. Devy.

**10.6** The Commission is of the firm view that there is a need to combat age-old biases and entrenched attitudes through education and public information campaigns. The change of attitudes and mindset of civil society is the key to further progress in bringing down the discrimination. For this purpose the Commission has been holding workshops and seminars so as to educate and create awareness amongst the civil society.

**10.7** In particular, the Commission has been deeply concerned about the atrocities against persons belonging to Scheduled Castes. The Commission, therefore, requested Shri K B Saxena, a senior retired civil servant, to look into this issue. In pursuance, he has completed the study and submitted a comprehensive report, which contains a number of recommendations to various authorities. In order to monitor the implementation of these recommendations, the Commission has set up a

Dalit Cell and placed it under the charge of a Member of the Commission. The Chairperson, NHRC released Shri K.B. Saxena's report on prevention of atrocities against Scheduled Castes on 12-10-2004. The Cell has co-ordinated the printing of the Report in English. It is also being printed in Hindi and other Indian languages. The Commission has sent its recommendations on ways and means to prevent atrocities against Scheduled Castes to various authorities, both to the Central and State Governments for taking necessary action (**Annexure 11 (a) to (c)**). In particular, States have been asked to:

- Identify atrocity and untouchability prone areas and prepare a plan of action.
- Appointment of exclusive special courts where volume of atrocity cases is large and appoint competent and committed special public prosecutors.
- A 3-tier Training programme for police and civil functionaries.
- An annual workshop of District Magistrates and Superintendents of Police on implementation of laws in this regard.
- Women officers should be assigned to all atrocity prone areas, with cells established to entertain complaints;
- Self-help groups of Scheduled Caste women should be given elementary legal training along with sessions on confidence building;
- Identify a NGO in each district which can be approached in case of custodial violence or any other atrocity.
- Panchayats may be sensitized about the issues concerning the Scheduled Castes and various De-Notified Tribes.
- Institute annual awards for the police stations and districts, which emerge as the most responsive to the complaints of the Scheduled Castes.

**10.8** The Commission proposes to closely monitor the implementation of these recommendations in the coming years.

**10.9** The Commission also organized a two-day Sensitization Training Programme for senior police officers in the Northern Region on the prevention of atrocities against Scheduled Castes in New Delhi in the month of January 2005 in partnership with the Indian Social Institute. The workshop aimed at sensitizing the law enforcement personnel about the scale and intensity of atrocities on the Scheduled Castes and Scheduled Tribes communities in the country and the legal support available to them to carry out their role for the protection and promotion of human rights of the Dalit community. The programme was well received. The feedback received from the participants suggested that the Commission should organize similar programmes in other parts of the country.

## **B] Manual Scavenging**

**10.10** The NHRC has been vigorously pursuing the need to end the degrading practice of manual scavenging in the country. It has taken up this matter at the highest echelons of the

## Rights of the Vulnerable

Central and State Governments through a series of personal interventions by the Chairperson of NHRC. The Central Government notified the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 on 24 January, 1997.

**10.11** In keeping with the Prime Minister's announcement, the Planning Commission formulated a National Action Plan for total Eradication of Manual Scavenging by 2007. The salient features of the Plan are :-

1. Identification of Manual Scavengers
2. The 1993 Act should be adopted by all the States where manual scavenging exists
3. Involvement of NGOs
4. Ministry of Finance should issue necessary instructions to Nationalized Banks for providing loans
5. Incentives for Implementation

**10.12** The NHRC has been monitoring the following action points: -

1. Adoption of the Employment of Manual Scavengers & Construction of Dry Latrines (Prohibition) Act, 1993.
2. Carry out Survey to identify the number of Scavengers and their dependents.
3. Imparting of training to the identified Scavengers.
4. Rehabilitation under the prescribed funding pattern.
5. Making provision in building by-laws not to sanction new building without provision of pour flush latrines.

**10.13** As decided in the last meeting held in the Commission, the Ministry of Social Justice and Empowerment convened a meeting on 26.07.2004 with the representative of the concerned Ministries/Departments/Organisations. Concluding the Action Plan, it was decided that the National Action Plan is to be implemented in a time-bound manner so as to ensure eradication of manual scavenging by 2007. The pace of progress has however been slow. It was observed that as per the discussion, following actions are to be taken expeditiously for timely implementation of the National Action Plan:-

- i) Survey of manual scavengers is to be conducted in a time-bound manner;
- ii) The scheme of ILCS is to be modified urgently to make suitable provision for providing funds to the State for conducting surveys;
- iii) The Employment of Manual Scavengers and Construction of Dry Latrines Act. 1993 to be transferred from Ministry of Urban Development to Ministry of UEPA;

- iv) Suitable fresh guidelines are to be issued for expeditious implementation of National Action Plan;
- v) Ministry of Finance should be approached for issuing necessary instructions to Nationalized Banks for providing loans;
- vi) Details of release of funds and unspent balances are also to be provided to Ministry of Social Justice & Empowerment; and
- vii) Sanitation Councils are to be set up in the State Government.

**10.14** During the period under report, the decisions taken in the last meeting held with the concerned State Governments were followed up. The response from the States has not been very encouraging.

**10.15** According to the information available with NHRC, the latest position with regard to status of adoption of the Act by the States/UTs is as under:-

**10.16** The States of Andhra Pradesh, Assam, Chhattisgarh, Gujarat, Haryana, Himachal Pradesh (its own Municipal Act), Karnataka, Kerala, Madhya Pradesh, Maharashtra, Orissa, Tamil Nadu, Tripura, Uttar Pradesh, Uttranchal, Punjab, Meghalaya and the UT of Andaman & Nicobar Islands have already implemented the Central Act. The States of Bihar, Jammu & Kashmir, Jharkhand, Manipur, Rajasthan, West Bengal and the UTs of Dadra & Nagar Haveli, Daman & Diu, Lakshadweep & Pondicherry have not adopted the Central Act. The States of Arunachal Pradesh, NCT of Delhi, Goa, Mizoram, Nagaland, Sikkim and the UT of Chandigarh have informed that they are manual scavenging free or they do not have dry latrines in their respective States/UTs.

**10.17** A review meeting with the representatives of the nodal Ministries, the State Governments/ UT Administrations and the NGOs is scheduled to be held shortly.

## C] Rights of the Elderly

### (a) National Old Age Pension Scheme

**10.18** The Commission is deeply concerned about the protection of rights of older persons. Earlier, two rounds of discussions were held in the Commission with some representatives of Non-governmental Organizations working for the rights of the older persons who made a number of suggestions in this regard. In its meeting held on 08-03-2002, the Commission noted the details of the implementation of the Old Age Pension Scheme by the Central and State Governments and desired that the matter may be sent to Shri K. B. Saxena, IAS (Retd.), Former Advisor, Planning Commission for an in-depth study and recommendations. The Secretariat of the Commission assisted Shri Saxena by making available the source material and data base on the subject from various quarters, including the Ministry

## Rights of the Vulnerable

of Rural Development, National Institute of Rural Development, Hyderabad etc. (The study has been completed during 2005-06 and is under consideration of the Commission)

### (b) Security of Senior Citizens

**10.19** A report appeared in THE HINDU dated 22-6-2004 regarding setting up of Special Cell to monitor security of senior citizens in Delhi. The Cell has been set up in the wake of the gruesome murder of Lieutenant General (Retd.) Harnam Singh Seth and his wife at their Vasant Enclave residence. A meeting was held at the instance of Lt. Governor of Delhi, Shri B. L. Joshi in which the decision to set up Special Cell was taken.

**10.20** The Special Cell would function directly under the supervision of Shri Sudhir Yadav, Additional Commissioner of Police (Crime Branch). However, the modalities of its functioning were yet to be worked out.

**10.21** The Delhi Police have also decided to take the following steps to ensure safety and security of senior citizens in Delhi :-

- To give wide publicity to the dedicated helpline numbers for senior citizens (1091 and 1291);
- To contact on the above numbers in case the names of senior citizens do not figure in the list of senior citizens prepared by the Delhi Police;
- To verify the character and antecedents of servants before their employment;
- To collect at least two references from their domestic helps to facilitate proper verification;
- To reduce the dependence on unknown persons, the Delhi Police have launched "Adoption of Senior Citizens by School Students" programme. Under the scheme, students from various schools visit senior citizens living away from their children to share their problems and to extend to them emotional support;
- Delhi Police have also issued some guidelines in newspapers instructing the senior citizens to install grills on the door, cover transparent windows with curtains, keep lights on throughout the night, install alarm bells linking with neighbours, etc.

**10.22** The Commission felt that the issue of senior citizens needs to be taken up in a wider perspective for the entire country by the Commission. It was decided that a Core Group be constituted to go into the issues relating to security, health and housing requirements, etc. of the senior citizens. The Core Group is being set up.



# Internally Displaced Persons

## A] National Policy on Resettlement and Rehabilitation

**11.1** The Commission reviewed the provisions of the National Policy on Resettlement and Rehabilitation sent to it by the Ministry of Rural Development. The Commission has noted that the rehabilitation policy has not been made a part of the Land Acquisition Act of 1894. The Commission is of the firm view that resettlement and rehabilitation should be incorporated in the legislation proposed to be enacted by the Ministry of Rural Development so that it becomes justiciable. Keeping in view human rights aspects and related public interest involved, the Commission has also sought a copy of the draft legislation in this regard for a critical review.

**11.2** The Ministry of Home Affairs in the Action Taken Report on the Annual Report of the Commission for the year 2002-2003 has mentioned that a national policy on the subject has been notified. The draft bill proposed to be introduced for legislative approval are processed in accordance with legislative procedure prescribed in this regard.

## B] Visit of the APF Team to India on Issue of IDPs

**11.3** The Brookings-SAIS project on the Internally Displaced and the Asia Pacific Forum undertook an eighteen month internally displacement project consisting of individual assessments of six institutions in countries experiencing displacement (India, Indonesia, Nepal, Philippines, Sri Lanka and Thailand) and a regional workshop devoted to the issue to be undertaken in 2005. In respect of this, a four-

Chapter 11





## Internally Displaced Persons

member team visited the Commission from 4-7 October 2004 to undertake the fifth institutional assessment in the regional programme.

**11.4** The purpose of the visit was to discuss the NHRC's activities with regard to IDPs and develop recommendations for the Commission's consideration on means to enhance its role in this area.

**11.5** The team offered the following recommendations on the existing efforts:

- To enhance NHRC's capacity on the issue of IDPs
- To promote greater understanding and dialogue on IDP issues
- Promotion of effective and comprehensive Law and Policy.

**11.6** The recommendations of the Asia Pacific Forum's IDP Projects team have been considered by the Commission. A number of steps have been proposed to address this issue.

## C] Human Rights Situation in Natural Disasters

### a] Tsunami

**11.7** Taking suo-motu cognizance of the calamity that arose from devastating tsunami waves which hit large areas of coastal India, including Andaman & Nicobar Islands, Pondicherry, Tamil Nadu, Andhra Pradesh and Kerala on 26.12.2004, the Full Commission, vide its proceedings dated 13/01/2005, observed that:

- (i) it is essential that the Government machinery involved in rehabilitation is able to take all necessary steps for an equitable distribution of both relief as well as rehabilitation measures while maintaining transparency and ensure that the poor, destitute women, destitute children and all persons, who would be in greater need of the relief and rehabilitation measures, are not deprived or made to suffer and are well taken care of;
- (ii) in order to ensure smooth process of relief, the concerned State Governments/ Union Territories must at the earliest prepare and publicize a computerized list of persons, dead or missing, because of tsunami disaster, as also list of the totally/partially destroyed properties; as such authentic list would help in smooth settlement of insurance and other claims of the victims and expedite the rehabilitation process and also help the families to trace the missing persons;
- (iii) to ensure that young widows and children were not sexually or otherwise exploited



## Internally Displaced Persons

by unscrupulous elements, the State Governments/Union Territories should evolve a mechanism towards that end and to prepare a computerized list of such widows and children who were victims of tsunami disaster which would help the authorities to guard against their exploitation.

**11.8** The Commission called for responses from the Secretary, Ministry of Home Affairs, Chief Secretaries of the Governments of Andhra Pradesh, Kerala and Tamil Nadu as also the Administrators, Andaman & Nicobar Islands and Pondicherry. Responses were received by the Commission from the Government of Andhra Pradesh, Administrator, Andaman Nicobar Islands, Government of Kerala, Administrator UT of Pondicherry, the Ministry of Home Affairs, besides an interim reply from the Government of Tamil Nadu.

**11.9** The Commission also received several petitions from various individuals/NGOs alleging (a) eviction of fishermen from coastal areas by the State Government of Tamil Nadu in the name of rehabilitation and thus endangering their livelihood, and (b) discrimination against dalits in distribution of relief and rehabilitation works by the Administration. Response in the matter was called for from the Government of Tamil Nadu, which is still awaited.

### b] Monitoring of Cyclone Reconstruction Work in Orissa

**11.10** The Commission continued to monitor the implementation of its recommendations relating to Cyclone Reconstruction Work in Orissa references to which can be found in previous reports of the Commission. The State Government has been very regular in sending quarterly progress reports to the Commission in this connection. Following progress has been registered during the year 2004-05:

1. Construction of Multipurpose Cyclone Shelters - Out of 40 MCSs to be installed with the World Bank assistance, construction of 32 has been completed. The construction of 8 is in progress. However, there has been no further progress on construction of the 60 MCSs taken up with the Chief Minister's Relief Fund (CRMF) after the completion of construction of 57 MCSs was reported and finds mention in the last report.
2. Construction of School Buildings - As per the revised programme, 5798 Primary School and 1170 High School Buildings were required to be constructed. The construction of 5645 Primary and 1046 High School buildings was completed till 31-03-2004. In the period of this report, the number of completed Primary School Buildings and High School Buildings has gone upto 5724 and 1118, respectively. Construction of 50 Primary School and 34 High school buildings is in progress.
3. Operationalization of ICDS Projects - All the 41 ICDS projects including 27 sanctioned in the wake of the super-cyclone have been operationalised.



## Internally Displaced Persons

4. Action against Supervisory Staff Responsible for Delay in Opening of 'SLUICE' Gate.  
– The Commission is not satisfied with the progress of departmental proceedings initiated against one Superintending Engineer (Civil), two Executive Engineers and one Assistant Engineer (civil) for professional negligence, which had aggravated the impact of the floods in Keonjhar town and Bhadrak municipality area. Action against these officers was initiated after the Commission expressed its dismay over the decision of the State Government to treat the matter as closed after punishing a junior engineer. It has been appropriately conveyed to the Government. The Commission has been informed that the departmental proceedings are at the final stage.
5. Expansion of Orissa Disaster Rapid Action Force (ODRAF) - Following the Commission's recommendations, the State Government has formed a specialized outfit called Orissa Disaster Rapid Action Force (ODRAF) within the Orissa State Armed Police to take up the restoration of essential services like power, water, telephone-communication etc. in the wake of natural disaster. Starting with three battalions initially, these units are now available in 5 out of a total of 8 Armed Police Battalions of Orissa. These have been strategically located at Balasore, Cuttack, Chatrapur, Jharsuguda and Koraput. It is proposed to create 3 more units of ODRAF to be stationed at Charbatia, Bhubaneswar and Rangamatia.

### c] Monitoring of Post Earthquake Measures In Gujarat

**11.11** The Commission took suo-motu cognizance of the national calamity that arose from the devastating earthquake, which hit large areas in the State of Gujarat on 26-01-2001. Keeping in mind the precedent of monitoring of relief and rehabilitation work in the super cyclone-affected areas and the generally perceived efficacy of the Commission's intervention in Orissa, the Commission engaged itself in this task in Gujarat in the aftermath of devastating earthquake.

**11.12** In order to monitor closely the follow-up action taken by the State Governments to impact its directions, the Commission set up a Group consisting of Shri PGJ Nampoothiri, Special Rapporteur, NHRC; Shri Gagan Sethi, Managing Trustee of Jan Vikas Trust; Smt. Annie Prasad, President of Kutch Mahila Sangathan and Prof. Anil Gupta, IIM, Ahmedabad.

**11.13** The Special Rapporteur submitted a preliminary report of the Group in February, 2003 regarding the monitoring of the relief of persons disabled in the earthquake. A detailed report from the Special Rapporteur was received during the period under report. The highlights of the report are as under :-

- (i) There are several complaints of irregular payments to widows due to inadequacy funds at the disposal of District Officers.



## Internally Displaced Persons

- (ii) A number of houses constructed by outside agencies are lying un-occupied because there are no takers. The beneficiaries are not willing to accept relocation. The result is a colossal waste of scarce funds.
- (iii) There are a number of complaints regarding payment of housing assistance and classification of damaged houses since as many as 15,000 persons in Kutch area alone have been denied any assistance though their houses either fell in G-5 category or had to be demolished.
- (iv) There are instances where the instructions given by the Lokpal had not been complied with. Some of the cases have been quoted by the Special Rapporteur.
- (v) The main issue in all these and similar cases is the tendency on the part of the officers to be too technical and treat such matters in a routine unsympathetic manner.
- (vi) Draft town planning schemes have been finalized for 4 towns, namely, Bhuj, Anjar, Bhachau and Rapar. A Board of Appeal with District Judge as Chairman has been constituted to hear and dispose of objections. This process is likely to take some considerable time.
- (vii) The victims of earthquake, who were tenants are facing lot of difficulties since they have either lost their documents, either due to passage of time or in the quake. They have no proof to establish their tenancy rights. There are 1000 such families who are awaiting decision of the Government for allotment of land.
- (viii) The relocated sites are neither attached to the Municipalities or village panchayats. The area development authorities have no democratic dispensation or responsibilities. One common complaint is that the money raised by the sale of property in the towns was not being used for development.
- (ix) It is feared that the new Town Planning Schemes do not take care of the Gujarat High Court order that no construction should be permitted to interfere with the water bodies.
- (x) Under the new Scheme, there is no provision for shops in residential areas selling daily requirements. These are proposed to be relocated at designated areas only.
- (xi) While physical rehabilitation of the victims has made reasonable progress, economic improvement has not happened.
- (xii) Under the scheme of assistance to Professionals, 34 advocates in Kutch have been left out while others have received the subsidy.





## Internally Displaced Persons

- (xiii) Regarding updating the building by-laws, some action has been taken, but a lot remains to be done. There is no qualification required to become a builder. The structural engineers hardly verify whether the structures are properly put up. They do not have the time to check the quality and adequacy of the materials used.

### d] Rehabilitation of Gujarat Riot Victims

**11.14** In the Annual Report for the year 2003-04, the Commission had mentioned in detail on its interventions on the issue of relief and rehabilitation of victims of the communal violence in Gujarat which took place in the year 2002. A report was received from the State Government, in February, 2005, inter-alia, detailing the measures taken by it on the relief and rehabilitation of the victims of the Gujarat riots. Further clarifications were sought from the State Government, in March, 2005, with regard to the total number of families displaced due to the riots, the number of families rehabilitated, both, temporarily and permanently and, the number of families still left to be rehabilitated along with reasons for the same. A reply has been received, after reminders, in the middle of September, 2005. The Commission has sought the comprehensive views and comments of its Special Rapporteur, on the report of the State Government, before deciding on the further course of action.



# Research Studies and Projects

---

**12.1** The Statute of the Commission requires it to undertake and promote research in the field of human rights [Section 12 (g)]. Ever since the Commission was constituted, its endeavour has been to ensure that its overall efforts in the area of research are not only of greater depth and relevance but also have a practical outcome. The research studies thus undertaken by the Commission are not only directed to ascertain ground realities, build database, etc., but also to evolve some kind of a mechanism in the country that can be used to promote and protect human rights and combat violations of such rights. The Action Research on Trafficking in Women and Children in India has been one such effort in this direction. The details of the Action Research and other research studies and projects, a few of which have been completed and the others on-going are given below:

## ***1] Completed***

### **A] Action Research on Trafficking in Women and Children in India**

**12.2** As mentioned in the earlier annual reports from 2000-2001 onwards, the Commission nominated one of its members to serve as a focal point on Human Rights of Women including Trafficking in the year 2001. In order to provide respite to the victims of trafficking as well as strengthen the vulnerable groups in the supply zones both economically and socially, the Focal Point felt that it was necessary to have, first and foremost, an authentic database on all aspects of trafficking. Accordingly, it undertook an Action Research on Trafficking in Women and Children in India in the year 2002 in collaboration with UNIFEM and the

## Research Studies and Projects

Institute of Social Sciences, a research institute in New Delhi. The cost of the entire research was borne by UNIFEM.

**12.3** The main objective of the Action Research was to study the factors, trends and dimensions of trafficking including vulnerability mapping of geographical areas prone to trafficking in terms of demand, supply and transit points/zones; assess the types of existing responses to issues arising from trafficking in women and children including the role of Government, law enforcement agencies, NGOs and others in preventing, detecting and combating trafficking; review the existing laws and recommend changes for strengthening of old laws or enactment of new law(s); and bring out a comprehensive Plan of Action for prevention of trafficking, protection of trafficked women and children including their rehabilitation and repatriation and better law enforcement.

**12.4** Being an Action Research, an attempt was simultaneously made along with the research to generate awareness through training programmes, seminars, workshops, etc. on matters relating to trafficking among all the stakeholders so as to sensitize them about the problem of trafficking; facilitate various activities in the States/Union Territories with respect to prevention of trafficking, investigation into and prosecution of traffickers, protection of trafficked victims, including their rescue, rehabilitation and repatriation/reintegration; and building up a functional network of governmental and non-governmental agencies for preventing and combating trafficking in women and children.

**12.5** The Action Research was guided, facilitated and supervised by a National Study Team consisting of Shri Sankar Sen, Senior Fellow, ISS; Prof. B.S. Baviskar, Senior Fellow, ISS; Dr. B.S. Nagi, Consultant, ISS; Shri P.M. Nair, Nodal Officer, NHRC and Dr. Savita Bhakhry, Senior Research Officer, NHRC.

**12.6** The Action Research was completed in July 2004 and its report was released to the public on 24 August 2004. The recommendations and suggestions that have emerged from the Action Research are at **Annexure 12**. Copies of the report were later forwarded to all concerned in the Central Government, States/Union Territories for effective implementation of the recommendations for preventing and combating trafficking. They were also requested to send an Action Taken Report on the steps taken by them. So far Action Taken Reports have been received only from the Department of Police of Government of Arunachal Pradesh and Government of Goa.

**12.7** The issue of trafficking was also raised during the meeting of the Commission with the Chief Secretaries and Directors General of Police that was held on 14-12-2004 at New Delhi. Since the Memorandum of Action Taken on the Annual Report of the National Human Rights Commission for the year 2002-2003 on the said subject states that 'the observations of the Commission have been noted', the Commission trusts that action would be taken on the recommendations of the Action Research by all State Governments and Union Territory





Administrations at the earliest so that anti-trafficking interventions and initiatives follow the paradigm of human rights.

## **B] Operation Oasis – A Study Related to Mentally Ill Persons in West Bengal**

**12.8** The Commission entrusted the Sane and Enthusiast Volunteers' Association of Calcutta (SEVAC), a Kolkata based NGO to carry out the 'Study related to mentally ill persons languishing in jails, vagrant and juvenile homes of West Bengal'. The duration of the project was initially for a period of one year for which Rs.3,10,000/- were sanctioned by the Commission.

**12.9** The main objective of the study was to identify the percentage of mentally ill and mentally disabled persons in prisons and other correctional and custodial institutions in West Bengal as well as assess their overall human rights situation so that arrangements could be made for their release and restoration.

**12.10** The study has been carried out in four jails, namely, Dumdum Central Jail, Presidency Jail, Alipore Special Jail and Berhampore Central Jail; three Vagrant Homes, namely, Home for Lunatic Vagrants at Mahalandi, which houses both males and females, Uttarpara Female Vagrant Home, Dhakuria Male Vagrant Home, and two Rescue Homes, namely, Kishalay Home for Boys and S.M.M. Home at Liluah for females.

**12.11** The study has been completed by SEVAC and its final draft report has also been submitted to the Commission. It is inferred from the report that while care of mentally ill patients remains a cause of concern; the State Government too was neither discharging its duties and obligations towards these patients nor complying with the provisions of the Mental Health Act, 1987.

### **II] On-going Studies**

#### **A] Study of the Implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000**

**12.12** The Commission approved a proposal for undertaking a study of the Implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000 in February 2004 submitted by the Socio-Legal Information Centre, New Delhi. The study aims to review the extent of implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000 by carrying out the following:-

- Interaction with the nodal Government agencies to ascertain the status of the Institutions/ Committees/Boards that ought to be set up under the Act;



## Research Studies and Projects

- Interaction with the nodal Government agencies to ascertain the status regarding framing of rules, appointment of judges, staff etc.;
- Find out the different kinds of homes set up or identified for the reception of children falling within the ambit of the Act;
- Interviews with key institutions/academicians and child rights groups on their opinion on the proper implementation of the Act;
- Examining the obligations cast on the Government and NGOs under the Act and ascertain the status of its implementation;
- Examining the status of the special juvenile police unit to be created under the Act;
- Collecting statistics on the number of children who have been covered by the Act; and
- Compiling information with respect to the public interest litigation filed for the implementation of the Act.

**12.13** The 15-month research study started in March 2004. The study would collect data from 16 States, viz. Andhra Pradesh, Bihar, Delhi, Goa, Gujarat, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Orissa, Punjab, Rajasthan, Uttaranchal, Uttar Pradesh and West Bengal. At the time of writing this report, data were collected from the States of Bihar, Gujarat, Madhya Pradesh, Maharashtra, Manipur, Orissa, Punjab, Rajasthan, Uttar Pradesh and West Bengal. From the data collected till date, it can be inferred that so far no special juvenile police units as prescribed under the Act have been set up in the States of Bihar, Madhya Pradesh, Maharashtra, Manipur, Orissa, Punjab, Rajasthan and West Bengal. The data also reveal that Juvenile Justice Boards have not been set up in the State of Bihar, neither have the Child Welfare Committees in the State of Madhya Pradesh been set up. Further, there were only two Juvenile Justice Boards functioning for the entire State of West Bengal. The study is in progress.

## B] Current Trends in Child Labour in Beedi Industry

**12.14** The Commission has entrusted the research study on 'Current Trends in Child Labour in Beedi Industry' to Surul Centre for Services in Rural Area (CSRA), a NGO based in Birbhum District of West Bengal. The main objective of the study is to examine the magnitude as well as the existent trends in child labour in the beedi industry, especially the socio-economic realities that force young children to start beedi rolling at an early age.

**12.15** The study has been undertaken in Bharatpur – II Block of Murshidabad District in West Bengal. It has primarily focused on children in the age group of 5 to 7 years engaged in beedi



## Research Studies and Projects

processing activities and those falling in the age group of 8 to 14 years engaged in beedi rolling activities from 10 villages which covers about 40% of the villages where beedis are being made. In addition to this, information has also been elicited from the parents of child labourers, contractors, employers, panchayat functionaries, school teachers, block development authorities, sub-divisional officials and district social welfare officials.

**12.16** The CSRA has submitted its interim report to the Commission. Some of the highlights of the interim report are that children are the worst sufferers as they get minimum wages of Rs.5/- for making 1,000 beedis per day. Most of the families whose children make beedis live below the poverty line. The principal employers work through their contractors who in turn employ workers in a village or a cluster of villages. About 10% of the beedis rolled by the children are arbitrarily taken away as 'standard deduction' by the contractor on the pretext of replacing defective beedis made by children. This results in deduction of daily wages of children. For this research, the NHRC has sanctioned financial assistance of Rs.1,88,000/-.

### **C] Freedom Mortgaged and Future Abandoned: Bonded Child Labour in Karnataka's Silk Industry**

**12.17** The Commission has entrusted the above research study to the Institute of Social and Economic Change, Bangalore. The main aim of the research is to analyze the household conditions contributing to the occurrence of bonded child labour in the silk industry of Karnataka and thereby make an overall assessment of the magnitude of bonded child labour engaged in sericulture in Karnataka. In addition to this, it would analyze the policies and programmes of the Government and non-governmental organizations in promoting child rights and eliminating bonded child labour in the silk industry. The total cost of the study would be Rs.3,60,367/-.

### **D] Pilot Study of the Socio-Economic, Political and Cultural Status of Dalit Women in Haryana**

**12.18** The Commission had reported in its preceding annual report that it had approved a Pilot Study entitled "Socio-Economic, Political and Cultural Status of Dalit Women in Haryana" submitted by Maharshi Dayanand University, Rohtak (Haryana). The objectives of the study are to –

- survey the socio-cultural and economic status of dalit women through field studies in selected districts in the State of Haryana;
- identify the impediments faced by the dalit women in attaining all round development in social, economic and political field;



## Research Studies and Projects

- survey the impact of Government's special protective provisions in providing economic, political and judicial relief to Dalit women;
- assess the role of elected representatives in creating awareness among the dalits in general and women belonging to this section in particular; and
- make recommendations for the improvement of the social, economic and political status of dalit women.

**12.19** The 18-month research study started in April 2004. The study is in progress. During the period under report, data have been collected for the above study from four districts of Haryana, viz. Fatehabad, Sirsa, Ambala and Yamuna Nagar, which have maximum concentration of dalit population. The Commission's Secretariat held meetings with the Project Director from time to time to discuss the progress of the study and gave its inputs.

### **E] Feminization of Poverty and Impact of Globalization – A Study of Women Construction Labourers in Delhi, Uttar Pradesh and Haryana**

**12.20** The Commission approved in August 2004 a proposal for research study entitled "Feminization of Poverty and Impact of Globalization – A Study of Women Construction Labourers in Delhi, Uttar Pradesh and Haryana, submitted by Sarojini Naidu Centre for Women's Studies (SNCWS), Jamia Millia Islamia, New Delhi. The study aims to project the appalling conditions of women construction labourers and suggest measure for improving them by:-

- studying the nature and extent of women's involvement in construction work in the selected districts;
- studying the socio-economic profile of women construction labourers;
- studying and analyzing the human rights violations faced by them;
- finding out the possibility and extent of sexual harassment faced by them;
- accessing the incidents of migration and displacement among them and to study the problems associated with it;
- analyzing disabilities, discrimination and deprivation faced by them;
- finding out the impact of new technologies on their status;



## Research Studies and Projects

- studying the legal frame of reference governing women construction labourers and its relevance; and
- suggesting measures for improving their existing conditions.

**12.21** The study would cover the States of Uttar Pradesh, Haryana and Delhi. It proposes to interview a total sample size of 4,500 respondents consisting of construction labourers, contractors, experts, policy makers, government officers and representatives of non-governmental organizations. The methodology for the above study including the research tools for data collection have been finalized in collaboration with the Commission. The study has been initiated by Sarojini Naidu Centre for Women's Studies and it is in full swing.

### **F] Research Study on Domestic Violence against Women in India : Nature, Causes and Response of Criminal Justice System**

**12.22** The Commission approved financial assistance for a research study on "Domestic Violence Against Women in India: Nature, Causes and Response of Criminal Justice System" submitted by Sardar Vallabhbhai Patel National Police Academy, Hyderabad.

**12.23** The objectives of the research project are to study the:-

- nature of domestic violence against women in the country;
- extent and types of violence committed against women by family members;
- causes of domestic violence in the country;
- entrenched attitudes and stereotypes held by people which lead to domestic violence;
- attitudes and stereotypes held by police personnel of various ranks about domestic violence, which make them to react to instances of domestic violence in a specified manner;
- effectiveness of the legal provisions regarding domestic violence; and
- recommend suitable interventions for reducing the incidence of domestic violence on the basis of the findings of the study.

**12.24** The Academy submitted the draft report of the research study on 22-03-2005. At the time of writing this report, the draft report was being examined by the Secretariat of the Commission.



## **G] Study on the Complaints made by Women at Police Stations at Bangalore**

**12.25** The Commission approved a research study on the 'Complaints made by Women at Police Stations at Bangalore' that was submitted by Vimochana – a Forum for Women's Rights, a NGO based at Bangalore. The objectives of the study were:-

- to make an overall assessment of the kind of complaints that are made at police stations by women;
- to evaluate the manner in which these complaints are being handled by police personnel;
- to know the extent of knowledge the complainants have about their legal rights;
- to ascertain as to who assists the complainants when they lodge their complaints in the police stations; and
- to suggest measures that may be adopted within police stations and outside with regard to improving citizen's access to FIRs, the procedure of drafting complaints and follow-up on the investigation and prosecution of complaints.

**12.26** For this study, data was collected from two police stations – Jagjeevanram Nagar and Banaswadi. A total of 264 women complainants were interviewed. In-depth interviews of police officials across rank in both the police stations were also conducted. Chapter-wise drafts were submitted by Vimochana from time to time and the Commission's Secretariat gave its comments on them. The organisation is in the process of writing the final report.

## **H] A Study to Assess the Degree of Realization of Economic, Social and Cultural Rights in India.**

**12.27** The Commission had entrusted a study that will assess the human rights situation in India with particular reference to economic, social and cultural rights to a Pune based NGO, the National Centre for Advocacy Studies (NCAS).

**12.28** The study was conducted in three states of India: Maharashtra, Karnataka and Chhattisgarh. Field surveys were conducted in one development block of each state. The blocks were chosen where the majority of the population belonged to the Scheduled Castes and Scheduled Tribes. The field study focused on

- Collection of list of the Below Poverty Level families from the identified villages.



## Research Studies and Projects

- Sampling for selection of sample families for the study.
- Collection of primary data from the sample families.
- Visit to ICDS, Government hospitals, fair price shops, schools run by both government and NGOs to verify the primary data.
- Visit to different NGOs in the selected blocks to cross-examine data as well as their contribution to economic, social and cultural rights.

**12.29** The final report of the Study is expected to be submitted to the Commission shortly.

### **I] Action Research Project on 'Land, Labour and Human Rights Violation in Bundelkhand and Sonbhadra Region of Uttar Pradesh'**

**12.30** The Commission in August 2004 entrusted to Dr. K. Gopal Iyer, a retired Professor in Sociology from Punjab University, Chandigarh to undertake the action research project on 'Land, Labour and Human Rights Violation in Bundelkhand and Sonbhadra Region of Uttar Pradesh'. For this action research, the Commission agreed to provide financial assistance of Rs.6,92,000/-. The main aim of the action research is to understand in depth the intensity of violations of legal, labour and other human rights of the people in Bundelkhand and Sonbhadra region, thereby evolving an action strategy for taking remedial measures. The focus is to improve the overall basic conditions of the vulnerable sections in the region, especially dalits, tribals and women. The duration of the project is 24 months. The project is in progress and the same is being monitored.

### **J] A Study of the Status of Tendu Leaf Pluckers in Orissa**

**12.31** The Commission has entrusted the above research study to Human Development Society, which is based in New Delhi. The objectives of the project are as under :-

- Find out the socio-economic background of the tendu leaf pluckers;
- Analyze the dynamics of the tendu leaf trade - the role of different actors, the process and the economics of the trade;
- Examine the extent of bonded labour system in tendu leaf trade - relationship between the pluckers and their employers, wages, working conditions etc. in the light of various statutory provisions and guidelines and orders of the Supreme Court, NHRC, etc.
- Examine the extent of child labour in tendu leaf trade;





## Research Studies and Projects

- Find out the social, economic and other problems faced by the pluckers and their families;
- Suggest remedial measures that can be taken up to address the problems; and
- Create a database on pluckers with a view to helping the policy makers and others concerned with the conditions of the marginalized people, especially the tendu leaf pluckers.

**12.32** For the purpose of the study, five tendu leaf divisions of Orissa, viz., Nawarangpur, Jeypore, Padampur, Patnagarh and Angul have been selected. Each of these divisions have further been divided into four zones and from each of these zones five villages have been randomly selected for collecting data. The field work for the study has been completed. However, the draft final report is awaited from the organisation. The Commission has sanctioned financial assistance of Rs.3,06,000/-.

### **K] A Study of the Human Rights Status of Denotified and Nomadic Communities of Delhi, Gujarat and Maharashtra**

**12.33** The 'Study of the Human Rights Status of Denotified and Nomadic Communities of Delhi, Gujarat and Maharashtra' has been entrusted by the Commission to Bhasha Research and Publication Centre, Baroda. The entire cost of the study – Rs.4,21,000/- would be borne by the Commission.

**12.34** The objectives of the proposed study are as under :-

- (i) To study the economic status and occupational patterns of the communities selected for study;
- (ii) To study the patterns of encounter with the police department;
- (iii) To study incidents of custodial deaths of persons belonging to the communities selected for study;
- (iv) To study the levels of legal awareness and legal literacy among these communities; and
- (v) To study the engagement of these communities with the electoral processes.

**12.35** In each of the three States, two to three denotified and nomadic communities have been identified. For instance in Delhi, Gadia Lohar/Gaddi Lohar and Sansis; in Gujarat: Bahurupis, Chamthas and Sansi/Chhara; and from Maharashtra: Banjara, Ramoshi and Pardhi have been selected for the study. The study is currently in progress.



## **L] Programmatic Intervention in Mental Hospitals in India: Efforts Towards Humanizing Institutions and Community-based Rehabilitation**

**12.36** In order to rehabilitate cured mentally ill patients languishing in the mental hospitals located in Agra, Gwalior and Ranchi, the Commission in collaboration with the Action Aid India decided to make a programmatic intervention by way of building-up and strengthening the organisational cadre employed in these mental hospitals by imparting to them the necessary knowledge and skills required for dealing with mentally ill patients. The project was sanctioned in February 2004 and is for the duration of 2 years. For this project the Commission has sanctioned financial assistance of Rs.5,40,250/-.

**12.37** So far, 11 sensitization workshops have been organized for the nurses, attendants and other hospital staff of the three mental hospitals mentioned above. The main objective of these workshops was to bring about an attitudinal change among the hospital staff towards mentally ill patients. In all, a total of 300 staff members have been trained through these sensitization workshops.

## **M] CHRC-NHRC-IGNOU Linkage Project on Disability**

**12.38** The Commission is deeply concerned about the rights of the persons with disability. In order to build capacity for better protection of rights of persons with disability, the Commission launched a project in partnership with the Canadian Human Rights Commission (CHRC) and the Indira Gandhi National Open University (IGNOU) in 2003. Initially NHRC-CHRC linkage project was conceived on commission-to-commission basis. It was later changed to a tripartite project with Indira Gandhi National Open University (IGNOU) as the 3<sup>rd</sup> partner for financial management. The MOU between the parties was signed on 26-08-2003 at New Delhi and was counter signed by CHRC on 19-09-2003.

**12.39** In accordance with the revised Project Implementation Plan (PIP), out of the original five elements the focus concentrated on the following :

1. Raise Awareness of Human Rights of Persons with Disabilities.
2. Improve the Technical Capabilities of INHRC and CHRC.
3. Strengthen Project Management Capabilities of INHRC and CHRC.

**12.40** For raising awareness of human rights of persons with disabilities, strategic interventions were planned. The thrust remained on improving the capacity of academic and advocacy organizations for better application of domestic and international human rights law in the



## Research Studies and Projects

promotion and protection of the rights of disabled. For grounding firmly the human rights perspective on disability, the project worked towards effecting change in the programmes of legal and human rights studies. It has also prepared a small cadre of master trainers capable of serving formal and non-formal programmes of human rights education and awareness. To facilitate effective delivery of disability and human rights component in the study programmes, an impressive body of resource materials and references have been compiled and widely shared. These materials present:

- a) An in-depth analysis of legal frameworks and their relevance in the disability context.
- b) Examples of jurisprudence- disability specific or those which are helpful in clarifying the content of rights, obligations of the State and the broad human rights principles.
- c) Critical information and data on endemic areas.

**12.41** Under this project, Trainers programme at NLSIU, Bangalore (July 2004), National Workshop at NALSAR, Hyderabad (October 2004) and 5 Outreach programmes were organized during July 2004-March 2005.

**12.42** In concrete two manuals, 17 research papers make up the resource kit, which also includes a curriculum design for a course in Human Rights Disability and Law and a Bibliography.

### **N] Estimating Precise Costs and Providing Level Playing Field to Persons with Disabilities (PWDs) both as Consumers (Users of Social Services) and as Producers (Contributors to Economy) – a case study by the National Association for the Blind**

**12.43** The Commission approved a proposal of the National Association for the Blind for promoting the concerns of People with Disabilities (PWDs) in general, and the visually impaired, in particular. The objectives of the study are as follows:

- To enlist the additional cost of living and for additional inputs needed for PWDs.
- To quantify the additional costs, across different regions, of the country and for different types/degree of disability.
- To disseminate information among International bodies, Central Government organizations, State Governments, NGOs on the additional costs for living by PWDs and additional inputs needed.



## Research Studies and Projects

- To assess the gap between the minimum support needed by PWDs as producers and consumers with what is being provided presently.
- To recommend steps to bridge the gap through better utilization of existing schemes, introduce new schemes (if needed), utilize the community resources and individual professional skills.

**12.44** The final report has been received. In the light of the objectives of the project, the report is being examined.

### **O] A Study on Efficacy of District Level Mechanism for Securing the Rights and Entitlements of People with Disabilities as Guaranteed in the National Trust Act, 1999.**

**12.45** The Commission and National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities jointly took up the above research study. The objectives of the study are to find out:

- The factors that facilitate the implementation of a national level policy at the district level.
- The factors that impede the successful implementation of a national level policy for the district level.
- The linkages between different level/tiers of service and care providers.
- The strategies of reaching the unreached.
- The barriers that impede integration.
- The strategies to utilize limited resources.
- Ways and means of putting disability issues higher on the district magistrates lists of priorities.

**12.46** The study proposes to cover 15 districts in different states and is presently underway.

### **P] Source Material on Human Rights Education for Indian Universities**

**12.47** As a follow-up of the 'Round-Table Conference on Human Rights Education' organized by the NHRC in collaboration with Karnataka Women's Information and Resource Centre





## Research Studies and Projects

(KWIRC), Bangalore, on 10-11 October 2002, the Commission decided to develop source material on human rights education for Indian universities along with KWIRC on seven different themes. The themes decided upon were: right to information, environment and human rights, rights of dalits, land and housing rights, rights of children, rights of home based workers in India and struggle of fish workers for their human rights. Drafts of all these source material have been submitted by KWIRC and the Commission is examining these. The Commission has sanctioned Rs.3,56,000/- for developing this source material.

### **Q] Status of Human Rights Education in India at the University Level**

**12.48** The Commission has entrusted the National Institute of Human Rights at the National Law School of India University, Bangalore, to carry out the above research study. The main objective of the study is to assess the overall status of human rights education in India at the university level with special reference to the UN Decade on Human Rights Education (1995-2004). The final report of the study is awaited. For this research study, the Commission has sanctioned Rs.4,50,000/





# Promotion of Human Rights Literacy and Awareness

---

**13.1** One of the mandates of the Commission under Section 12 (h) of the Protection of Human Rights Act, 1993 is the Promotion of Human Rights Literacy and Awareness. The Commission has been endeavouring to achieve the objectives with its own resources. The entire range of activities of the Commission is aimed at creating an environment in which rights can be better promoted and protected. The decisions taken by the Commission in respect of complaints, the programmes and projects undertaken, seminars and workshops held and its publications and discourses, all aim to create a culture of human rights in the country.

## **A] National Action Plan on Human Rights Education**

**13.2** The Commission has decided to take up the task of development of the National Action Plan and has set up a group of experts comprising representatives from Government Departments, legal experts, and representatives from NGOs and civil society.

## **B] UN Decade of HR Education and the National Action Plan of Human Rights Education**

**13.3** The period 1995-2004 was declared as the United Nations Decade for Human Rights Education by the United Nations. The National Human Rights Commission pursued with the Government to develop a National Action Plan for Human Rights Education and as mentioned in the previous annual report the National Action Plan of Human Rights Education was finalized and circulated



## Promotion of Human Rights Literacy and Awareness

by the Government in 2001. As per the action plan, Government has taken steps to reorient the syllabus so as to introduce elements of human rights in school education as well as in Universities. According to the information with the Commission, so far 35 Universities/Colleges have introduced Certificate, Diploma and PG courses on Human Rights with financial assistance from the University Grants Commission.

**13.4** With a view to assess the level of Human Rights Education at the School level, the Commission took up an in-house study to prepare a Status Paper on Human Rights Education at School in 2004-2005. The textbooks prescribed for schools brought out by the NCERT and the SCERT were analyzed with regard to the human rights component being taught in schools with possible suggestions to enhance the quality of human rights education in schools.

**13.5** The study revealed that Human Rights Education is not taught as a separate subject. However, the NCERT and the SCERT, Delhi have integrated human rights concepts in various subjects from the primary level to the higher secondary level. The Study also revealed that wide ranges of issues related to Human Rights are covered in the school curriculum. The focus needs to be on the methodology of imparting the concepts to the students and an analysis of the perception and understanding of the human rights issues by the students.

**13.6** In order to assess the position prevailing in the various states in the field of human rights education a questionnaire was also sent to all the States/Union Territories to indicate the steps being taken by them to promote Human Rights Education in Schools. The information has been received from 17 States and is under compilation.

### C] Rights Education for Youth

**13.7** With a view to spreading an awareness of human rights issues among university students, the Commission conducts internship programmes during summer and winter vacations every year.

**13.8** During the internship, the students are apprised of the working of the Commission. They are also made aware of the provisions of the Constitution and the main institutions and international instruments relevant to an understanding of human rights. The interns are provided an opportunity to interact with NGOs working in the field of human rights and are also taken to field visits. In addition the students are assigned research topics to work on.

### D] Human Rights Training

**13.9** The Commission is deeply concerned about human rights awareness, literacy and







## Promotion of Human Rights Literacy and Awareness

sensitization, which is one of the mandates of the Commission under Sec 12(h) of Human Rights Act, 1993. One of the main endeavours of the Commission is to promote citizens' increasing and persistent demand for dignity, respect, justice and prevent violations of their human rights by public servants. For this, it is essential that the public servants should be sensitized through training, to meet the human rights challenges that they encounter in their work sphere or else violations will continue to escalate and flourish. Simultaneously, the Commission is required to encourage the NGOs and other institutions working in the field of human rights as partners. The training programme involved civil administrators, law enforcement agencies, para-military forces, lawyers, academicians judicial officers, NGOs, prison officers and other stakeholders. This programme proved to be useful in enhancing the professional knowledge, human rights awareness, skills and perception of the participants.

**13.10** When the Commission talks about Human Rights Education, it must be understood that a context specific broad and dynamic human rights education is being referred to. Advancing this trend, the Commission organized a programme of Human Rights Education from a disability perspective in four distinct phases to empower the Law schools and departments with the capacity to deliver an optional paper in 'Human Rights, Disability and Law' and simultaneously help them address disability throughout the programme of legal studies.

- Phase I included face-to-face training at NLSIU, Bangalore in July 2004 attended by 30 participants comprising law faculties and disability and human rights advocates.
- In Phase II the participants undertook individual studies using desk research and field investigations.
- Phase III included a seminar in which participants shared findings of their studies.
- In Phase IV, the participants facilitated five training workshops for a group of Law Faculties, Disability Rights and Human Rights advocates.

**13.11** These workshops were organized at:

- NUJS, Calcutta from 19-21 January, 2005
- NLS, Bhopal from 1-3 February, 2005
- Cochin University of Science and Technology from 10-12 February, 2005
- ILS Law College, Pune from 19-21 February, 2005



## Promotion of Human Rights Literacy and Awareness

- Punjab University, Chandigarh from 25-27 February, 2005

**13.12** This project has not only prepared a small cadre of trainers in Disability and Human Rights but has also contributed a learner's module to facilitate teaching of law from the disability standpoint.

**13.13** In addition, during the period under review, the Commission provided Disability input in a number of programmes offered by Institute of Secretarial Training and Management. Likewise a series of workshops have been facilitated by the Commission to raise awareness of the disability sector about the procedure of elaborating UN Convention and its importance in the protection and promotion of rights and dignity of persons with disabilities. These workshops at Bangalore, Ahmedabad and Delhi have helped the disability sector articulate their proposals for making the Treaty more realistic in their context. A set of recommendations emerging out of these workshops has also been communicated to the M/O-SJ&E, Government of India who is participating actively in the UN Ad Hoc Committee elaborating the Disability Convention.

**13.14** During the period 2004-05, twenty six training programmes were conducted in the form of workshop/seminar/training courses, on a wide range of human rights issues and subjects. These programmes were organized in collaboration with State Human Rights Commission, Universities, Institutes, Academies, Law Schools, United National High Commission for Refugees, UNICEF and NGOs. Further, the target groups/participants of these training programmes were Civil Servants, Police Officers, Judicial Officers, Prison Officers, Lawyers, NGOs, Journalists, Academicians, Teachers and Social Activists. The above training programmes focus on the issues of Human Rights Awareness and Sensitization, Human Rights Investigations, Legal Literacy, Dalits Rights and related issues.

**13.15** These training programmes were conducted in four regions i.e. North, East, South and West of the country. Besides giving financial support, the Commission has provided Resource Persons and Human Rights Training materials for the training programmes.

**13.16** Three in-house training programmes were also conducted for officers and staff of the Commission, so as to orient them to human rights principles, philosophy, practices, values and culture, necessary to deal with matters handled by them in the Commission. United Nations agencies like, UNHCR, UNICEF arranged day long briefing session for our officials, to specially focus on issues of Refugees and Child Rights, respectively.

**13.17** Officials of the Investigation and Law Division were also deputed to undergo training courses and seminars conducted by National Institutes and reputed agencies on the subjects of



## Promotion of Human Rights Literacy and Awareness

refugees, trafficking, child sexual abuse, child labour, scientific aids to investigation and scientific interrogation, which gave them further exposure to sharpen their professional skills and knowledge. These training programmes have been highly appreciated by the participants and have enabled the participants to carry forward the message of human rights to the lowest level functionaries in their respective fields. The Commission in the next year proposes to focus on the issues of Human Rights Education.

**13.18** Training Programmes conducted during 2004-05, alongwith other details, is placed at **Annexure 13.**

**13.19** In order to sensitise different stakeholders to the problem of human trafficking, the Commission organized a two-day training programme on 'Combating Trafficking in Women and Children' in January 2005 at Jaipur in collaboration with the Joint Women's Programme, an NGO working for the protection of rights of women and children.

**13.20** The objectives of the training programme were to:-

- understand the trends, dimensions and magnitude of the problem of trafficking in women and children;
- provide information on the existing laws to combat trafficking and its enforcement;
- analyse issues relating to rehabilitation and repatriation of trafficked women and children once they are rescued; and
- analyse the role of the governmental organisations and civil society in preventing and combating trafficking in women and children.

**13.21** The Judicial Officers, Police Officers and Government Officers from the States of Gujarat, Madhya Pradesh and Rajasthan and the representatives of the NGOs participated in this programme.

**13.22** The Commission organized a one-day Workshop on Prevention and Redressal of Sexual Harassment of Women in collaboration with the Human Rights Law Network, an NGO on 03-03-2005 at India Habitat Centre, New Delhi for the Chairpersons/ Members of the Sexual Harassment Complaints Committees that have been constituted in the various Ministries/Departments of the Central Government, in pursuance with the guidelines prescribed by the Supreme Court in Vishaka vs. State of Rajasthan.



## Promotion of Human Rights Literacy and Awareness

**13.23** The objectives of the Workshop were –

- to enable the participants to understand the basic concept of gender;
- to enable them to understand the meaning, dimension, intent and impact of sexual harassment of women at the work place;
- to familiarise them to the Supreme Court guidelines on prevention of sexual harassment of women at the work place, constitution of a complaint mechanism and its operation; and
- the need and importance of a policy for prevention and redressal of sexual harassment at the work place.

**13.24** The Chairpersons/Members of the Complaints Committees from various Ministries/ Departments participated in the Workshop.

**13.25** Awareness of, and sensitization to, the issue of trafficking, particularly its adverse impact on the rights of women and children, is an important element on prevention. In order to inform and educate the general public, particularly the vulnerable groups, on the problem of trafficking, the Commission in association with the Joint Women's Programme, a Delhi-based NGO brought out two posters in Hindi on the theme of prevention of trafficking and disseminated the same all over the country.

### **E] Para Military and Armed Forces**

**13.26** The para-military and armed forces are often called upon to maintain peace and law and order in areas affected by terrorism or insurgency. Pursuant to the commission's efforts, the subject of human rights is now included in all of their training courses at all levels.

**13.27** To encourage interaction and experience-sharing between personnel of para-military forces and the Commission, holding of an annual debate competition, both in Hindi and English, was started in 1998. With every passing year this debate competition has been attracting growing and enthusiastic participation of the personnel of para-military forces, competing in both languages.

**13.28** Human rights education is also included in training courses for Para Military and Armed Forces so as to create better awareness among officers and staff on human rights.

### **F] National Institute of Human Rights**

**13.29** The National Institute of Human Rights (NIHR) which was set up in the National Law



## Promotion of Human Rights Literacy and Awareness

School of India University Bangalore, had been a resource extensively used by the Commission in the past. The Commission approved a project 'Review of the Status of Human Rights Education in India at the University level' submitted by the NIHR. However, the project report is yet to be received.

### G] The Media and Legal Issues of Freedom of the Press

**13.30** The Commission has shared a special relationship with the media. Based on reciprocity in highlighting issues of human rights, the Commission has found a key ally in the media in generating public awareness. The Commission has frequently taken cognizance of human rights violations on the basis of media reports. It has benefited substantially from the editorials, letters and articles that feature in the media. The media has indeed acted as a watchdog for the Commission on many an occasion. The diverse opinions across the country and the world find a voice through the media and it is this, which has prompted the Commission on a daily basis to scan 24 newspapers — regional, national and international.

### H] List of Publications

**13.31** In order to spread awareness on Human Rights, the Commission decided to bring out a series of booklets titled "Human Rights" on the pattern of booklets brought out by the United Nations. Booklets on the following 8 themes were printed and published in English and four South Indian Languages, namely Tamil, Telugu, Kannada and Malayalam :-

- National Human Rights Commission
- International Human Rights Conventions
- Manual Scavenging
- Bonded Labour
- Child Labour
- Sexual harassment of women at the work place
- Rights of persons with Disabilities
- Human Rights and HIV/AIDS





## Promotion of Human Rights Literacy and Awareness .....

**13.32** Apart from the above the Commission also brought out the following publications during the year: -

- Journal of National Human Rights Commission Vol.III 2004,
- Disability Manual
- Glossary of Human Rights Terms (English to Hindi)
- Hindi Journal “Nai Dishayen”



# International Cooperation

---

## A] Meetings of the International Coordination Committee (ICC) and the Commission on Human Rights

**14.1** The 60<sup>th</sup> Session of the Commission on Human Rights and the meeting of the International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights (ICC), was held in April, 2004, in Geneva, Switzerland. Dr. Justice A.S. Anand, Chairperson, Justice Shri Y. Bhaskar Rao, Member and Smt. S. Jalaja, Joint Secretary of the Commission attended the meetings. The Chairperson also made a Statement on behalf of the Commission. A copy of the statement is at **Annexure-14**.

## B] Annual Meeting of the Asia Pacific Forum

**14.2** The Ninth Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions was held in Seoul, South Korea on 13-09-2004. The Commission was represented at the Forum meeting by a delegation led by Dr. Justice A.S. Anand, Chairperson and Smt. S. Jalaja, Joint Secretary, NHRC.

**14.3** Participants from the member institutions of the Asia Pacific Forum (APF) viz., Republic of Korea, Afghanistan, Australia, Fiji, India, Indonesia, Malaysia, Mongolia, Nepal, New Zealand, Palestine, Philippines, Sri Lanka and Thailand, attended the meeting.





## International Cooperation

**14.4** The Forum considered the application from Jordan National Centre for Human Rights and admitted it as an ‘Associate Member’ of the Forum. The overall membership of the Forum, during the period of report, stands at fifteen.

**14.5** A copy of the Concluding Statement of the Ninth Annual Meeting is at **Annexure 15**.

**14.6** The Commission has remitted an amount of US \$100,000 as its contribution to the Asia Pacific Forum during the year 2004-05.

### **C] International Conference of National Human Rights Institutions**

**14.7** The Seventh International Conference of National Human Rights Institutions (ICNI) was held in Seoul, South Korea from 14-17 September, 2004. The Commission was represented at the Conference by a delegation led by Dr. Justice A.S.Anand, Chairperson and Smt. S.Jalaja, Joint Secretary, NHRC.

**14.8** The conference was devoted to the theme of upholding human rights during conflict and while countering terrorism. The Chairperson also made a Statement on ‘Combating Terrorism with focus on Human Rights’ a copy of which is at **Annexure 16**.

**14.9** A copy of the Seoul Declaration adopted at the conclusion of the meeting is at **Annexure 17**.

### **D] Coordination & Cooperation with other APF Member Institutions**

**14.10** The Commission has always endeavoured to share information and expertise with other APF member institutions. The Commission has developed an Internet-based Complaint Management System (CMS), by which it is possible for a complainant to track the progress of his complaint lodged with the Commission through the internet. The Commission has been privileged to share its expertise with the Nepal Human Rights Commission including training of the concerned personnel in handling the software. With the Nepal Commission, the Commission has also imparted training on investigation techniques, by officials from Commission’s Training division. A team from the APF Secretariat and the Jordan National Center for Human Rights had visited the Commission to understand the procedures and functioning of the Commission. Particular interest was evinced in the CMS package during the visit. The Commission is also in the process of sharing the CMS package with the Jordan National Center for Human Rights.



## E] Other Visits, Seminars and Workshops abroad

**14.11** Justice Smt. Sujata V. Manohar, Member visited Nassau, Bahamas and New York, USA during 17-21 May, 2004 to attend the Judicial Colloquium on the application of International Human Rights Law and the review meeting of the World Survey on the Role of Women in Development-2004 respectively organized by the United Nations (Division for the Advancement of Women).

**14.12** Dr. Savita Bhakhry, Senior Research Officer of the Commission visited Sri Lanka to participate in the “Regional Workshop on National Laws to Combat Trafficking in South Asia: Sharing of Research Studies”, held in Colombo, from 25 to 26 May 2004. The main objective of the Regional Workshop was to share the findings of the legal research studies conducted by the UNIFEM in collaboration with research partners/organisations in Bangladesh, India, Nepal and Sri Lanka on the issue of trafficking so as to facilitate the work of Governments, NGOs and civil society in combating trafficking. Its other broad objective was to identify strategies in order to take forward the recommendations and suggestions made in the studies conducted in the aforementioned four countries.

**14.13** Shri Santosh Kumar, Director General Investigation and Shri Ajit Bharihoke, Registrar (Law) visited Dhaka, Bangladesh during 19-21 September, 2004 to attend an International Conference on “Institutional Protection of Human Rights: Role of National Human Rights Institutions”.

**14.14** Ms. Sudha Shrotria, Director, Shri Y.S.R. Murthy, Deputy Secretary (Research) and Shri Sunil Arora, Assistant Registrar (Law) visited Ottawa, Canada from 1-14 August, 2004 to attend Internship Programme organized by the Canadian Human Rights Commission, under the CHRC-NHRC-IGNOU Linkage Project on Disability.

**14.15** Ms. Natasha D’Souza, Information Officer visited Accra, Ghana from 22-24 June, 2004 to participate in the workshop on “Building an Effective Media Communications Programme” organized by the Commission on Human Rights and Administrative Justice (CHRAJ), Ghana.

## F] Exchanges and other Interactions

- A fifteen member group of students from the Asia Pacific Human Rights Information Center, Osaka, Japan visited the Commission on 26-07-2004.
- A delegation of senior officials from the United Kingdom visited the Commission on 13-07-2004.



## International Cooperation

- The delegation of EU troika, led by H.E. Mr. Eric F.Ch. Niehe, Ambassador of the Netherlands accompanied by H.E. Paul Steinmetz, Ambassador of Luxembourg and H.E. Fransisco Da Camara Gomes, Ambassador of the European Commission visited the Commission 21-09-2004.
- A group of member of European Parliament from the South Asia Delegation (SAD) in the European Parliament visited the Commission on 02-11-2004.
- H.E. Dr. Kheir A. Latif, Ambassador of the Arab Republic of Egypt visited the Commission on 16-11-2004.
- A 11 member delegation from the Iranian Ministry of Education visited the Commission on 20-01-2005.
- A delegation headed by H.E. Mr. Abdulrahim Mohamed Hussein, Interior Minister of Sudan visited the Commission on 27-01-2005.
- Mr. Loy, Minister (Human Rights, German Embassy) visited the Commission 01-02-2005.
- H.E. Dr. Boutros Ghali, Former Secretary General of the United Nations and President, Human Rights Commission, Egypt accompanied by Dr. Kheir Eldin A. Latif, Ambassador of Egypt in India visited the Commission on 08-02-2005 for one to one meeting with the Chairperson. This was then followed by an interaction with members and senior officials of the Commission.
- Mr. Saleh Al-Zubi, Executive Director, Jordan National Centre for Human Rights visited the Commission from 7-9 February, 2005, to understand the procedures being followed in the Commission.
- A delegation from the German Parliament's German-Indian Friendship Group visited the Commission on 10-02-2005.





# Non-Governmental Organizations

**15.1** Encouraging the efforts of the non-governmental organizations (NGOs) working in the field of human rights is a statutory responsibility of the Commission under Section 12(i) of The Protection of Human Rights Act, 1993. The promotion and protection of human rights cannot gather momentum without the fullest cooperation between the Commission and the NGOs.

**15.2** In order to strengthen the relationship with NGOs, the Commission has been holding a series of consultations with NGOs and voluntary organizations engaged with the promotion and protection of human rights, on a regional basis. This has proven to be of considerable value both to the Commission and to the NGOs, reinforcing their understanding of each other and their capacity to work together in the furtherance of rights across the country. In the past, regional consultations with NGOs for the northern region have been organized at Delhi, for the eastern region at Bhubaneshwar; for the southern region in Chennai; for the western region at Pune; and for the north-eastern region at Guwahati.

**15.3** The Commission provides financial assistance to credible NGOs for organizing seminars, workshops, etc. associated with spreading human rights awareness amongst the people. During the period of report, the following organization were given financial assistance by the Commission for conducting workshops, seminars, etc. for spreading human rights awareness:-

- Arshbharath Bahujana Bodha Valkarana Grama Vikasana Samiti, Dt. Waynad, Kerala organized awareness camps on human rights in the District for which an amount of Rs.37,950/-was sanctioned.

## Non-Governmental Organizations

- Center for Social Justice, Ahmedabad imparted training to selected prisoners lodged in jails in Gujarat for which an amount of Rs.79,000/- was sanctioned.
- SETU, Mumbai organized awareness camps on Child Labour in selected Districts of Maharashtra for which an amount of Rs.70,000/- was sanctioned.
- Press Club of Bihar, Patna organized a one day seminar cum workshop on the “Role of Media in the Promotion and Protection of human rights in Bihar” for which an amount of Rs.1,00,000/- was sanctioned.
- Society for the Cause of Justice, Secunderabad organized a seminar on “Human Rights and the Administration of Criminal Justice” for which an amount of Rs.45,000/- was sanctioned.
- The Indian Institute of Public Administration, Orissa Branch organized a function to observe Human Rights Day 2004, for which an amount of Rs.35,000/- was sanctioned.

**15.4** The Commission continues to receive complaints relating to serious violations of human rights from NGOs, which act as the eyes and ears of the Commission in the remotest corners of the country.

**15.5** A Core Group of NGOs has been constituted under section 12(i) of the Protection of Human Rights Act, 1993, to encourage the efforts of the Non-Governmental Organizations (NGOs) and institutions engaged in the field of human rights. The Core Group provides the Commission with crucial inputs regarding the hopes, aspirations and expectations of the civil society from the Commission.

**15.6** The Commission has worked closely with NGOs in respect of the specific issues which had been identified in discussions between the Core Group and the Commission. These included: systemic reforms in police and jail administration; matters relating to custodial institutions of various kinds, including women’s homes, children’s homes and the like; the rights of persons with disabilities, especially women and those belonging to disadvantaged sections of society; issues relating to Dalits; incidents of communalism-related violations of human rights; and the human rights of unorganized workers in both urban and rural areas.



# State Human Rights Commissions

**16.1** State Human Rights Commissions have been set up in 15<sup>1</sup> States viz., the States of Andhra Pradesh, Assam, Chhattisgarh, Himachal Pradesh, Jammu & Kashmir, Kerala, Madhya Pradesh, Maharashtra, Manipur, Orissa, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal. The Commission would like to reiterate its view that the 'better protection of human rights' can be ensured if all the States set up Human Rights Commission. The Commission also emphasizes that the State Human Rights Commission which have already been set up or are proposed to be set up should be in compliance with the 'Paris Principles'.

**16.2** The Commission, on its part, has endeavoured to assist and guide the State Commissions in whatever manner possible, whenever requests for such assistance or guidance has been sought. The strengthening of the State Commissions, is an important agenda in the Commission's activities. With this in view, the Commission has taken the initiative to have annual interactions with all the State Human Rights Commissions, where mutual discussions take place.

**16.3** The first such annual meeting was held on the 30-01-2004, where the agenda included coordination and sharing of information between the SHRCs and the Commission; training, awareness building and substantive human rights issues. Taking forward the initiative, the second meeting was convened on the 13-05-2005. Apart from the various issues of concern discussed in the meeting, the meeting concluded with the adoption of the following Resolution:-

---

<sup>1</sup>At the time of writing the report, one more State, Karnataka, has also constituted State Human Rights Commission.

## State Human Rights Commissions

“The National Human Rights Commission and the State Human Rights Commissions present hereby unanimously resolve to urge the State Governments to:-

- a) Setup, on priority, State Human Rights Commissions where the same do not exist.
- b) Where, there are State Human Rights Commissions or, are in the process of being setup, it be ensured that they are structurally and financially independent as envisaged in and, fully confirming to, the principles relating to the status of national institutions (the “Paris Principles”) which were endorsed by the UN General Assembly Resolution 48/134 of 20-12-1993.

The National and State Commissions also reiterate and remind the Governments, both, at the Centre and in the States, that the primary obligation towards the protection of human rights is that of the State and that the national human rights institutions are for ‘better protection of human rights’.

**16.4** The Commission places great importance to these interactions especially keeping in view the social, cultural and linguistic diversity that comprises our society. Institutionalizing the mechanism of these annual interactions is one way the Commission hopes to keep up the process of dialogue. It is thus, all the more important that all the states expeditiously set up human rights Commissions.

**16.5** The Commission has always endeavoured to share information and expertise with SHRCs. The Commission has developed an Internet based Complaint Management System (CMS), by which it is possible for a complainant to track the progress of his complaint lodged with the Commission through the internet. The Commission has been privileged to share its expertise, during the year with the State Human Rights Commission of Maharashtra and Rajasthan.

**16.6** It has been more than 12 years since the Protection of Human Rights Act, 1993, came into force. The Commission has been deeply concerned towards the non-fulfillment of the promise of Section 30 of the Protection of Human Rights Act, 1993, which provides for speedy trial of offences arising out of violation of human rights by designating, in each district, a Court of Session to be a Human Rights Court to try the offences. It is a matter of great regret that even after so many years, there has been lack of clarity as to what offences, precisely, can be classified as human rights offences. For its part, the Commission has proposed a precise amendment to Section 30 of the Act, which may be seen in Annexure-I of the annual report for 2001-02.





# Review of Laws, Implementation of Treaties and other International Instruments on Human Rights

---

## A] Review of Laws

### 1] Child Marriage Restraint Act, 1929

**17.1** It is a well known fact that child marriages are still prevalent in certain parts of the country, especially in Rajasthan, Chhattisgarh, Madhya Pradesh, Jharkhand, Bihar and Uttar Pradesh. It is on *Akshya Tritiya*, popularly known as *Akha Teej*, when hundreds of child marriages are openly performed despite the fact that the Child Marriage Restraint Act was enacted in 1929 and later amended in 1978. Given the ramifications it has on the rights of children, particularly girl children, the Commission, since its inception, has continued to focus its attention towards eradication of this problem. In its preceding annual reports, the Commission had reported that the draft Child Marriage Restraint Bill recommending substantial changes in the Child Marriage Restraint Act, 1929 was sent to the Department of Women and Child Development, Ministry of Human Resource Development, Government of India for consideration. A copy of the draft Bill was also forwarded for information to the Ministry of Home Affairs and Ministry of Law and Justice, Government of India. The draft Bill was also sent to all the State Governments and Union Territories inviting suggestions/objections, if any.

**17.2** In order to discuss the amendments/recommendations made in the draft Bill, the Commission convened a meeting on 22-02-2005 under the chairmanship of Dr. Justice A.S. Anand, Chairperson of the Commission. Meanwhile, the Legislative Department, Ministry of Law and Justice,

## A Review of Laws

Government of India informed that they had introduced a new Bill entitled 'The Prevention of Child Marriage Bill, 2004' in the Rajya Sabha on 20-12-2004. This Bill, the Legislative Department stated, would repeal the Child Marriage Restraint Act, 1929.

**17.3** The meeting appreciated the Legislative Department for their efforts in introducing the new Bill in the Rajya Sabha as well as for taking into consideration almost all the amendments/recommendations proposed by the Commission in the new Bill. The meeting was attended, *inter alia* by the Secretary and the Joint Secretary, Legislative Department, Ministry of Law and Justice; the Joint Secretary, Department of Women and Child Development, Ministry of Human Resource Development; the Joint Secretary and the Senior Research Officer, National Commission for Women and Director (Human Rights), Ministry of Home Affairs. In this meeting, a general discussion also took place on the new Bill introduced in Parliament and the provisions incorporated therein. After a detailed discussion, it was pointed out that –

- there was need to bring the definition of child in the proposed Bill in consonance with the definition prescribed for the child in the 'Convention on the Rights of the Child' that had been ratified by the Government of India;
- there was need to make a statutory provision on compulsory registration of marriages as this would deter communities from indulging in child marriages; and
- keeping in view the best interest of the child, there was need to modify Section 14 of the proposed Bill.

**17.4** Later, in response to an advertisement in the National Herald dated 28-02-2005 inviting memoranda containing views of individuals/organizations, interested in the "Prevention of Child Marriage Bill, 2004", the Commission wrote a letter to the Secretary, Legislative Department in March 2005 requesting that the above three points be referred to the Department related to Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice for consideration so that necessary amendments could be further made in the proposed Bill.

**17.5** As one of the suggestions that emanated from the discussion held on 22-02-2005 pertained to organization of mass scale awareness programmes/campaigns in order to educate and sensitize people about the demerits of child marriages, the Chairperson wrote to the Minister of Human Resource Development, Government of India and the Chief Ministers/ Administrators of all States/Union Territories. Similarly, the Secretary General of the Commission also wrote to the Secretaries, Ministry of Panchayati Raj and the Department of Women and Child Development as well as to the Chief Secretaries and Secretaries of the Department of Women and Child Development/Social Welfare of all States and Union Territories. Copies of the letters

addressed by the Chairperson and Secretary General of the Commission are at **Annexure 18** and **Annexure 19** respectively.

**17.6** Till such time, the Child Marriage Restraint Act, 1929 is repealed, the Commission hopes that all the State Governments and Union Territories would continue to organize awareness campaigns, on a large scale, on the demerits of child marriage in order to educate people at large and save the girl children from falling prey to the age old custom and evil practice of child marriage.

## 2] Protection from Domestic Violence Bill, 2002

**17.7** There is no denial of the fact that domestic violence is a universal phenomenon that cuts across culture, religion, class and ethnicity. Despite this widespread prevalence, such violence is not customarily acknowledged and has remained invisible. The social construction of the divide between the public and private domain underlies the hidden nature of domestic violence against women. Legal jurisprudence has historically considered the domain of the house to be within the control and unquestionable authority of the male head of household. Thus, acts of violence against members of the household, whether wife or child, have generally been perceived as discipline, essential for maintaining the rule of authority within the family.

**17.8** In the last two decades, apart from the Indian women's movement that has contributed largely to a growing public awareness of violence against women, international conventions also have been equally explicit in acknowledging the State's responsibility for human rights violations by private actors in both the public and private spheres. The Vienna Accord of 1993 and the Beijing Platform of 1995 together crystallized the principle that women's rights are human rights.

**17.9** Keeping this in view, the Department of Women and Child Development in consultation with the Ministry of Law, Justice and Company Affairs drafted a Bill on the Protection from Domestic Violence that was also introduced in the Parliament on 8-03-2002. As reported in the preceding annual report, the said Bill was referred to the Standing Committee of the Parliament pertaining to the Ministry of Human Resource Development for further examination and for suggesting changes, if any, required in the draft Bill. After the Standing Committee submitted its report, the Department of Women and Child Development sent a copy of the draft Bill, along with a copy of the report of the Standing Committee, to the Commission for its comments. Both these documents were carefully examined by the Commission and comments/modifications suggested by it were later forwarded to the Department of Women and Child Development. The comments/modifications suggested by the Commission have already been reported by it in its annual report for the year 2002-03.

**17.10** In the Memorandum of Action Taken on the Annual Report of National Human Rights Commission for the year 2002-03, the Ministry of Home Affairs has stated that the aforesaid

## A Review of Laws

draft Bill was circulated by the Department of Women and Child Development to all the concerned Ministries/Departments for their comments and views. Further, it added that the Bill would be finalized after the views are received.

### 3] Protection of Human Rights Act, 1993

**17.11** The Commission had referred a proposal to the Government, in March, 2000, for amendments to the statute. As reiterated, over the years, the Commission is of the considered view that the amendments, as proposed by the Commission, are necessary to ensure the independence and effectiveness of the Commission in the fulfillment of its mandate. Despite the long passage of time, no progress has been made despite efforts made to expedite the amendments.<sup>1</sup>

### 4] Food Safety and Standard Bill, 2005

**17.12** The Commission expressed its concern regarding the reported repeal of the Infant Milk Substitute, Feeding Bottle and Infant Foods Act (IMS Act.) as proposed by its inclusion in Schedule one of the Food Safety and Standard Bill 2005.

**17.13** The Hon'ble Chairperson in his letter dated 15-03-2005 to the Minister of State, Ministry of Food Processing Industries conveyed the concern of the Commission in this regard. In particular, he pointed out that the IMS Act is not a routine food law, nor does it have anything in common with the other Acts in the repeal list. It is a special Act to protect, promote and support breastfeeding and it focuses on marketing practices and other practices which interfere with breastfeeding, and thereby jeopardize the well being of baby and mother. The Commission observed that the protection of breastfeeding is vital for saving the lives of millions of children in India every year. The Commission urged to keep the above facts in view and to take appropriate action in order to protect the "best interests" of children—the IMS Act should not be repealed.

## B] Implementation of Treaties and other International Instruments

### 1] Convention Against Torture

**17.14** Torture and other cruel, inhuman or degrading treatment or punishment are particularly serious violation of human rights and, as such, are strictly condemned by International Law. Based upon the recognition that such practices are outlawed, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention) strengthens

---

<sup>1</sup> At the time of writing this report, the Commission has come across the copy of the Protection of Human Rights Act (Amendment) Bill, 2005, which is proposed to be introduced by the Government in the Rajya Sabha. The amendments proposed in the Bill are under examination in the Commission. However, it is noted that the Bill does not reflect the amendments as proposed by the Commission.

the existing prohibition by a number of supporting measures. The Right against Torture has been judicially recognized by the Apex court as a Fundamental Right.

**17.15** The Commission has been requesting the Government of India to ratify the ‘Convention against Torture and other forms of Cruel Inhuman and Degrading Punishment or Treatment’, which was signed by India on 14-10-1997 on the recommendation of the Commission. The Convention entered into force on 26-06-1987 (Article 27).

**17.16** In October, 2003 the Government of India informed the Commission that the draft cabinet note for ratification of convention against torture is under examination. The Commission has been reminding the Government to expedite action regarding this.

**17.17** The Ministry of Home Affairs has in its letter dated 10-09-2005 informed that the Ministry of External Affairs has constituted an Inter-Ministerial Group under the Chairmanship of AS(UN), comprising of representatives from the MHA, Ministry of Law and L&T Division of the MEA to go into the question of early ratification and steps required for this purpose. The MHA has informed that the action on ratification of the Convention could be taken only after the receipt of the recommendations of the group.

**17.18** The Commission would therefore, again like to reiterate for early ratification of the UN Convention against Torture.

## 2] The 1977 Protocol additional to the Geneva Convention of 1949

**17.19** India ratified the four Geneva Conventions of 1949 in 1959 and enacted the Indian Geneva Conventions Act in 1960 incorporating them in the Indian legal system. The four Geneva Conventions of 1949 were considerably supplemented by two additional protocols adopted in 1977. Protocol I contains new rules on international armed conflicts while Protocol II develops the rules on international humanitarian law governing non-international armed conflicts. These protocols contain elaborate norms and provisions concerning protection of human rights in times of armed conflicts – both international as well as national.

**17.20** The Ministry of External Affairs has, vide letter dated 29-12-2003, stated that “... all matters relating to International Humanitarian Law (IHL) including Geneva Conventions were extensively discussed during the recent Conference of the Parties to the Red Cross Movement and the Geneva Conventions in Geneva. The changing nature of armed conflict in the contemporary period (Afghanistan, Iraq, conflicts in Africa, etc.), their impact on IHL and the Geneva Conventions and the related issues are under review at the international level. In the light of these developments, it is felt that the concerned Ministries and Agencies of the Government including Ministry of Defence, Ministry of Home Affairs, Ministry of External Affairs and Ministry of Law should take stock of the current realities and of our response.”

## A Review of Laws

**17.21** The Commission perused the reply received from the Ministry of External Affairs and desired to know from the Ministry the specific responses on its part regarding signing of the two additional protocols to the Geneva Convention 1949.

**17.22** The Ministry of External Affairs has further informed that a thorough examination of substantive aspects of these protocols is needed and their Ministry is consulting the concerned agencies. In this regard Inter-Ministerial Meeting was convened by MEA on 22-07-2004. The Ministry of Home Affairs and the Ministry of Defence were requested to study the subject.

**17.23** The issue of accession to the Geneva Convention was discussed in the meeting of the Commission and the Commission has desired that issue should be addressed after a joint meeting of MEA, MHA and Ministry of Defence.

**17.24** The Ministry of Home Affairs in the Action Taken Report on the Annual Report of the Commission for the year 2002-2003 has mentioned that the consultation process is going on in the Government of India in order to take stock of the current realities.

### 3] Optional Protocols to the Convention on the Rights of the Child

**17.25** Protection and promotion of the rights of children has always been a central issue on the agenda of the National Human Rights Commission. India is a home to more than four hundred million children and these children undoubtedly are the supreme asset of the nation. Recognizing the rights of children and our duties towards them, the Constitution of India, first and foremost, has protected their rights. Having ratified the UN Convention on the Rights of the Child, the Government of India has committed itself *inter alia* towards all round development of children, including reducing inequalities among them; protecting them from violence and exploitation; and creating an overall environment that will nurture them to bloom into robust citizens who will be the pride of the nation.

**17.26** In the Commission's earlier annual reports, the Commission had recommended that the Government of India examine and become a party to Optional Protocols 1 and 2 to the Convention on the Rights of the Child, dealing with the involvement of children in armed conflict and the sale of children, child prostitution and child pornography. The Memorandum of Action Taken on the Annual Report of the National Human Rights Commission for the year 2002-03 also mentions that the Government has approved the signing and ratification of the aforesaid two Optional Protocols to the Convention on the Rights of the Child. The Ministry of External Affairs has communicated to the Commission that the Government of India had signed the above two Optional Protocols on 15-11-2004. These, however, are yet to be ratified. The Commission trusts that the Government of India would ratify the two Optional Protocols to the Convention on the Rights of the Child in the best interest of our children.





# Administration and Logistic Support

**18.1** The total sanctioned strength of the Commission remained at the level of 341 posts. As of 31-03-2005, 326 officers and staff were in position. Under Section 32 of the Protection of Human Rights Act, 1993, the Commission is granted financial assistance by way of grants-in-aid after due appropriation made in this behalf by the Parliament. During 2004-2005 the Commission received Rs.1070 lakhs under Non-plan funding and Rs.188 lakhs under Plan funding as grants-in-aid. The actual expenditure during the year under Non-plan was Rs.1063.51 lakhs and Rs.188 lakhs under Plan funding.

## A] Special Rapporteurs

**18.2** The Commission has a scheme for engaging of eminent persons as Special Rapporteurs to function as representatives of NHRC for the concerned State in the area of civil and political rights, on human rights violations and to provide guidance to citizens regarding the provisions of the Protection of Human Rights Act, 1993 for seeking redressal from the Commission. The Special Rapporteurs are drawn from among eminent persons who have had meritorious record of service and have retired from senior positions, both in the Indian Administrative Service and in the Indian Police Service with a commitment for human rights concerns.

**18.3** During the year 2004-05, Shri Chaman Lal continued to serve as Special Rapporteur for issues such as Custodial Justice, Prison Reforms, Bonded Labour, Child Labour, monitoring of the functioning of the Agra Protective Home and the three Mental hospitals in Agra, Gwalior and Ranchi and monitoring cyclone reconstruction work in Orissa.





## Administration and Logistic Support

**18.4** Shri K.R. Venugopal, as the Special Rapporteur for the states of Karnataka, Andhra Pradesh, Tamil Nadu, Kerala, Andhra Pradesh and UT of Pondicherry, continued to look after the issue of bonded labour. He also participated in several conferences and workshops that aimed at contributing to the protection and enhancement of human rights.

**18.5** Shri P.G.J. Nampoothiri has continued to serve as Special Rapporteur to primarily look after the matters relating to Civil and Political Rights in the State of Gujarat such as Gujarat Earthquake and events that occurred in Gujarat after the Godhra tragedy. He continued to assist the Commission in coordinating with the State Government and reporting on all matters relating to the communal disturbance in Gujarat on the directions of the Commission.

**18.6** Shri A.B.Tripathy, also continued to serve as Special Rapporteur to look after the issues on Custodial Justice, Civil and Political Rights in the States of Orissa and Jharkhand.

**18.7** Ms. Anuradha Mohit has continued to serve as Special Rapporteur on issues relating to Disability and is looking after the issues relating to Disability. Ms Mohit has also been nominated by the International Coordinating Committee of human rights institutions (ICC), to represent the national human rights institutions in the deliberations on the proposed international convention on disability.

### B] Core Groups

**18.8** In its endeavour to further enhance its functioning and the need that arises on occasions for getting expert advice on complex technical issues, the Commission has been establishing Core Groups of experts on selected subjects. These Core Groups have been rendering selfless service to the cause of human rights, as the members who are renowned names in their respective fields have been sparing their valuable time and giving their opinion on the issues referred to them. That, these eminent personalities give their advice *probono*, is in the Commission's view a reflection of their commitment and concern to human rights issues.

**18.9** Some of the important Core Groups that have been set up by the Commission are indicated below: -

- A Core Group on Rehabilitation of Long Stay Mentally Ill Patients Cured of their Illness has been set up under the chairmanship of a Member of the Commission;
- A Core Group has been set up on the Right to Food to advise the Commission on issues relating to Right to food in the context of India;
- An Expert Group has been set up on Refugees by the Commission with a view to have an expert opinion on the subject before formulating its views on the Model Law on Refugees;



## Administration and Logistic Support

- A Core Group has been set up on Disability related issues with a view to consider the problems faced by the disabled people in the country from a human rights perspective and to enable the Commission to have regular consultation with experts in the field;
- An Expert Group has been set up to go into the issue of unsafe drugs and medical devices which have not been addressed so far and to examine the effectiveness of licensing and monitoring systems;
- A Core Group of lawyers has been set up to enable the Commission to draw upon the expertise and experience of eminent lawyers in matters having legal implications.

### C] Use of Official Language

**18.10** The Official Language section is responsible for translation of the monthly newsletter, annual report and budget documents of the Commission into Hindi. The Section also translated about 2000 complaints/reports received in Hindi and other regional languages, from different States, to English. A bilingual English-Hindi Glossary pertaining to Human Rights terms was published and released during this period. Compilation of an Hindi-English Glossary of Human Rights terms was undertaken as it was felt that most literature on Human Rights is in English and bringing out a glossary would address the felt need for authentic Hindi equivalents of human rights terms. This would be of great help to all those who are engaged in the Human rights field. The work of preparation of Hindi-English Glossary pertaining to Human Rights is under process. To create awareness among the masses about the issues related to human rights a Hindi Journal “*Nai Dishayain*” was published.

**18.11** The Commission took the initiative of getting three United Nations publications translated in Hindi. Two other publications relating to Human Rights norms were also translated in Hindi during the year. The details of the publications are:-

- **United Nations Publications Translated**
  - Human Rights – A compilation of International Instruments – Volume-I (1<sup>st</sup> Part), Universal Instruments
  - Human Rights – A compilation of International Instruments – (2<sup>nd</sup> Part), Universal Instruments
  - Human Rights – A compilation of International Instruments – Volume-II, Regional Instruments
- **Other Publications**
  - National Conference on Human Rights and HIV/AIDS and
  - Report on Prevention of atrocities against Scheduled Castes were completed during the period of this report.



### D] Library

**18.12** The Library of the Commission is meant for research and reference purposes, primarily by those working in the Commission. It is increasingly, however, also being used by Interns, Research scholars, and others working in the field of human rights. The staff of the library maintain liaison with almost all of the libraries in New Delhi through inter-library loan facilities and also institutional membership of DELNET and British Council Library. At present, the library has 11,147 books, 35 journals and subscribes to 24 magazines and 25 newspapers (including 4 regional newspapers). The library has an extensive collection of books, journals and reports covering a wide spectrum of Human Rights related subjects, Supreme Court Judgements and Digests. Project reports on different topics prepared by Interns are also available in the library. A list of books added in the library is also compiled and circulated to the officials from time to time. During the year 2004-2005, the library added 922 new books on Human Rights, or having relevance to human rights to the titles that it had acquired in earlier years. The library is also equipped with SCC online and Library Management System (Software package developed by the Computer Cell, NIC).

### E] Manavadhikar Bhavan

**18.13** The Commission has been desirous of having its own office building commensurate with its status as an independent and autonomous National Human Rights Institution. Towards this end, the Commission would now have its own office building, 'Manavadhikar Bhavan' constructed in the space allotted in Block 'C' of the office complex premises in INA area. A sum of Rs. 2.88 crores have so far been released to the Ministry of Urban Development/CPW towards construction of the building from Plan funds. In addition, a sum of Rs. 62 lakhs have also been released to them from Non-Plan funds for the cost of land and construction of boundary wall. Although it is more than two years since a block has been allotted to NHRC for construction of the Bhavan, the Ministry of Urban Development is yet to obtain necessary clearances from various authorities thereby leading to delay in commencement of the construction work. The Commission has been expressing its concern about the undue delay in the starting of the construction of the building. The Commission urges the Ministry of Urban Development to take up the construction of the building without any further delay.



# Summary of Principal Recommendations and Observations

---

## General

**19.1** The Annual Reports of the Commission are essential sources of information on the human rights situation in the country. The Commission, therefore, expresses its deep concern over the delay in placing the Annual Reports before the Parliament. The delay in placing the Report not only results in not getting a feedback about the action taken by the Government, but also delays in timely and comprehensive information on the work and concerns of the Commission to the Parliament and an opportunity to discuss its contents at the earliest and in most appropriate time. The Commission urges the Central government to expeditiously place the Annual report before Parliament, along with the Memorandum of action taken by the Government.

## Right to Life and Civil Liberties

**19.2** The Commission is of the firm view that though nothing justifies terrorism, far too many people live in conditions where it can breed. It is common knowledge that systemic human rights violations for long periods of time are often the root cause of conflicts and terrorism. It cannot be denied that disillusionment with a society where there is exploitation and massive inequalities and whose systems fail to provide any hope for justice are fertile breeding grounds for terrorism, which more often than not thrives in environments where human rights and more particularly Economic, Social and Cultural Rights are denied by the State and Political rights are violated with impunity both by the State and non-State actors. Any worthwhile strategy to resolve conflicts and terrorism



## Summary of Principal Recommendations and Observations

will have to ensure enjoyment of the full range of Economic, Social and Cultural Rights. **(Para 3.12)**

**19.3** Violation of Human Rights of innocent citizens at the hands of terrorists is a reality. There is, therefore, need to wage a relentless war against terrorism. However, while fighting the war against terrorism relentlessly, the State cannot be permitted to be either selective in its approach or to go over board and in effect declare a war on the civil liberties of people because the rationale of anti-terrorism measures is aimed at protecting human rights and democracy. Counter terrorism measures should, therefore, not undermine democratic values or subvert the rule of law. **(Para 3.16)**

**19.4** The Commission continued to monitor closely the situation relating to human rights in North-Eastern region. The Commission received a complaint from the Director, Asian Centre for Human Rights, New Delhi alleging killing of one civilian and injury to four others including two Manipur Rifles Personnel during an attack by unidentified militants upon the security forces at Yuremban Nagasepam, Imphal West District of Manipur on 10-01-2005. Response to the notice issued to the Chief Secretary and Director General of Police, Manipur was, however, still awaited. **(Para 3.21)**

**19.5** The Commission, with a view to curb the tendency of the State agencies to conceal the truth or underplay the accountability of those involved for the death in custody due to custodial violence or negligence, proposed an amendment in section 36(1) of the Protection of Human Rights Act, 1993 for obviating the efforts made by the State agencies to block the jurisdiction of the Commission by asserting that another Commission has taken cognizance of the custodial death prior to the National Human Rights Commission. The amendment is, however, still under consideration with the central Government at the end of the year. The Commission impresses upon the Central Government to expedite the aforesaid amendment as proposed. **(Para 3.26)**

### Custodial Deaths

**19.6** As regards the deaths which occurred in the police custody in the course of the year 2004-2005, the report indicated that there was a noticeable decline in such cases vis-à-vis the previous year in the States of Bihar, Gujarat, Maharashtra, Uttar Pradesh, Assam, Rajasthan, Tamil Nadu and West Bengal. There was, however, an increase in the deaths in police custody in the States of Andhra Pradesh, Karnataka, Kerala, Orissa, Delhi, Jharkhand and Uttaranchal. Similarly, there was a decline in deaths in judicial custody in the States of Assam, Maharashtra, Orissa, Punjab, Tamil Nadu and Chattisgarh but an increase in such deaths in the States of Andhra Pradesh, Bihar, Gujarat, Himachal Pradesh, Madhya Pradesh, Uttar Pradesh, West Bengal, Delhi and Jharkhand. **(Para 3.28)**



## Summary of Principal Recommendations and Observations

### Jail Reforms

**19.7** With regard to the jail reforms, the Commission would urge the concerned authorities to initiate systemic changes and monitor the implementation of the recommendations as listed in **Para 3.54**

### Complaints Before the Commission

**19.8** The Commission would like to reiterate that it is of utmost importance that both the Central and State Governments respond promptly to requests for reports made by the Commission. Further, they need to act without delay on its varied recommendations in respect of individual cases. The Protection of Human Rights Act 1993 is based on the premise that the fullest co-operation will be extended to the Commission by both the Central and State Governments. It is therefore, incumbent on them to assist the Commission in its efforts to dispose of cases promptly and efficiently, in order to ensure that the better protection of human rights, as envisaged under the Act, is achieved. **(Para 4.8).**

**19.9** In the course of the year 2004-2005, the Commission has come across a large number of cases complaining of avoidance on the part of the police station officers to register complaints of a cognizable offence or a tendency to minimise the gravity of the offence while registering a case. This indeed is a violation of statutory obligations imposed on the police station incharge by the provisions of Chapter XII, Code of Criminal Procedure, in particular, section 154 CrPC. **(Para 4.9)**

**19.10** Such deviant act on the part of the police officers, in the opinion of the Commission, does have an adverse effect on Criminal Justice Delivery System. Accordingly, it is recommended that Central Government, all State Governments and all the Governments of UTs should issue necessary instructions to all the concerned police officers to meticulously adhere to provision of section 154 CrPC in the matter relating to registration of cases. **(Para 4.10).**

**19.11** The Commission has been making certain recommendations through its annual reports for strengthening the Investigation Division by sanctioning additional posts and bringing about changes in the conditions of service of its personnel with a view to facilitate the appointment of well qualified and trained man power. The Commission is still waiting for the Government to fulfil its assurance. **(Para 4.19)**

### Human Rights of the Mentally ill Prisoners

**19.12** The illustrative case of mentally challenged under-trial prisoner, Charanjit Singh—It may be seen that while dealing with his matter in the writ petition filed at the instance of the Commission, Hon'ble High Court of Delhi requested the Commission to formulate some guidelines to mitigate the plight of mentally challenged under-trial prisoners. The Commission,



## Summary of Principal Recommendations and Observations

accordingly, formulated the guidelines in that regard and submitted to the court for its consideration. The High Court of Delhi appreciated those guidelines and while disposing of the writ petition, directed the Government of NCT of Delhi as well as the judicial academy to look into those guidelines and formulate a comprehensive policy relating to under-trial mentally challenged detenués / prisoners. The guidelines are salutary in nature. The Commission, therefore, recommends to the Central Government to look into those guidelines and frame a comprehensive policy in relation to mentally challenged under-trial prisoners. The detailed guidelines are given in **Para 4.184**.

### Rights of the Disabled

**19.13** Despite international and domestic actions taken, however, the physically and mentally challenged persons in our country continue to face several obstacles in leading their life with dignity. During the reporting period a questionnaire was circulated to the ministries and departments in Government of India, States and UT Administrations to ascertain the number of schemes and affirmative action programmes introduced by them to guarantee right to health, housing, assistive devices, education, vocational training, employment and social security benefits. The Commission would urge the Governments and the various agencies under it to urgently comply with the responsibilities enunciated in the questionnaire. (**Para 5.15**)

**19.14** It seems disability continues to be treated as a unidimensional subject with major responsibilities being shared by the Ministry of Social Justice and Empowerment and its counter parts in the States. The relative indifference of a number of ministries and departments is a major obstacle in the overall development and mainstreaming of disability. Likewise the function of the Central and the State Coordination Committees is far from satisfactory. Disabilities Act in Sections 8 (2)(b) & (c) and in Sections 18(2) (b) & (c), requires the Central and the State Coordination Committees to develop a National/State Policy to address issues faced by persons with disabilities and advise the Government on the formulation of policies, programmes, legislation and projects with respect to disability. It is a pity that even after ten years of the enactment of the Disabilities Act, the mechanisms responsible to evolve a disability policy have failed to do so. (**Para 5.16**).

**19.15** In the previous Reports the Commission has already pointed out some shortcomings from a disability rights perspective in the Hindu Marriage Act of 1955, the Hindu Adoption and Maintenance Act of 1956, and the Indian Contract Act of 1872. During the reporting period, yet another deficiency in the Hindu Marriage Act surfaced when a media report, confirmed that a senior psychiatrist at the Institute of Mental Institute and Hospital, Agra, on the payment of bribes by husbands, fabricated at least 10 certificates of mental illness of their wives, for securing divorce who were otherwise perfectly normal. Taking in view the gravity of the offences and the ease with which they had been committed, the Commission issued notices to the Home Secretary,





## Summary of Principal Recommendations and Observations

Uttar Pradesh Government, and the Director of the Institute of Mental Health and Hospital, Agra. **(Para 5.27)**

**19.16** In order to suspend abusive use of the Hindu Marriage Act and other similar legislations it has become almost urgent for the Government of India to consider systematic review of all the laws including administrative rules, regulations and instructions. **(Para 5.28)**

**19.17** In view of the treaty obligations and the clarification offered by international monitoring bodies, the GOI must modify outmoded provisions of the Hindu Marriage Act and the Hindu Adoption and Maintenance Act must be modified in light of the treaty norms. **(Para 5.31)**

**19.18** The Commission, in order to build capacity for better protection of rights of persons with disability, launched a project in partnership with the Canadian Human Rights Commission (CHRC) and the Indira Gandhi National Open University (IGNOU) in 2003. As a culmination of the project, the Commission held a National Conference on Disability, in June, 2005. Detailed recommendations have been formulated for action by the various authorities which have been brought out in **Para 5.34**.

### Food Security

**19.19** Death by starvation constitutes the gravest violation of the Human Rights of an individual. That is the reason why the Commission has always taken serious note of starvation deaths occurring anywhere in the country. The Commission has also been concerned with the general conditions of hunger, destitution and poverty that are responsible for suicides, particularly, by the farmers and other forms of physical and psychological degradation that arises on account of lack of freedom from hunger and denial of right to food. **(Para 6.1)**

**19.20** In view of the significance of freedom from hunger, the Commission felt the need to formulate a program of action for making the Right to Food a reality in the country. The Commission approved the constitution of a Core Group on the Right to Food under the chairmanship of the Hon'ble Chairperson. The issues that emerged from the meeting of experts have been recorded in **Para 6.5**.

**19.21** On the issue of suicides by farmers in the State of Andhra Pradesh, a detailed report was prepared by the Special Rapporteur of the Commission. The gist of the recommendations are recorded in detail in **Para 6.12**.

**19.22** In its response, the state government has informed that it has decided to take certain "short term" and "long term" measures to deal with the situation. **(Para 6.13)**



## Summary of Principal Recommendations and Observations

### Right to Health

**19.23** The Commission is deeply concerned about the prevailing unsatisfactory system of emergency medical care in the country, which results in loss of many lives. The expert group reviewed the existing scenario and Centralized Accident and Trauma Services (CATS). While pointing out a number of deficiencies in the existing Emergency Medical Services (EMS) of the country, it has suggested a number of short-term as well as long-term measures to address the lacunae. **(Para 7.8 and 7.9)**

**19.24** These recommendations have already been referred to the Health Secretary, the Director General of Health Services as well as all the State governments (Para 7.10). While encouraging responses have been received from some of the states, the Commission would like to impress the need for full compliance from all the states, on a matter which is undoubtedly of vital importance impinging on the Right to life itself.

### Public Hearings on Right to Health Care

**19.25** In Chapter 7 of the Report, details of the initiatives undertaken by the Commission on health care have been indicated. Of special significance was the series of regional public hearings held which culminated in the national public hearing. The National Public Hearing was held in New Delhi on 16<sup>th</sup> – 17<sup>th</sup> December, 2004 in which the National Action Plan to Operationalize the Right to Health Care was proposed. **(Para 7.14)**

**19.26** Detailed Recommendations on right to health care were made in the National Action Plan to the Ministry of Health & Family Welfare, Government of India, State Governments and Union Territories, NHRC, State Human Rights Commissions and NGOs and health service networks. The recommendations of Regional Public Hearing and National Action Plan was communicated to all States/Union Territories on 11-03-2005. Responses have been received from only some of the States/Union Territories. **(Para 7.16)** The Commission would, therefore, urge the governments to speed up their responses to the recommendations made.

### Plan of Action to Tackle Fluorosis

**19.27** A meeting to discuss the human rights issues relating to fluorosis was convened by the Commission **(Para 7.18)** which was attended by the senior representatives of the Ministry of health and other experts from the field. The recommendations made as a sequel to the meeting, inter-alia, include mounting a national programme, preparing a Plan of Action, to tackle the problem of Fluorosis. It is hoped that the Government will be monitoring the implementation of the recommendations made in consultation with it.



## Summary of Principal Recommendations and Observations

### Human Rights and HIV/AIDS

**19.28** The problem of HIV/AIDS is of global concern. The medical issues, notwithstanding, the Commission has been focusing on the human rights dimensions connected therein and, within the whole range of such issues, the plight of children affected by HIV/AIDS, is most urgent and cause for worry. The Chairperson of the Commission addressed letters to the Union Minister for Human Resource Development, Health Minister and Chief Ministers of all States/ Union Territories on 06-09-2004 urging them to take steps to prevent discrimination of such children in access to education and healthcare. The detailed recommendations made in **Para 7.24** need to be implemented to ensure that the problem which is attaining dangerous proportions, does not lead to discrimination.

### Female Foeticide and Infanticide

**19.29** The Commission notes with concern that despite its recommendations made from time to time, the practice of female foeticide and infanticide continues unabatedly. This undoubtedly has resulted in sharp decline – nation wide – in the sex ratio of the child population in the age group 0-6 years. That ratio fell from 945 in 1991 to 927 in 2001. It was particularly disturbing to note that the sharpest decline was in the comparatively affluent States of Himachal Pradesh, Punjab, Haryana, Gujarat, Uttaranchal, Maharashtra and the Union Territories of Delhi and Chandigarh. The Commission once again reiterates that vigorous and comprehensive measures be taken by all States and Union Territories to put an end to the problem of female foeticide and infanticide. (**Para 7.30**)

### Quality Assurance in Mental Health (NIMHANS Report)

**19.30** On the issue of the implementation of the recommendations made in the report titled “Quality Assurance in Mental Health”, the Commission would request the Ministry of Health & Family Welfare, which is already reported to have constituted three appraisal teams under their Scheme of upgradation/modernization of Mental Health Institutes in the country, to forward the details of the scheme as requested for by the Commission. (**Para 7.34**).

### Visit to Mental Hospitals

**19.31** The Management of the mental hospitals at Ranchi, Agra and Gwalior came under the scrutiny of the Hon’ble Supreme Court through Writ Petitions (C) No.339/96, No.901/93, No.80/94 and No.448/94 filed by Social activists. The Hon’ble Supreme Court in its Order dated 11-11-1997 requested the National Human Rights Commission to be involved in the supervision of the functioning of these three hospitals. In pursuance of the Order of the Hon’ble Supreme Court, the Commission has been monitoring the functioning of these hospitals through its Special Rapporteur. (**Para 7.35**).

## Summary of Principal Recommendations and Observations

**19.32** In Para 7.42 of the report, the recommendations made by the Commission to the Government of Tripura on 11.8.04, have been detailed. While the ATR received from the Government of Tripura in December 2004 indicated satisfactory level of compliance on all points except on the issues of i) strengthening of the National Mental Health Programme: and ii) upgradation of Psychiatry Unit, the same are awaited. The Commission would request for compliance with regard to these issues also. **(Para 7.43)**

### Mental Health

**19.33** As mentioned in the preceding reports, the Commission had constituted an Expert Group on 31-12-2001, for rehabilitation of long stay patients who are languishing in the mental hospitals at Agra, Gwalior and Ranchi even after having been cured of their mental illness. These patients either do not have families or they have been abandoned by their families and have nowhere to go. In a meeting of the Expert Group held on 12 July, 2004, the Directors of the three Institutes gave up to date status of long stay patients with an account of rehabilitation activities initiated by them with the help of Action Aid India volunteers. The pendency of two proposals for the establishment of half-way homes, one at Gwalior and another at Ranchi was pointed out to the representative of the Ministry of Social Justice and Empowerment. The meeting discussed a proposal of Action Aid India to set up a National Pension Scheme for those mental patients who are fit to be discharged but whose families are not willing to accept them due to economic constraints. Action Aid India also suggested formation of a Protective Community Life Scheme for looking after those cured patients whose families are either not traceable or cannot be trusted for taking their proper care. The meeting decided that the Ministry of Health and Family Welfare should first ascertain collect from all the 37 Government Mental Hospitals in the country the number of long stay patients in their respective hospitals who would be eligible for benefits under these schemes. **(Para 7.52)**

### Trafficking in Women and Children

#### *Judicial Handbook on Combating Trafficking of Women and Children for Commercial Sexual Exploitation*

**19.34** Trafficking in human beings is a complex and global phenomenon having serious visible and invisible impact on women and children. This inherent complexity necessitates action at various levels by State actors to prevent and combat trafficking on the basis of a detailed understanding of the players and mechanisms involved in a particular trafficking situation. In this context, as reported in this report, the draft Judicial Handbook on Combating Trafficking of Women and Children for Commercial Sexual Exploitation that was prepared by NLSIU under the overall guidance of the Focal Point on Human Rights



## Summary of Principal Recommendations and Observations

of Women including Trafficking has been finalized and forwarded to the Department of Women and Child Development for printing. The Commission is hopeful that the Department of Women and Child Development would expedite the printing of the Judicial Handbook so that it is widely disseminated to the concerned Judicial Officers for their usage and the victims of trafficking are saved from the clutches of traffickers. (Paras 8.3 and 8.7)

### *Trafficking of Women and Children: Effective Rescue and Post-Rescue Strategy*

**19.35** While dealing with the problem of trafficking in women and children, the process of rescue and post-rescue are two major challenges faced by the personnel of law enforcement and welfare agencies. Keeping this in view, the Commission had organized a two-day National Workshop to Review the Implementation of Laws and Policies Related to Trafficking: Towards an Effective Rescue and Post-Rescue Strategy in February 2004 at Mumbai. The recommendations that emanated from this workshop were accepted in principle by the Commission and the same were then forwarded to the Union Department of Women and Child Development (Ministry of Human Resource Development), Directors General of Police of all the States and concerned Secretaries of the Department of Women and Child Development/Social Welfare of all States/Union Territories for effective implementation. They were also requested to send their Action Taken Reports. The Commission would emphasize the need for implementation of the recommendations of the National Workshop organized by it with all concerned and trusts, and that they would respond to it in a positive manner. This would to a large extent facilitate in mitigating the scourge of trafficking. (Paras 8.8, 8.9 & 8.10)

### *Role of National Human Rights Institutions in the Prevention of Trafficking in Women and Children*

**19.36** It was reported in the preceding annual report that the Advisory Council of Jurists of the Asia Pacific Forum of National Human Rights Institutions which met in New Delhi in the year 2002 had deliberated on the issue of trafficking at its Seventh Annual Meeting. The Council later forwarded its Final Report on the issue of trafficking to the Commission. In this report, it made a number of recommendations for preventing and combating trafficking that was adopted by the Commission. The Commission then forwarded these recommendations to the Department of Women and Child Development and the Ministry of Home Affairs for appropriate action with the request that action taken on the recommendations be reported to the Commission. At the time of writing this report, the Commission had not received any response from the Ministry of Home Affairs. However, the Department of Women and Child Development informed the Commission about the initiatives taken by them to combat trafficking in women and children. On examination, it was pointed out by the Commission to the



## Summary of Principal Recommendations and Observations

Department that except for few, which were new initiatives, the others were already in existence. It is hoped that the Department of Women and Child Development as well as the Ministry of Home Affairs would take appropriate action on the recommendations made in the Final Report on the Issue of Trafficking by the Advisory Council of Jurists of the Asia Pacific Forum of National Human Rights Institutions and inform the Commission about those at the earliest. **(Paras 8.11, 8.12 and 8.13)**

### *Prevention of Sex Tourism and Trafficking*

**19.37** The Commission is conscious of the fact that trafficking in women and children is a complex and multifaceted phenomenon interwoven with sex tourism. The NHRC's Report on the Action Research on Trafficking in Women and Children in India also highlights this fact. As tourism industry encompasses a whole range of allied sectors, such as, airlines, hotels, restaurants, travel and tour agencies, the Commission, as was reported in the annual report for 2003-04, had conducted a one-day Sensitization Programme on 'Prevention of Sex Tourism and Trafficking' in the year 2003 in Mumbai. The recommendations that had emanated from this Programme were accepted by the Commission and as per its directions these were also forwarded to the Tourism Secretaries and the Secretaries in-charge of Women Welfare of all the States and Union Territories for taking appropriate action. In this connection, the Commission has received Action Taken Reports from Governments of Sikkim, Jharkhand, Tamil Nadu, Manipur, Punjab, Meghalaya, Union Territory of Andaman & Nicobar Islands and NCT of Delhi. The Commission intends to monitor the follow-up of the recommendations made in the above Workshop and is hopeful that all those States/Union Territories who have so far not complied with the Commission's recommendations would do so at the earliest. **(Paras 8.14 and 8.15)**

### **Combating Sexual Harassment of Women at the Workplace**

**19.38** The Commission has been monitoring the implementation of the guidelines to prevent and combat sexual harassment of women at the work place issued by the Supreme Court in Vishaka vs. State of Rajasthan case. The Ministry of Home Affairs, Government of India in its Memorandum of Action Taken on the Annual Report of the Commission for the year 2002-03 has categorically stated that the observations of the Commission with regard to its efforts to combat sexual harassment of women at the work place have been noted, the Commission is confident that Vishaka guidelines as enumerated by the Apex Court would be complied with by all States and Union Territories in true spirit so that women are no longer subjected to gender discrimination at the work place. The Commission also hopes that States who have yet to amend their conduct rules and set up the complaints mechanism would do so without any further delay. The issue was highlighted during the meeting of the Commission with the Chief Secretaries and Directors General of Police of all States and Union Territories held on 14-12- 2004. **(Paras 8.16 and 8.18)**





## Summary of Principal Recommendations and Observations

### Combating Sexual Harassment of Women in Trains

**19.39** The Commission has been working for the eradication of sexual harassment of women passengers in trains in collaboration with the Ministry of Railways. Despite several meetings held with the Ministry of Railways, the Commission notes with concern that the Ministry is yet to implement some of the important recommendations made by it for ensuring safety and security of the women passengers travelling by trains. These are: (i) availability of FIR forms in all regional languages, (ii) preparation and display of messages in the railway coaches, (iii) preparation and display of graphics and other publicity materials at the railway platforms, (iv) printing of the message on the back of the ticket saying that sexual harassment of women in trains is a crime, and (v) preparation of a power point presentation on the problem of sexual harassment in trains and its implications so that the same could be made in a software for public viewing on television. The Commission again requests the Ministry of Railways to take appropriate action on all these without any further delay. **(Paras 8.20 & 8.22)**

### Rehabilitation of Marginalized and Destitute Women including Widows in Vrindavan

**19.40** The Commission is concerned about the rehabilitation of marginalized and destitute women including widows in Vrindavan. Since the Action Taken Report of the Government of Uttar Pradesh was not satisfactory, the Commission took up the matter with the Department of Women and Child Development, Government of India, in particular, the issue of providing suitable accommodation to these women. **(Paras 8.24 and 8.25)**

### Population Policy – Development and Human Rights

**19.41** In its two preceding annual reports, the Commission had reported that it had organized a Colloquium on Population Policy – Development and Human Rights. In this context, Action Taken Reports were still awaited from Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Himachal Pradesh, Jammu & Kashmir, Jharkhand, Kerala, Maharashtra, Meghalaya, Mizoram, Nagaland, Orissa, Punjab, Tamil Nadu, West Bengal, Dadra & Nagar Haveli, Daman & Diu and Pondicherry. The Commission requests those States and Union Territories who have not sent in their Action Taken Reports on the recommendations that emerged from the deliberations of the Colloquium to expedite sending the same, as this has implications on the vulnerable sections of the society. **(Paras 8.26 and 8.27)**

### Rights of Children

#### *Guidebook for the Media on Sexual Violence against Children*

**19.42** The Commission reiterates that the contents in the Media Guidebook brought out by the





## Summary of Principal Recommendations and Observations

Commission are adhered to by all media personnel while reporting cases of sexual violence against children. **(Para 8.30)**

### Rights of Vulnerable

#### *Human Rights of Scheduled Castes*

**19.43** The Commission has been concerned about the violation of the human rights of communities designated as Denotified Tribes (DNT) and Nomadic Tribes (NT). The Commission constituted an Advisory Group to examine the matter who submitted its report in August, 1998 which made several recommendations to improve the condition of the communities. The main recommendations have been brought out in **Para 10.4** of this Report.

**19.44** The Commission has been deeply concerned about the atrocities against persons belonging to Scheduled Castes. The Commission, therefore, requested Shri K B Saxena, a senior retired civil servant, to look into this issue. In pursuance, he has completed the study and submitted a comprehensive report, which contains a number of recommendations to various authorities. The Commission has sent its recommendations on ways and means to prevent atrocities against Scheduled Castes to various authorities, both of the Central and State Governments for taking necessary action **(Para 10.7)** and urges the Government at the Centre and in the States for early follow up action on the recommendations made by the Commission.

#### *Manual Scavenging*

**19.45** The NHRC has been vigorously pursuing the need to end the degrading practice of manual scavenging in the country. It has taken up this matter at the highest level of the Central and State Governments through a series of personal interventions by the Chairperson of NHRC. **(Para 10.10)**

**19.46** The Ministry of Social Justice and Empowerment convened a meeting on 26.07.2004 with the representatives of the concerned Ministries/Departments/Organizations, as a follow up of the recommendations of the Commission. It was reiterated in the meeting that the National Action Plan is to be implemented in a time-bound manner so as to ensure eradication of manual scavenging by 2007. The pace of progress has however been slow. There is, therefore, need to ensure that actions are taken expeditiously for timely implementation of the National Action Plan. **(Para 10.12 and 10.13)**

**19.47** During the period under report, the decisions taken in the last meeting held with the concerned State Governments were followed up. The response from the States has not been very encouraging on their commitment to abolish the degrading practice of manual scavenging. **(Paras 10.14 and 10.16)**



## Summary of Principal Recommendations and Observations

### *Tsunami*

**19.48** Taking suo-motu cognizance of the calamity that arose from devastating tsunami waves which hit large areas of coastal India, including Andaman & Nicobar Islands, Pondicherry, Tamil Nadu, Andhra Pradesh and Kerala on 26.12.2004, the Full Commission, vide its proceedings dated 13-01-2005, recorded in detail the steps to be taken by the authorities concerned to ensure equitable distribution of relief as well as rehabilitation measures. These include, inter-alia, ensuring that the poor, destitute women, destitute children and all persons, who would be in greater need of the relief and rehabilitation measures, are not deprived or made to suffer, preparing and publicizing a computerized list of persons, dead or missing because of tsunami disaster, as also list of the totally/partially destroyed properties and ensuring that young widows and children were not sexually or otherwise exploited by unscrupulous elements. The State Governments/ Union Territories should evolve a mechanism towards that end. **(Para 11.7)**

**19.49** The Commission also received several petitions from various individuals/NGOs alleging (a) eviction of fishermen from coastal areas by the State Government of Tamil Nadu in the name of rehabilitation and thus endangering their livelihood, and (b) discrimination against dalits in distribution of relief and rehabilitation works by the administration. Response in the matter was called for from the State Government, which is still awaited **(Para 11.9)**

### State Human Rights Commissions

**19.50** State Human Rights Commissions have been set up in 16 States. The Commission would like to reiterate its view that the 'better protection of human rights' can be ensured if all the States set up Human Rights Commission. The Commission would also emphasize that the State Human Rights Commission which have already been set up or are proposed to be set up should be in compliance with the 'Paris Principles'. **(Para 16.1 read with the foot note)**

**19.51** In the meeting of the National Human Rights Commission and the State Human Rights Commissions held on 13-05-2005, the following Resolution was adopted:-

"The National Human Rights Commission and the State Human Rights Commissions present hereby unanimously resolve to urge the State Governments to:-

- a) Setup, on priority, State Human Rights Commissions where the same do not exist.
- b) Where, there are State Human Rights Commissions or, are in the process of being setup, it be ensured that they are structurally and financially independent as envisaged in and, fullyconfirming to, the principles relating to the status of national institutions (the "Paris Principles") which were endorsed by the UN General Assembly Resolution 48/134 of 20-12-1993.



## Summary of Principal Recommendations and Observations

The National and State Commissions also reiterate and remind the Governments, both, at the Centre and in the States, that the primary obligation towards the protection of human rights is that of the State and that the national human rights institutions are for 'better protection of human rights'. **(Para 16.3)**

**19.52** The Commission has been deeply concerned towards the non-fulfillment of the promise of Section 30 of the Protection of Human Rights Act, 1993, which provides for speedy trial of offences arising out of violation of human rights by designating, in each district, a Court of Session to be a Human Rights Court to try the offences. It is a matter of regret that even after so many years, there has been lack of clarity as to what offences, precisely, can be classified as human rights offences. Human Rights Courts have not been set up or identified in all the states. **(Para 16.6)**

### Review of Laws

#### *Child Marriage Restraint Act, 1929*

**19.53** It is a well known fact that child marriages are still prevalent in certain parts of the country. In its preceding annual reports, the Commission had reported that the draft Child Marriage Restraint Bill recommending substantial changes in the Child Marriage Restraint Act, 1929 was sent to the Department of Women and Child Development, Ministry of Human Resource Development, Government of India for consideration. A copy of the draft Bill was also forwarded for information to the Ministry of Home Affairs and Ministry of Law and Justice, Government of India. Meanwhile, the Legislative Department, Ministry of Law and Justice, Government of India informed that they had introduced a new Bill entitled 'The Prevention of Child Marriage Bill, 2004' in the Rajya Sabha on 20-12-2004. This Bill, the Legislative Department stated, would repeal the Child Marriage Restraint Act, 1929. Till such time, the Child Marriage Restraint Act, 1929 is repealed, the Commission hopes that all the State Governments and Union Territories would continue to organise awareness campaigns on large scale on the demerits of child marriage in order to educate people at large and save the girl children from falling prey to the age old custom and evil practice of child marriage. **(Paras 17.1, 17.2 and 17.6)**

#### *Protection of Human Rights Act, 1993*

**19.54** The Commission had referred a proposal to the Central Government, in March, 2000, for amendments to the statute. As reiterated, over the years, the Commission is of the considered view that the amendments, as proposed by the Commission, are necessary to ensure the independence and effectiveness of the Commission in the fulfillment of its mandate. Despite the long passage of time, no progress has been made despite efforts made to expedite the amendments. At the time of writing this report, the Commission has come across the copy of the Protection of Human Rights Act (Amendment) Bill, 2005, which is proposed to be introduced by the Government in the Rajya Sabha. The amendments proposed in the Bill are under examination in



## Summary of Principal Recommendations and Observations

the Commission. However, it is noted that the Bill does not reflect the amendments as proposed by the Commission (**Reference footnote to para 17.11**).

### Implementation of Treaties and Other International Instruments on Human Rights

#### *Convention against Torture*

**19.55** Torture and other cruel, inhuman or degrading treatment or punishment are particularly serious violation of human rights and, as such, are strictly condemned by International Law. The Convention entered into force on 26-06-1987. The Commission has been requesting the Government of India to ratify the Convention against Torture and other forms of Cruel Inhuman and Degrading Punishment or Treatment, which was signed by India on 14-10-1997. More than 8 years have gone by since India signed the Convention, its ratification, despite repeated urgings of the Commission, is still awaited. The Commission has been continuously urging the Government of India for ratification of the Convention Against Torture. (**Para 3.41**)

**19.56** The Commission urges the Central Government for an early ratification of this important Convention to fulfill not only its obligation under the international humanitarian law but also to honour the promise made at the time of signing the Convention by the Permanent Representatives of India to the United Nations, namely, that India would “uphold the greatest values of Indian civilization and our policy to work with other members of the international community to promote and protect human rights.” (**Paras 17.18 and 3.35**)

#### *The 1977 Protocol additional to the Geneva Convention of 1949*

**19.57** India ratified the four Geneva Conventions of 1949 in 1959 and enacted the Indian Geneva Conventions Act in 1960 incorporating them in the Indian legal system. The four Geneva Conventions of 1949 were considerably supplemented by two additional protocols adopted in 1977. Protocol I contains new rules on international armed conflicts while Protocol II develops the rules on international humanitarian law governing non-international armed conflicts. These Protocols contain elaborate norms and provisions concerning protection of human rights in times of armed conflicts – both international as well as national. (**Para 17.19**)

**19.58** The Ministry of External Affairs had, informed in December, 2003, that the changing nature of armed conflict in the contemporary period (Afghanistan, Iraq, conflicts in Africa, etc.), their impact on IHL and the Geneva Conventions and the related issues are under review at the international level and in the light of these developments, inter ministerial deliberations were required to take stock of the current realities and of our response. (**Para 17.20**). The Commission desired to know from the Ministry of external Affairs the specific responses on its part regarding signing of the two additional protocols to the Geneva Convention 1949. (**Para 17.21**)



## Summary of Principal Recommendations and Observations

**19.59** The Ministry of External Affairs has further informed that a thorough examination of substantive aspects of these protocols is needed and their Ministry is consulting the concerned agencies. In this regard Inter-Ministerial Meeting was convened by MEA on 22-07- 2004. The Ministry of Home Affairs and the Ministry of Defence were requested to study the subject. The issue of accession to the Geneva Convention would be pursued after a joint meeting of MEA, MHA and Ministry of Defence. **(Para 17.22 & 17.23)**

### *Optional Protocols to the Convention on the Rights of the Child*

**19.60** In the Commission's earlier annual reports, the Commission had recommended that the Government of India examine and become a party to Optional Protocols 1 and 2 to the Convention on the Rights of the Child, dealing with the involvement of children in armed conflict and the sale of children, child prostitution and child pornography. The Memorandum of Action Taken on the Annual Report of the National Human Rights Commission for the year 2002-03 also mentions that the Government has approved the signing and ratification of the aforesaid two Optional Protocols to the Convention on the Rights of the Child. The Ministry of External Affairs has communicated to the Commission that the Government of India had signed the above two Optional Protocols on 15-11-2004. These, however, are yet to be ratified. The Commission trusts that the Government of India would ratify the two Optional Protocols to the Convention on the Rights of the Child in the best interest of our children. **(Para 17.26)**

### Manavadhikar Bhavan

**19.61** It is more than two years since a block has been allotted to NHRC for construction of the Bhavan, the Ministry of Urban Development is yet to obtain necessary clearances from various authorities thereby leading to delay in commencement of the construction work. The Commission has been expressing its concern about the undue delay in the starting of the construction of the building. The Commission urges the Ministry of Urban Development to take up the construction of the building without any further delay **(Para 18.13)**.

Sd/-  
(A.S.Anand)  
Chairperson

Sd/-  
(Shivaraj V. Patil)  
Member

Sd/-  
(Y.Bhaskar Rao)  
Member

Sd/-  
(R.S.Kalha)  
Member

Sd/-  
(P.C.Sharma)  
Member

New Delhi  
12<sup>th</sup> January, 2006

**Statement Showing State-Wise Number of Cases/Intimations  
Registered During The Year 2004-2005**

S.No.	Name of the State/Union Territory	Complaints	Intimation Received about Custodial Deaths				Intimation received about Encounter Deaths	Total
			Police Custody	Judicial Custody	Defence/ Para-military	Custodial rapes		
1	Andhra Pradesh	767	13	116	0	0	18	<b>914</b>
2	Arunachal Pradesh	15	0	2	0	0	0	<b>17</b>
3	Assam	131	4	11	2	0	1	<b>149</b>
4	Bihar	3917	3	150	0	0	0	<b>4070</b>
5	Goa	32	0	4	0	0	0	<b>36</b>
6	Gujarat	999	15	54	0	0	2	<b>1070</b>
7	Haryana	2666	2	49	0	0	1	<b>2718</b>
8	Himachal Pradesh	162	0	5	0	0	0	<b>167</b>
9	Jammu & Kashmir	182	0	0	0	2	0	<b>184</b>
10	Karnataka	412	9	51	0	0	2	<b>474</b>
11	Kerala	177	6	51	0	0	0	<b>234</b>
12	Madhya Pradesh	2127	2	49	0	0	5	<b>2183</b>
13	Maharashtra	1657	23	138	0	0	5	<b>1823</b>
14	Manipur	40	0	0	2	0	1	<b>43</b>
15	Meghalaya	9	2	6	0	0	0	<b>17</b>
16	Mizoram	4	0	0	0	0	0	<b>4</b>
17	Nagaland	11	0	0	0	0	0	<b>11</b>
18	Orissa	814	3	39	0	1	0	<b>857</b>
19	Punjab	914	6	65	0	0	0	<b>985</b>
20	Rajasthan	2369	0	50	1	0	0	<b>2420</b>
21	Sikkim	0	0	0	0	0	0	<b>0</b>
22	Tamilnadu	1191	9	98	0	0	1	<b>1299</b>
23	Tripura	37	1	4	0	0	0	<b>42</b>
24	Uttar Pradesh	44351	7	219	0	0	66	<b>44643</b>
25	West Bengal	863	11	64	1	0	2	<b>941</b>
26	A & N Islands	22	0	1	0	0	0	<b>23</b>
27	Chandigarh	108	1	3	0	0	0	<b>112</b>
28	D & Nagar Haveli	7	0	0	0	0	0	<b>7</b>
29	Daman & Diu	2	0	0	0	0	0	<b>2</b>
30	Delhi	5221	5	27	1	1	9	<b>5264</b>
31	Lakshadweep	0	0	0	0	0	0	<b>0</b>
32	Pondicherry	41	1	0	0	0	0	<b>42</b>
33	Chhattisgarh	306	5	26	0	0	1	<b>338</b>
34	Jharkhand	1326	5	66	0	0	1	<b>1398</b>
35	Uttaranchal	1779	3	9	0	0	7	<b>1798</b>
36	Foreigners	116	0	0	0	0	0	<b>116</b>
	<b>Total</b>	<b>72775</b>	<b>136</b>	<b>1357</b>	<b>7</b>	<b>4</b>	<b>122</b>	<b>74401</b>

**Statement Showing State-Wise Disposal of Cases  
During the Year 2004-2005**

S.No.	Name of the State/ Union Territory	Dismissed in limini	Disposed off with directions	Concluded after receipt of reports			Total
				Complaints Cases	Custodial Death cases	Encounter Death cases	
1	Andhra Pradesh	434	196	245	13	1	<b>889</b>
2	Arunachal Pradesh	9	4	14	2	0	<b>29</b>
3	Assam	82	20	32	8	0	<b>142</b>
4	Bihar	2226	833	1574	16	0	<b>4649</b>
5	Goa	20	7	16	0	0	<b>43</b>
6	Gujarat	712	225	187	16	0	<b>1140</b>
7	Haryana	1528	672	1111	14	4	<b>3329</b>
8	Himachal Pradesh	88	43	56	5	0	<b>192</b>
9	Jammu & Kashmir	109	27	47	0	0	<b>183</b>
10	Karnataka	267	89	144	5	1	<b>506</b>
11	Kerala	114	36	46	44	0	<b>240</b>
12	Madhya Pradesh	1503	439	777	13	2	<b>2734</b>
13	Maharashtra	1006	315	632	271	2	<b>2226</b>
14	Manipur	13	6	5	0	0	<b>24</b>
15	Meghalaya	8	1	3	0	0	<b>12</b>
16	Mizoram	2	3	0	0	0	<b>5</b>
17	Nagaland	7	1	3	0	0	<b>11</b>
18	Orissa	533	147	318	9	0	<b>1007</b>
19	Punjab	563	174	207	109	0	<b>1053</b>
20	Rajasthan	1421	500	1687	15	0	<b>3623</b>
21	Sikkim	0	0	3	0	0	<b>3</b>
22	Tamilnadu	584	366	389	9	0	<b>1348</b>
23	Tripura	14	9	15	2	0	<b>40</b>
24	Uttar Pradesh	21131	15235	15338	35	31	<b>51770</b>
25	West Bengal	530	186	107	108	1	<b>932</b>
26	A & N Islands	16	2	4	0	0	<b>22</b>
27	Chandigarh	63	23	38	0	0	<b>124</b>
28	D & Nagar Haveli	9	0	1	0	0	<b>10</b>
29	Daman & Diu	1	0	1	0	0	<b>2</b>
30	Delhi	3173	1057	849	7	2	<b>5088</b>
31	Lakshadweep	1	11	1	0	0	<b>13</b>
32	Pondicherry	31	64	9	0	0	<b>104</b>
33	Chhattisgarh	226	216	67	48	0	<b>557</b>
34	Jharkhand	934	535	413	14	1	<b>1897</b>
35	Uttaranchal	1016	23	593	3	1	<b>1636</b>
36	Foreigners	74	0	4	0	0	<b>78</b>
	<b>Total</b>	<b>38448</b>	<b>21465</b>	<b>24936</b>	<b>766</b>	<b>46</b>	<b>85661</b>



## Annexure - 3 (a)

## Paras 4.1 &amp; 4.5

State/Union Territory-wise Statement of Category of Report Cases  
Disposed off During the Year 2004-2005

S.No.	Name of the State/Union Territory	Disappearance	False implication	Custodial Violence	Illegal arrest	Unlawful detention	Failure in taking action	Alleged fake encounters	Other police excesses	Total
1	2	3	4	5	6	7	8	9	10	11
1	Andhra Pradesh	1	14	0	5	21	40	5	58	144
2	Arunachal Pradesh	0	0	0	0	0	6	0	0	6
3	Assam	0	0	0	0	0	1	1	5	7
4	Bihar	2	111	1	4	35	480	7	314	954
5	Goa	0	2	0	0	1	4	0	5	12
6	Gujarat	0	15	0	1	9	36	1	38	100
7	Haryana	2	95	1	13	51	361	4	208	735
8	Himachal Pradesh	0	2	0	0	0	10	0	13	25
9	Jammu & Kashmir	0	1	0	0	3	3	0	4	11
10	Karnataka	0	6	1	2	3	28	0	42	82
11	Kerala	0	2	0	0	2	6	0	12	22
12	Madhya Pradesh	2	30	0	0	14	128	3	96	273
13	Maharashtra	2	28	0	10	12	102	2	88	244
14	Manipur	0	0	0	0	0	0	0	3	3
15	Meghalaya	0	0	0	0	0	0	0	3	3
16	Mizoram	0	0	0	0	0	0	0	0	0
17	Nagaland	0	0	0	0	0	0	0	0	0
18	Orissa	0	8	0	1	8	55	0	52	124
19	Punjab	0	11	0	1	9	47	0	42	110
20	Rajasthan	4	72	0	9	43	438	3	394	963
21	Sikkim	0	0	0	0	1	0	0	0	1
22	Tamilnadu	0	39	1	5	29	59	2	96	231
23	Tripura	0	0	0	0	0	2	0	4	6
24	Uttar Pradesh	10	671	9	145	551	4592	54	4531	10563
25	West Bengal	0	4	0	1	1	24	0	15	45
26	A&N Islands	0	0	0	0	0	2	0	1	3
27	Chandigarh	0	1	0	0	3	13	0	9	26
28	Dadra & Nagar Haveli	0	0	0	0	0	0	0	0	0
29	Daman & Diu	0	0	0	0	0	0	0	0	0
30	Delhi	1	28	1	4	26	160	1	164	385
31	Lakshadweep	0	0	0	0	0	0	0	0	0
32	Pondicherry	0	0	0	0	0	2	0	2	4
33	Chhattisgarh	0	5	1	0	1	16	0	10	33
34	Jharkhand	0	34	1	1	16	73	0	99	224
35	Uttaranchal	0	34	0	8	37	145	1	180	405
36	Foreigners	0	0	0	0	0	0	0	0	0
	<b>Total</b>	<b>24</b>	<b>1213</b>	<b>16</b>	<b>210</b>	<b>876</b>	<b>6833</b>	<b>84</b>	<b>6488</b>	<b>15744</b>

**Annexure - 3 (b)**
**Paras 4.1 & 4.5**
**State/Union Territory-wise Statement of Category of Report Cases  
Disposed of During the year 2004-2005**

S.No.	Name of the State/Union Territory	Indignity to women	Sexual harassment	Abduction rape & murder	Dowry death or its attempt	Dowry demand	Exploitation of women	Rape of Women	Total
12	13	14	15	16	17	18	19	20	21
1	Andhra Pradesh	3	0	2	8	3	1	2	<b>19</b>
2	Arunachal Pradesh	1	0	1	0	0	0	1	<b>3</b>
3	Assam	0	0	0	1	1	1	0	<b>3</b>
4	Bihar	24	11	24	87	22	26	40	<b>234</b>
5	Goa	0	0	0	0	0	0	0	<b>0</b>
6	Gujarat	0	0	1	4	2	0	2	<b>9</b>
7	Haryana	7	18	23	41	30	10	17	<b>146</b>
8	Himachal Pradesh	0	0	2	3	0	0	0	<b>5</b>
9	Jammu & Kashmir	0	2	0	0	0	0	0	<b>2</b>
10	Karnataka	1	0	1	4	2	2	2	<b>12</b>
11	Kerala	1	1	0	0	0	0	0	<b>2</b>
12	Madhya Pradesh	0	8	9	42	17	6	10	<b>92</b>
13	Maharashtra	1	8	8	7	11	3	3	<b>41</b>
14	Manipur	0	0	0	0	0	0	1	<b>1</b>
15	Meghalaya	0	0	0	0	0	0	0	<b>0</b>
16	Mizoram	0	0	0	0	0	0	0	<b>0</b>
17	Nagaland	0	0	0	0	0	0	1	<b>1</b>
18	Orissa	8	2	7	13	7	7	6	<b>50</b>
19	Punjab	1	1	1	2	13	2	1	<b>21</b>
20	Rajasthan	16	16	27	83	34	20	40	<b>236</b>
21	Sikkim	0	0	0	0	0	0	0	<b>0</b>
22	Tamilnadu	2	7	5	4	6	3	5	<b>32</b>
23	Tripura	0	0	0	0	0	0	0	<b>0</b>
24	Uttar Pradesh	99	204	465	739	489	150	226	<b>2372</b>
25	West Bengal	3	1	1	6	4	2	1	<b>18</b>
26	A&N Islands	0	0	0	0	0	0	0	<b>0</b>
27	Chandigarh	0	0	0	0	2	0	0	<b>2</b>
28	Dadra & Nagar Haveli	0	0	0	0	0	0	0	<b>0</b>
29	Daman & Diu	0	0	0	0	0	0	0	<b>0</b>
30	Delhi	18	24	40	29	39	32	11	<b>193</b>
31	Lakshadweep	0	0	0	0	0	0	0	<b>0</b>
32	Pondicherry	0	0	0	0	0	0	0	<b>0</b>
33	Chhattisgarh	2	0	1	3	2	0	1	<b>9</b>
34	Jharkhand	5	7	3	22	8	10	9	<b>64</b>
35	Uttaranchal	4	10	13	17	16	4	13	<b>77</b>
36	Foreigners	0	0	0	0	0	0		<b>0</b>
	<b>Total</b>	<b>196</b>	<b>320</b>	<b>634</b>	<b>1115</b>	<b>708</b>	<b>279</b>	<b>392</b>	<b>3644</b>

**Annexure - 3 (c)**
**Paras 4.1 & 4.5**
**State/Union Territory-wise Statement of Category of Report Cases  
Disposed off During The Year 2004-2005**

S.No.	Name of the State/Union Territory	Child Labour	Child Marriage	Bonded labour	Harassment of - prisoners	Lack of medical facilities in Jails	Jail conditions	Atrocities on SC/ST	Communal Violence	Others	Total	Grand Total (11+21+33)
22	23	24	25	26	27	28	29	30	31	32	33	34
1	Andhra Pradesh	1	0	3	3	0	4	5	0	66	82	<b>245</b>
2	Arunachal Pradesh	1	0	0	0	0	0	0	0	4	5	<b>14</b>
3	Assam	0	0	0	0	0	0	1	0	21	22	<b>32</b>
4	Bihar	1	0	4	21	12	14	50	1	283	386	<b>1574</b>
5	Goa	0	0	0	2	0	0	0	0	2	4	<b>16</b>
6	Gujarat	0	0	1	4	2	1	4	5	61	78	<b>187</b>
7	Haryana	1	1	14	12	0	7	14	0	181	230	<b>1111</b>
8	Himachal Pradesh	0	0	1	1	0	2	3	0	19	26	<b>56</b>
9	Jammu & Kashmir	0	0	0	0	1	0	0	0	33	34	<b>47</b>
10	Karnataka	1	0	3	5	2	3	4	1	31	50	<b>144</b>
11	Kerala	0	0	0	0	0	1	1	0	20	22	<b>46</b>
12	Madhya Pradesh	3	0	1	7	2	5	13	0	381	412	<b>777</b>
13	Maharashtra	2	0	1	6	0	41	4	0	293	347	<b>632</b>
14	Manipur	0	0	0	0	0	0	0	0	1	1	<b>5</b>
15	Meghalaya	0	0	0	0	0	0	0	0	0	0	<b>3</b>
16	Mizoram	0	0	0	0	0	0	0	0	0	0	<b>0</b>
17	Nagaland	0	0	0	0	0	0	0	0	2	2	<b>3</b>
18	Orissa	1	0	1	5	2	5	5	0	125	144	<b>318</b>
19	Punjab	0	1	14	4	1	2	2	0	52	76	<b>207</b>
20	Rajasthan	2	6	12	28	5	16	74	0	345	488	<b>1687</b>
21	Sikkim	0	0	0	0	0	0	0	0	2	2	<b>3</b>
22	Tamilnadu	1	0	1	3	0	5	20	0	96	126	<b>389</b>
23	Tripura	0	0	0	0	0	0	1	0	8	9	<b>15</b>
24	Uttar Pradesh	14	11	41	61	18	30	363	1	1864	2403	<b>15338</b>
25	West Bengal	0	0	1	0	0	6	0	0	37	44	<b>107</b>
26	A&N Islands	0	0	0	0	0	0	0	0	1	1	<b>4</b>
27	Chandigarh	0	0	0	1	0	4	0	0	5	10	<b>38</b>
28	D & Nagar Haveli	0	0		0	0	0	0	0	1	1	<b>1</b>
29	Daman & Diu	0	0	0	0	0	0	0	0	1	1	<b>1</b>
30	Delhi	2	0	0	8	5	10	5	0	241	271	<b>849</b>
31	Lakshadweep	0	0	0	0	0	0	0	0	1	1	<b>1</b>
32	Pondicherry	0	0	0	1	0	0	1	0	3	5	<b>9</b>
33	Chhattisgarh	0	0	0	2	0	3	1	0	19	25	<b>67</b>
34	Jharkhand	0	0	3	2	0	3	13	1	103	125	<b>413</b>
35	Uttaranchal	0	0	1	3	1	2	9	0	95	111	<b>593</b>
36	Foreigners	0	0	0	0	0	0	0	0	4	4	<b>4</b>
	<b>Total</b>	<b>30</b>	<b>19</b>	<b>102</b>	<b>179</b>	<b>51</b>	<b>164</b>	<b>593</b>	<b>9</b>	<b>4401</b>	<b>5548</b>	<b>24936</b>

## Annexure - 4 (a)

## Para 4.2

**Statement Showing State-wise Number of Cases  
Pending as on 31/3/2005**

S.No.	Name of the State/Union Territory	Cases awaiting preliminary consideration				Pendency of cases where reports have either been received or awaited from the State Authorities			
		Complaints	Custodial Deaths	Encounter Deaths	Total	Complaints	Custodial Death Cases	Encounter Death Cases	Total
		Intimation about							
1	Andhra Pradesh	21	6	0	27	783	369	21	1173
2	Arunachal Pradesh	0	0	0	0	31	8	0	39
3	Assam	1	0	0	1	252	70	9	331
4	Bihar	181	1	0	182	4222	469	8	4699
5	Goa	1	0	0	1	27	4	0	31
6	Gujarat	18	0	0	18	589	192	5	786
7	Haryana	78	1	0	79	1471	132	2	1605
8	Himachal Pradesh	8	0	0	8	108	3	0	111
9	Jammu & Kashmir	7	0	0	7	503	4	2	509
10	Karnataka	11	1	0	12	443	203	5	651
11	Kerala	3	2	0	5	170	116	1	287
12	Madhya Pradesh	43	1	0	44	1028	115	9	1152
13	Maharashtra	58	1	1	60	1525	272	29	1826
14	Manipur	2	0	0	2	105	-	2	107
15	Meghalaya	0	0	0	0	17	17	1	35
16	Mizoram	0	0	0	0	13	4	0	17
17	Nagaland	0	0	0	0	29	1	0	30
18	Orissa	19	1	0	20	685	108	0	793
19	Punjab	25	1	0	26	1175	187	0	1362
20	Rajasthan	114	1	0	115	1377	104	33	1514
21	Sikkim	0	0	0	0	4	0	0	4
22	Tamilnadu	69	6	0	75	875	326	9	1210
23	Tripura	1	0	0	1	51	6	0	57
24	Uttar Pradesh	1216	2	0	1218	20442	677	175	21294
25	West Bengal	34	0	0	34	719	122	6	847
26	A & N Islands	0	0	0	0	11	1	0	12
27	Chandigarh	7	0	0	7	48	10	0	58
28	D & Nagar Haveli	0	0	0	0	6	0	0	6
29	Daman & Diu	0	0	0	0	4	0	0	4
30	Delhi	215	2	0	217	4045	87	18	4150
31	Lakshadweep	0	0	0	0	1	0	0	1
32	Pondicherry	2	0	0	2	19	3	0	22
33	Chhattisgarh	12	0	1	13	181	44	0	225
34	Jharkhand	53	0	0	53	1156	147	3	1306
35	Uttaranchal	52	0	0	52	895	37	14	946
36	Foreigners	9	0	0	9	60	0	0	60
	<b>Total</b>	<b>2260</b>	<b>26</b>	<b>2</b>	<b>2288</b>	<b>43070</b>	<b>3838</b>	<b>352</b>	<b>47260</b>

Grand Total (2288+47260) = 49548

## Annexure - 4 (b)

Para 4.2

Statement Showing State-wise Number of Cases  
Pending as on 1/4/2004

S.No.	Name of the State/Union Territory	Compl- aints	Intimation about Custodial Deaths	Intimation about Encounter Deaths	Total	Complaints	Custodial Death Cases	Encounter Death Cases	Total
1	Andhra Pradesh	111	2	4	117	782	250	16	1048
2	Arunachal Pradesh	4	0	0	4	39	8	0	47
3	Assam	18	0	0	18	238	62	8	308
4	Bihar	326	1	0	327	4751	334	8	5093
5	Goa	3	0	0	3	34	0	0	34
6	Gujarat	159	1	0	160	567	137	3	707
7	Haryana	315	0	0	315	1850	97	5	1952
8	Himachal Pradesh	14	0	0	14	126	3	0	129
9	Jammu & Kashmir	12	0	0	12	494	4	2	500
10	Karnataka	65	1	0	66	471	146	6	623
11	Kerala	22	0	0	22	171	95	1	267
12	Madhya Pradesh	213	0	0	213	1445	78	6	1529
13	Maharashtra	368	1	0	369	1497	361	26	1884
14	Manipur	3	0	0	3	86	0	1	87
15	Meghalaya	2	0	0	2	18	9	1	28
16	Mizoram	0	0	0	0	14	4	0	18
17	Nagaland	1	0	0	1	27	1	0	28
18	Orissa	107	0	0	107	772	77	0	849
19	Punjab	49	0	0	49	1188	210	0	1398
20	Rajasthan	174	0	0	174	2528	133	33	2694
21	Sikkim	0	0	0	0	7	0	0	7
22	Tamilnadu	140	0	0	140	939	230	8	1177
23	Tripura	2	0	0	2	52	3	0	55
24	Uttar Pradesh	1946	2	0	1948	27289	491	143	27923
25	West Bengal	55	0	0	55	661	133	5	799
26	A & N Islands	2	0	0	2	8	0	0	8
27	Chandigarh	16	0	0	16	56	7	0	63
28	D & Nagar Haveli	2	0	0	2	7	0	0	7
29	Daman & Diu	0	0	0	0	3	0	0	3
30	Delhi	292	1	0	293	3797	62	11	3870
31	Lakshadweep	1	0	0	1	2	0	0	2
32	Pondicherry	11	0	0	11	20	2	0	22
33	Chhattisgarh	46	0	0	46	199	53	0	252
34	Jharkhand	141	0	0	141	1287	90	0	1377
35	Uttaranchal	123	0	0	123	1182	28	0	1210
36	Foreigners	11	0	0	11	43	0	0	43
	<b>Total</b>	<b>4754</b>	<b>9</b>	<b>4</b>	<b>4767</b>	<b>52650</b>	<b>3108</b>	<b>283</b>	<b>56041</b>

Grand Total = 4767+56041 = 60808

**Letter dated 20-02-2004 from Chairperson, NHRC to the Chief Justice of Delhi High Court regarding plight of the undertrial prisoners in Tihar and reply dated 19-05-2004 from the Chief Justice of Delhi High Court to the Chairperson, NHRC**

D.O. No. 4/9/2003-PRP & P

Dated 20-02-2004

Dear Chief Justice

You may be aware that National Human Rights Commission has been undertaking visits to various prisons across the country to study the living conditions of the inmates in discharge of its functions under section 12(c) of the Protection of Human Rights Act, 1993. During a recent visit by a team of officials from the Commission to the Central Women's Jail, Tihar, New Delhi on 25-11-2003, it was reported by the Jail Superintendent that out of 456 undertrial prisoners as on 31-10-2003, 39 had completed more than 3 years in the prison. The undertrials made common complaints to the team about the delay in commencement of their trials, slow progress of the trial for various reasons as well as delay in pronouncement of sentence by the Courts even after hearing arguments.

A list of 19 specific complaints given to the NHRC team by women prisoners in this regard is enclosed for your ready reference. In addition, 9 undertrial prisoners who had been granted bail by the Trial Courts were found to be still languishing in jail because of their inability to furnish surety. Out of these nine cases, four cases included in the last part of the list, do require urgent attention.

A perusal of the list would demonstrate, if the allegations are correct, a glaring and systemic violation of basic human rights of the prisoners to a speedy trial, which is a fundamental right implicit in the guarantee to life and personal liberty enshrined in Art. 21 of the Constitution of India.

May I, therefore, request you to kindly look into the plight of undertrial prisoners in Tihar Jail in general and, the cases of unfortunate women cited in the attached list in particular and to issue appropriate directions as you may please deem fit.

Yours sincerely,

Sd/-  
(A. S. Anand)

Justice Shri B. C. Patel  
Chief Justice  
Delhi High Court  
New Delhi

## List of 19 Specific Complaints

1. Lata Devi w/o Deep Chand was admitted on 25-09-1997 in case FIR No.930/97 u/s 302 IPC, PS Mangopuri. The case has been pending for final arguments for about a year.
2. Mamta, w/o Anand was admitted on 06-05-1999 in case FIR No.304/98 u/s 302/34 PC, PS Vikaspuri. The case been pending for pronouncement of sentence which was reserved more than 3 months back. Kanti, w/o Rajinder, admitted on 19-03-2000 in case FIR No.60/2000 u/s 364 IPC, PS Seemapuri, made the same complaint. Her case has been pending for pronouncement of sentence for six months because of the transfer of trial judge.
3. Hapuri alias Basanti w/o Shyam was admitted on 16-01-2000 in case FIR No.161199 u/s 302/34 IPC, PS Kalkaji. She stated that her case is at a standstill for the past 2 months after reaching the arguments stage. She has appeared in court twice during this period without achieving any progress of the case. She is being defended by a Government lawyer whom she finds indifferent to her plight.
4. Pooja d/o Raghubir Singh has been in this jail since 05-081998 as a UTP in case FIR No.406/98 u/s 302/1208/34 IPC, PS Janakpuri. Her case has been at a standstill for the last 08-09 months because of non-appearance of the I.O. (Inspector Ashok Tyagi).
5. Kamlesh d/o Karam Chand was admitted on 14-04-2000 in case FIR No.147/98 u/s 147/148/149/307/34 IPC, PS Partap Nagar. She stated that her case has been pending for long because of non-appearance of the I.O. after all other witnesses have been examined. She narrated in tears that her request for bail, or temporary release for 6 hours under police custody to meet her ailing mother, who has no other child, has been turned down repeatedly.
6. Famida w/o Ahsaan was admitted on 21-12-1998 in case FIR No.116/98 u/s 365/1208/302 IPC, PS Chandni Chowk. Her case has been pending at, the stage of examination of accused for the last six months. She has appeared in court for 5 times during this period



## Annexure 6

but her examination was not taken up. Similar complaint was made by Sultana w/o Chaman Lal (admitted on 20-03-2000 in case FIR No.115/2000 u/s 363/366/376/34 IPC, PS Timarpur). Urmila w/o Inderpal (admitted on 20-03-2000 in case FIR No.45/2000 u/s 363/366/376/34 IPC, PS Timarpur). Stella Sayed w/o Syed Fazluddin (admitted on 08-05-2000 in case FIR No.174/2000 u/s 375/396/376/412/1208 IPC, PS Vasant Vihar) and Rajni w/o Ashok admitted on 15-10-1999 in NDPS case.

7. Salma w/o Sartaj and Vakila w/o Guddu were both admitted on 01-06-2000 in case FIR No.230/2000 u/s 365/366/373/376/506/34 IPC, PS I.P. Estate. Their cases are at a standstill pending for recording the statements of accused persons.
8. Afroz w/o Ishtiyak was admitted on 09-10-1998 in case FIR No. 145/96 u/s 20/21161/98 NDPS Act, PS NCB. She has been acquitted in this case but was also involved since 27-10-2002 in another case FIR No.82/2002 u/s 21/61/85 NDPS Act. The charge has not been framed in the second case.
9. Sunita alias Kaligudi w/o Ramesh Singh was admitted on 3.5.99 in case FIR No.87/99 u/s 302/120B/34 IPC, PS Vikaspuri. She complained that the Government pleader provided to her is irregular in appearing for her and *did* not turn up on 2-3 last occasions.
10. Satinder Kaur w/o Darshan Singh was admitted on 26-09-1999 in case FIR NO.349/98 u/s 302/498/201/34 IPC. She cannot comprehend the reasons of extremely slow progress of her case which look two years to start after the challan was filed.
11. Kamlesh w/o Hari Chand Sharma (admitted on 14-09-1999), Bimla w/o Satish (admitted on 19-10-1999), Nita Gurung d/o Chander Sahadur Gurung (admitted on 05-02-2000) Seema Gupta w/o Ajay Kumar (admitted on 12-05-2000), Babita w/o Virender Kumar (admitted on 27-05-2000), Sheela w/o Mishri Lal (admitted on 08-06-2000) and Gurcharan Kaur w/o Jagdish Singh (admitted on 16-10-2000) complained that their cases had a late start and recording of evidence was going on very slowly.
12. Tahira Syed w/o Syed Abdula was admitted on 14-12-1999 in an NOPS case. She stated that only one witness has been examined in three and half years after the charge was framed. The judge was also transferred during this period.
13. Sonia w/o Sohanbir alias Pinku was admitted on 20-03-2000 in case FIR NO.54/2000 u/s 364N302/201/120B/34 IPC PS Shadhra. She stated that her trial was delayed because the judge was transferred and the new judge took quite sometime to familiarise herself with the case. Only one witness was examined on 24-11-2003. For about 8 months the Government pleader provided to defend her did not turn up.

## Annexure 6

14. Shaila Azhar alias Shaila Zaidi w/o Noor Sarwar Qureishi was admitted on 19-05-2000 in case FIR No.143/2000 uls 3/9 OS Act 120B/468/471 PS GK.1. She stated that she is one of the accused persons in a case, which has 52 witnesses. She stated that with the examination of 18 witnesses, prosecution evidence against her has been completed except for the statement of the I.O. She requests that she may be granted bail if the I.O. cannot be examined until all the remaining 34 witnesses have been examined.
15. Girija Pandey alias Kalika Pandey w/o Mangla Pandey was admitted on 30-05-2000 in an NDPS case. The case is pending at the stage of cross-examination of the I.O. The next date has been given after 3 months in February 2004.
16. Rekha w/o Ram Chander was admitted on 02-08-2000 in an NDPS case. 4 out of 8 witnesses have been examined. The case has made no progress in the last 8-9 months. She also complained about the indifference of the Government pleader provided to her.
17. Renu Chakravarti w/o Vishvnath was admitted on 10-08-2000 in an NDPS case of PS Kamla Market. For a long time she used to be taken for court appearance but kept waiting in the lock-up and not produced before the Magistrate. She is now being produced before the court but only 3 witnesses out of a total of 10 have been examined. She stated her Government lawyer, DP Chopra has met her only 3 times in the last three years.
18. Kotashya Verma w/o Nar Singh was admitted on 22-10-2000 in a case of kidnapping, rape and ITP Act. She was not able to explain her case because of language problem (she is a Telgu speaking woman). The Superintendent was requested to arrange services of a Telugu speaking person to comprehend her complaint and proceed further.
19. Charanjit Kaur, an old woman was admitted on 19-12-2000 in a case of murder in which she has been acquitted. She was charge-sheeted in another case U/S 420 IPC on 12-01-2001. She states that her case has remained at a standstill for about 11 months because of transfer of trial judge. Now all evidence is over but the IO/SHO is not turning up. She said that on every 'peshi' day she finds the IO present in the court premises but he does not come forward for evidence.

### Four specific cases where undertrial prisoners were granted bail and are still languishing in jail because of their inability to furnish surety:

1. Lalita w/o Anil Prasad was admitted on 01.10.2002 in case FIR No.254/02 PS Bhawana in a case of kidnapping and rape. Although she has a son who comes to meet her occasionally, he is not taking interest in arranging a surety of Rs.15000/-.
2. Namita w/o Deewari was admitted on 15-10-2003 in a case FIR No.1887/03 U/S 308/34

## Annexure 6

IPC. Her husband, the main accused in the case, seems to have abandoned her after arranging his release on bail. She is in a family way and has been granted bail with a surety of Rs.10, 000/- which she has not been able to arrange.

3. Seema w/o Ajay was admitted on 12-05-2000 in a case of kidnapping and murder PS Gandhi Nagar. She was granted bail with a surety of Rs.20, 000/-. She is being defended by a Government lawyer. She complained that her brother is being threatened by the accused party not to arrange her release on bail.
4. Lata w/o Raju was admitted on 17-09-2002 in an NDPS case of PS Cannaught Place. Four months back she was granted bail with a surety of Rs.5000/- which she cannot arrange. Her husband is also in jail. She is being defended by a Government lawyer.

## Reply from the Chief Justice of Delhi High Court

B. C. Patel  
Chief Justice

D.O. No. 38/CJS/04  
19 May 2004

With reference to your demi-official letter No. 4/9/2003-PRP&P dated 20th February, 2004, I would like to inform you that after the receipt of your aforesaid letter alongwith the list, I called for the reports from the learned Public Prosecutor and after hearing the learned Public Prosecutor, myself sitting in a Division Bench with Justice Badar Durrez Ahmed, passed the orders, substance whereof is enclosed herewith.

We were constrained to call for the report in one of the matters where the learned Additional Sessions Judge remained a silent spectator. Except adjournments nothing had been done. I am sending his reports for your kind perusal. In the said matter, the Bench issued notice for compensation.

In view of the aforesaid letter, many poor people got justice. I visited Tihar Jail alongwith M/s D.K. Jain, A.K. Sikri and Badar Durrez Ahmad, JJ. Thereafter we also passed orders releasing sick and infirm accused as also aged male and female accused on bail after hearing the learned Public Prosecutor who made her submissions after calling the report and evidence in some of the cases.

With warm regards.

Yours sincerely

Sd/  
(B. C. Patel)

Hon'ble Justice Dr. A. S. Anand  
Chairperson  
National Human Rights Commission,  
Sardar Patel Bhawan, Parliament Street,  
New Delhi - 110001

**Letter dated 12<sup>th</sup> May 2004 to Chief Secretaries of all States/  
UTs Regarding Emergency Medical Care**

D.O.No. 6/1/2002-PRP&amp;P

12 May 2004

Dear

The Commission is deeply concerned about access to health care and in particular, access to emergency medical care. The Commission, therefore, constituted an Expert Group headed by Dr. P.K. Dave to go into the issue in April 2003.

The Expert Group has submitted a report to the Commission. In its meeting held on 22<sup>nd</sup> April 2004, the Commission accepted the recommendations made by it and desired that they be referred to the concerned Ministries/Departments of Central and State Governments as well as to the Director General of Health Services, Government of India.

I am enclosing herewith the Commission's recommendations for restructuring emergency medical services. You are requested to kindly have appropriate follow-up action initiated on these recommendations. You are also requested to kindly intimate the action taken on the recommendations of the Commission.

With kind regards,

Yours sincerely,

Sd/-  
(S.Jalaja)To,  
The Chief Secretaries of All States/UTs.

## **Recommendations of Regional Public Hearings on Right to Health Care and National Action Plan**

D.O.No. 11/21/2003-PRP&P

11 March 2005

Dear

1. The Commission, in partnership with the Jan Swasthya Abhiyan (JSA), held five Public Hearings in various regions of the country followed by one Public Hearing at the National level on Right to Health Care. In the Regional Hearings, a large number of individual victims testified before a panel comprising of senior officials of NHRC, State Government officials and representatives of JSA. During these hearings, an attempt has been made to identify systemic gaps in the health care delivery system. The recommendations arising out of the Regional Hearing pertaining to your State are enclosed.

2. The National Public Hearing on Right to Health Care was organized on 16-17 December 2004 at New Delhi. In the two day hearing, there were discussions on issues like women's right to health care, children's right to health care, health rights in situations of conflict and displacement, mental health rights, right to essential drugs, health rights in the context of private medical sector, occupational and environmental health rights and health rights in the context of HIV/AIDS. Systemic gaps in health care delivery system were discussed during the National Hearing and a National Action Plan to operationalise the Right to Health Care was evolved during the deliberations (copy enclosed).

3. The recommendations of the Regional Public Hearings and the National Action Plan were examined by the Commission. The Commission desired that they be forwarded to authorities concerned for their consideration and to get their feedback thereon by 30<sup>th</sup> March 2005. The feed-back would then be an important input before Commission finalizes the recommendations.

4. I, therefore, request you kindly have a report sent to the Commission in this regard. With kind regards,

Yours sincerely,

Sd/-  
(Aruna Sharma)

To,  
Chief Secretaries of all States/UTs

**National Public Hearing on Right to Health Care  
Organized by NHRC & JSA on 16-17 December  
2004, New Delhi**

**NHRC Recommendations for a National Action Plan to  
Operationalise the Right to Health Care within the Broader  
Framework of the Right to Health**

**Objectives of the National Action Plan**

- Explicit recognition of the Right to Health Care, to be enjoyed by all citizens of India, by various concerned parties: Union and State Governments, NHRC, SHRCs and civil society and other health sector civil society platforms.
- Delineation of essential health services and supplies whose timely delivery would be assured as a right at various levels of the Public Health System.
- Delineation of citizen's health rights related to the Private medical sector including a Charter of Patients Rights.
- Legal enshrinement of the Right to Health Care by enacting a Public Health Services Act, Public Health Services Rules and a Clinical Establishment Regulation Act to regulate the Private medical sector.
- Operationalization of the Right to Health Care by formulation of a broad timetable of activities by Union and State Governments, consisting of the essential steps required to ensure availability and accessibility of 'appropriate' health services to all citizens, which would be necessary to operationalize the Right to Health care. This may include a basic set of Health Sector reform measures essential for universal and equitable access to appropriate health care, and guidelines regarding the budgetary provisions to be made available for effective operationalization.
- Initiation of mechanisms for joint monitoring at District, State and National levels involving health departments and civil society representatives, with specified regularity of monitoring meetings and powers to monitoring committees. In parallel with this, an institutionalized space needs to be created for regular civil society inputs towards a more consultative planning process. These should be combined with vigilance mechanisms to take prompt action regarding illegal charging of patients, unauthorized private practice, corruption relating to drugs and supplies etc. to monitor unethical and illegal medical practices.



- Functional redressal mechanisms to be put in place at District, State and National levels to address all complaints of denial of health care.

## Recommendations Under the Action Plan

### *Recommendations to Government of India / Union Health Ministry*

- Enactment of a National Public Health Services Act, recognizing and delineating the Health rights of citizens, duties of the public health system, public health obligations of private health care providers and specifying broad legal and organizational mechanisms to operationalize these rights. This Act would make mandatory many of the recommendations laid down, and would make more justiciable the denial of health care arising from systemic failures, as have been witnessed during the recent public hearings.

This Act would also include special sections to recognise and legally protect the health rights of various sections of the population, which have special health needs: Women, children, persons affected by HIV-AIDS, persons with mental health problems, persons with disability, persons in conflict situations, persons facing displacement, workers in various hazardous occupations including unorganized and migrant workers etc.

- Delineation of model lists of essential health services at various levels: Village / Community, Sub-centre, PHC, CHC, Sub-divisional and District hospital to be made available as a right to all citizens.
- Substantial increase in Central Budgetary provisions for Public health, to be increased to 2-3% of the GDP by 2009 as per the Common Minimum Programme.
- Convening one or more meetings of the Central Council on Health to evolve a consensus among various state governments towards operationalizing the Right to Health Care across the country.
- Enacting a National Clinical Establishments Regulation Act to ensure citizen's health rights concerning the Private medical sector including right to emergency services, ensuring minimum standards, adherence to Standard treatment protocols and ceilings on prices of essential health services. Issuing a Health Services Price Control Order parallel to the Drug Price Control Order. Formulation of a Charter of Patients Rights.
- Setting up a Health Services Regulatory Authority - analogous to the Telecom regulatory authority- which broadly defines and sanctions what constitutes

## Annexure 8

rational and ethical practice, and sets and monitors quality standards and prices of services. This is distinct and superior compared to the Indian Medical Council in that it is not representative of professional doctors alone – but includes representatives of legal health care providers, public health expertise, legal expertise, representatives of consumer, health and human rights groups and elected public representatives. Also this could independently monitor and intervene in an effective manner.

- Issuing National Operational Guidelines on Essential Drugs specifying the right of all citizens to be able to access good quality essential drugs at all levels in the public health system; promotion of generic drugs in preference to brand names; inclusion of all essential drugs under Drug Price Control Order; elimination of irrational formulations and combinations. Government of India should take steps to publish a National Drug Formulary based on the morbidity pattern of the Indian people and also on the essential drug list.
- Measures to integrate National Health Programmes with the Primary Health Care system with decentralized planning, decision-making and implementation. Focus to be shifted from bio-medical and individual based measures to social, ecological and community based measures. Such measures would include compulsory health impact assessment for all development projects; decentralized and effective surveillance and compulsory notification of prevalent diseases by all health care providers, including private practitioners.
- Reversal of all coercive population control measures, that are violative of basic human rights, have been shown to be less effective in stabilizing population, and draw away significant resources and energies of the health system from public health priorities. In keeping with the spirit of the NPP 2000, steps need to be taken to eliminate and prevent all forms of coercive population control measures and the two-child norm, which targets the most vulnerable sections of society.
- Active participation by Union Health Ministry in a National mechanism for health services monitoring, consisting of a *Central Health Services Monitoring and Consultative Committee* to periodically review the implementation of health rights related to actions by the Union Government. This would also include deliberations on the underlying structural and policy issues, responsible for health rights violations. Half of the members of this Committee would be drawn from National level health sector civil society platforms. NHRC would facilitate this committee. Similarly, operationalizing *Sectoral Health Services Monitoring Committees* dealing with specific health rights issues (Women's health, Children's health, Mental health, Right to essential drugs, Health rights related to HIV-AIDS etc.)

- The structure and functioning of the Medical Council of India should be immediately reviewed to make its functioning more democratic and transparent. Members from Civil Society Organizations concerned with health issues should also be included in the Medical Council to conform medical education to serve the needs of all citizens, especially the poor and disadvantaged.
- People's access to emergency medical care is an important facet of right to health. Based on the Report of the Expert Group constituted by NHRC (Dr. P.K.Dave Committee), short-term and long-term recommendations were sent to the Centre and to all States in May 2004. In particular, the Commission recommended:
  - (i) Enunciation of a National Accident Policy;
  - (ii) Establishment of a central coordinating, facilitating, monitoring and controlling committee for Emergency Medical Services (EMS) under the aegis of Ministry of Health and Family Welfare as advocated in the National Accident Policy;
  - (iii) Establishment of Centralized Accident and Trauma Services in all districts of all States and various Union Territories along with strengthening infrastructure, pre-hospital care at all government and private hospitals.
- Spurious drugs and sub-standard medical devices have grave implications for the enjoyment of human rights by the people. Keeping this in view all authorities are urged to take concrete steps to eliminate them.
- Access to mental health care has emerged as a serious concern. The NHRC reiterates its earlier recommendations based on a Study "Quality Assurance in Mental Health" which were sent to concerned authorities in the Centre and in States and underlines the need to take further action in this regard.

### ***Recommendations to State Governments / State Health Ministries***

- Enactment of State Public Health Services Acts/Rules, detailing and operationalizing the National Public Health Services Act, recognizing and delineating the health rights of citizens, duties of the Public health system and private health care providers and specifying broad legal and organizational mechanisms to operationalise these rights. This would include delineation of lists of essential health services at all levels: Village / Community, Sub - centre, PHC, CHC, Sub-divisional and District hospital to be made available as a right to all citizens. This would take as a base minimum the National Lists of essential services mentioned above, but would be modified in keeping with the specific health situation in each state.

## Annexure 8

These rules would also include special sections to recognize and protect the health rights of various sections of the population, which have special health needs: Women, children, persons affected by HIV-AIDS, persons with mental health problems, persons in conflict situations, persons facing displacement, workers in various hazardous occupations including unorganized and migrant workers etc.

- Enacting State Clinical Establishments Rules regarding health rights concerning the Private medical sector, detailing the provisions made in the National Act.
- Enactment of State Public Health Protection Acts that define the norms for nutritional security, drinking water quality, sanitary facilities and other key determinants of health. Such acts would complement the existing acts regarding environmental protection, working conditions etc. to ensure that citizens enjoy the full range of conditions necessary for health, along with the right to accessible, good quality health services.
- Substantial increase in State budgetary provisions for Public health to parallel the budgetary increase at Central level, this would entail at least doubling of state health budgets in real terms by 2009.
- Operationalizing a State level health services monitoring mechanism, consisting of a *State Health Services Monitoring and Consultative Committee* to periodically review the implementation of health rights, and underlying policy and structural issues in the State. Half of the members of this Committee would be drawn from State level health sector/civil society platforms. Corresponding Monitoring and Consultative Committees with civil society involvement would be formed in all districts, and to monitor urban health services in all Class A and Class B cities.
- Instituting a Health Rights Redressal Mechanism at State and District levels, to enquire and take action relating to all cases of denial of health care in a time bound manner.
- A set of public health sector reform measures to ensure health rights through strengthening public health systems, and by making private care more accountable and equitable. The minimum aspects of a health sector reform framework that would strengthen public health systems must be laid down as an essential precondition to securing health rights. An illustrative list of such measures is as follows:
  1. State Governments should take steps to decentralize the health services by giving control to the respective Panchayati Raj Institutions (PRIs) from the Gram Sabha up to the district level in accordance with the XI Schedule of the 73<sup>rd</sup> and 74<sup>th</sup> Constitutional Amendment of 1993. Enough funds from the plan and non plan allocation should be devolved to the PRIs at various levels. The local bodies should be given the

responsibility to formulate and implement health projects as per the local requirements within the local overall framework of the health policy of the state. The elected representatives of the PRIs and the officers should be given adequate training in local level health planning. Integration between the health department and local bodies should be ensured in formulating and implementing the health projects at local levels.

2. The adoption of a State essential drug policy that ensures full availability of essential drugs in the public health system. This would be through adoption of a graded essential drug list, transparent drug procurement and efficient drug distribution mechanisms and adequate budgetary outlay. The drug policy should also promote rational drug use in the private sector.
3. The health department should prepare a State Drug Formulary based on the health status of the people of the state. The drug formulary should be supplied at free of cost to all government hospitals and at subsidized rate to the private hospitals. Regular updating of the formulary should be ensured. Treatment protocols for common disease states should be prepared and made available to the members of the medical profession.
4. The adoption of an integrated community health worker programme with adequate provisioning and support, so as to reach out to the weakest rural and urban sections, providing basic primary care and strengthening community level mechanisms for preventive, promotive and curative care.
5. The adoption of a detailed plan with milestones, demonstrating how essential secondary care services, including emergency care services, which constitute a basic right but are not available today, would be made universally available.
6. The public notification of medically underserved areas combined with special packages administered by the local elected bodies of PRI to close these gaps in a time bound manner.
7. The adoption of an integrated human resource development plan to ensure adequate availability of appropriate health human power at all levels.
8. The adoption of transparent non-discriminatory workforce management policies, especially on transfers and postings, so that medical personnel are available for working in rural areas and so that specialists are prioritised for serving in secondary care facilities according to public interest.
9. The adoption of improved vigilance mechanisms to respond to and limit corruption,

## Annexure 8

negligence and different forms of harassment within both the public and private health system.

10. All health personnel upto the district PRI level must be administratively and financially accountable to the PRI at each level from the Gram Panchayat to the District level. Adequate financial resources must be made available at each level to ensure all basic requirements of health and medical care for all citizens.
- Ensuring the implementation of the Supreme court order regarding food security, universalising ICDS programmes and mid day school meal programmes, to address food insecurity and malnutrition, which are a major cause of ill-health.
  - People's access to emergency medical care is an important facet of right to health. Based on the Report of the Expert Group constituted by NHRC (Dr. P.K.Dave Committee), short-term and long-term recommendations were sent to the Centre and to all States in May 2004. In particular, the Commission recommended:
    - (i) Enunciation of a National Accident Policy;
    - (ii) Establishment of a central coordinating, facilitating, monitoring and controlling committee for Emergency Medical Services (EMS) under the aegis of Ministry of Health and Family Welfare as advocated in the National Accident Policy;
    - (iii) Establishment of Centralized Accident and Trauma Services in all districts of all States and various Union Territories along with strengthening infrastructure, pre-hospital care at all government and private hospitals.
  - Spurious drugs and sub-standard medical devices have grave implications for the enjoyment of human rights by the people. Keeping this in view all authorities are urged to take concrete steps to monitor and eliminate them.
  - Access to Mental health care has emerged as a serious concern. The NHRC reiterates its earlier recommendations based on a Study "Quality Assurance in Mental Health" which were sent to concerned authorities in the Centre and in States and underlines the need to take further action in this regard.

### *Recommendations to NHRC*

- NHRC would oversee the monitoring of health rights at the National level by initiating and facilitating the *Central Health Services Monitoring Committee*, and at regional level by appointing *Special Rapporteurs on Health Rights* for all regions of the country.



## Annexure 8

- Review of all laws/statutes relating to public health from a human rights perspective and to make appropriate recommendations to the Government for bringing out suitable amendments.

### *Recommendations to SHRCs*

- SHRCs in each state would facilitate the *State Health Rights Monitoring Committees* and oversee the functioning of the State level health rights redressal mechanisms.

### *Recommendations to Jan Swasthya Abhiyan and Civil Society Organizations*

- JSA and various other civil society organisations would work for the widest possible raising of awareness on health rights – ‘Health Rights Literacy’ among all sections of citizens of the country.





## Western Region Public Hearing on Right to Health Care, 29 July 2004, Bhopal, Madhya Pradesh

### Recommendations from the Public Hearing

#### Legal Measures

- Enactment of a State Public Health Act in each state, which would outline the mandatory health care services which must be made available to the people as a right at various levels of the public health system. This act would specify which services and standards of care must be made available at the community, sub-centre, PHC, CHC, Sub-district and District hospital levels, as well as the preventive and promotive measures that the government would undertake.
- Enactment of a Clinical Establishments Regulation Act in each state to ensure minimum standards, adherence to standard treatment guidelines and ceilings for costs of essential medical services in the private sector. For example, the Bombay Nursing Home Regulation Act 1949 - Maharashtra, may be substantially modified and improved to effectively regulate the quality of private medical services in the state.
- Private practice presently allowed to Government health care providers should be legally banned, and those doing it should be promptly punished.

#### Independent Social Monitoring and Redressal System

- Preparing lists of specific services and supplies that would be guaranteed at all levels of the public health system; wide dissemination and public display of these lists in all relevant facilities.
- A system of regular independent monitoring of the functioning of the health care system at all levels – encompassing state, district, city / town, block and community levels. Representatives of state level health sector coalitions, social organizations involved in health-work along with representations from the beneficiary population, in conjunction with relevant health officials, should be entrusted with this independent monitoring.
- An effective redressal mechanism at block, district and state levels for persons with complaints regarding quality of health care, or those who have suffered denial in any form. This mechanism should be transparent, should involve health sector coalitions and social organizations, and should be independently reviewed on a periodic basis. A department or

position of Swasthya Lok Ayukta may be created especially to address complaints and to ensure that rational guidelines are followed.

### Budgetary Measures

- Immediate doubling of public health-care expenditure by State governments and further increase to at least 3% of the State Domestic Product in next five years in keeping with provisions in the Common Minimum Programme.
- Per capita allocation for public health care for rural areas should be increased and made equal to that for urban areas.
- Immediate doubling of drug budget for rural health facilities.

### Measures to improve functioning of the health system and attention to special groups

- Standard Treatment Protocols should be implemented regarding care to be provided at various levels of Health Care Facilities, so that the necessary quality is maintained.
- The full range of comprehensive health services should be guaranteed at all levels of the public health system, these health services must be ensured as a right. In exceptional cases of failure by the public system to provide any such health service to a patient, there should be a mechanism wherein care may sought from designated private facilities following standard treatment protocols. Such registered and regulated facilities could give relevant care to the patient, and the state could reimburse them at standard rates, ensuring that the patient is not deprived of any essential care at the time of need.
- Guaranteed availability of essential drugs relevant to the level of service, in all public health facilities. A mechanism to ensure that if any health care facility is unable to provide any of the essential drugs that are supposed to be available at that level of health care, the expenses incurred by the patient on this 'outside prescription' should be promptly reimbursed. All health care providers in both public and private sector should prescribe according to the essential drug list, and prescribe drugs by their generic names.
- A comprehensive statewide policy to provide Primary Health Services to urban areas. Adequate health services need to be provided in all cities and small towns. Expansion of Urban health care infrastructure, especially of health posts and of outreach health services keeping in mind the needs of the growing slum population.
- Filling of all the vacant posts and construction of buildings for Sub-centres and other facilities.

## Annexure 8

- A new scheme to provide a Community Health Worker in every village or habitation of the state should be launched. As part of such a scheme, in tribal areas the Community Health Worker should be operative at hamlet level. For example, in Maharashtra under the Pada Swayam Sevak scheme, the full potential of the Pada Swayam Sevaks (PSSs), in tribal districts now needs to be realized by upgrading their role as has been done in innovative projects. This may be done by ensuring substantially upgraded training, integration of curative and preventive roles and preference being given to women in the selection process.
- Regarding women's access to health care, availability of all services in a woman-friendly and sensitive manner at public health facilities must be ensured. This should include assured round-the-clock maternity services at Sub-centre and PHC level; assured emergency obstetric and neonatal care at CHC level; facility of diagnosis and treatment of Reproductive Tract Infections and of infertility; and woman-friendly, quality abortion services. Simultaneously, quality health care for women beyond reproductive health such as availability of services by women doctors; supply of iron tablets to all anaemic women irrespective of being pregnant or not; care for victims of domestic violence, and other services relevant to women's health must be ensured.
- Training of staff to increase its sensitivity to groups with special health care needs like women, children, old people, the mentally and physically challenged.
- Greater sensitivity towards mentally unwell, institutionalised patients, provisions for proper counseling. Provisions for consent procedures, facilities for legal aid and measures for rehabilitation and family contact.
- All coercive measures, including incentives and disincentives for limiting family size, which result in violations of human rights, must be stopped immediately.
- The norms for maintaining quality of service during tubectomy operations must be strictly followed. For any violation, of these norms responsible persons must be suitably held accountable and punished. The 'camp approach', which often results in poor quality operative care and violation of various aspects of women's rights, needs to be seriously reviewed immediately.

### The other recommendations are:

1. Public Health facilities should guarantee a Health Centre within walkable distance with qualified doctors and infrastructure.
2. Facility to refer patients with serious ailments to specialized hospitals including transport

(Ambulance or Vehicles) with minimum facilities to give life sustaining treatment during transit.

3. Drugs availability at reasonable rate within reach of common man.

- a) Supply of quality drugs.
- b) Ban of spurious drugs envisaging violation as grave crime entailing severe punishment.
- c) There should be a Drug Price Control Policy. Violators should be held accountable, including penal action.

4. Social responsibility of providing 10% of free service or service on nominal charges fixed by the State should be made mandatory for all Corporate Hospitals and Private Nursing Homes with regular accountability entrusted to a body created by the State to monitor the system.

- Visit of Mobile Hospitals with adequate infrastructure and doctors, at least twice a month, to a village to treat the ailing people where there is no hospital facility and refer serious patients to Health Centres or District hospitals.
- To examine the children in all primary and middle schools regularly twice a year and send report to DMs and/or Collectors, along with names and attestation of Head Master and Sarpanchs of the village.
- The diet specialist doctors should prepare a list of food articles available in local area and prepare a chart showing the proportions of food articles to be taken by children, young boys and girls, pregnant women, old citizens and women from weaker sections, etc. for strengthening the nutrition of body and to end malnutrition. This exercise should be done every year and published in local language, put up on Notice Board of Panchayat offices, Schools and Hospitals of every village.
- It should also publish that the parents should get their children examined regarding their hearing problems, vision, speech, etc. immediately after they notice any symptom so that at young age itself the same could be treated.
- The Gram Panchayats (full body) and recognized Non-Governmental Organizations at village, taluq, and district levels should send quarterly reports about the functioning of hospitals in their village stating presence or absence of doctors, the period for which one is absent or no doctor is posted at all, including women doctors, nurses, other medical



## Annexure 8

staff of hospital and availability of drugs to the District Medical Officer, Collector or Commissioner, Director of Medical Services of the State and one to the Health Secretary.

- A Monitoring body should be formed with Chief Secretary as Chairperson, Health Secretary, Director of Medical Services and Secretary in-charge of Vigilance as Members to scrutinize the reports and suggest action to be taken immediately as time-bound programmes. The reports of Monitoring Committees should be placed before the Assembly every six months for consideration of elected representatives.

**Southern Region Public Hearing on the  
Right to Health Care Held on 29<sup>th</sup>  
August, 2004 at Chennai**

**Key Findings and Recommendations in Response to Oral and  
Written Testimonies for the States of Kerala, Tamil Nadu,  
Andhra Pradesh, Karnataka and Pondicherry**

**1. Access to Primary Health Care through the Public Sector Health  
System**

Primary health care is understood in a more limited way as services made available through Sub-Centre (SCs), Primary Health Centres (PHCs) and Community Health Centres (CHCs).

- Pondicherry received positive community response regarding the availability and quality of primary health care services.
- There were no complaints from Kerala though issues regarding essential drugs, environmental health and trauma care were raised which come within a broader understanding of primary health care (covered in item 5,6,7).
- In Karnataka and AP the irrational siting of PHCs (possibly under political pressure) made access to health care very difficult and sometimes impossible. Some of the farthest villages were 40 – 50 kms away, and in other cases there was no easy bus access to PHCs / SCs. In AP; subcentres that were supposed to be there were non-existent or non-functional. In Tamilnadu, Karnataka and AP there were problems with regard to quality of care, referrals and staff attitudes.

**Recommendation 1**

- The siting/distribution and physical accessibility of PHCs and subcentres must be ensured. They should provide good quality services during the prescribed timings. Indicators and mechanisms for monitoring quality of care need to be developed and used. No money should be taken for services that are to be provided free. The citizens charter for services at PHCs should be prominently displayed and implemented. Staff vacancies need to be filled up and staff needs such as quarters, toilets, water supply and electricity need to be ensured. Adequate provision of medicines, laboratory equipment and consumables, registers etc is a basic requirement. Maintaining staff motivation through good management practices will help improve the quality of services and to foster a relationship of mutual respect and trust between providers and people.

## Annexure 8

- State and Central health budgets would need to be increased as per the National Health Policy 2002 and the Common Minimum Programme commitments. Distribution of the health budget between the primary, secondary and tertiary levels of care would also need to follow norms, such as 65%, 20% and 15% respectively.

### 2. Urban health care

There were several instances where the urban poor suffered adversely due to lack of access to health care and to basic determinants such as lack of access to safe potable water and sanitation.

#### Recommendation 2

- The urban poor should have access not just to family welfare services but to comprehensive primary health care through health centres which cater to 50,000 people.
- Provision of safe potable water and sanitation is necessary to prevent morbidity and mortality due to water-borne diseases.
- User fees in institutions like NIMHANS need to be reconsidered as they have resulted in lack of access to care. Urban poor families including migrants often do not have ration cards and BPL cards. Rural and urban poor patients coming from other places do not carry all these cards (if they have them) when they come to hospital in times of illness.
- Corruption and rude behaviour in institutions like Kidwai Institute of Oncology as well as in IPP VIII Centres need to be checked.
- Pourakarmikas from Hyderabad Metro Water Works and those in other cities and towns need to have access to basic preventive, promotive and curative care, including safety gear and equipment.

### 3. Private sector health care

The case of death of a teenaged girl following treatment of gastroenteritis by a private practitioner (with an unusual medical qualification) raised the need for:

#### Recommendation 3

- Regulation of the private medical/health sector by government and professional bodies. Liability of practitioners and payment of compensation where death or disability results from improper treatment or negligence.



- Unnecessary surgeries such as hysterectomies as was reported from AP should be curbed.

#### 4. Women's access to health care and gender concerns

It was painful to hear testimonies from women about the poor treatment they received even for ANC/PNC and family planning services and the lack of respect and privacy.

##### Recommendation 4

- The camp approach should not be used for tubectomies/sterilizations. Good quality, safe contraceptives need to be available in health centres at different levels, with adequate facilities for screening follow-up and discussion about possible side-effects. Patient feedback on quality of care should be regularly taken and acted upon.
- Medical and health care should be made available to women and children as close to their residence as possible.
- Privacy and respect should be ensured for women and girls during medical examination and treatment.
- The large number of hysterectomies at young ages taking place in AP without adequate medical justification needs to be urgently looked into and curbed. The commercialization of medical practice does not benefit persons or families and requires social control.
- There should be 24 hour PHCs functioning in every taluk for emergency obstetric care and CHCs should have gynecologists and anaesthetists. Due to the shortage of anaesthetists medical officers with a 3 – 6 month training in anaesthesia could be authorized to give anaesthesia.

#### 5. Environment and Health

Strong testimonies were presented from Kerala, Tamilnadu and AP on the adverse impact on human health resulting from exposure to toxins from industries / factories, and pesticides. This problem exists throughout the country.

##### Recommendation 5

- The Department of Health at state and central level needs to have structural mechanisms through which it can function along with other agencies likes the pollution control board, ministry of environment and forests etc. to implement regulatory and preventive measures, and to provide for occupational health and safety, as well as access to medical

## Annexure 8

care where environmental injury has occurred. In short there is need for a public health response to environmental health problems.

### 6. Access to essential medicines and rational therapeutics

The use of irrational and sometimes harmful, banned and bannable medicinal drugs and preparations was raised as an issue of concern in Kerala. This problem exists in all states.

#### Recommendation 6

- Rational drug policies, essential drug lists, standard treatment guidelines and formularies need to be adopted in the public and private sector, and more importantly they should be used and regularly updated.
- Existing and new mechanisms for continuing education of medical practioners and allied health professionals need to be actively used for this purpose.
- Measures to increase consumer awareness and good pharmacy practice need to be widely instituted.

### 7. Trauma care

This came up strongly from Kerala, but is applicable in all states.

#### Recommendation 7

- With the rising number of traffic and other accidents early trauma care using standard protocols need to be ensured through provision of infrastructure and training. Preventive measures such as use of helmets and seat-belts should be mandatory.

### 8. Mental health

The following problems were experienced by groups working in the different states – lack of access to mental health care by rural poor due to centralized mental health care available mainly in city and town based institutions; stigma, discrimination and abuse; lack of medical and health personnel with adequate training in mental health; non-availability of drugs; lack of public awareness about mental health

#### Recommendation 8

- Medical and psychosocial care and support for persons with mental illness should be

available in a decentralized manner. This will require adequate training and continuing education. Public awareness and sensitivity also needs to be increased.

## 9. Public health issues

Other public health issues raised included prevalence of Vit. A deficiency (AP); discrimination faced by patients with AIDS who required surgery (AP); death of TB patients due to lack of access to treatment (Karnataka).

### Recommendation 9

National guidelines regarding these public health issues need to be followed. Increasing community involvement and feeling of community ownership of health institutions and programmes would help in better outreach and quality. Training and involvement of community health workers/social health activists would provide a valuable link.

## 10. Follow-up and monitoring of implementation of recommendations arising from the public hearings on the Right to Health Care.

### Recommendation 10

- A mechanism needs to be established at state level for joint monitoring by the Jan Swasthya Abhiyan and officials from the state department of health regarding the follow-up of recommendations. They will report to the NHRC. NHRC officials may also visit to observe and monitor the follow-up whenever necessary. Accountability and communication with the local communities is of greatest importance.

**Northern Region Public Hearing on  
Right to Health Care,  
Lucknow, 26<sup>th</sup> September, 2004**

**Recommendations by the Northern Region Public Hearing,  
NHRC-Jan Swasthya Abhiyan:**

**Regulation and Monitoring**

- Enactment of State Public Health Acts, which would outline the mandatory health care services that would be guaranteed at all levels of public health system as a right.
- Regulatory mechanism at state level to ensure the quality of private medical services by implementing minimum standards, standard treatment guidelines and ceiling for costs of essential medical services.
- A system of regular independent review of the functioning of the public health system at state, district and community levels. This review, every 3 to 6 months, should involve JSA and other social representatives.
- An effective redressal mechanism for persons or communities who have suffered denial of health care in any form. This mechanism should involve JSA and other social representatives.

**Strengthening Public Health System**

- Tripling the public health budget in next five years, to increase it to at least 3% of SDP as per the Common minimum programme.
- Allocation of adequate budget for drugs, which would involve at least doubling of state drug budgets. Guarantee of essential drug at all levels.
- Provision of adequate infrastructure including buildings, equipments, vehicles and maintenance for all public health facilities. Filling of all vacant posts at various levels.
- Women are often denied access to health care because of insensitive attitude of health staff and inadequate facilities. Keeping this in mind, availability of all health services for both reproductive and non reproductive health needs to be guaranteed in a women friendly manner at all public health facilities.

- Universalization of ICDS, including strengthening of child health related services. Guarantee of immunization, nutritional supplementation and other essential preventive child health services. Ensuring school health services and mid-day meals.
- A comprehensive statewide policy to provide primary health services to urban areas. Expansion of Urban Health care infrastructure, especially of health posts and of outreach health services.
- A new scheme to provide a community health worker in every village of the state should be launched. This should effectively involve communities, Panchayats and local organizations.
- Regarding mental health, much greater sensitivity towards mentally unwell, institutionalized patients; provisions for proper counseling and measures for rehabilitation and family contact.
- All coercive measures for limiting family size must be stopped immediately. The tubectomy camp approach, which often results in poor quality operative care and violation of various aspects of women's rights, needs to be reviewed.

## State Level Recommendations:

### Recommendations for Health Services in Delhi

1. There are three over-arching issues applicable to all Public Health Institutions:
  - a. With Delhi being a city-state and the national capital with a historical development of multiple local bodies there is a multiplicity of providers. The respective roles of Government of India, Government of Delhi and the local bodies need to be clearly spelt out and well coordinated.
  - b. There is a need to rationalize and integrate the functioning of the public health agencies. The Dr. Pattanayak Committee had given its recommendations for restructuring the health services of the Municipal Corporation of Delhi in 2001-02 but it has largely been ignored. There is a need to consider its implementation.
  - c. Health personnel (including doctors) need to be in position through regular appointments and their performance should be ensured through administrative and community regulatory mechanisms.
2. Strengthening of Primary Level Institutions:
  - a. Peripheral areas lack institutional coverage; these areas require special attention and should be expanded.

## Annexure 8

- b. Equipment and infrastructure backup should be available in dispensaries and PHCs including laboratory support and emergency backup services.
- c. Vacant posts of personnel should be filled up, their allocation rationalized and regular attendance and performance ensured.
- d. The Maternal & Child Welfare Centres and Family Welfare Centres should provide full range of primary gynaecologic and paediatric services.
- e. The sub-centre network should be expanded in rural areas that should be linked to the respective PHCs.
- f. Public health programmes and personnel need to be reorganized/restructured and these institutions need to integrate with the local curative institutions.
- g. Involvement of local communities (through Local Health Committees, for example) in local level planning and implementation of services; the departments of health, water, sanitation and social welfare should be involved and accountable to these local committees.

### 3. Secondary Level Hospitals:

- a. 100 bedded hospitals and 30/40 bedded colony hospitals should have full range of secondary level services operational from its inception; hospitals like Sanjay Gandhi Hospital, Mangolpuri took more than 10 years to develop all services – the present new hospitals are in a similar state.
- b. The secondary level institutions should be linked with the local primary level institutions with a proper referral mechanism.
- c. Secondary level speciality services and requisite equipment and supplies should be available.
- d. Rational prescribing practices should be implemented.
- e. Special emphasis needs to be given on environmental and occupational health problems

### 4. Tertiary Level Hospitals (all agencies):

- a. The above measures will decrease unnecessary overload at this level.
- b. Adequate supply of drugs and supplies, based on rational drug formularies, should be available.

- c. Internal medical audit mechanisms should be instituted.
5. With strengthening of these three levels we should be able to ensure that social security services like CGHS, Railways and ESIC should not be sending their patients to private corporate institutions.
  6. a. Reporting of notifiable diseases and medical certification of deaths should be strictly implemented by all institutions (government and private) and private practitioners.
    - b. Public should have access to information about availability of services at each level, availability of beds at a point of time; other linkages like networking of blood banks are also necessary.
  7. a. Independent monitoring of health services through social audit:
    - b. Grievance redressal mechanisms within each agency providing public health services.
  8. There are 4 state level medical colleges and one national apex institute (AIIMS). There should not be any more increase in medical colleges. The content of medical education needs to be appropriate for operationlizing the public health services as detailed above – including training for managerial roles, a public health perspective and rational therapeutics. Training of field workers need to be strengthened.

## Recommendations for Health Services in Himachal Pradesh

- Rationalization of staff
- Filling up of all vacant posts
- Contract system be abolished
- Free diagnostic tests and no user charges
- Each PHC should have a lady doctor
- Per Diem system for different trainings be removed
- Incentive for trained birth attendant for promoting safe deliveries
- Basic facilities at sub centre level be ensured



## Annexure 8

- Separate and independent IEC Bureau be established with trained staff in health education
- Work load of Anganwari workers should be decreased

### Recommendations for Health Services in Uttar Pradesh

- Establish, adopt, recognize health as a fundamental right of all citizens including vulnerable, displaced, slum dwellers and poor.
- The Primary Health care system should be made accountable to Panchayats in rural and urban areas including JSA.
- Privatization or commercialization of health should be totally banned and regulated by the state.
- Poor, marginalized, deprived, migrant and other vulnerable groups should be accorded identity, accessibility and availability of health care system free of cost.
- Indian system of medicines should be treated at par with modern medicines and should be mainstreamed.
- Social security to senior citizens, children, disabled and women should be specially provided.
- All the policies related to health, child development and women empowerment should be seen in totality and not in isolation.
- All forms of user charges should be removed and health care should be provided free of cost.
- The denial of health care and negligent care should be made accountable to people and arrangement of redressal should be in place.
- The essential drug list should be made public and state should ensure the reasonably quality and adequate essential drugs to all health facilities.
- The incentive and disincentive in family planning programme should be removed.
- Two child norm and coercive population policies should be removed.
- Government should honour the 'Health for all' goals and adopt the PHA charter.

**Eastern Region Public Hearing  
on Right to Health Care,  
Ranchi, 11 October, 2004**

**Recommendations**

The public hearing on the denial of right to health care that was held in Ranchi on the 11-10-2004, heard a number of cases of denial from the five states of Bihar, Jharkhand, Chhattisgarh, Orissa and West Bengal.

Of the over 70 cases presented orally and about 150 cases submitted in writing, there were a few recurrent themes. These included:

- a. High degrees of illegal fees and denial of treatment if these are not paid – in public health facilities.
- b. Poor quality of service in many public health facilities.
- c. Absence of any services in remote tribal areas.
- d. Denial of right to safe drinking water.
- e. Lack of food security and malnutrition related illness.
- f. Expensive, irrational drug prescription along with lack of availability of essential drugs in public health facilities.
- g. Lack of emergency obstetric care services and safe abortion services.
- h. Lack of emergency services for a wide variety of emergencies – notably accidents, burns, snakebites.
- i. Lack of referral transport system to access emergency services.
- j. Poor access to sterilisation services and poor quality of sterilisation services.
- k. Weak public health response to epidemics and sudden increase in infectious deaths in certain areas.

## Annexure 8

After listening to the testimonies the panel has decided to take cognisance of only a small part of them as individual human rights cases. Though the other individual cases are also heart-rending the panel thought it more useful to pursue the systemic causes behind these failures. For these systemic issues that underlie the denial of the right to health care the panel makes the following 15 recommendations which are forwarded to the state governments for implementation.

1. A Vigilance Mechanism must be built up in each state health department with assistance and in coordination with the police department. This vigilance should be proactive and not only responding to complaints. Its focus should be to prevent illegal charges in public health facilities, and private practice inside public health facilities or in public hours.
2. All public health facilities should have display boards that state what are the legal user fees, if any, declare that payments other than these are illegal and inform where to register a complaint in this regard.
3. Vigilance also needs to be exercised against unnecessary referrals to nursing homes, clinics, diagnostic services. To be effective on this the state governments have to issue orders disallowing public health staff from referring to nursing homes, clinics or diagnostic services where they have a monetary advantage or commission.
4. Monitoring structures for health programmes should be established/strengthened at the district and block levels with the inclusion of panchayat representatives and civil society partners who are active in advocacy work.
5. Monitoring structures for CHCs, civil hospitals and district hospitals should be established by either strengthening existing patient welfare societies or creating them. These would also have vigilance functions.
6. Independent of the above two there should be a grievance redressal mechanism where those who have been denied quality care- in the private or public sector- can go to for registering their grievance and seeking relief.
7. All areas which have had no doctor for over an year and all those areas which have had no nurse/midwife for over an year should be publicly notified as medically and paramedically underserved and a special package of measures must be undertaken to provide some temporary relief and access to care for these areas. ( eg visiting doctor- pvt or public, mobile clinic, NGO, etc). This special package adopted may be made in consultation with all interested parties especially the elected panchayats.
8. States should have a transparent non-discriminatory transfer policy such that doctors

and other paramedical staff serve by rotation in difficult areas. During such service in difficult areas a special package of measures including financial incentives to support such doctors should be adopted. These two steps are critical to address the problem of lack of doctors in difficult rural areas.

9. States should have a state drug policy and/or adopt a state drug action plan which ensures that the states formulate an essential drug list and all the drugs on this list are available at all public health facilities without interruption, and that the prescription and use of irrational, expensive drugs and the use of hazardous and banned drugs is curbed in both the private and public sector. This would also need to specify better drug information to both the patient and the prescribers.
10. The state should adopt a time bound action plan/road map by which the critical gaps in the provision of good quality emergency obstetric services, sterilisation services, safe abortion services, and basic surgical emergency services (burns , accidents) can be provided in a network of referral centers such that there is at least one such centre per every 100000 population. This action plan should be a detailed publicly stated commitment and should have an year by year milestone, so that even if the entire plan would take ten years to implement, the monitoring committees and the public would know whether each year, that year's goals are being achieved.
11. The most immediate measure for closing specialist gaps in the referral center would be transferring of surgeons and gynaecologists and anaesthetists so that this norm for the provision of emergency and referral level care is met in as many facilities as possible. In the absence of a transfer policy well-qualified specialists languish in peripheral centers losing their skills while key facilities, which needs their services, go without them.
12. The governments may publicly notify what are the services it would be providing at the level of the habitation, at the level of subcenters, at the level of PHCs, CHCs and district hospitals along with quality indicators. This should be accompanied by similarly graded standard treatment protocols. This is essential for public knowledge and for monitoring. This will also help prevent unreasonable expectations from the public – for certain services may be available only at the district or block level and not at every PHC as may be expected. But this needs to be publicly notified.
13. The governments should set up a medical services regulatory authority- analogous to the telecom regulatory authority- which sanctions what constitutes ethical practice and sets and monitors quality standards and prices of services – both in the public and even more importantly in the private sector.
14. A Public Health and Health Services Act that defines the rights of food security, safe



## Annexure 8

drinking water, and other determinants of health and the citizens' rights to enjoy them along with the rights to medical services that are accessible, safe, affordable needs to be worked out. This act would make mandatory many of the recommendations laid down above and would make more justiciable the denial of health care arising from systemic failures as had been witnessed during the public hearing.

15. Implementation of the Supreme Court order regarding food security and the need to universalise ICDS programmes and mid-day school meal programmes remains a priority that this panel also endorses.

**Recommendations of North East Regional Public  
Hearing on Right to Health Care,  
Guwahati, 28<sup>th</sup> Nov 2004**

**Budgetary Measures:**

1. The State Health Budget or Health Budget on Health Care to be doubled with immediate effect.
2. The drug budget for PHC and CHC in the state should be doubled.
3. In the pre-monsoon season, extra stocks and inventory of all essential medicines to be made available in government hospitals in rural areas to deal with possible disruption in supply.
4. Contingency plan to deal with healthcare arising during and post flood situation in the state with special staff assigned for such work.

**Legal Measures:**

1. **Enactment of a State Public Health Act** in each state, which would outline the mandatory health care services which might be made available to the people as a right at various levels of the public health system. This act would specify which services and standards of care must be made available at the community, sub centre, PHC, CHC, Sub-district and District hospital levels, as well as the preventive and promotive measures that the government would undertake.
2. Enactment of a **Clinical Establishment Regulation Act** in each state to ensure minimum standards, adherence to standard treatment guidelines and ceilings for costs of essential medical services in the private sector.
3. Private practice presently allowed to Government health care providers should be legally banned, and those doing it should be promptly punished.
4. Policy for primary health care in the state should be adopted and implemented.
5. Standard Treatment Protocol for treating of all common ailments should be prepared and enforced.
6. The clear and distinct regulatory act for private nursing homes should be made.

## Annexure 8

7. Public hearing should be organized on a regular basis in all the North Eastern States and in every district of Assam.
8. Private practitioners should have a uniform and affordable rate to make medical treatment accessible to all.

### Measures to improve functioning of the health system and attention to special groups:

1. Standard Treatment Protocols should be implemented regarding care to be provided at various levels of Health Care Facilities, so that the necessary quality is maintained.
2. The full range of comprehensive health services should be guaranteed at all levels of the public health system, these health services must be ensured as a right. In exceptional cases of failure by the public system to provide any such health service to a patient, there should be a mechanism wherein care may be sought from designated private facilities following standard treatment protocols. Such registered and regulated facilities could give relevant care to the patient, and the state could reimburse them at standard rates, ensuring that the patient is not deprived of any essential care at time of need.
3. Guaranteed availability of essential drugs relevant to the level of service, in all public health facilities. A mechanism to ensure that if any health care facility is unable to provide any of the essential drugs that are supposed to be available at that level of health care; the expenses incurred by a patient on this “outside prescription” should be promptly reimbursed. All health care providers in both public and private sector should prescribe according to the essential drug list, and prescribe drugs by their generic names.
4. A comprehensive statewide policy to provide Primary Health Services to urban areas. Adequate health services need to be provided in all cities and small towns. Expansion of urban health care infrastructure especially of health posts and of outreach health services keeping in mind the needs of the growing slum population.
5. Filling up of vacant posts and construction of buildings for sub centres and other facilities. A new scheme to provide a community health worker in every village of the state should be launched.
6. Regarding women’s access to health care, availability of all services in a women friendly and sensitive manner at public health facilities must be ensured. This should include maternity services, pre natal and neonatal care etc.
7. A scheme for community health worker in every village should be launched.



8. Urban Health care infrastructure should be expanded and PHC services should be made available in all towns and cities. Emphasis should be given to slum dwellers.
9. Malaria is a major problem in the state. Special action plan to deal with malaria in the north east states with emphasis on vector control and ecological measure along with universal availability of anti malarial drugs.

### Independent Social Monitoring and Redressal System

1. Apart from the above steps, a system of regular independent monitoring of the functioning of the health care system at all levels should be taken up.
2. An effective redressal mechanism at block, district and state levels for persons with complaints regarding quality of health care and for those who have suffered denial of health care in any form.
  - Enactment of a State Public Health Act in each state, which would outline the mandatory health care services which must be made available to the people as a right at various levels of the public health system. This act would specify which services and standards of care must be made available at the community, sub-centre, PHC, CHC, Sub- district and District hospital levels.
  - Enactment of a Clinical Establishments Regulation Act in each state to ensure minimum standards, adherence to standard treatment guidelines and ceilings for costs of essential medical services in the private sector. For example, the Bombay Nursing Home Regulation Act 1949-Maharashtra, may be substantially modified and improved to effectively regulate the quality of private medical services in the state.
  - The clear and distinct regulatory act for private nursing homes should be made.
  - Public hearing should be organized on a regular basis in all the North Eastern States and in every district of Assam.
  - Private practitioners should have a uniform and affordable rate to make medical treatment accessible to all.

**Letter of the Chairperson of the Commission dated  
6<sup>th</sup> September 2004 to the Chief Ministers of all  
States/UTs regarding protection of Human Rights of  
children infected/affected by HIV/AIDS**

D.O.No. 11/6/2003-PRP&P

6 September 2004

Dear Chief Minister,

The National Human Rights Commission is deeply concerned about the protection of human rights of children infected/affected by HIV/AIDS. In March 2003, the Commission took suo motu cognizance and initiated proceedings in the case of Bency (aged seven years) and her brother Benson (aged five years), who faced discrimination in their access to education owing to their HIV+ve status in Kerala. In yet another case of similar nature involving children, the Commission intervened to secure justice for Akshara and Anantakrishnan from Kerala. The Commission has also come across instances from other States in which children were turned away from schools, clinics and orphanages because they and their family members are HIV+ve. In particular, there was a case of a six-year old girl who has been asked not to return to the school and was also refused treatment by a local doctor in Maharashtra.

The Human Rights Watch, an international non-governmental organization, in its report, "Future forsaken; abuses against children affected by HIV/AIDS in India" has criticized the Government for doing "little to protect children already living with HIV/AIDS" and "for virtually ignoring" the affected children. It is said that children are not an important factor in policy formulation.

The Commission recently considered the above report and commends the following recommendations:

1. Enact and enforce legislation to prevent children living with HIV/AIDS from being discriminated against, including being barred from attending schools.
2. Address school fees and related costs that keep children, especially girls, from going to school.



Annexure 9

3. Provide all children, both in and out of school, with comprehensive, accurate and age-appropriate information about HIV/AIDS.
4. Provide care and protection to children whose parents are unable to care for them due to HIV/AIDS. Institutional arrangements must be made for extending medical aid to such children [Hospitals and medical professionals should not be allowed to turn away people who are HIV+ve from being treated].

May I request you kindly to have appropriate action initiated on the above recommendations?  
The Commission would like to know the details of steps proposed to be taken in this regard.

With regards,

Yours sincerely,

Sd/-  
(A.S.Anand)

All Chief Ministers of States and UTs  
and Administrators



## **Recommendations of the National Workshop to Review the Implementation of Laws and Policies Related to Trafficking: Towards an Effective Rescue and Post-Rescue Strategy**

### **Recommendations Related to Law and Structures:**

**Problem:** Effective and meaningful prevention, rescue, rehabilitation and reintegration are the four major areas based on which the menace of trafficking can be successfully combated. In all these four areas, the issue of shelter remains an all-pervasive aspect. Lack of availability of shelters at taluka and district places denies women and young girls in need of adequate and proper places where they could reside. This makes them vulnerable to being trafficked or re-trafficked.

**Recommendation:** Sufficient number of Short-Stay Homes/Protective Homes or Shelter Homes should be started at taluka and district places, whereby any woman or a young girl who is in moral danger or rescued or is in a situation to be trafficked or re-trafficked into prostitution, can approach these Homes for a safe and secure shelter. The Shelter Homes run by the Government should also be open to facilitate the mobility of the women and girls in order to obtain vocational training outside.

**Problem:** Lack of trained personnel to attend to psycho-social and rehabilitative needs of women and girls rescued from prostitution. Currently, there is dependence on ad-hoc and non-standardised measures such as Mahila Thanas, counselling by police, volunteers, involvement of NGOs (wherever available), with no legal mandate. Moreover, there is no continuity in this piecemeal approach and half-hearted attempts lead to half-hearted results.

**Recommendation:** The Government should appoint trained social workers at police stations, courts and rehabilitation Homes for counselling, information and guidance, and rehabilitation purposes.

**Problem:** Increasing dependence of the State on the voluntary sector accompanied by a gradual process of withdrawal from the welfare sector. In the given scenario, commitment of the State to aid the voluntary sector in the long run is not clear.

**Recommendation:** State Departments and agencies should not be replaced by NGOs as the

major intervention agency, especially when it comes to rescue and rehabilitation.

**Problem:** Lack of co-ordination between the police, judiciary and government institutions with regard to rescue and rehabilitation process at the district level and absence of monitoring system related to the problem of trafficking at the State and Central levels.

**Recommendation:** An Inter-Departmental Coordination structure should be set up to facilitate and monitor the process of rescue and rehabilitation at the district level, and Advisory Bodies at Central and State levels to monitor the problem of trafficking and bottlenecks in the implementation of ITPA and other provisions relating to rescue, rehabilitation and reintegration of victims.

**Problem:** Lack of informed and sensitized officials to deal with the subject of proper implementation of law and procedure pertaining to trafficking.

**Recommendation:** Training organizations at Central and State level should focus on sensitization, dissemination of knowledge and training of ground level staff from the police, judiciary and women and child welfare departments. The objective behind this should be to develop personnel who know the correct legal framework and are aware of issues related to rescue, rehabilitation and reintegration. The training institutions could take the help of field-based organizations to achieve this objective.

**Problem:** There is a danger of deletion of Sections 7 and 8 of ITPA in a hurry, as a response to the problem of harassment and penalizing of adult women in prostitution by the police.

**Recommendation:** The issue of deletion of Sections 7 and 8 of ITPA needs further debate and discussion, as there is lack of consensus on the same. One view was that these Sections lead to harassment and penalizing of women in prostitution by the police, while the other view was that these Sections have proviso under which the woman, who has been prosecuted, could be treated as a victim and rehabilitated with the help of corresponding Section 10-A of ITPA. In addition, it was pointed out that under Section 7, customers could be booked and prosecuted.

**Problem:** Concerted attempts are being made to bring a new legislation or amend the existing law (s) to legalize prostitution by certain sections and lobbies in society.

**Recommendation:** Legalization of prostitution would be an anti-women and anti-rehabilitation measure, leading to violation of human rights of the trafficked persons.

The following sections pertain to implementation gaps or problems in the law:

## Annexure 10

1. Section 4 and 6 of ITPA can be used against traffickers, brothel keepers, landlords, pimps, etc.
2. Section 7 of ITPA and Section 145(b) of the Indian Railway Act in order to bring the customers to book.
3. Sec 14 (ii) of ITPA, which pertains to delegation of powers of the special police officer to an officer of subordinate rank through a written order, as special police officer are not available in rural and moffusil areas.
4. Sections 22-A and 22-AA of ITPA with regard to establishment of Special Courts and appointment of panel of social workers to assist the police under Section 13(3)(b) and the judiciary under Section 17(5) in deciding cases.
5. With regard to the problem of finding reliable panchas (who do not later turn hostile in court), especially women panchas in ITPA cases, a suggestion was made to involve government officers who can be used as panchas, as their chances of turning hostile are less.

The following Sections may be suitably amended or new Sections introduced:

1. Need to revise/amend State rules of ITPA, as these have not been revised (in most States) ever since the Act was first passed in 1956. An exercise needs to be undertaken to formulate Model Rules in this connection, along the lines of the JJ Act Model Rules, in consultation with the State Governments.
2. Section 18 of ITPA, which deals with complete closure of brothels and eviction of offenders from the premises where prostitution is being carried out. This Section may be amended to include a clause regarding forfeiture of property along the lines of Chapter V (A) of NDPS Act. Along with order for closure of brothel, the magistrate may be empowered to pass orders for forfeiting such property especially in cases of repeated offenders under Sections 3, 4, 7 (2) of ITPA. The onus of proof should be on the accused to prove that such property has not been acquired through living off the proceeds of prostitution or that such property being used as a brothel does not belong to him or was without his knowledge or consent. Also, if this power, which currently vests with the Commissioner of Police, is conferred on DCP or suitable officer of lower rank, then follow-up will become easier.
3. Section 20 of ITPA, which is currently being used against the woman in prostitution, to remove her from the area, may be amended to apply to brothel keepers, pimps, managers, etc. where s/he can be asked by the magistrate to remove her/himself from the area and

be prohibited from re-entering the same. Also the fine amount imposed under Section 20(4)(b) may be suitably raised to act as a deterrent measure against the above mentioned persons.

4. Suitable amendment in the ITPA to allow for voluntary admission or referral by any citizen or NGO of women into any shelter, be it Protective Home, State Home, Reception Centre or Short-Stay Home, who is in need of temporary shelter or feels vulnerable to being trafficked. Such admission should be allowed at any hour of the day/ night and may be ratified before the appropriate magistrate within 24 hours by the Superintendent of the institution.

## Recommendations related to the Victims:

### Phase I: Prevention

**Problem:** Lack of systematic data and focus on trafficking prone areas and analysis of reasons behind trafficking at those places, leading to large-scale trafficking and re-trafficking of women and children from certain districts to the supply areas.

### Recommendations:

1. Trafficking prone areas and districts should be identified in the States with the twin objectives of awareness generation and generation of viable economic options. This would facilitate in spreading information about various government welfare services and anti-poverty schemes to even the remotest areas.
2. Need to set up a national database and a quick-response tracing mechanism and coordinating structure for missing children and women – intra and inter State, within the police system to prevent trafficking.
3. Necessary structure should be set up for Inter-Departmental Coordination between the police, judiciary and government institutions for rescued victims with regard to rescue and rehabilitation process at the district level and State and Central level Advisory Bodies to monitor inter-State and cross-border trafficking.
4. Proper follow-up mechanism should be established through the proposed district level coordinating structure for women and children after they have been repatriated to prevent re-trafficking. Similarly, a coordinating structure should be established between the respective governments of those countries which act as supply, demand or transit zones for proper follow-up.



## Annexure 10

### Phase II: Rescue

**Problem:** Unplanned raids/rescue operations often result in logistic problems at the ground level with regard to accommodation, recovery of personal belongings or money, rescue of children, food, health problems, vocational training, repatriation, etc. defeating the entire objective of rehabilitation.

**Recommendations:** The police should plan rescue operations in coordination with the institutional authorities, in a humanistic and rehabilitation-oriented approach with the rescued women and children. The proposed Inter-Departmental Coordination structure suggested in Point No.3 under the head 'Prevention' should be used for this purpose.

**Problem:** Adult women in prostitution are often treated as offenders (arrested and fined/imprisoned) by the police and the judiciary and not as victims. Also, women trafficked from across the borders/foreign countries are booked by the police under the Passports Act and the Foreigners Act and then prosecuted as illegal immigrants.

**Recommendations:** The policy of the State of penalizing the adult woman in prostitution (e.g. Section 110 of Bombay Police Act, or Section 145(b) of Indian Railway Act, Section 294 of IPC) should be stopped. A procedure may be set up whereby victims of cross-border and transnational trafficking are given assistance, with the help of the Ministry of Foreign Affairs and the Embassy concerned, to repatriate them in a humane and prompt manner. All women in prostitution should be presumed to be victims in need of assistance to get out of prostitution, as is the case with minors.

**Problem:** Rescue operations and raids on premises where organized prostitution is carried on, is carried out in an ad-hoc manner and not as a part of mainstream policing. Quite often, the priority given to this work depends on the personal interest of the officer on the job. The focus of raids with the objective of rescuing girls and women from prostitution primarily happens in big cities and that too is limited to red-light areas. Rehabilitative and anti-trafficking sections of the law and acts thus do not get properly implemented. For example, in small towns and semi-urban areas, the focus of raids continues to be penalizing the women under sections, such as, 110 of BP Act and hardly anyone is seen as in need of rescue and rehabilitation. Also, when raids are conducted in lodges, massage parlours, etc., they are termed as 'busting of rackets' and the women found in these premises are arrested for soliciting or indecent exposure.

**Recommendations:** A specialized anti-trafficking structure within the police at the Central, State, district and taluka levels should be established in order to deal with the issue of trafficking (including cross-border and inter-State), rescue, recovery of personal belongings, repatriation, etc., along the lines of structures set up within the police to deal with trafficking of drugs, smuggling of antiques, wild life poaching, etc.

This recommendation is supported by Sec 13 of ITPA, which lays down proviso whereby the Central government may appoint Central Trafficking Officers in various States to prevent inter-State trafficking.

### Phase III: Rehabilitation and Reintegration

**Problem:** There seems to be an invisibility of institutional population, when it comes to accessing the government schemes available for the mainstream populations coming from poverty-stricken or socio-economically weaker sections.

**Recommendation:** Socio-economic-educational and welfare schemes of the Government meant for the mainstream population should be made available to the rescued persons both during the institutional and reintegration phase, including efforts to access citizenship rights, for example, voting rights, application of schemes for welfare of women and children, SC/ST/OBC, opening of bank account, etc.

**Problem:** Lack of protection for the victim in order to avoid harassment from the traffickers and brothel keepers, while she is in the institution and/or in the process of being re-integrated in the community, especially when she appears as a witness. Also, there is over dependence on the statement of the victim to secure conviction of the offender in court, leading to increased vulnerability of an already vulnerable person.

**Recommendation:** Suitable legislation for victim protection and support should be introduced in the law. Efforts should be made by the police to obtain evidence other than the victim's statement.

**Problem:** In most of the institutions, vocational training given to the inmates are elementary in nature that may not be of much use in the rapidly changing economic scenario outside.

**Recommendation:** In order to be successfully reintegrated, every woman rescued from prostitution requires an alternative source of income, which again is dependant on effective skills and training. Hence, the effectiveness of traditional skills that is being taught to the women in the government institutions needs to be re-examined, keeping in mind the changing economic scenario. The government Shelter Homes should also be open to facilitate the mobility of the women and girls in order to obtain vocational training outside.

### Recommendations related to the Anti-trafficking Measures:

**Problem:** There seems to be indifferent attitude on the part of law enforcing agencies in viewing trafficking as a social menace, rather than viewing it as a hard-core crime and law and order problem. As a result, trafficking gets less priority in the list of law enforcing agencies.

## Annexure 10

Much confusion prevails when it comes to using relevant sections of the laws related to trafficking. The work of anti-trafficking and rescue is marked by tokenism and adhocism, often depending on media reports about sex-rackets, pressure from NGOs, judicial activism and the individual interest shown by some committed officers.

### Recommendation:

1. Trafficking should be considered as an organized crime and tackled through an equally organized and systematic approach, for example, the Organized Crime Control Act.
2. There should be a nation-wide database on traffickers containing their profile, fingerprints, photographs, previous conviction record etc by central agencies likes the NCRB and the CBI.
3. Appropriate legal measures should be introduced in order to take action against customers, especially when the victim is an adult.
4. The IPC sections related to rape, kidnapping, abduction, wrongful confinement, etc. against customers, (by the police) should be implemented especially when the victim is a minor.

Use of the JJ Act for rescue of minors and acting against offenders, including customers, whereby persons involved could be charged under statutory rape.

**Letter of the Chairperson of the Commission dated  
3<sup>rd</sup> August 2004, to the Prime Minister of India  
Regarding Prevention of Atrocities Against  
Scheduled Castes**

D.O.No.20/1/2004-PRP&P

3 August 2004

Dear Prime Minister,

The National Human Rights Commission has been deeply concerned about the Human Rights violations faced by persons belonging to the Scheduled Castes in general and Dalits in particular. Despite the Constitutional safeguards and protective provisions in a number of legislations enacted by the Parliament, the persistence of these violations is a matter of grave concern to the Commission. The regularity with which such instances are being reported in the media underline the need for addressing them without any further delay.

The Commission, therefore, requested Shri K.B.Saxena, a retired IAS officer, to go into the entire gamut of issues related to atrocities against the Scheduled Castes and submit a report. He has since submitted a comprehensive and detailed report, which has been considered by the Commission.

In the report of Shri Saxena, there are a number of useful recommendations to prevent atrocities against the Scheduled Castes. I am separately writing to the Chief Ministers of all States and Union Territories and the concerned Union Ministers with a request to initiate appropriate action in this regard.

I am enclosing a copy of Shri K.B.Saxena's 'Report on Prevention of Atrocities against Scheduled Castes' for your kind perusal.

In the interest of protection of human rights of one of the most vulnerable sections of the population, the Commission urges you to please institute an appropriate monitoring mechanism at the Centre to monitor the steps being taken to prevent atrocities against persons belonging to the Scheduled Castes.

Yours sincerely,  
Sd/-  
(A.S.Anand)

Dr. Manmohan Singh  
Prime Minister  
Government of India  
South Block  
New Delhi

**Letter of the Chairperson of the Commission  
dated 3<sup>rd</sup> August 2004, to the Union Ministers  
Regarding Prevention of Atrocities Against  
Scheduled Castes**

D.O.No.20/1/2004-PRP&P

3 August 2004

Dear Minister,

The National Human Rights Commission has been deeply concerned about the human rights violations faced by persons belonging to the Scheduled Castes.

Despite elaborate provisions in the Constitution and other laws, it is an unfortunate reality that social injustice and exploitation of Scheduled Castes and Scheduled Tribes and other weaker sections persist. Atrocities against persons belonging to these groups appear in the Press and the frequency with which they occur is a cause for disquiet. The humiliation which persons belong to the Scheduled Castes in general and the Dalits in particular suffer even today, more than half a century after India proclaimed itself to be a Republic, is a matter of shame.

The Commission, therefore, requested Shri K.B.Saxena, a retired IAS officer, to go into the entire gamut of issues related to atrocities against the Scheduled Castes and submit a report. He has since submitted a comprehensive and detailed report, which has been considered by the Commission.

In the Report there are a number of useful recommendations to prevent atrocities against Scheduled Castes (page 203-265). The Commission commends them for your consideration and further action. I am also separately writing to the Chief Ministers of all States and Union Territories with a request to initiate appropriate action in this regard.

Many of the recommendations relate to Union Ministries and other Central agencies. A co-ordinated effort by different arms of the Centre will help ensure that persons belonging to the Scheduled Castes lead a life of dignity and enjoy the full range of human rights, just as other sections of the society.

Yours sincerely,

Sd/-  
(A.S.Anand)

To,  
Union Ministers

**Letter of the Chairperson of the Commission dated  
3<sup>rd</sup> August 2004, to the Chief Ministers of all  
States/UTs Regarding Prevention of Atrocities  
Against Scheduled Castes**

D.O.No.20/1/2004-PRP&amp;P

3 August 2004

Dear

The National Human Rights Commission has been deeply concerned about the atrocities against persons belonging to the Scheduled Castes.

Despite the elaborate provisions in the Constitution and other laws, it is an unfortunate reality that social injustice and exploitation of Scheduled Castes and Scheduled Tribes and other weaker sections persist. There are frequent reports in the media about atrocities against persons belonging to these groups. The humiliation which persons belong to the Scheduled Castes in general and the Dalits in particular suffer even today, more than half a century after India proclaimed itself to be a Republic, is a matter of shame.

Article 15 of the Constitution prohibits discrimination based on caste and that Constitutional guarantee must be honoured. Various protective provisions in the laws enacted by the Parliament to protect the SCs need to be enforced. The Commission, requested Shri K.B.Saxena, a retired IAS officer, to go into the entire gamut of issues related to atrocities against the Scheduled Castes and submit a report. He has since submitted a comprehensive and detailed report, which has been considered by the Commission.

The report has made a number of useful recommendations to address this issue (page 203-265). In particular, the Commission wishes to draw your attention to the following recommendations: -

- Identify atrocity and untouchability prone areas and prepare a plan of action;
- Appointment of exclusive special courts where volume of atrocity cases is large and appoint competent and committed special public prosecutors;
- A 3-tier Training programme for police and civil functionaries;

## Annexure 11 (c)

- An annual workshop of District Magistrates and Superintendents of Police on implementation of laws in this regard;
- Women officers should be assigned to all atrocity prone areas, with cells established to entertain complaints;
- Self-help groups of Scheduled Caste women should be given elementary legal training along with sessions on confidence building;
- Identify in each district a NGO which can be approached in case of custodial violence or any other atrocity;
- Panchayats may be sensitized about the issues concerning the Scheduled Castes and various De-Notified Tribes;
- Institute annual awards for the police stations and districts, which emerge as the most responsive to the complaints of the Scheduled Castes.

The Commission commends these and other recommendations contained in the Report for your kind consideration and for initiating appropriate action. I have separately addressed letters to the Prime Minister and various Union Ministers for an appropriate action to be taken at their level.

May I request you to ensure that the State Government also initiates steps to implement the recommendations contained in the report and monitor their progress.

With regards,

Yours sincerely,

Sd/-  
(A.S.Anand)

To  
All Chief Ministers of States and UTs



## Recommendations and Suggestions of the Action Research on Trafficking in Women and Children in India

The suggestions and recommendations emerged from this study are below under five categories:

- Cross-cutting issues
- Prevention of trafficking
- Protection of victims and survivors
- Prosecution of exploiters and others
- Changes proposed in ITPA

Despite the best efforts to avoid overlapping, the five-tier categorisation is not devoid of repetitions, because the issues involved are closely inter-linked. Though some recommendations may appear repetitive, the focus of the recommendations is different under different heads. Moreover, the ideal situation would be an integration of prevention, protection and prosecution activities. Thus integration is essential in the given situation because each category has a direct bearing on the other. Therefore, any action on one front will provide the best results only when it is supplemented with corresponding action on other fronts.

### Cross-cutting Issues

#### *Importance of Human Rights*

To address trafficking, the first and foremost requirement is to recognize the human rights violations involved. The commonly prevalent paternalistic 'law and order perspective' and the predominantly moralistic 'welfare perspective' have to be substituted by a 'human rights perspective'. This approach is holistic, participatory and rights-based, with an underlying commitment to ensure human dignity. Every action and initiative, whether it is a policy, programme or project, should be oriented towards the best interests of the trafficked victim/survivor and towards the protection of a vulnerable victim. Therefore, all such activities have to be built upon the basic substratum of human rights, which, in turn, will also be the yardstick for the efficacy or utility of the concerned initiative. The NHRC and State Human Rights Commissions could be the appropriate catalysts for bringing about this paradigm shift.

#### *Understanding the Concepts and Issues*

Research has shown that the concepts and issues of trafficking have often been surrounded

## Annexure 12

by myths, for example, trafficking is usually presumed to be for the purpose of commercial sexual exploitation. Often, it is considered to be coterminous with prostitution. This research has demystified these concepts and issues, and has also shown that there is a requirement for all concerned to understand the appropriate meaning and import of various related issues. Similarly, the law enforcement agencies, including the immigration authorities, need to be properly trained to understand the linkages as well as the distinction between trafficking, migration and smuggling. All activities relating to prevention, protection and prosecution of trafficking have to necessarily originate from a clear understanding of all such concepts and their linkages. There is a need to develop guidebooks, brochures or flyers, which would help, demystify the concepts and bring about clarity to all stakeholders. In this context the UNIFEM briefing kit (2003) is a useful source book.

### *Notifying the Advisory Body*

Despite the provision u/s 13(3)(b) ITPA for constituting an advisory body of NGOs, many states have not taken any initiative in this direction. Though the law does not deem it to be mandatory, considering the facts and circumstances clearly emerging from this study, partnership of civil society — represented by the advisory body of NGOs — with the law enforcement agencies, is not only an ideal mechanism, but also an essential requirement for addressing the issues relating to trafficking. Therefore, all state governments should consider constituting the advisory body consisting of NGOs as well as respected members of the public who are sensitive, committed and working against trafficking. The research experience shows that it would be better if the NGOs are notified on a District-basis or, at least, a regional basis, so that the services of the appropriate NGOs working in the field are co-opted.

### *Forming Rules under ITPA*

State governments should revise the rules issued long back under SITA (Suppression of Immoral Traffic Act, 1956) and issue a fresh set of rules under ITPA. These rules should also list out the procedure and protocols, which are to be followed in rescue and post-rescue operations, keeping the best interest of the survivors/victims. These rules and provisions should clear the concepts, especially the existing confusion between trafficking and commercial sexual exploitation, and bring about clarity of understanding from a human rights point of view. The points that emerged from this study can be effectively utilized for preparing these guidelines and rules.

### *Minimum Standards*

Governments should bring out state policies, including guidelines on the minimum standards of care, attention and service to be extended to the victims and survivors by all the service providers, including law enforcement officials, judicial officers, prosecutors, medical professionals, psychosocial professionals, counsellors, people manning after care homes, and all such stakeholders. The state policy should bring to focus the linkages between migration, HIV/AIDS and trafficking. The guidelines, which can be issued as information kits or handbooks, or as part of the rules to be issued under ITPA (as stated in the previous paragraph), have to be in

conformity with the human rights of the survivor/victim. They should also specify the accountability of the agencies concerned in providing services. These guidelines should not be confined to law enforcement and justice delivery, but also extend to prescribing minimum standards with respect to prevention, rehabilitation, counselling, providing livelihood options, economic and social empowerment, etc. These are grey areas in which many stakeholders find it difficult to function effectively for want of appropriate orientation. For example, the girls rescued in 2002 in Delhi were from different states in India. The government officials of NCT Delhi did try their best to network with the officials of the concerned state governments. Though many states cooperated, some did not. However, after the High Court intervened, things moved in a positive direction. Perhaps appropriate guidelines on such issues would have made the situation easier and facilitated in the protection of rights of all concerned. Considering the fact that this is an area where the central government and all state governments are involved, it would be appropriate to prepare these guidelines of minimum standards of care under the aegis of NHRC and thereupon, the state governments could incorporate them in the rules to be issued under ITPA and the Government of India could incorporate them in the NPA.

### *Multidisciplinary Approach in Combating Trafficking*

The Constitution of India, under Article 23, explicitly prohibits trafficking for any type of exploitation, including commercial sexual exploitation, labour and servitude. Research has shown that issues relating to trafficking in women and children cut across departments, agencies and all such boundaries, but the response from governmental and other agencies has been sectarian, segmented and, usually, unidimensional. Anti-trafficking activities should, therefore, be integrated into polices, programmes and projects of all ministries and departments which have any bearing on the issues concerned with or related not only to trafficked persons but also to the persons who are vulnerable to trafficking. It calls for a multidisciplinary integrated approach by all the concerned government agencies.

### *National Nodal Agency*

The research has brought out the wide gap between the various government agencies at the centre and in the states in addressing the problems related to trafficking. A national nodal agency to counter human trafficking needs to be set up, by integrating the anti-trafficking activities of the central government and state governments, especially involving the departments of women and child, labour, social justice, health, home, tourism, railways, information and broadcasting, law and justice, and agencies like NACO and CBI. An MOU among these agencies, perhaps taking cue from the Thailand MOU, may be required for effective coordination. Since an amendment of the ITPA is in the pipeline, this nodal agency could be built into the Act itself. Considering the fact that this involves the central government and all state governments, it would be appropriate if this is set up by DWCD under the aegis of the NHRC. The state governments, as advised by the NHRC during this research, have already earmarked two nodal officers in each state (one representing the police and the other representing the welfare/women and child development departments). Integrating them into the proposed national nodal agency could

## Annexure 12

institutionalise the functioning of these nodal officers from all states. The national agency could function as the special rapporteur-cum-coordinator of all activities related to anti-trafficking. Since this agency can facilitate counter-trafficking activities across all states, the states should be willing to be associated.

### *NGO Coordination at the National Level*

At present, NGOs function not in unison, but disparately. There is a need for coordination among the NGOs within the states, across the states and across the borders. As of today, the trans-border networking of selected NGOs (for example, SANLAAP, SLARTC, etc. from India, BNWLA from Bangladesh and Maiti from Nepal) is functioning well. Similarly, NGO networks like ATSEC and NASCET have established effective linkages. However, it is appropriate and essential to set up a national integrated grid of the NGOs on anti-trafficking, which is linked with the NGO groups across the borders in Nepal and Bangladesh. This could perhaps be facilitated by an MOU similar to the one in Thailand.

### *GO-NGO Partnership*

Collaboration of NGOs and government agencies is an essential requirement in the anti-trafficking programmes and activities. The national nodal agency mentioned above could facilitate such collaboration. It should, however, be borne in mind that the government agencies cannot abdicate their responsibility and, therefore, the role of NGOs would be only complementary and not supplementary. However, in order to achieve best results from community participation, certain specific activities such as setting up rescue homes and counselling centres could be delegated to the NGOs. The Andhra Pradesh model of co-management of rescue homes and having coordination committees at the state and district levels is a good example. At many places, the police faces acute shortage of personnel, particularly women police, and resources to cater to such requirements. Therefore, despite court orders, repatriation gets unusually delayed. The Tamil Nadu practice of involving NGOs in the process of repatriation, by providing adequate resources to them, has been found to be effective. Similar examples could be thought of by other states. Notifying them, as stated earlier, in the advisory body u/s 13(3) (b) of ITPA could strengthen the partnership of NGOs. At the national level the NGO grid, discussed above, could be dovetailed to the National System of Nodal Officers on Anti-Trafficking, which has been set up by the NHRC. The initiatives for integrating the national network of NGOs and nodal officers should be facilitated by the NHRC.

### *Corporate Response*

The research has shown that, of late, the social responsibility of the corporates has given a strong impetus to anti-trafficking activities. The illustrations presented in the study explain the scope and potential of the role of corporates not only in providing financial resources, but also reducing the vulnerabilities which lead to trafficking. Therefore, they have a large role to play in preventing trafficking. The partnership of corporates with NGOs can be initiated by either party or could be facilitated by the concerned government agencies. The large amounts which corporates

have earmarked for meeting their social responsibility could be adequately channelized to the anti-trafficking sector.

### ***Role of UN Agencies and INGOs***

Many UN agencies have anti-trafficking as part of their mandate, either fully or partly. The study has, however, shown that many projects and programmes are overlapping. Therefore, it would be in the fitness of things and in the best interests of the public that the various UN agencies avoid duplication of efforts and synergise their policies and programmes. The case of INGOs is also no different. If the concern is for maximum and effective utilization of their resources, they need to network and ensure non-duplication of efforts and wastage of resources. Synergy and dialogue are called for in this sphere.

### ***Commitment and Accountability of Development Agencies***

The study has shown that poverty and other delimiting factors cause vulnerability, leading to the trafficking of women and children. The disability factor, described in the chapter on psycho-social intervention, is an indication of the colossal loss to the society. Despite a plethora of developmental schemes and projects in operation by the Government of India and the state governments for helping the vulnerable groups of society, their poor implementation is the main reason for keeping these groups exposed to different types of exploitation, including trafficking. Proper implementation could have brought these vulnerable sections out of this trap. There is a need to bring in commitment and ensure accountability of these agencies. This calls for proper monitoring and evaluation of the impact of not only of the programmes but also of the policies, by utilizing the appropriate process and impact indicators.

### ***Right to Development as a Human Rights Issue***

The study also shows complete ignorance of the concerned parties (victims, vulnerable sections, NGOs, civil society, etc.) to the various schemes of the government that could have been of benefit to the vulnerable sections of society who eventually get trafficked. Once these vulnerable groups are made aware of their rights to development and progress, dignity and individuality, traffickers will find it difficult to prey on them. Therefore, creating awareness of such schemes should not be considered merely a welfare activity but should be considered as human rights issue. The NHRC could, accordingly, advise the various ministries and agencies in the union government and state governments.

### ***Mainstreaming Anti-trafficking into the Agenda of Professional Bodies***

Anti-trafficking and the human rights issues involved in the process should find a place in the agenda of professional bodies. The annual Conference of the Chiefs of Police in India organized by the MHA should have an exclusive slot for presentation and discussion of this subject. The same should be the case with the annual meetings held at the state police headquarters and the monthly meetings held by the district police chiefs. Similarly, meetings of the State Women's

## Annexure 12

Commission, State Human Rights Commission and other such professional bodies should have definite focus on the issues related to trafficking. The NHRC could issue directions to the MHA and other agencies in this respect.

### *Integrating Anti-trafficking Issues in the Training Curricula*

Considering the multisectoral aspect of the issues, processes and responses to trafficking, the training schedules of administrative officials, police officers, prosecutors, judicial officers, welfare officers, correctional officers, etc. should include a module on anti-trafficking activities. It could also focus on drawing the required attention in addressing these issues and all related aspects of human rights arising therefrom. This calls for developing training modules and schedules which would be appropriate for the requirements of the concerned agency.

### *Bilateral Trans-border Cooperation*

Traffickers and exploiters have no boundaries but the law enforcement officials and others are bound by limitations of jurisdiction. This has become a serious impediment to anti-trafficking programmes and activities. The SAARC Convention envisages setting up a task force for dealing with trans-border trafficking. Since the convention has not been ratified by all State Parties (as of January 2004), the implementation has not commenced. Trans-border cooperation requirements cannot be geographically confined to the bordering districts. However, the ad hoc task forces or cross-border committees set up at the initiative of the local administration or the law enforcement agencies manning the borders, are operational in many places along the borders. To start with such informal networks, which include government officials and NGOs of both sides, could be institutionalised so that they could effectively carry out anti-trafficking activities.

### *Regional Initiatives*

Since the research has brought out the problems of trans-border trafficking, proper law enforcement as well as care and protection of women and children need concerted action. However, the problems are common to most of the countries in the region, and so, it would be better to have regional initiatives in this direction for better results. A regional database of traffickers and exploiters is called for. Similarly, sharing of good practice models and important judgements of the courts in the region could be considered. Regional victim-witness protection protocols could be developed and circulated to all concerned for guidance. A regional Childline could be set up to link all Childlines in the countries concerned so that trans-border issues of missing and trafficked children could be effectively attended to. These regional initiatives would be meaningful if they are taken up by the MEA, supported by UN bodies like UNIFEM and UNICEF.

### *Human Trafficking Web Portal*

Advancements in ICTs should be utilized for developing an appropriate portal. This requires involvement of the concerned ministries/departments in the Government of India and could be facilitated by UN agencies. The task could be promoted by the NHRC so that the human rights aspects are given proper attention. It could be set up under one of the existing government



agencies like the NCRB. The portal should have sites on missing persons, intelligence and alert notice on suspected traffickers, and fact sheets of research, surveys, conferences and workshops being held by various agencies. The portal should have data on resource persons, anti-trafficking networks and NGOs, who could be consulted and contacted by any person requiring their help. The data could also include the details of agencies and donors who would like to render support to the various activities. The sites have to be interactive so that they can function as help desk and clearing house.

### *Differential Approach in Dealing with Trafficking in Children*

The research has shown the high level of vulnerability of children especially girl children. Therefore there is a need to develop and put to practice a distinctly different approach for children, as separate from that of women, in all aspects of preventing and combating trafficking.

## Prevention of Trafficking

### *Vulnerability Mapping of the Source Areas*

This is an essential requirement for prevention of trafficking. The study has identified the various source areas in the country. It has also shown how the source areas shift from one place to another and even from one state to another. Therefore, no area can be permanently branded as the exclusive source area. It needs careful understanding by the various stakeholders to identify the source area, as any vulnerable area could develop into a source area. District officials, along with NGOs working in the field, are the appropriate agencies to take on such micro studies. The mapping has to be done keeping all the parameters and dimensions in view and not only from the law and order perspective. It should be participatory, involving the community, the survivor and the victim. Since panchayati raj institutions (PRIs) have a major role to play, their services should be utilized. The initiatives of Tamil Nadu government in involving PRIs could be thought of as a model.

The situation in the northeastern part of the country demands special attention. Trafficking of women and children in this region cuts across the different states and extends beyond national boundaries, involving Bangladesh, Myanmar, etc., but since the present study covered only Meghalaya and Assam, it is essential that micro studies be carried out exclusively in this region to understand the dimensions of trafficking specific to the region, and take appropriate steps to deal with the situation. The study should specifically focus on the trafficking that takes place through More in Manipur, and Pangsa and Dimapur in Nagaland. Simultaneously, efforts need to be made to address the extreme vulnerability situations that the women and children in this area are subjected to, especially resulting from the ethnic clashes and conflicts which have affected this area for a long time.

### *Vulnerability Mapping of the Demand Areas*

Since trafficking is an organized crime, the exploiters are, without doubt, criminals, and action



## Annexure 12

has to be taken accordingly. This includes traffickers, transporters, financiers, abettors, conspirators and all those who are involved, by their acts of omission and commission, which lead to exploitation. The group also includes the clients who abuse and exploit women and children. The study has shown that the majority of them look for sex with children and, therefore, such clients have to be dealt with stringently. The burgeoning demand for child sex, both brothel-based and non brothel-based has to be aborted ruthlessly. Since child sex amounts to rape even with consent (vide s.375 IPC), the clients need to be booked under substantive law too. At the same time, the study has shown that there are some clients, especially teenagers, who come to brothels for sex mostly out of curiosity or lack of guidance. These clients could be dealt with by counselling and education. They should be made aware of women's rights, human rights and child rights. Such programmes for action can be planned only after understanding the demand scenario, which needs to be mapped in detail by involving the clientele. Since this study has brought out different patterns in different states, it would be appropriate that such micro-level mapping is carried out by the district administration, as mentioned above, so that necessary steps can be locally initiated, by involving all the stakeholders.

### *Addressing the Vulnerabilities*

The most important issue in prevention is to address the vulnerabilities of women and children. Economic and social empowerment are the cornerstones for prevention of trafficking. The different policies, programmes and projects of the government with respect to the various departments need to be dovetailed in such a way that they necessarily have an anti-trafficking component, which would be integrated into the larger plan of action by the concerned government department. Self Help Groups (SHG) and PRIs can be effectively utilised for this. The Tamil Nadu example shows that PRIs can be very effective in the empowerment of women and children at the grassroots. The role of corporates has been discussed earlier. They have an important role to play in prevention of trafficking by addressing the vulnerable sections of society. Since the study shows that the majority of the existing intervention programmes are focused on the supply side, there is a need to reorient the focus to the demand side too. The study has shown that trafficking has caused an exodus-like situation of women and children from the economically/ socially oppressed sections of society and those affected by natural/man-made calamities. When such circumstances prevail, the girl child and women become highly vulnerable. In such situations it has become a common feature to convert the girl child, who is considered a liability, into an asset by selling her or abetting in trafficking her. Therefore, preventive strategies need to focus on such vulnerabilities. Developmental programmes should specifically address social and economic empowerment of these vulnerable sections. There is a need for significant inputs through education, public awareness and community involvement.

### *Public Awareness Campaigns*

Lack of awareness of human rights of women and children is the springboard from which the exploiters gain impetus. Once the vulnerable sections are adequately aware of their rights, they themselves will feel strengthened. Though the public relations department of the government

and certain NGOs carry out such programmes, they are microscopic, considering the scale of the problems concerned. The research has shown that there is a ‘conspiracy of silence’ by all concerned, which does not exclude family, community, religious institutions, political parties and, at times, even CBOs, NGOs. There is a need to have extensive and sustained awareness programmes focused on rights of individuals. Such programmes should be sustained too. It would be a good strategy to empower them by encouraging leaders from among them, who would be able to garner adequate public support for the anti-trafficking initiatives. Moreover, such awareness campaigns could be target-oriented, with specific attention on the most vulnerable sections of society.

### *Sensitization of Adolescents*

This research has shown that a large number of the victims as well as clients are teenagers or adolescents, especially school and college students. There is a need to address the issue of sexuality within this group and sensitise them about the human rights of women and children. Appropriate NGOs could be asked by the educational institutions to carry out such target-oriented advocacy in schools, colleges, etc.

### *Role of Family*

The study has shown that certain families, due to several reasons, are directly or indirectly involved in the trafficking process. It could be their ignorance, lack of livelihood options arising out of poverty, prevailing cultural traditions, or commercial motives. There are plenty of instances of family members getting lured by traffickers, falling prey to their evil designs and, thereupon, allowing their wards to be trafficked. All such acts of omission and commission have to be addressed. The situations vary from place to place and, therefore, intervention programmes have to be focused on the assessment of these realities. The mapping exercise stated earlier could be utilised for this assessment. Moreover, any preventive strategy should take the family into consideration, as the role of the family has been found crucial.

### *Social Culture*

This research has brought to light the fact that prevention of trafficking is possible only if the community is fully involved. Trafficking has deep roots in the social ethos of the society and, therefore, cannot be handled by law alone. The larger issues of lack of livelihood options, gender discrimination and deprivation of opportunities have to be kept in mind. Therefore, any preventive strategy should focus on eradication of poverty, illiteracy, lack of awareness of rights and livelihood options, as well as on issues of social and economic empowerment. The lack of options provides a fertile ground for the exploiters to enhance their commercial motivation and grow rich faster. Therefore, the basic question is to uphold community values and create a culture against exploitation of women and children. Community should become a guarantor of human rights. The prevailing ‘culture of silence’ of the community has to be transformed into ‘community involvement’. In this context, besides the role of family discussed earlier, there is an important role to be played by all stakeholders, viz., the schools, the panchayats, other democratic institutions,

## Annexure 12

NGOs, CBOs, religious teachers, mediapersons and all members of the community. We need to build up a community culture to ensure that trafficking is not just condemned, but not tolerated at all.

### *Community Policing*

Several initiatives have been taken by many police officers across the country by involving NGOs to act as bridges between the police and the public. Such initiatives of community policing are essential for combating trafficking. This not only brings in the involvement of the community, but also facilitates the functioning of the police. Community cooperation is essential for getting independent witnesses for rescue operations. Rescued persons can be lodged in the 'homes' run by NGOs. Certain innovative examples of community-police partnership do exist like the cross-border committees in certain districts on the Indo-Nepal border. The JIT programme, set up by the UN agencies, is another example. However, such initiatives have to spread to other places and the existing ones need to be institutionalised. In order to prevent cross-border trafficking, law enforcement agencies like BSF and SSB could look at developing police-public networks, especially in the vulnerable areas, and utilise them for acting as watchdogs and informants on traffickers and exploiters and thus, help in the prevention of trafficking.

### *Combating Sex Tourism*

Law enforcement agencies and civil society need to take special efforts in this direction. Urgent steps have to be taken by the government to arrest the menace of sex tourism. It cannot be hidden under the carpet any longer. Coordination among the state police agencies and central law enforcement agencies, including immigration authorities, as well as other related departments like tourism and urban development, etc. has institutionalized. The provisions of the Goa Children's Act, 2003 could be a model for other states to bring in such provisions and ensure their implementation. There is a need for extra-territorial legislation on the subject. Moreover, preventive steps should include wide dissemination of the legal provisions and preventive strategies, by involving tourism departments, corporates, hoteliers, tour operators, and other stakeholders. Tourism promotion cannot be at the expense of women and children. Protection of child rights and women's rights should form the core of tourism promotion initiatives, policies and programmes.

### *Addressing Culturally Sanctioned Practices*

Since several cultural practices provide the substratum for trafficking and commercial sexual exploitation of women and children, it is essential to initiate special efforts to address these issues in places where such practices exist. While the Devadasi (Prohibition of Dedication) Act, 1982 of Karnataka addresses the issue per se; the Goa Children's Act, 2003 addresses the issue of trafficking linked to culturally sanctioned practices. Effective implementation of these social legislations calls for synergy between law enforcement agencies, other governmental institutions like NCW, and civil society. NGOs have a large role to play in building up public awareness and breaking the silence of the community. There is a need to promote zero tolerance to this kind of

exploitation in such communities. At the same time, the rehabilitation of women and girls who have been trafficked and exploited needs to be given special attention. Rehabilitation efforts may go against the cultural norms in existence in the community and, therefore, can be successful only if they are properly monitored, as is seen in the Delhi case study where the Delhi High Court intervention was instrumental in helping the rehabilitation of Bedia girls of Rajasthan.

### ***Intervention to Prevent Trans-border Trafficking***

The SEVA model of setting up a Rights Awareness Centre at the Indo-Nepal border has been successful in preventing trafficking under the garb of migration. While not interfering with migration, the strategy of making the migrants aware of their human rights has succeeded in preventing trafficking of girl children. Such models could be replicated in other areas on the border by involving the NGOs which are working on issues related to cross-border trafficking.

### ***Role of Media***

The media has a large role to play in mobilizing public support and involvement for preventing and combating trafficking. Due to its outreach and its ability to mould public opinion, it is a powerful tool of social change. Therefore, there is a need for involving the media in a sustained manner. Investigative journalism on trafficking needs to be promoted. However, media publicity should take into consideration the rights-approach and ensure that there is no violation of the rights of the victims and survivors. And so, there is a need to develop minimum standards for the media. The NHRC may consider facilitating appropriate agencies to bring out guidelines in this regard. Moreover, there is a need for linkage of mediapersons across the borders so that they can work on a common platform, especially with respect to prevention of trafficking. Multilateral agencies could help in establishing and facilitating this linkage.

## **Protection of Victims and Survivors**

### ***Urgency of Rescue Operations***

The study has pointed towards the urgency and essentiality of carrying out rescue operations. The large majority of survivors and victims are eager to be rescued and rehabilitated. During the field work, it has come to notice that there are more than 500 children languishing in brothels, as stated by the brothel keepers themselves. Moreover, a vast majority of the interviewed victims in CSE in the brothels have expressly stated their eagerness to be rescued and rehabilitated. No doubt the non-rescue of these trafficked persons, more so of children, compounds the human rights violations. Therefore the urgency to rescue and rehabilitate them.

### ***Handbook on Do's and Don'ts***

In order to ensure that the police officials at the grassroots level are aware of the dos and don'ts, especially from the human rights perspective, in dealing with matters relating to trafficking, and to bring in accountability, it is essential that they are provided with guidelines on the do's and don'ts that are to be followed before, during and after rescue. This should have a checklist

## Annexure 12

of the care and attention they should provide during the various activities. The checklist will also help to ensure that the rights of the victims are not violated. Perhaps a guidebook covering these aspects could be prepared under the aegis of the NHRC, so that it acquires greater credibility. South Asian Professionals against Trafficking (SAPAT), a forum facilitated by UNIFEM, has a plan to prepare such a handbook.

### *Minimum Standards during Rescue and Post-rescue Activities*

The research has brought out violations of the victims and survivors before trafficking, during trafficking, after trafficking, and even after rescue. Such violations occur because the activities by governmental and non-governmental agencies are not always guided by specific yardsticks conforming to human rights. All efforts have to be made to ensure that human rights are not violated in any manner. The voice of the victims and survivors have to be given primacy. There is a need for appropriate psycho-social inputs in getting the informed consent of the rescued victim for any future course of action on her behalf. There is thus a need to develop minimum standards of care and protection for all activities during and after rescue. Considering the fact that this is one of the important matters of human rights affecting a large community across the country, it would be appropriate if the minimum standards and guidelines are developed under the aegis of the NHRC. Since the issues concerned cut across the entire region, regional protocols could be developed by involving the various countries in the region. Asia Pacific Forum of Human Rights agencies and the bilateral linkage of Human Rights organisations can be considered as a medium to facilitate the development of such trans-border protocols.

### *Segregation of Victims from Exploiters*

This research shows that victims and exploiters are 'rounded off' together by the police (sometimes along with NGOs) and thereafter, taken to the police station and kept together during the registration of FIR, and during interview and other processes of investigation. This gives ample opportunity to the exploiters to terrorise the victims, and prevent them from speaking out and exposing the exploitation. Therefore, utmost care has to be given by police agencies and others to ensure that the rights of the victims are protected. They need to be isolated from the abusers, exploiters and their representatives.

### *Legal Representation*

The Supreme Court of India, in *Delhi Domestic Working Women's Forum vs Union of India* [1995 (1) SCC 14], has pointed out the need for legal representation for rape victims. The victims of CSE are, no doubt, victims of rape. Therefore, the legal representation mentioned in the order of the Apex Court becomes applicable to them also. The services of the Free Legal Aid Authority in the districts could be utilized for this purpose.

### *Medical Care and Attention for the Rescued Persons*

Police agencies have reported difficulties in providing medical attention to the rescued survivors/victims. Shortage of staff, especially women staff, lack of resources and medicines, and lack of

sensitivity among the staff, are vital issues that need to be immediately attended to. (Discrepancies related to age verification have been discussed separately). These problems exacerbate the violation of rights of the survivors. Therefore, adequate steps have to be initiated by the health department to deal with these problems on priority basis and with utmost sensitivity. This also calls for sensitization of the medical professionals on the related issues.

### ***Psycho-social Intervention***

The research has shown that trafficked person is under severe emotional strain. The traumatized victim requires counselling. Trained counsellors are essential in such situations. It would be a good idea to provide such personnel at every police station by networking with the welfare department and other agencies like the Central Social Welfare Board (CSWB). The police department could set up Family Counselling Centres (FCC), with trained counsellors in police stations. The CSWB should extend the facility of FCC to all police stations and enlarge their scope to counsel the trafficked victims. These counsellors should be given thorough, professional training before they embark upon counselling. Training programmes for counsellors, like the one organized by SARTHAK, an NGO in Delhi, could be effectively utilized.

### ***Linkage of Homes with the Police and NGOs***

The study shows that lack of linkage of the police with the authorities of 'homes' usually causes severe inconvenience to the latter. In one instance, officials of a rescue home in Delhi were unprepared to receive large number of rescued persons without adequate notice, especially because it was late at night. Consequently, there were several complaints of violation of rights of the trafficked victims. In order to avoid such situations, the police agencies should notify all concerned in advance, preferably immediately after rescue, about the future programme and likely time of arrival at the 'home' so that these homes can make necessary arrangements. Keeping in view the best interests of the survivors, there is a need for institutionalizing police linkage with homes and laying down protocols for such transfers.

### ***Inadequacy in the Existing Homes***

The research has brought out the fact that there is acute shortage of manpower, infrastructure and resources in most of the existing homes. These need to be replenished and augmented, depending on the requirement. The superintendents should be given powers to cope with emergencies, especially when large numbers of rescued persons are brought to these homes without advance notice. Some police officials have even stated that they refrain from carrying out rescue operations for want of adequate rescue homes where the survivors could be lodged. This highlights the need for setting up such homes wherever required. Homes set up by NGOs should be recognized and more NGOs could be facilitated to set up similar homes.

### ***Shortage of CWCs***

There is an acute shortage of Child Welfare Committees (under the JJ Act) which can take charge of the trafficked children. Since CWCs are the competent bodies to take care of the



## Annexure 12

interests of children trafficked or likely to be trafficked, they should be available at places where vulnerability exists. Their offices need to be linked to Childline and other such helplines so that assistance is rendered without delay. Instances are aplenty where, for want of CWCs, the rescued children have been produced before the judicial magistrate and have been deprived of the rights and privileges due to them under the JJ Act. Therefore, CWCs should be set up in all districts in India.

### *Rehabilitative Mechanisms*

Rehabilitative measures should be oriented to the best interests of the trafficked victim/survivor. The NPA of DWCD has made provisions on rehabilitation. However, this study shows that a uniform policy of rehabilitation will not suffice. Persons who are subjected to commercial sexual exploitation and are in need of rehabilitation can be categorized into three groups. The first group includes newly trafficked women and children who are to be rescued without any delay and should be rehabilitated on priority. The second category includes elderly persons who have been subjected to exploitation for many years and have been rendered jobless and penniless, and are mostly sick or infirm. They have no livelihood options before them. The third category includes other women, mostly middle aged, who are trapped in the brothels because of lack of appropriate and sustainable rehabilitative mechanisms. The strategy for rehabilitating each of these categories has to be different and should not only take into account their best interests, but also have their informed consent.

Rehabilitation should be based on the rights approach rather than the narrow welfare-approach. It should not be considered as an act of welfare or extending largesse, but should be seen as an act to protect and ensure human rights. Moreover, decision-making should be participatory, keeping in view the best interests of the survivor. Livelihood options have to be based on marketable skills and knowledge. Rehabilitative institutions should have a holistic approach — with trauma counselling, psychosocial intervention and health care for the victims, as well as provision for imparting appropriate skills, knowledge and resources for a sustainable livelihood. Moreover, rehabilitation programmes have to take into consideration the legal requirements of the criminal cases, if any pending, so that the latter does not become impediments in proper rehabilitation. It should also be borne in mind that rehabilitative processes are applicable to both rescued and non-rescued persons. In order to make sure that the victims who are yet to be rescued do have access to the rehabilitation programmes and processes, it is essential to provide helplines and other help services, along with adequate public awareness programmes. Also, rehabilitation programmes have to be made sustainable. Micro-credit and other facilities should be provided. The local administration should have monitoring mechanisms to ensure that the rehabilitated person is not re-trafficked. The research has brought out the need for a holistic and integrated rehabilitation scheme for the survivors and victims of trafficking, with adequate provisions for addressing prevention of trafficking. The government should also bring out a clear policy on the social security of the survivors, keeping in view the points stated above.



### ***Shortage of Police Personnel***

The study has shown the inadequacy of human resources, especially women police, as well as infrastructural resources with the police agencies in almost all the states, which are impediments in undertaking rehabilitative initiatives. It would be advisable to have adequate number of women police officials in all police stations. Since the police station is the first rung of the government machinery that is called upon to ensure human rights of the survivors, it is essential that the police stations should be adequately equipped to deal with the situation. Augmenting the human resource and material resource of the police stations will be in the best interest of preventing trafficking and other crimes.

### ***Anonymity of the Rescued Person***

All efforts should be made to ensure that anonymity is maintained with respect to the identity of the trafficked person. This is an important aspect of protection of human rights. The provisions of 228A IPC and 22 JJ Act have to be complied with and any violator should be made accountable.

### **Prosecution of Exploiters and Others**

#### ***Registration of Cases***

Police officials themselves have reported about under-reporting or non-reporting of crimes related to trafficking. This is a serious lapse in the existing system of law enforcement. Unless all crimes of trafficking are reported to the police, legal action cannot be initiated against traffickers and exploiters. This is possible only with greater police-public cooperation, involvement of civil society, increased public awareness and, above all, sensitivity and accountability among the officials concerned.

#### ***Misuse of Section 8 ITPA***

The research has brought out several distortions in law enforcement. On the one hand, there is non-utilization of sections of ITPA against traffickers and exploiters, and on the other hand, there is grave misuse of Section 8 ITPA, wherein victims are arrested, prosecuted and even convicted on the charge of soliciting. The legal concept of *mens rea* has to be investigated and the person should not be chargesheeted or convicted if *mens rea* is lacking. A person who is made to solicit under coercion, duress, threat, etc., cannot be charged with the offence of soliciting, as there is no *mens rea*. A victim of trafficking should not be arrested at all. This calls for sensitivity and accountability of all concerned. Even if the person is wrongly charged, she should not be convicted. If the investigation is perfunctory, the court can call for further investigation. Similar aspects of protecting the human rights of the victims have to be brought home by appropriately training and sensitizing police officers, prosecutors and judicial officers.

#### ***Justice Delivery***

Several distortions in justice delivery have been brought out by this study. Most of the persons convicted are victims who are charged with the offence of soliciting. Instances are many where

## Annexure 12

the trial processes have contributed to the revictimisation of the victim. The delay in trial, the inability to produce witnesses by the prosecution, repeated requirements of appearance of the victim in the courts, etc., adds to her problems. Often sentencing practices show lot of discretion and does not indicate any specific yardstick. Many times compensation is not awarded to the victim even after conviction of the offender. At times convictions are not followed up by closure of brothel, externment proceedings etc. Redressal of the grievances of the victims calls for effective implementation of all the provisions of law keeping in view the best interest of the victim. The judicial intervention by the High Court of Delhi shows that the justice delivery process can be oriented to the best interests of the victim if the concerned authorities take appropriate initiatives. Moreover, there are several judicial pronouncements by the Supreme Court of India and High Courts, upholding women's rights and child rights. All these have to be put to practice. This calls for sensitization of judicial officers, prosecutors, medical experts and lawyers.

### *Human Rights Perspective in Law Enforcement*

The study has highlighted that in the existing situation, it is the trafficked women and children who are being victimized by arrests and conviction. The judicial intervention of the Delhi High Court has amply demonstrated how it is possible to bring about a paradigm shift from punishing the victims to punishing the exploiters. Trafficked victims should not be exploited any further. Radical changes in the existing law enforcement scenario are needed to ensure this. It calls for (a) declaring trafficking offences as 'grave crimes' or 'special report' crimes, which are supervised by the officer of the rank of SP/DCP and above, and investigations are carried out properly, (b) sensitization of the police officers and prosecutors, and (c) fixing accountability of the officers concerned for acts of omission and commission. Activities and initiatives that uphold the rights of the women and children should be publicly commended. All efforts are to be made to ensure that the law enforcement machinery functions within the paradigm of human rights. This necessitates appropriate circulars and directives by the government and police chiefs. The research shows that such circulars are available in Bihar and Tamil Nadu. Since district police, railway police and special outfits like the CID, CBI, etc., have an important role to play in dealing with offences related to trafficking, their training in this area should be given priority.

### *Conjunction of JJ Act, IPC and Other Laws with ITPA*

The present legislations, especially ITPA and JJ Act, have a lot of strength and scope for dealing with offenders and providing redressal to the victims. However, many of the sections are not being used, e.g., when the rescued victim appears to be under 18 years, she is entitled to treatment as a "child in need of care and protection" under the JJ Act. Despite this, there are instances where the JJ Act is not invoked and the victims have not only been charged but also convicted u/s 8 ITPA. Similarly, there are instances where, despite the fact that the victims were under 16 years of age and has been subjected to sexual assault, Section 376 IPC was not invoked. Even after conviction, the brothels, where the exploitation had taken place, were

functioning and only in very few cases were they closed down. There is a need to orient the police officers and prosecutors to invoke these sections of law, and file reports accordingly. There is a need to sensitise and orient the judicial officers for ensuring justice delivery to the victims by invoking all the relevant laws and rulings. As a corollary, there is an urgent need for implementation of the JJ Act, 2000. Many states are yet to start the process but this needs to be expedited.

### *Misuse of Local Laws and Special Laws*

The study shows that many victims are harassed by action against them u/s 110 of the Mumbai Police Act, sec 95 Delhi Police Act, and sec 145 Railways Act. There is a need to carry out a social audit of the actions taken under these and other similar laws by the concerned police agencies to see whether they have protected or violated the rights of women and children who are victims of trafficking. The law enforcement officials and magistrates need to be sensitised accordingly. The state police chiefs and state governments should carry out social audit and ensure protection of human rights. The NHRC could direct all concerned for ensuring compliance. State Human Rights Commissions, wherever they exist, need to look into this. It needs to be ensured that human rights violations are not allowed to continue.

### *Stringent Action Against Exploiters*

There is no doubt that law enforcement has to be ruthless against traffickers and exploiters. While there is an emerging trend of punishing brothel owners and associated exploiters, there are very few instances of traffickers being identified and brought to book. Investigation has to go beyond the brothel, which is usually perceived as the scene of crime. It has to reach the source of trafficking, the trafficking routes, the transit points, all persons involved in these processes and also cover the crime syndicates of exploiters, transporters, financiers and all other accomplices, abettors, etc. This calls for multi-disciplinary and in-depth investigations which can bring out the organized linkages as well as the illegal assets acquired through the crime. Many case studies have presented examples of unbelievable assets amassed by traffickers. There is a need for proper investigation to establish the ownership of such assets and thereafter, take legal steps for forfeiting and confiscating them.

### *Closure of Brothel and Eviction*

The power to close brothels and evict offenders u/s 18 ITPA can be an effective tool in dealing with the exploiters. The prosecution should move the court for initiating such action, in the event of the court convicting the exploiters. Even before conviction, the executive magistrate can initiate such action by issuing notice. The ITPA also provides for surveillance of the convicted person. These provisions have been sparingly used. There is a need for sensitizing the officials concerned and making them accountable. Moreover, in some places, like Mumbai city, this power has not been conferred on the district level officials. It would be better if such powers could be delegated to DCPs.

## Annexure 12

### *Organized Crime Approach*

This study has shown that trafficking involves a multiplicity of well-organized exploiters. The manifestations of trafficking present all parameters required for an organized crime. It is a chain of offences, involving multiple abuses and violations, and a host of offenders at various levels. Data also provides adequate instances of this organized crime being trans-national. Therefore, special provisions of law should be brought in, wherever appropriate, to deal with these organized criminals. The law enforcement officials should consider invoking the provisions of the special legislations on organized crimes, wherever applicable. Many state governments have already enacted special laws on organized crimes. Trafficking offences should be brought under the ambit of such special laws.

### *National Database and Data Surveillance*

The research shows that there is a need for effective monitoring of the data on cases of trafficking. The supervisory officers should carry out regular and in-depth study of the data, understand the trends and take appropriate steps to ensure that victims are not arrested or harassed and that their rights are fully protected. Guidelines for monitoring the trafficking cases should be developed. It should include collation of data of the review period separately under different sections of ITPA (Sections 3 to 9), related sections of IPC and Local Acts, as well as the preventive sections of Cr.PC. The data should provide the details of cases registered, chargesheeted and convicted. The details of arrest and conviction should be separately indicated for males and females as well as for adults and children. The data should also show the number of rescued persons (with sex and age disaggregation) and the details of persons repatriated/rehabilitated. Data surveillance with such details will expose the violation of rights that take place in law enforcement and, therefore, will facilitate in reorienting law enforcement, keeping in mind the best interests of the victims. Similarly, the data being collected and published by the National Crime Records Bureau (in its annual publication *Crime in India*) should also reflect the data on trafficking in women and children, with sex and age disaggregation as above. It should also have details of arrests and convictions, specifically stated under the various sections of ITPA.

### *National System of Intelligence Dissemination on Traffickers and Exploiters*

The research has exposed a serious vacuum in the law enforcement scenario in the absence of a national system of data collection and information on traffickers and other exploiters. Trafficking has emerged as a serious organized crime cutting across districts, states and nations. Hence, effective law enforcement essentially calls for sharing of intelligence and data by all concerned. The shackles of boundaries that tie down the law enforcement agencies are being effectively capitalised by the exploiters. The study has also shown that certain NGOs working in this field have large databases, which could be effectively tapped by the police. However, there is no national criminal intelligence organization which can collate the data, build up the database and disseminate it to all concerned. This has to be done by an appropriate law enforcement agency. Delhi High Court, acting on a public petition, had directed CBI to start a Cell on criminal records

of abductors and kidnappers. Recently, DWCD has authorized CBI to investigate crimes under ITPA. These developments could also be utilized as catalysts for setting up a national database on traffickers in the CBI. The national system of nodal officers needs to be linked to this intelligence storehouse in CBI. These linkages may call for active involvement of the MHA and facilitation by the NHRC.

### ***Central Anti-Trafficking Establishment***

As per Section 13(4) ITPA, the Government of India (DWCD) has notified all officers of the rank of Inspector and above of CBI as CTPO. However, for want of jurisdiction u/s 5/6 of the DSPE Act, CBI cannot *suo moto* take up crimes of trafficking for investigation, even if they have international ramifications. The state police agencies will not have the wherewithal to carry out such inter-state/international investigations. Therefore, there is a need to set up a National Task Force, duly empowered, to take up investigation of such crimes. It is important to note here that the role of CBI as the nodal agency has been appreciated by the Supreme Court of India in *Gaurav Jain vs. Union of India (1998 4 SCC 270)*, where the Supreme Court held, 'The ground realities should be tapped with meaningful action imperatives, apart from the administrative action which aims at arresting immoral traffic of women under the ITP Act through inter-state or Interpol arrangements and the nodal agency like the CBI is charged to investigate and prevent such crimes.' CBI having been notified by DWCD, it would be preferable to have the CTPO establishment working under the Director, CBI. They should be given contiguous powers of investigation in all states, at par with the NCB, which can take up any case of the NDPS Act in any state. The discretion of taking over the cases should be left to the Director, CBI, who will take decisions keeping in view the multi-state or international ramifications of the cases concerned. This calls for setting up a special cell in the CBI, by involving experienced persons, experts and officials who are not only aware of the issues concerned but are also sensitised to the rights of women and children. The officials in CTPO need to be specially trained to handle trafficking offences. It needs to be added that the national nodal agency and national rapporteur mentioned earlier should coordinate with the central anti-trafficking establishment so that there is synergy in functioning. This will avoid duplication of efforts and wastage of resources.

### ***Federal Crime***

Trafficking in women and children is a crime which is committed without any restriction of boundaries. However, the government agencies are restricted in their response by boundaries of police station, district, state, country, etc. These geographical restrictions, coupled with the prevalent mindset, are serious impediments in preventing trafficking as well as in protecting the rights of trafficked women and children. Therefore, trafficking offences have to be made a federal crime as is the case with narcotic offences, over which the state police, CBI and Narcotics Control Bureau have contiguous jurisdiction. Unless it is declared a federal offence where CBI has *suo moto* authority to intervene, CBI will not be able to take over even international trafficking crimes till such time as they are specifically notified by the concerned state government and the Union Government under Sections 6 and 5, respectively, of the DSPE Act.

## Annexure 12

### *Age Verification*

This is an important issue in law enforcement. The serious anomalies in the existing systems of age verification have been brought out in the case study from Maharashtra. The suggestions made in this case study are worth pursuing, as they are in the best interests of the victims. Presumption of age, at first sight, should be drawn in favour of the survivor. The interview of the survivor needs to be carried out by trained persons who can help the survivor to determine her exact age. In all-borderline cases a CWC representative should be consulted by police officials before taking a decision as to whether the person is a child or adult.

### *Victim Assistance Programmes*

Redressal of the grievances of the victim should be the topmost agenda in law enforcement and justice delivery. While changes in law are being proposed to incorporate specific provisions on the subject, even within the existing legislation, there is scope for extending assistance to the victims. The provision for ensuring anonymity has already been stated. Similarly, Section 327 Cr.PC provides for in-camera trial with respect to rape and related offences. Also, Section 357 Cr.PC provides for compensation. These provisions should be invoked in appropriate cases to ensure the rights of victims. Moreover victim assistance programmes, covering all human rights principles have to be incorporated in law and practice.

### *Criminal Injuries Compensation Board*

The Supreme Court of India in *Delhi Domestic Working Women's Forum vs Union of India* has advised the setting up of this Board to provide assistance to victims. Considering the fact that most of the trafficked victims, after rescue, are penniless, it is essential that they are provided with minimum resources for sustaining themselves. The compensation to be imposed on the accused u/s 357 Cr.PC can come into effect only after conviction and not otherwise. Therefore, there is a need for setting up a Board with adequate funds to provide for post-rescue assistance, without waiting for closure of the judicial process of trial. The Tamil Nadu government has already set up a Social Defence Fund for giving financial assistance to rescued victims. Andhra Pradesh government has a scheme of extending financial help to all victims immediately after rescue. These could be considered as models for other states too.

### *Video Conferencing*

One of the important aspects of justice delivery is ensuring the protection of the rights of the victims during the trial process. It has come to light in many places that the victims are called to the court for their evidence long after repatriation. There are instances in Delhi where the victims rescued from Delhi brothels were rehabilitated in Bangladesh, but were brought back to Delhi eight years later and made to depose in the court. Often, the victims are reluctant to make statements in the court in the presence of the accused, because they do not like to revisit the trauma and relive the exploitation. In such situations, video conferencing can be an effective tool. The research mentions the order of the High Court of Delhi on video conferencing, which can, if implemented



properly, be a great boon to a large number of young girls who are rescued from one place but rehabilitated in their hometowns.

### ***Providing Interpreters***

In the case of trans-border trafficking and inter-state trafficking, the investigators and trial courts are handicapped when the victim speaks a different language. Ad hoc arrangements may not be in the best interests of the victim. There are instances in Delhi where the interpreter was found to be misleading the court and speaking in favour of the trafficker. The court could not proceed for want of an objective and neutral interpreter. Here, NGO intervention can redeem the situation. Therefore, there is a need for competent interpreters in such cases. The presiding officers of the courts concerned may ask the district administration to maintain a list of proficient interpreters, in languages spoken by the victims. The state governments need to take appropriate steps in this regard.

### ***Nationality of Illegal Immigrants***

The study has brought out the serious issue of nationality of the women and children trafficked from Bangladesh to India. As regards citizens of Nepal, the issue of nationality has not been a problem so far. However, there are instances where trafficked Bangladeshi girls have been convicted u/s 14 of the Foreigners Act, on the charge of being illegal immigrants. The question arises as to how they could be considered to be illegal immigrants when they had been trafficked by lure, deceit or coercion by the traffickers. There is a need to provide appropriate status to these victims till such time as they are required to stay in the country for purposes of the trial, so that they are not prosecuted for violating the provisions of the Passport Act and the Foreigners Act. Distinct policy guidelines by the government on migration, trafficking and nationality are required in this context. There is a need for attention by MEA, MHA and Ministry of Law and Justice.

### ***District-level Monitoring Committee***

Since anti-trafficking activities have to be based on realities at the ground level, it is advisable to constitute district-level monitoring committees on anti-trafficking. The Tamil Nadu example could be considered as a model. In Tamil Nadu there is further decentralization with village level watchdog committees, involving PRIs. These committees can be more effective if they include NGOs and other professionals (counsellors, psychiatrists, etc.) working in the field.

### ***Special Police Officers under JJ Act***

As per the Juvenile Justice Act, 2000, special police officers are to be posted at all police stations. There should be a special cell at the district level. In many states, such police officers have not been notified. The law also prescribes that these police officers should be specially trained. Considering the fact that a large number of trafficked persons are children — both boys and girls — it is essential that the system envisaged under the JJ Act are brought into existence



## Annexure 12

without delay. Professional bodies, including NGOs who have expertise on the subject, could be utilised for training the police officers.

### *Special Police Officers under the ITPA*

The research has brought out the fact that there is acute shortage of notified special police officers in police stations for implementing the law. There is a definite requirement for augmenting the strength of police officers. Ideal situation would be to have adequate strength of notified women and men police officers, specially trained, in all police stations. Section 13(2A) authorizes District Magistrates to confer upon any retired police or military officer (not below the rank of Inspector and Commissioned Officer respectively) all or any of the powers under ITPA. This provision has not been utilized. It empowers the district administration to identify competent personnel, especially women, train them and utilize their services effectively in dealing with trafficking.

### *Strengthening the Prosecution System*

Despite the fact that prosecutors play an important role in the justice delivery mechanisms, the prosecution wing remains neglected. There is acute shortage of resources, including law books and copies of relevant judgements by the Supreme Court and High Courts. This needs to be attended to. There are no training programmes for prosecutors, except in a few states. Prosecutors need to be trained and sensitised regarding the human rights of women and children. The prosecution should also be oriented to take up the cases in the best interests of the victim — ensuring victim-friendly procedures and moving the courts for appropriate relief and compensation. Though the law does not provide for independent private counsels for victims as their role is taken over by the state prosecutor, the case study of SLARTC, Kolkata, presents an innovative approach — of private lawyers carrying out prosecution work in trafficking cases.

### *Coordinating Law Enforcement on Missing Persons*

As of today, the system of monitoring activities to locate the missing persons is haphazard and ad hoc. The research highlights the issue of missing persons and provides the linkages between missing and trafficked persons. This distressing scenario calls for immediate action. There is a need for reorganising the National Missing Persons Bureau at the NCRB, Delhi, as a coordinating agency, linking it up with the missing persons bureaus in the states, and with Childline and other helplines in the states. The management of the information system needs to be overhauled. In addition, the available manpower has to be augmented with professionally trained and qualified persons. The database built up for this research from the states could be taken over by the NCRB and thereafter, updated regularly. Since this is a serious violation of rights, the issue of missing persons needs to be given importance and priority in law enforcement. Any effort to address the issue of missing persons will be successful only if it is done in an integrated manner, involving all agencies concerned. There is a need for cooperation of Ministry of Home Affairs, Ministry of Social Justice and Empowerment, Department of Women and Child

Development, Ministry of Information and Broadcasting, Ministry of Surface Transport, Department of Education and other agencies like CBI, RPF, state police, GRP, NCRB, as well as Children's Networks, Child India Foundation (CIF) and other voluntary agencies in the field.

Efforts need to be made to ensure that children do not go missing. Proper registration of birth, appropriate identity systems for individuals even at the infant stage, and involving community in not only reporting about the missing persons but also in carrying out verifications and recovery of the missing children, are essential. PRIs have an important role in this regard.

### *Contingency Expenditure*

It has come to light that in many states, police officials face acute shortage of communication facilities and other infrastructure, especially in police stations. A Delhi case study has shown how, when a rescue operation was carried out, the police station did not have adequate resources even for extending minimum facilities to the rescued victims. When this was brought to the notice of the High Court of Delhi, the court ordered the Government of India (DWCD) to provide a contingency grant to the Commissioner of Police, Delhi. This was fully utilized by the latter. Governments have to earmark adequate resources for the concerned police agencies for meeting such contingencies.

### *Training*

The study presents serious gaps with respect to the training of police officials. Only 17 per cent of the 852 police officials who were interviewed had received any refresher training after their basic training which they received during induction into the service. Only 6.6 per cent of them had been exposed to some training relating to anti-trafficking. The police, being a professional organization, cannot deliver the goods without appropriate and regular training courses for upgradation of their skills and knowledge, and orientation of attitudes. Perhaps lack of training is one of the major causes for the negative image of the police. The government should take initiative in earmarking adequate budget for the same and ensure timely training and professionalisation of police officials. This neglected area deserves utmost attention by all concerned.

Gender sensitization of the law enforcement officials is an urgent requirement in the given context. The sensitization process, oriented towards bringing in accountability, should cover all officials of all ranks, from top to bottom. This should be done across the board and should extend to state police, CBI, Railway Police, RPF, immigration officials, as well as those officials who are concerned with the issue and are working with BSF, SSB, customs, health department, NACO, etc.

Appropriate training modules need to be prepared by involving professionals and experts in the field. These modules should incorporate the principles of human rights of women and children,

## Annexure 12

professional techniques of investigation, and scientific tools of carrying out investigation and dealing with human beings. It would be ideal to involve not only professional agencies but also NGOs working on the anti-trafficking front in formulating training modules and carrying out training programmes. It is also essential that proper post-training evaluation is carried out to understand the effects of training and to upgrade/change the modules and programmes accordingly.

### *Special Courts*

The ITPA provides for establishment of special courts not only by the state governments but also by the central government. However, the latter has never been invoked and the former has been minimally implemented. The concerned government departments should take initiatives in setting up special courts, and preferably exclusive courts, to deal with the trial of offences under ITPA, so that justice can be delivered expeditiously.

### *Role of DWCD in Monitoring*

ITPA is a social legislation. Since it comes under the purview of DWCD, there is a need to monitor the implementation of this legislation by the latter. It is an irony that DWCD is not even a party to the several fora where such crimes are discussed, as for example, the annual conference of the police chiefs of the states, organized by the MHA. The violation of women's rights and child rights has to be prevented and set right. This calls for an active involvement of DWCD not only in monitoring of the facts and figures regarding the implementation of ITPA and other similar legislations, but also in developing a working partnership between law enforcement agencies, welfare and developmental departments, NGOs etc.

### *Suggested Changes in ITPA*

The Immoral Traffic (Prevention) Act, 1956 (ITPA) was initially known as the Suppression of Immoral Traffic Act, 1956 (SITA). It underwent certain changes in 1978. However, taking into consideration international and national developments, the necessity of shifting the focus of the law from suppression to prevention was felt. Accordingly, the legislation underwent major changes in the title and content, giving rise to ITPA, 1956. During this research, several efforts were made to have a practical understanding and a social audit of this legislation. While interviewing police officials, survivors, exploiters, etc., their opinion on the issue was sought. A focus group discussion (FGD) was arranged with judicial officers serving in the district courts. This FGD was made possible by the NHRC. In addition, the NST participated in several training programmes of judicial officers held in different parts of the country. The interactive sessions threw up several points on law and law enforcement. Thereafter, FGDs were held at ISS with lawyers from Delhi and Mumbai who are specifically working on ITPA. All the above-mentioned activities facilitated the detailed understanding of the provision and implementation of ITPA. In addition, the literature on the subject was also reviewed. The National Law School University, Bangalore, had prepared two sets of alternative draft legislations. The analytical articles and critical comments by eminent jurists

in published materials were studied. The report of the Lawyers Collective, based on a field study conducted by them in 2003, was also reviewed. The judgements by the Supreme Court of India and various High Courts and certain trial courts on the subject as well as the recent legislation by the Government of Goa (Goa Children's Act, 2003) were also studied. Discussions were held with eminent jurists and experts. Accordingly, the points that emerge with respect to amendments and changes of ITPA have been collated and are placed below:

### *Comprehensive Code on Trafficking*

The Constitution of India, under Article 23, prohibits trafficking in human beings. This includes trafficking for all purposes. The United Nation's Convention on trans-national organized crime, to which India is a signatory, also speaks about trafficking for all types of exploitation. Therefore, it would be appropriate that the existing law is replaced by a comprehensive legislation, covering all forms of trafficking. The bottom line of the proposed legislation should be on the process of trafficking, and not the purpose of trafficking. In fact, the purpose could be any under the two broad categories: (a) for commercial sexual exploitation, which includes exploitation in brothels and non-brothel-based situations, paedophilia, pornography, cyber pornography, sex tourism or sexual exploitation taking place under the facade of massage parlours, beauty parlours, beer bars, escort services, etc. (b) other types of exploitation, including camel jockeying, begging, forced delinquency, organ transplant by force or deceit or lure, false marriages, false adoptions as well as trafficking for labour in the field of industry, entertainment, domestic environment, etc. or any other exploitative situation. Therefore, the law has to be comprehensive enough to address all issues of trafficking. A similarity can be drawn from the Goa Children's Act, 2003. A code incorporating the substantive and procedural laws would be ideal.

### *Definition of Trafficking*

It is advisable to provide a legal definition of trafficking. The Goa Children's Act, 2003 could be considered as an example. However, in defining 'trafficking', the following points should be explicit:

- (a) That consent is immaterial for any person who is under 18 years.
- (b) That with respect to persons who are 18 years and above, consent should mean 'informed consent under no compulsion whatsoever'.
- (c) Trafficking, by definition, has certain essential ingredients. The first aspect is the displacement of a person from one community but need not essentially mean physical movement from one place to another. Trafficking could be within the community too. For example if the daughter of a woman subjected to commercial sexual exploitation is lured or coerced by the brothel owner to join her brothel as a victim of CSE, this also should be considered as trafficking, as the child is displaced from the community of the mother to the community of the brothel.

## Annexure 12

The second aspect of the definition should be its emphasis on exploitation - which could be physical, sexual or emotional.

The third aspect of the definition should be its focus on the commodification of the trafficked person and the commercialisation of the activity by anybody. It should be all-encompassing to include all types of violation of human rights and dignity and should include even customary activities which are exploitative, e.g., 'dedicating a child', and similar customs prevalent in certain places. All such activities of trafficking should be covered by the Act.

- (d) At times, it is possible that definitions can become too restrictive and, therefore, counterproductive. In such a situation, as an alternative, the difficulty can be solved by introducing a section giving legislative guidelines on what is intended to be achieved by the key words used in the statute and how the interpretation should go in favour of the victims when there are ambiguities.

### *Redefinition of Brothel*

Considering the fact that commercial sexual exploitation of women and children has moved out of traditionally known brothels to beauty parlours, massage parlours, beer bars and other such places, it is essential to cover all such places under the ambit of the law.

### *Definition of Child*

A child should be redefined, as in the JJ Act, 2000, to include all persons who have not attained 18 years of age, and this definition should apply in all matters relating to children in all legal matters. It requires appropriate amendments in all concerned laws. Simultaneously, ITPA should provide for separate treatment (care and attention) of child victims and child offenders, in tune with the JJ Act, 2000.

### *Section 2(f)*

This section of ITPA provides definitions of prostitution and prostitute. The definition should be amended to include both males and females.

### *Section 2(g)*

This section of ITPA defines protective homes and other homes. These definitions must be in harmony with the definition of homes in the JJ Act, 2000. Secondly, the definition of corrective homes needs to be changed. If Section 2(b) of ITPA is read with 2(g) ITPA, the corrective home defined in 2(b) appears to include jails/prisons. The concept of corrective home is different from incarceration or punitive detention centres. The term needs to be redefined to include the social philosophy of the Act. As Justice V.R. Krishna Iyer says, there must be "a dynamic set of definitions dealing with correctional, curative, protective and salvatory institutions. There must be stress in preliminary classification, categorisation, psychological diagnosis and observation before

appropriate assignment to institutions. Lugging together indiscriminately all kinds of persons who are arrested or convicted (or even rescued) into one large warehouse without individuation or personalised identification or diagnostic distinction is institutional nescience.” (Krishna, V.K. Iyer, 1988).

### ***Sections 3, 4, 5, 6 and 9 of ITPA***

These sections should be made sessions triable with a minimum punishment of five years (wherever it is not provided for) and the fine amount should be increased to a minimum of Rs. 25,000.

### ***Section 4***

This section dealing with punishment for living on the earnings from prostitution should have a proviso to ensure the welfare of the children of the person subjected to commercial sexual exploitation, so that they are not victimised due to the fact that they are looked after by the mother from her earnings in the brothel.

### ***Section 5***

Dealing with trafficking, this section of ITPA should be made more exhaustive, comprehensive and explicit to bring in all types of trafficking, and all associates, accomplices, financiers, transporters, facilitators, promoters and all other exploiters within the ambit of the law. Section 5.1 (b) speaks about the intent of the person. This should be replaced with ‘intent or knowledge’, so that all these exploiters are brought to book.

### ***Section 7 ITPA: Punishment***

Under this section two categories of persons are liable: (a) any person who carries on prostitution and (b) the person with whom such prostitution is carried on. Therefore, part (b) is the section that becomes applicable to the ‘customers’ or ‘clientele’. A fact that is borne out of the research is that trafficking cannot be prevented unless deterrent action is taken against those who ‘demand’ the services. Therefore, the punishment to the ‘customers/clientele’ has to be deterrent. Section 7(1A) prescribes a minimum of seven years imprisonment and fine only if the victim is a child, and in other cases, as per Section 7(1)(b), the punishment for the ‘customer’ is only three months imprisonment and no fine at all. This needs to be changed. There should be provision for stringent punishment and a mandatory fine on the ‘customer’. Moreover, the law should state that the amount taken as fine should go to the victim. However, the study has shown that many teenagers and children below 18 years are also part of the clientele. They probably venture into brothels out of curiosity or lack of proper guidance and control. Such persons need to be counselled, rather than punished. This calls for integrating the provisions of the JJ Act with the ITPA.

### ***Section 7 ITPA: Enlarging the Scope***

This section deals with two types of persons, as stated in the previous paragraph. The scope of the section should be broadened to include a third category of persons, viz., “and any person



## Annexure 12

who encourages, facilitates, abets, connives, orders, tolerates or perpetuates commercial sexual exploitation” (by any act of omission or commission). This additional clause will help in bringing in ‘strict liability’ not only against those who mastermind trafficking, but also bring in accountability among the law enforcement officials.

### ***Section 8 ITPA***

This section of the law which has been overwhelmingly used by all concerned for arrest and conviction of trafficked women and children on the charge of ‘soliciting’. Therefore, this section needs to be provided with additional safeguards in the form of a proviso to ensure that trafficked victims of CSE are not arrested, prosecuted or convicted. There should be one proviso which expressly states that a person under 18 years will not be liable at all under this section. A second proviso, in the form of a saving clause to safeguard the interests of trafficked women, should state that an adult woman would become liable only if it is proved beyond doubt that she was soliciting voluntarily and without any coercion, threat, deceit, force, compulsion or intimidation. Accordingly, the *mens rea* should be explicitly brought out in the proviso of Section 8 ITPA.

Section 8 has a proviso, authorizing a different type of punishment for men accused of the offence. Many law enforcement officials have stated that a plain reading of the section gives an impression that this provision has a strong gender bias - it gives lesser punishment to men. This has to be set right in explicit terms, so that there is no discriminatory treatment of women.

### ***Notification of the Special Police Officer***

Section 13 (1) and 13(4) ITPA should have a proviso that the officer notified as Central Trafficking Police Officer (CTPO) should be specially trained on women’s and children’s rights, human rights and the principles of victimology. There should be mandatory training for the SPOs and their supervisory ranks before they are put on the job. Every unit dealing with ITPA should have a minimum of two SPOs, with at least 50 per cent being women police officials.

### ***Section 13(3)(b)***

This section should be amended, making it mandatory to notify the non-official advisory body. Moreover the Advisory Body should be applicable to Section 13(1) and Section 13(4) ITPA. The NGOs who are committed to anti-trafficking work should be incorporated into this body and 50 per cent of the members should be women. The body should also include a lawyer specialised in children’s/women’s rights, a child psychiatrist and/or a child counsel, trained in the subject. If such specialised persons are not available, the district authority should be made responsible for identifying appropriate persons and getting them training in counselling activities. Considering the fact that the notification of the advisory body could be an instrument of community participation in law enforcement, the Act should be amended in such a way that the District Magistrate and/or the police chief of the district could be authorised to notify the advisory body. Similarly, the CTPO should have the benefit of an advisory body. This body should also be made mandatory. Since the CBI has been notified as CTPO, the Director CBI, in consultation



with the NCW Chairperson, could be authorized to notify appropriate NGOs in this body. This study has shown that best results are achieved only when there is an effective partnership between the police and NGOs. Therefore, all rescue operations, especially u/s 15 and 16 ITPA, should necessarily involve NGOs or social activists, duly notified u/s 13(3)(b) ITPA.

#### **Section 15(4)**

It authorizes the special police officer to remove all persons found in brothels, etc. and other places where commercial sexual exploitation is carried out. There should be a proviso added to this section as below:

*The police officer should ensure that while doing so, the rights of the persons being removed, including those of their children or wards, if any, are protected against any violation whatsoever. After removal, the police officer should ensure that the rescued persons and their children/wards, if any, are given appropriate security and shelter so that the rights of these persons are protected and are not violated by the exploiters or other accused or anybody else.*

#### **Section 15(5A)**

This provides for mandatory medical examination of the rescued person for ascertaining, *inter alia*, the presence of any sexually transmitted diseases. Considering the fact that the person has a right to decide whether he/she should be subjected to HIV/AIDS test, which has been ratified by recent Supreme Court rulings, this provision appears to be counter to the provisions u/s 15 (5A). Therefore, considering the human rights perspective, there is a need to make appropriate changes in this section.

#### ***Time-frame for Medical Examination and Reports***

In section 15(5A), which deals with medical examination of all rescued persons for the determination of age, injury, sexual abuse and HIV/AIDS, a proviso could be added that it will be incumbent upon the doctor(s) to carry out all tests without any loss of time and to hand over the medical report to the investigating police officer within three days of medical examination. The members of the advisory body under Section 13(3)(b) and the person whose medical examination was done, or anybody acting on behalf of the person, should have a right to know the contents of the medical report and if there is any dispute, the investigating officer should immediately approach the civil surgeon or anybody acting on his behalf, get a medical board constituted and get the person medically examined at the earliest. These aspects need to be incorporated in the law.

#### ***Pre-emptive Custody***

A subsection should be added to Section 15 ITPA to provide for rescue and rehabilitation of all women and children who are vulnerable (JJ Act provides the same only for children under 18 years of age). Justice V R Krishna Iyer says, "Many girls who have not yet slipped in the circle of vice but are perilously hovering around it and are gravitating towards the flesh business, may

## Annexure 12

have to be kept sequestered and conscientised, studied psychiatrically and given personalised attention. Pre-emptive semi-custody with facilities for economic self-reliance and moral normalisation will be possible only if some kind of institution designed for this purpose is provided statutorily” (Krishna V.K. Iyer, 1988). There should be a specific provision to authorize privately run, government-run or recognized institutions to take up this task.

### **Section 15(5)**

This provision deals with producing a rescued victim before the appropriate magistrate. Since children under 18 years of age are to be produced before the Child Welfare Committee, as provided in the JJ Act, 2000, there should be a provision of presumption of age in favour of the person in this section - that any person who is or is likely to be a child, as per the *prima facie* opinion of the police officer or the NGO (whichever is in favour of the child), should be dealt with under the JJ Act.

### **Section 17 (3)**

This authorizes the magistrate to pass an order for the safe custody of the rescued person. The following words may be added to this section, “in a recognised rehabilitative institution.”

### **The Sunset Clause**

There should be a ‘sunset’ clause - that the period of stay in the safe custody and other homes should be for a minimum period, to be decided by the magistrate concerned, keeping in mind the best interests of the person. The magistrate should review the decision at regular intervals of not more than 15 days.

### **Section 17(3)**

There are three provisos under this section in the existing law. The second proviso says that no person shall be kept in custody for a period exceeding three weeks. This should be changed to “at least four months” to bring it at par with the JJ Act and with a further proviso that the decision of the magistrate, keeping in view the best interests of the victim, should be final.

### **Section 17(5)**

This says that a magistrate may summon a panel of five persons. Here the word “may” should be substituted by the word “shall”. Mandatory involvement of civil society would be essential for after-care activities.

### **Section 18**

This has five sub-sections. A sixth sub-section may be added bringing in a provision for attachment/seizure/confiscation/sale of all assets of the traffickers and other exploiters, movable and immovable, wherever they are, if acquired through any criminal act defined in ITPA. The investigating officer should be empowered to do this, at the stage of investigation itself, after obtaining orders of the concerned magistrate in whose court the FIR is pending.

### **Section 19**

It relates to the application by a person seeking permission for being kept in a protective home. This section may be amended to authorise NGOs, or an advocate or any person working for the cause of victims of exploitation, to file such an application.

### **Section 21**

The state governments are authorized under this section to set up protective homes. The mandate for setting up such homes may also be extended to “the appropriate authority” constituted under the JJ Act, 2000.

Moreover in this section, after the word “establish”, the following words may also be added: “or recognize”. Wherever the government is unable to accomplish the task, recognition could be granted to appropriate agencies to do the needful.

### **Section 22 (A), Section 22 (AA) and Section 22 (B)**

These may be amended to raise the level of the courts dealing with ITPA to the court of additional sessions judge. The schedules attached to ITPA should also be changed accordingly. Appointment of special judicial officers could be considered. These could be exclusive courts dealing with ITPA and all related offences.

### **Developing a Code**

The Act authorizes the central and state governments to set up special courts under Section 22AA. However, it does not speak about procedures. Victim-friendly procedures have to be made part of the law, by developing it into a code, as stated earlier. It would be advisable that the code takes into account all the relevant points discussed in this chapter.

### **Extraterritorial Legislation**

Trafficking in women and children is a crime which often transcends international boundaries calling for universal jurisdiction and, therefore, it cannot be inconsistent with the condition of jurisdictional limitations arising out of the nationality of the offender. In accordance with the provisions of the UN Trafficking Protocol as well as the optional protocol to the CRC, there is a need for extraterritorial legislation. An offence under this Act should have a universal jurisdiction. A crime by anybody in India should be made triable in the country he/she belongs to, subject to the doctrine of dual criminality. Similarly, any crime under this law, if committed by an Indian national anywhere in the world, will be deemed to be an offence under this law and should be tried by any court in India (which is otherwise authorised to try an offence under this Act).

### **Victim Assistance Programmes**

The law should have specific Victim Assistance Programmes. The principles of criminal justice begin with the victims and survivors. In the present system, the emphasis and orientation is only on the prosecution of the accused and not on justice delivery to the victims or her family members.

## Annexure 12

Victims are considered only as witnesses and nothing more. There is no specific attention to the victim's welfare, remedies, redressal, security and rights. This calls for a paradigm shift — to a human rights approach. The recent US legislation on the subject of victim assistance (Victims of Trafficking and Violence Protection Act of 2000) is an example. A similar provision is also available in the recently enacted Pakistani law on the subject (Section 6, Prevention and Control of Human Trafficking Ordinance, 2002). Every effort should be made to prevent further victimization of the victim as well as to protect her human rights. The report of the Expert Committee on Custodial Justice to women prisoners, constituted by the DWCD in 1986–87, has also brought out several proposals on the treatment of women and girls in the criminal proceedings. This report also needs to be considered while framing victim assistance programmes.

### *Anonymity of the Victim*

In order to protect the identity of the victim, publicity and photographs should be banned under the law. Provision of anonymity prescribed under 228A IPC to rape victims should be extended to victims of trafficking.

### *In-camera Trial*

All cases of trafficking should mandatorily be in-camera trials. Section 327 of the CrPC which provides for in-camera trials for rape cases should be extended to cases under ITPA. This saves the victim from publicity, from intimidation and thereby, protects her rights. In *State of Punjab vs Gurmit Singh (1996 2 SCC 384)*, the Supreme Court has held that trials for rape cases ought to be held in-camera, as a rule, and open trials can only be the exception.

### *Counsellors*

There is need of a legal provision providing for one or two counsellors to assist the victim during the entire proceedings. If the victim cannot afford to bear the expense and no agency comes forward to help her, the court may order the district administration to bear the cost in this regard. Similarly, the procedures for ensuring proper care and reception of the victims, especially in the post-rescue situations, need to be specifically brought into the law.

### *Recall of the Rehabilitated Victim*

Once the victim is rehabilitated, it is not in her interest to recall her to the court of law for any purpose including evidence, as she is compelled to relive the trauma and indignity. Therefore, it would be better to take into consideration the statement given by her before repatriation and act accordingly. If, however, her recall is necessitated, it should be done in such a way that it causes least harm to her. Dislocating her from the rehabilitated ambience usually causes serious problems. Therefore, if her statement is to be recorded, or evidence taken, it should be done in commission or through video conferencing at an appropriate place which would create least disturbance and discomfort to the person concerned. The Supreme Court has held in *State of Maharashtra vs Praful Desai (2003 4 SCC 601)* that the recording of evidence by way of video conferencing might be done in cases where the attendance of the witness cannot be ensured without delay,

expense and inconvenience. It was also held by the apex court that recording of evidence by video conferencing was a 'procedure established by law' under Article 21 of the Constitution and did not violate the rights of the accused. The court observed that although the rights of the accused must be safeguarded, they should not be overemphasised to the extent of forgetting that the victim also has rights. Therefore, the ITPA should make it mandatory to provide video conferencing facility at the place where the victim would find it comfortable. The victim's best interests should be the deciding factor in choosing the place and time of video recording/conferencing. The recent order of the Delhi High Court could be taken as a model.

### ***Victim's Legal Representation in the Criminal Justice Process***

The direction of the Supreme Court in *Delhi Domestic Working Women's Forum vs Union of India (1995 1 SCC 14, 18-21)* with respect to rape victims needs to be extended to trafficked victims — they should also be given the facility for legal representation from the very beginning itself. In order to secure continuity of legal assistance, the services of the same lawyer should be extended till the conclusion of the entire process and he should be allowed to collaborate with the prosecutor. Moreover, the victim should have the option of choosing her own advocate. This might be a radical change in the existing situation and may amount to supplementing the existing system of prosecution. However, the experiment has proved to be workable, as a case study from West Bengal has shown.

### ***Compensation***

The law should make specific provisions for compensation to the victim. Section 357 CrPC allows for limited compensation to victims, to be recovered from the convicted offender. In cases of custodial rape, by invoking the obligation of the state to protect its citizens, the Supreme Court has directed the state to pay compensation [*P. Rathinam vs State of Gujarat, 1994 SCC (Cri) 1163, Arvinder Singh Bagga vs. State of U.P. 1994 6 SCC 565*]. The Supreme Court has also directed the setting up of a Criminal Injuries Compensation Board in *Delhi Domestic Working Women's Forum vs Union of India (1995 1 SCC 14)*. The High Courts have inherent powers under Section 482 CrPC to make such orders as necessary to secure justice. The compensation should include not only monetary expenses incurred, but also exemplary compensation for the harm done, as well as compensation in the form of health care, education facilities, job opportunities, etc. The US law on victim protection referred to earlier also have provisions of compensation.

### ***Providing Safe Asylum, if the Victim is a Foreign National***

The law should have special provisions for giving temporary residential permits to trafficked victims/survivors till their presence is required to complete the judicial proceedings and till they are properly repatriated to their native countries. The recent US law provides for such temporary nationality. Article 15 of UDHR says that no person shall be arbitrarily deprived of his or her nationality. A case study contained in the report has shown how a trafficked victim was charged with offences under the Foreigners Act. In such situations, once it is confirmed that the victim

## Annexure 12

has been trafficked to India across borders, she/he should not be held to be an illegal immigrant. Temporary residential permits should be provided in such cases.

### *Timeframe for Justice Delivery*

As per the existing procedural law (Section 167 Cr.PC), there is a restriction on the time that the police can avail for investigation after the arrest of the person. Similar timeframe should be set for the trial of the cases in the courts of law also, without any prejudice in the delivery of justice to the victim. The available literature shows that a similar provision is available in Bangladesh for ensuring time-bound judicial trial of trafficking cases, and that this arrangement is working quite well, especially with regard to expediting justice delivery.

### *Punishments*

There is a need to enhance the punishments for traffickers and other exploiters. The provisions have to be made more stringent. Minimum punishment should be prescribed for all penal sections. Enhanced punishment is called for when the victim is a child.

### *National Nodal Agency to Monitor Human Trafficking*

The rationale for setting up a National Nodal Agency to counter trafficking has been discussed earlier. It would be appropriate if the provision is incorporated in the law itself by providing a separate section/subsection in ITPA.

### *Rehabilitation*

Rehabilitation is the creative essence of the preventive process and essential to the healing process. Therefore, there should be one exclusive chapter in the ITPA on correctional justice and rehabilitation, dealing with the 'drills, process, medical treatment, monitoring, follow-up action, and other distressing and mainstreaming techniques'. Social activists and NGOs should be statutorily encouraged to involve themselves in rehabilitation.

### *Prevention*

This should be the *summum bonum* in a social legislation like ITPA. Justice Iyer says, "Today we should not put all our eggs in the Macaulay basket, but in the Mahatma pharmacopoeia." Accordingly, there should be a separate chapter in the ITPA on Prevention, specifically bringing out the human rights perspective required in the policies, programmes and implementation. The chapter should spell out the procedures and role of agencies — governmental and non-governmental — in this regard. Preventive strategies should be oriented not only to the source of supply, but also to the demand site as well as trafficking routes and transit points. The present legislation (ITPA), which is more focused on the crime-criminal perspective, needs to be given a human rights perspective and make it fully oriented towards prevention.

### *Provision for the Handicapped*

There should be a specific provision in the law for offences against women and children who



## Annexure 12

are handicapped. During this research, it was found that children are maimed or disfigured and trafficked for activities like begging. Mentally challenged girls are easy targets for exploitation. The law should not only provide stringent punishment for the violators, but also shift the onus of defense on the accused.

### *Guidelines*

The law should also mandate that the government brings out specific guidelines regarding tourism, hoteliering, and other similar businesses as well as protocols to certain cyber sex, so as to ensure that women and children are not subjected to commercial sexual exploitation and sex tourism. The focus should be on involving the community in implementing the rights of women and children.

### *Preamble*

The preamble to the ITPA should incorporate in itself the philosophy, purpose and orientation of upholding the rights of women and children. There should be a specific section in the Act containing a statement of principles, which must emphasise the social philosophy and orientation of the law, with specific focus on women's rights and child rights.





**List of Training Programmes Conducted During 2004-05,  
alongwith Other Details**

S.No.	Name of the Course	Organized by/in collaboration with	Target Group	Duration/ Date(s)	Venue
1	Workshop on 'Human Rights Investigation And Fact Finding Techniques'	Indian Social Institute, New Delhi	NGOs/CBOs, young lawyers, social activists	Three days 30 Mar - 1 April, 2004.	Udaipur Agricultural University (Rajasthan)
2	Training Programme on 'Human Rights Investigation, Interviewing Skills'	NHRC/Nepal & Canadian Human Rights Commission	NHRC/Nepal Officers/staff and NGOs	Five days 3 - 7 May, 2004.	Nagarkot (Nepal)
3	'Human Rights And Child Rights'	MP Academy of Adm. & Management, Bhopal	Civil Servants/ Public Representatives of Madhya Pradesh	Two days 21 - 22 May, 2004.	MPAAM, Bhopal (MP)
4	Training Programme on 'Human Rights'	State Human Rights Commission, Assam	Dy SSP of Assam Police	Five days 31 May - 4 June, 2004.	PTC, Deragaon, Assam
5	'TOT For NGOs to Spread for Legal Literacy Among Women, Poor and Disadvantaged'	Multiple Action Research Group (MARG), New Delhi	NGOs of Madhya Pradesh	Five days 25 - 29 June, 2004.	Gramin Viksa Trust, Jhabua, MP
6	Sensitization Programme on 'Human Rights Issues'	West Bengal National University of Juridical Sciences	Judicial Officers of West Bengal	Three days 26 - 28 June, 2004.	NUJS, Kolkata (WB)
7	Workshop on 'Role of Criminal Justice System & Civil Society in the Protection of Dalit Rights'	Tata Institute of Social Sciences, Mumbai.	Dy SP & above of Maharashtra	One day 27 June, 2004.	TISS, Mumbai (Maharashtra)
8	Training Programme on 'Human Rights'	State Human Rights Commission, West Bengal	WB Police and Correctional Services officials	Three days 27 - 29 June, 2004.	SCRB, Kolkata (WB)

Continued

## Annexure 13

S.No.	Name of the Course	Organized by/in collaboration with	Target Group	Duration/ Date(s)	Venue
9	Sensitization Programme on 'Human Rights'	Commonwealth Human Rights Initiative, New Delhi	Chhattisgarh Police & SHRC officials	Four days 7 - 10 July, 2004.	Ambikapur (Chhattisgarh)
10	Training Programme on 'Human Rights & Ageing'	Yashwantrao Chavan Academy of Development Administration (YASHADA), Pune	Civil Servants, NGOs.	Two days 8 - 9 July, 2004.	YASHADA, Pune
11	Sensitization Programme on 'Human Rights'	Common-wealth Human Rights Initiative, New Delhi	Chhattisgarh Police & SHRC officials	Four days 14 - 15 Jul, 2004.	Jagdarpur, Chhattisgarh (MP)
12	Training Programme on 'Human Rights And Fact Finding & Interviewing Techniques & Report Writing'	Indian Social Institute, New Delhi.	NGOs, young lawyers, social activists	Three days 16 - 18 Jul, 2004.	SEVAC, Kolkata (WB)
13	Human Rights Course on 'Role & Responsibilities of Criminal Justice Functionaries'	National Institute of Criminology & Forensic Science, New Delhi	Judges, Senior Police & Prison Officials	Five days 19 - 23 July, 2004.	NICFS, New Delhi
14	Sensitization Programme on 'Human Rights'	Yashwantrao Chavan Academy of Development Administration (YASHADA). Pune	Civil Servants, NGOs	Three days 30 Jul - 01 Aug, 2004.	YASHADA, Pune
15	Regional Training on 'Professional Policing And HR'	North Eastern Police Academy, Umiam, (Meghalaya)	SHOs of Police Stations and Dy SsP in North Eastern States	Five days 04 - 08 Oct, 2004.	NEPA, Umiam (Meghalaya)
16	'Role & Responsibilities of Criminal Justice Functionaries'	National Institute of Criminology & Forensic Science, New Delhi	Judges, Senior Police & Prison Officials	Five days 29 Nov to 03 Dec, 2004	NICFS, New Delhi
17	Combating 'Trafficking In Women and Children'	Institute of Social Sciences, New Delhi	Judicial & Police Officers, NGOs, BSF, Prosecutors	One days 03 Dec 2004	ISS, New Delhi

Continued

## Annexure 13

S.No.	Name of the Course	Organized by/in collaboration with	Target Group	Duration/ Date(s)	Venue
18	'Capacity Building Workshop On ESCR'	Indian Institute of Public Administration, New Delhi	Civil Servants & State Govt, SHRC officials & NGOs	Two days 6-7 Dec 2004	FOSET, Kolkata (WB)
19	'HR and Fact Finding & Interviewing Techniques, & Report Writing'	Indian Social Institute New Delhi	NGOs, Social Activists, Lawyers, Teachers	Three days 5-7 Jan 2005	AICUF, Chennai
20	'Combating Trafficking in Women & Children'	Joint Women Programme, New Delhi	SPs/Dy SSP/ Inspectors, Probation Officers of State Home for Women/Protective Home.	Three days 18-20 Jan. 2005	Jaipur (Rajasthan)
21	Sensitize Programme On 'Prevention of Atrocities Against Dalits'	Indian Social Institute, New Delhi At Delhi	Dy SSP and above	Two days 20-21 Jan. 2005	ISI, New Delhi
22	'Capacity Building Workshop on ESCR'	Indian Institute of Public Administration, New Delhi	Civil Service Officers/ATIs SHRCs	Two days 7-8 Feb. 2005	Karnataka Judicial Academy, Bangalore
23	'Role of NGOs And HR Defenders In The Protection and Promotion of HR'	Tata Institute of Social Sciences, Mumbai (Maharashtra)	NGOs, HR defenders, social activists, journalists & academicians	Two days 28 Feb. 01 Mar 2005	TISS, Mumbai (Maharashtra)
24	Programme on 'Sexual Harassment of Women at Workplace'	Socio-Legal Information Centre, New Delhi	Members of Complaints Committee of Ministries/ Deptts/ PSUs & Senior Govt Officers	One Day 3 Mar 2005	India Habitat Centre, New Delhi
25	'Sensitization For Judicial Officers in HR'	National Law University Jodhpur (Rajasthan)	Judicial Officers of Rajasthan	Three days 11-13 Mar 2005	NLU, Jodhpur

*Continued*

## Annexure 13

S.No.	Name of the Course	Organized by/in collaboration with	Target Group	Duration/ Date(s)	Venue
26	'Training of Judges & Prosecutors on Child Sexual Abuse Laws'	Socio-Legal Information Centre, New Delhi	Judges of Delhi	Two days 25-26 Mar 2005	Delhi Judicial Academy
<b>IN-HOUSE TRAINING PROGRAMMES</b>					
27	Orientation Programme on 'Child Rights and Child Protection'	UNICEF	NHRC officials	29 Jul, 2004.	UNICEF, New Delhi
28	Orientation Programme on 'Human Rights And Refugees Protection'	United Nations High Commissioner For Refugees, New Delhi	NHRC officials	23 Nov 2004	YMCA, New Delhi
29	In-House Training on 'Human Rights'	Training Division NHRC	Newly inducted officials in the NHRC	One day 30 Nov 2004 New Delhi	NHRC

**Statement of Chairperson, NHRC at the 60<sup>th</sup>  
Session of the Commission on Human Rights at  
Geneva on 14<sup>th</sup> April 2004**

Mr. Chairman,

Thank you for giving me the floor.

I rise to speak on behalf of the National Human Rights Commission of India of which I hold the Chair.

Ten years have gone by since the adoption by the UN General Assembly of the Paris Principles, aimed at constituting National Human Rights Institutions in conformity with them. On the occasion of the tenth anniversary of these Principles, there is a need to address challenges to the independence of National Institutions and also address constraints, which come in the way of their effective operation. The Secretary General of the United Nations, Kofi Annan, in his programme to strengthen United Nations human rights activities, has called for greater attention to be given to the strengthening of national human rights protection systems in each country. All concerned, both in the Government and outside, need to be sensitized about the need to scrupulously adhere to the Paris Principles.

Mr. Chairman,

We are living in difficult times. The recent terrorist act in Madrid on 11 March 2004 and prior to that a number of international terrorist acts including the assassination of the then High Commissioner for Human Rights, Sergio Vieira de Mello in Iraq were issues of deep concern to all of us. India also has been a victim of terrorist attacks, with attacks occurring against democratic institutions like the Parliament, the Jammu & Kashmir State Legislature, places of worship and other facilities used by civilians. These bring into sharp focus the need to balance security concerns and the protection and promotion of human rights. The National Human Rights Commission of India examined the issues both of terrorism as a factor that inhibits the enjoyment of human rights as also adherence to human rights standards in the fight against terrorism, on several occasions.

I believe that the oft-repeated saying, 'one man's terrorist is another man's freedom fighter' is but one manifestation of the widespread confusion about the morality of terrorist forms of violence and even goes to encourage terrorism. It is wrong to be selective about violation of human rights

and the perpetrators of terrorism. Such selective approach leads to double standards. It also indirectly lends support to terrorists and terrorism. All nations must, therefore, co-operate to relentlessly and without any compromise fight terrorism. But let me emphasize that in doing so, the approach should be human, rational and secular. It must be consistent with democratic principles and the Rule of Law. We need to strike a balance between the liberty of an individual and the requirements of security of state and sovereignty and integrity of the nation. It requires respect for the principles of necessity and proportionality. We must avoid a descent into anarchy – in which the only rule is ‘might is right’ – combating terrorism should not be used as an excuse to suspend all the rules of international law and domestic civil liberties.

The Acting High Commissioner for Human Rights, Mr. Bertrand Ramcharan, in his address on 15 March 2004 at the opening of the 60<sup>th</sup> Session of the Commission on Human Rights observed: “At the end of the day we must all continue to strive for the universal realization of Human Rights through constructive cooperation. International cooperation for the effective protection of human rights is the call of our time.” The National Human Rights Commission of India shares the view that sustained cooperation at various levels including at the international level could go a long way in the protection of human rights and in addressing the challenges faced by the international community. The National Human Rights Commission of India, as the Chair of the Asia Pacific Forum of National Human Rights Institutions in 2003, contributed to this effort. In addition to cooperation at the regional level, the Commission has also taken up bilateral cooperation projects with the Human Rights Commission of Nepal involving technical assistance in Complaints Management System and investigation techniques.

Recognizing the crucial role of National Institutions, the United Nations has involved them in its efforts to draft a new convention on the rights of persons with disability. The Indian Commission, as Chair of Asia Pacific Forum of National Human Rights Institutions in 2003, co-hosted an international Workshop of National Institutions from Asia Pacific and Commonwealth Countries between 26 – 29 May 2003 in New Delhi to deliberate on the rights of the disabled. The Workshop called for a paradigm shift from a welfare-based approach to a rights-based one. The Workshop concretized a proposal regarding the nature, structure, principles and elements of the proposed Comprehensive and Integral United Nations Convention to Promote and Protect the Rights of Persons with Disabilities. This proposal was submitted to the Second Ad Hoc Committee of the United Nations. There is a need to further develop such cooperation between the National Institutions and the Office of the High Commissioner for Human Rights, treaty bodies and other UN agencies working on human rights issues. The National Institutions must be given their rightful role.

The National Human Rights Commission of India, the Canadian Human Rights Commission and the Indira Gandhi National Open University have taken up jointly a project on the rights of

## Annexure 14

the disabled. The project seeks to build the capacity of legal practitioners, disability rights and human rights activists to address problems of discrimination, marginalization and exclusion of persons with disability.

Mr. Chairman,

In the past one year, the National Human Rights Commission of India faced a number of challenges and took several bold steps to protect the rights of persons belonging to vulnerable sections like minorities, dalits, the disabled, women and others.

The Commission has continued to play an active role in regard to communal disturbances in the State of Gujarat, beginning with the tragedy that occurred in Godhra on 27 February 2002 continuing with the violence that ensued, and the process of establishment of justice and due rehabilitation of the victims. In the year 2003, the Commission issued notice to the Government of Gujarat on the matter of the protection of victims and witnesses. Convinced that fair trial is a constitutional imperative for victims, witnesses and accused persons alike, the Commission viewed the acquittal by the Trial Court of persons who were accused of burning alive 14 persons in what has come to be known as the 'Best Bakery case' as 'miscarriage of justice'. It filed a Special Leave Petition in the Supreme Court on 31 July 2003 with a prayer to set aside the judgement of the Trial Court and sought directions for further investigation by an independent agency and retrial of the case. The Supreme Court by its verdict dated 12.4.2004 has set aside the judgment of acquittal in the said case and further directed fresh investigation into the case and its re-trial outside the State of Gujarat in the State of Maharashtra with a further direction to appoint Public Prosecutor for prosecuting the case.

The Commission has also filed a separate application for transfer of four other serious cases which had been identified in its proceedings of 1 April 2002.

Besides, the Commission has extended legal assistance to Ms. Bilkis Yakub Rasul, a victim of alleged mass rape in Gujarat during the post-Godhra communal disturbances. Following this, the Supreme Court directed the Central Bureau of Investigation (CBI) to investigate the case. The CBI has succeeded in arresting a number of accused persons including certain police officials in this case. The proceedings in all these cases are continuing in the Supreme Court.

The Commission took up the issue of enforced or involuntary disappearances in Jammu & Kashmir. On 14 May 2003, the Commission directed the Government of J&K to furnish the following information:

- i) whether the State Government has established a system to record allegations of enforced or involuntary disappearances and, if so, the nature of that system;



- ii) the number of such allegations recorded by it, the details of the system established thus far to investigate such allegations and the results, thus far, of such investigations;
- iii) the measures that are being taken to prevent the occurrence of enforced or involuntary disappearances; and
- iv) the measures that are being taken to bring to book those who may have been involved in such disappearances and to provide justice to those who have suffered.

Not satisfied with the response of the Government of Jammu & Kashmir, further information has been asked for by the Commission. The proceedings are continuing.

Mr. Chairman,

Under-trial prisoners constitute almost 3/4th of the jail population in India. Their plight has, for long, been a matter of concern for the National Human Rights Commission. As Chairperson of the Commission, I have suggested to the Chief Justices of all High Courts to regularly hold special courts in jails for relief to undertrials particularly those accused of petty offences. The response from the High Courts has been encouraging with relief accruing to many under-trials.

Mr. Chairman,

During the preceding year, the Commission took a number of initiatives for the protection and promotion of economic, social and cultural rights and in particular, the right to health. Recognizing the importance of access to health care, and especially, access to emergency medical care, the Commission constituted an expert group of eminent medical practitioners to prepare a blueprint for restructuring of the emergency medical care and also evolve guidelines regarding trauma care. The group has submitted its report to the Commission on 7 April 2004. Similarly, recognizing the implications of sub standard drugs and medical devices on human rights, the Commission held consultations with authorities in the Union Government, concerned States and NGOs. An expert group has been constituted to go into this issue. The Commission also proposes to hold five regional and one national public hearing on access to health care followed by a National Consultation on Primary Health Care and Human Rights in the course of the current year.

The Commission has been concerned about the protection of the rights of those affected / infected by HIV/AIDS. Based on the outcome of National Consultation in this regard held in 2000, detailed recommendations were made to various authorities. Besides, in various individual complaints alleging discrimination in access to education and in access to health care, the Commission intervened to set right the wrong and thereby secure relief for the affected persons. The Core Group on Public Health has recommended certain measures to prevent mother-to-child transmission of HIV/AIDS and follow-up action has been taken by the Commission. The

## Annexure 14

Commission has taken up multi-media campaign to spread awareness about human rights and HIV/AIDS. The Commission has designated a Member of the Commission as the Focal Point on HIV/AIDS related Human Rights issues.

The practice of 'organ purchase' has acquired the dubious dimensions of 'organ trade' with touts operating as middlemen. Concerned by the illegal trade in human organs, which is unethical and often involves exploitation of poor people and violation of their human rights, the Commission has suggested a number of remedial measures to be adopted by the State to check this pernicious practice.

The Commission has been concerned about the plight of dalits and has taken steps towards protection of their human rights. The Commission has been redressing individual complaints of atrocities and has been recommending the payment of compensation and action against negligent public servants, wherever appropriate. The Commission also participated in the Durban Conference. It has set up a Dalit Cell in 2003 which is looking into complaints of alleged atrocities against persons belonging to the Scheduled Castes.

Steps for preventing trafficking in young women and children has continued to occupy a high place on the agenda of the Commission. The Commission and UNIFEM jointly began an Action Research Programme on Trafficking in Women and Children in India. With the assistance of the Institute of Social Sciences, a Survey has been conducted in twelve States to study the extent and magnitude of the problem. Through the Action Research, the Commission proposes to sensitize the public and the law enforcement agencies to the grave dangers inherent in trafficking and the need for its prevention. It is the endeavour of the Commission to strengthen laws and law enforcement processes, punish traffickers, revamp rescue and rehabilitation programmes, and help NGOs to take advantage of the National Plan of Action of the Government of India for this purpose. It is also endeavouring to create an authentic database so as to strengthen the vulnerable groups in the supply zones both economically and socially. Besides, i) a Manual for the Judiciary on Trafficking in women is being prepared to sensitize Judges on issues related to trafficking and ii) a joint Project for Combating Cross-Border Trafficking with the National Human Rights Commission of Nepal is under consideration.

Mr. Chairman,

In exercise of its statutory responsibilities, the Commission has been reviewing legislations which have an impact on human rights. For instance, the Commission reviewed the draft Protection from Domestic Violence Bill, 2002 and gave its detailed comments for modifications to the Department of Women and Child Development, Government of India. The Commission is presently reviewing the Juvenile Justice (Care and Protection of Children) Act, 2000. The Commission reviewed the Child Marriage Restraint Act, 1929 and suggested many amendments in the form of the Child Marriage Restraint Bill, 2002 to restrain the practice of child marriages.

In order to strengthen and consolidate the relationship between the Commission and NGOs, the Commission has been holding a series of consultations with them, on a regional basis. This has proven to be of considerable value both to the Commission and to the NGOs, reinforcing their understanding of each other and their capacity to work together in the furtherance of rights across the country.

Pursuant to the Commission's efforts, human rights have been introduced in the curriculum of educational institutions from school level to the university level. The Government of India also finalized the National Action Plan for Human Rights Education as part of the observance of the UN Decade for Human Rights Education 1995-2004. In so far as mass awareness programme is concerned, the Commission is pursuing the matter with the Ministry of Information and Broadcasting to have follow-up action initiated on the Action Plan. Seven dossiers on economic, social and cultural rights were developed by a Bangalore based NGO. The Commission has extended financial support to this NGO for developing source material for human rights education in Indian universities and at the school level and for use by grass-root level organizations.

Keeping in view the need to build capacity, change mindset of public servants and thereby create a human rights culture, the Commission established a Training Division in September 2003. In the period October 2003-March 2004, eleven training programmes have been organized for the police, civil servants, administrators, university teachers and other key stakeholders. In the period April-June 2004, seven more training programmes on different facets of human rights have been planned.

Mr. Chairman,

I am conscious that the struggle for Human Rights is an arduous one. It not only requires vigilance by various agencies but also sustained cooperation at regional and international levels. Our finest hour would be reached when human rights are made the focal point of good governance and are actualised by all and when justice eludes none. Permit me to remind ourselves what the apostle of peace, Mahatma Gandhi said:

“Peace does not come out of a clash of arms,  
but out of justice lived and done.”

## Concluding Statement of Ninth Annual Meeting for the Asia Pacific Forum of National Human Rights Institutions 13th September 2004, Seoul, Republic of Korea

### Introduction

1. The Asia Pacific Forum of National Human Rights Institutions (the Forum), consisting of the National Human Rights Commissions of the Republic of Korea, Afghanistan, Australia, Fiji, India, Indonesia, Malaysia, Mongolia, Nepal, New Zealand, Palestine, Philippines, Sri Lanka and Thailand, held this Ninth Annual Meeting in Seoul, Republic of Korea on 13<sup>th</sup> September 2004.
2. As agreed by Forum Members at their Eighth Annual Meeting, this year's annual meeting was limited to a one-day closed business session of its member institutions and the United Nations Office of the High Commissioner for Human Rights (OHCHR). This enabled the annual meeting to be held in association with the 7<sup>th</sup> International Conference of National Institutions from 14<sup>th</sup> to 17<sup>th</sup> September 2004.
3. The Forum Councillors expressed their gratitude to the National Human Rights Commission of Korea for hosting the meeting, to the OHCHR for its co-sponsorship and to all the Forum's donors for their financial support. The Forum Councillors expressed their appreciation for the efforts of the Commissioners and staff of the National Human Rights Commission of Korea and the secretariat of the Forum for their work in the organization of the meeting.
4. The Forum Councillors welcomed as observers to the meeting the representatives from the Hong Kong Equal Opportunities Commission, the Jordan National Centre for Human Rights and the Qatar National Human Rights Committee.

### Conclusions

*The Forum Councillors, during their closed business session:*

5. Noted the activity report of the Forum since its last annual meeting and expressed their appreciation for the work of the secretariat. Forum Councillors considered the secretariat's report of the Forum's finances and administration and adopted the Directors,

Financial and Audit report of the Forum for the period ending 31 March 2004. Forum Councillors expressed their appreciation for the financial contributions made by (i) member institutions; (ii) the governments of Australia, India, New Zealand, Republic of Korea, United Kingdom and the United States; (iii) donor institutions, including the British Council, Brookings Institution, MacArthur Foundation and the National Endowment for Democracy; and (iv) intergovernmental agencies, including the Commonwealth Secretariat and United Nations agencies (UNDP, UNESCO, UNICEF and the OHCHR).

6. Approved the Forum's annual plan for 2005 and requested the secretariat to consider the Forum's institutional strengthening needs and report back on this issue to the next annual meeting for further discussion.
7. Reaffirmed that the structure and responsibilities of national institutions should be consistent with the Principles Relating to the Status of National Institutions adopted by the United Nations General Assembly (Resolution 49/134) commonly referred to as the 'Paris Principles.' On this basis they admitted the Jordan National Centre for Human Rights as an associate member of the Forum. This increased the Forum's overall membership to 15 institutions. The Forum will provide assistance to the Jordan National Centre for Human Rights to become fully compliant with the Paris Principles.
8. Welcomed the report of the Forum's representative to the accreditation sub-committee of the International Coordinating Committee of National Institutions (ICC) and thanked her for her work. Forum Councillors congratulated the national human rights institutions of the Republic of Korea and Thailand for their full accreditation to the ICC.
9. Discussed the draft reference to the Advisory Council of Jurists on the issue of the prevention of torture during detention and requested that the secretariat send a revised draft reference to all Forum Councillors for their final consideration and adoption.
10. Welcomed the report of the Senior Executive Officers and commended their efforts to assist in the effective and efficient functioning of national institutions.
11. Considered the training needs of national human rights institutions and welcomed the commissioning of a training needs analysis of all Forum member institutions. Forum Councillors requested that the secretariat disseminate the findings and recommendations of the analysis to all Forum Councillors for their consideration and further action.
12. Considered the issue of the responsiveness of governments to the recommendations and findings of national human rights institutions and shared their experiences.

## Annexure 15

13. Discussed the potential role of national human rights institutions in the United Nations Commission on the Status of Women (CSW). Forum Councillors agreed to advocate for the participation of national human rights institutions in CSW on a basis at least consistent with their participation in the United Nations Commission on Human Rights.
14. Considered recent threats to the effective functioning of national human rights institutions. In this regard the Forum Councillors condemned the destruction of the regional Herat office of the Afghanistan Independent Human Rights Commission.
15. Thanked the national human rights institutions of Australia and Sri Lanka for agreeing to host during 2005 the APF's regional training workshops on trafficking and internally displaced persons.
16. Unanimously elected the National Human Rights Commission of the Republic of Korea (as the current host institution of the annual meeting) to the position of Chairperson of the Forum. The National Human Rights Commission of Nepal (as the host institution for the last annual meeting) and the National Human Rights Commission of Mongolia (as the host institution for the next annual meeting) were also elected unanimously to the two positions of Deputy Chairpersons.
17. Gratefully accepted the kind offer of the National Human Rights Commission of Mongolia to host the Tenth Annual Meeting of the Forum in August 2005.

**Statement of Chairperson, NHRC on 'Combating  
Terrorism with Focus on Human Rights' delivered  
at the Seventh International Conference of  
National Human Rights Institutions, Seoul  
from 14-17 April, 2004**

Terrorism and more particularly the counter measures which one takes to meet this menace is a matter of great concern and relevance today. Terrorism has been the subject of a huge debate over the years but as yet there is no universally acceptable definition of what is "terrorism", against which we have to fight. Indeed despite definitional difficulties, we can recognize terrorism in action since it is an assault on a civilized society. Terrorism is not merely a heinous criminal act. It is more than mere criminality. It is a frontal assault on the most basic human rights namely, right to life and liberty, by faceless murderers whose sole aim is to kill and maim human beings, whether they are innocent young children, elderly men or women. One of the rights incorporated in the Universal Declaration of Human Rights and in all International covenants is the right to life. For only this right ensures the enjoyment of all other rights. The right to life is of crucial significance for every person, every group of people, every class and every nation and as a matter of fact, for all humanity. This very right to life of the innocent people is the target of terrorism. It poses a formidable challenge to the enjoyment of human rights and causes unlimited miseries to the hapless innocent and ordinary people whose death, injury and agony is aimed at the destruction of human integrity.

While an acceptable definition of terrorism still eludes the international community, the Supreme Court of India, as far back as in 1994, dwelt at length on it and drew a distinction between a 'merely criminal act' and a 'terrorist act'. In its Judgment in Hitendra Vishnu Thakur v. State of Maharashtra [(1994) 4 SCC 602], the Supreme Court of India said:

".... It may be possible to describe it (Terrorism) as use of violence when its most important result is not merely the physical and mental damage of the victim but the prolonged psychological effect it produces or has the potential of producing on the society as a whole. There may be death, injury, or even deprivation of individual liberty in the process but the extent and reach of the intended terrorist activity travels beyond the effect of any ordinary crime capable of being punished under the ordinary penal law of the land and its main objective is to overawe the Government or disturb harmony of the society or "terrorise" people and the society and not only those directly assaulted, with a view to disturb even tempo, peace and tranquility of the society and create a sense of fear and insecurity. A 'terrorist' activity does not merely arise by causing disturbance of law and order or of public order. The fall out of the intended activity must be such



## Annexure 16

that it travels beyond the capacity of the ordinary law enforcement agencies to tackle it under the ordinary penal law. Experience has shown us that ‘terrorism’ is generally an attempt to acquire helplessness in the minds of the people at large or any section thereof and is a totally abnormal phenomenon. What distinguishes ‘terrorism’ from other forms of violence, therefore, appears to be the deliberate and systematic use of coercive intimidation...”

Different aspects of terrorism have been a concern of world community. The problem of hijacking was dealt with in the 1963 Tokyo Convention, 1970 Hague Convention and 1971 Montreal Convention. Though there have been as many as 12 conventions and a declaration dealing with the subject but it was the killing of Israeli athletes at the Munich Olympics which led to the inscribing of international terrorism on the agenda of the United Nations General Assembly in 1972 at the request of the then Secretary General of United Nation and the problem of international terrorism was confronted both politically and legally and in its entirety rather than concentrating on any specific acts of terror. The menace, however, still continues and is on the rise globally.

Conflicts and Terrorism have today emerged as serious threats to the humanity. They pose serious challenges to the international community. It is a strange paradox that while on the one hand, higher and better international human rights and humanitarian standards have evolved over the past five or six decades, on the other hand conflicts and newer forms of terrorism, which threaten human rights of people the world over, are on the rise and becoming more and more dangerous. One also finds resort to the use of more and more deadlier and lethal weapons, deliberate targeting of civilians, forced starvation of civilians and resort to rape and other sexual violations besides taking hostages etc. Scientific and technological developments as well as the global network of communications are being viciously exploited by terrorists. What is a matter of serious concern is the existence of trans-national networks of terrorist organizations, which have a nexus with arms and drug traffickers and crime syndicates. Today’s terrorists have modern technology to help them, permitting rapid international communications, travel and the transfer of monies. They have links with others of like mind across international borders. What makes it even more dangerous are recent media reports that they may well have access to weapons of mass destruction including biological weapons.

It must be remembered that there is a clear and emphatic relationship between national security and the security and integrity of the individuals who comprise the state. Between them, there is a symbiosis and no antagonism. The nation has no meaning without its people. The worth of a nation is the worth of the individuals constituting the nation. This is the emphasis laid in the Constitution of India, which holds out the promise to secure both simultaneously. Just as there can be no peace without justice, there cannot be any freedom without human rights. International terrorism is a modern form of warfare against liberal democracies and needs to be dealt with as such. The goal of these terrorists is to destroy the very fabric of democracy and it would be wrong for any democratic state to consider international terrorism to be “someone else’s” problem. The liberal democracies must, therefore, acknowledge that international terrorism is a collective

problem. They must unite to condemn and combat it. When one free nation is under attack, the rest must realise that democracy itself is under attack. The oft repeated cry, “One country’s terrorist is another nation’s freedom fighter” is but one manifestation of the widespread confusion about the morality of terroristic forms of violence and even goes to encourage terrorism because it clothes the terrorist with a cloake of respectability – totally undeserved.

Let us be clear that there can be no alibis or justification for terrorism under the spurious slogans of self-determination and struggle for liberation. As Senator Jackson has aptly stated:

“The idea that one person’s ‘terrorist’ is another’s ‘freedom fighter’ cannot be sanctioned. Freedom fighters or revolutionaries don’t blow up buses containing non-combatants; as terrorist murderers do. Freedom fighters don’t set out to capture and slaughter school children; terrorist murderers do... It is a disgrace that democracies would allow the treasured word ‘freedom’ to be associated with acts of terrorists”.

However, having said this, I must acknowledge that though nothing justifies terrorism, far too many people live in conditions where it can breed. It is common knowledge that systemic human rights violations for long periods of time are often the root cause of conflicts and terrorism. When there is tyranny and wide spread neglect of human rights and people are denied hope of better future, it becomes a fertile ground for breeding terrorism. The existence of social, economic and political disparities in a large measure contribute to the eruption of conflicts within the State and beyond. The importance of promoting Economic, Social and Cultural Rights to contain such conflicts must, therefore, be realized and appreciated. The protection and promotion of Economic, Social and Cultural Rights must go hand in hand with protection of Political Rights for giving human rights a true meaning. The neglect of Economic, Social and Cultural Rights gives rise to conflicts and emerging forms of terrorism which are threatening the democratic societies worldwide. It cannot be denied that disillusionment with a society where there is exploitation and massive inequalities and whose systems fail to provide any hope for justice are fertile breeding grounds for terrorism, which more often than not thrives in environments where human rights and more particularly Economic, Social and Cultural Rights are denied by the State and political rights are violated with impunity both by the State and non-State actors. Systemic denial of Economic, Social and Cultural Rights, like right to food, health, education etc. are causatic factors of conflict and terrorism. Any worthwhile strategy to resolve conflicts and terrorism will have to ensure enjoyment of the full range of Economic, Social and Cultural Rights.

According to UNDP’s Human Development Report of 2002:

- Of the 81 new democracies, only 47 are fully democratic. Many others do not seem to be in transition to democracy or have lapsed back into authoritarianism or conflict.

## Annexure 16

At the beginning of the 20<sup>th</sup> century, studies have indicated that the percentage of civilians killed during conflicts was about five percent as compared to 90 percent at the end of the 20<sup>th</sup> century, with disproportionate impact on women and children. As the events in the former Yugoslavia and Rwanda have shown, gender-based violence in conflict often carries a political and symbolic message. So devastating is its effect that rape, enforced prostitution and trafficking are now included in the definition of war crimes and crimes against humanity.

The next question and a vexed one, is: How do or should democratic States which adhere to the Rule of Law and respect basic human rights deal with this menace?

Undoubtedly, the spectre of terrorism is haunting many countries of the world. It has acquired a sinister dimension. The terrorist threats that we are facing are now on an unprecedented global scale. But it must be remembered that the fundamental rationale of anti-terrorism measures has to be to protect human rights and democracy. Counter terrorism measures should, therefore, not undermine democratic values, violate human rights and subvert the Rule of Law. Consequently, the battle against terrorism should be carried out in keeping with international human rights obligations and the basic tenets of the Rule of Law. No doubt “the war on terrorism” has to be relentlessly fought but that should be done without going over-board and in effect declaring war on the civil liberties of the people. The protection and promotion of human rights under the Rule of Law is essential in prevention of terrorism. If human rights are violated in the process of combating terrorism, it will be self defeating. It is imperative that the essential safeguards of due process and fair trial should not be jettisoned. We should emphasize that basic human rights and more particularly Economic, Social and Cultural Rights must always be protected and not derogated from.

Our experience shows that the rubric of counter-terrorism can be misused to justify acts in support of political agendas, such as the consolidation of political power, elimination of political opponents, inhibition of legitimate dissent. Labeling adversaries as terrorists is a notorious technique to de-legitimize political opponents. It is during anxious times that care has to be taken that state does not take recourse to bend the Rule of Law to accommodate popular sentiment for harsh measures against suspected criminals. An independent judiciary and the existence of an effective human rights institution are indispensable imperatives for protection of fundamental human rights in all situations involving counter-terrorism measures. It provides vital safeguards to prevent abuse of counter - terrorism measures. Counter- terrorism or anti-terrorism measures must, therefore, always conform to international human rights obligations.

In addressing the Security Council on 18<sup>th</sup> January 2002, the Secretary-General stated:

“While we certainly need vigilance to prevent acts of terrorism, and firmness in condemning and punishing them, it will be self-defeating if we sacrifice other key priorities – such as human rights – in the process”

Speaking on terrorism, Ms. Mary Robinson the then United Nations Commissioner for Human Rights, cautioned against the violation of human rights in the global 'fixation' with the war against terrorism and said:

“What must never be forgotten is that **human rights are no hindrance** to the promotion of peace and security. Rather **they are an essential element of any strategy to defeat terrorism.**”

While dealing with some fundamental issues relating to terrorism in the Annual Report of 2001 she said:

“There should be three **guiding principles** for the world community: the need to eliminate discrimination and build a just and tolerant world; the cooperation by all States against terrorism, **without using such cooperation as a pretext to infringe on human rights**; and a **Strengthened commitment to the rule of law.**”

“... **true respect for human life must go hand in hand with securing justice**”, and that “**the best tribute we can pay to the victims of terrorism and their grieving families and friends, is to ensure that justice, and not revenge, is served**”.

It must, therefore, stand as a caution that in times of distress, the shield of necessity and national security must not be used to protect governmental actions from close scrutiny and accountability where the same affect enjoyment of human rights. In times of international hostility and antagonisms our institutions, legislative, executive and judicial, must be prepared to exercise their authority to protect all citizens from petty fears and prejudices that are so easily aroused. Indeed, in the face of terrorism, there can be no doubt that the State has not only the right, but also the duty, to protect itself and its people against terrorist acts and to bring to justice those who perpetrate such acts. The manner in which a State acts to exercise this right and to perform this duty must be in accordance with the Rule of Law. The Supreme Court of India has, in DK Basu vs. State of West Bengal, [jt 1997(1) SC 1] cautioned:

“State terrorism is no answer to combat terrorism. State terrorism would only provide legitimacy to terrorism: that would be bad for the State, the community and above all for the rule of law. The State must, therefore, ensure that the various agencies deployed by it for combating terrorism act within the bounds of law and not become law unto themselves”

The National Human Rights Commission of India is of the firm view that a proper observance of human rights is not a hindrance to the promotion of peace and security. Rather, it is an essential element in any worthwhile strategy to preserve peace and security and to defeat terrorism. The purpose of anti-terrorism measures must therefore be to protect democracy, rule of law and human rights, which are fundamental values of our society and the core values of the Constitution. It is wrong to be selective about violation of human rights and the perpetrators of terrorism.

## Annexure 16

Such selective approach leads to double standards, which make the motives of the protagonists of human rights suspect. It also indirectly lends support to terrorists and terrorism. All nations must, therefore, co-operate to relentlessly and without any compromise fight terrorism. Concerted steps at a global level will have to be taken to tackle terrorism and safeguard human rights. The fight against terrorism requires close co-operation of all countries both at law enforcement and judicial levels in order to put an end to illegal trafficking which feeds terrorist networks. To clip the wings of terrorism, the international communities must target the roots of frustration as well as the feeling of injustice. But let me emphasise that in doing so, the approach should be humane, rational and secular. It must be consistent with democratic principles. Any kind of partisan and sectarian approach would be counter-productive. We need to strike a balance between the liberty of an individual and the requirements of security of state and sovereignty and integrity of the nation while keeping an open mind to fight terrorism. A limited approach may help eliminate some present terrorists but not the causes or the phenomenon of terrorism, which produces terrorists; and that too at the cost of violation of human rights of many innocents. A proper balance between the need and the remedy requires respect for the principles of necessity and proportionality.

In conclusion while I confess that I cannot prescribe a quick fix solution to tackle the scourge of terrorism, but, as the head of a National Human Rights institution, I consider that National Institutions can play a crucial role in the resolution of different forms of conflicts. From the causes identified earlier in my talk, may I submit for your kind consideration some suggestions regarding the role, which the National Institutions can play in that behalf. In my view:

- 1) There is an urgent need for evolving and putting in place a mechanism for channelising the grievances of the people, especially the vulnerable sections of our society by the National Human Rights Institutions. Their role is vital. Therefore, countries, which have not set up a National Institution so far, must do so without any further delay on the guidelines contained in the Paris Principles.
- 2) Once the mechanism is put in place, the National Institutions must, on their part, ensure speedy redressal of grievances brought before them. Neglect or delay in the consideration of such issues, often adds to the frustration of the people, making them even more cynical. The National Institutions need to generate a feeling amongst the citizens that it is a forum where the citizens shall be heard about their grievance. The hope of being heard can restrain a citizen from becoming a potential terrorist.
- 3) The National Institutions also need to focus on the socio-economic dimensions and related inequities in the society which provide a fertile ground for the growth of terrorism. Learning from each other's experience in that behalf would be rather useful. Therefore, greater co-operation between the National Institutions for that purpose is necessary.

- 4) The importance of the role of non-state actors for furtherance of the objectives of the National Institutions needs to be properly appreciated. National Institutions should step up the pace of dialogue and scope of joint partnerships with the non-governmental organizations. Such a linkage, our experience shows, bridges the gap between the government and civil society and helps in creation of public awareness.
- 5) Issues relating to Economic, Social and Cultural Rights and monitoring their implementation should form an important agenda for all National Institutions.
- 6) Networking between National Institutions and sharing of information and best practices between them can be very useful.

These are only some of the illustrative and not exhaustive suggestions and I wish also to add a disclaimer. Whether these suggestions can actually advance our fight against terrorism and addressing its causes or not shall have to be tested because the suggestions are aimed at making the National Institutions put their think-caps on to see what they can do to fight the menace of terrorism.

Friends, we need to strive for a world free of fear and oppression while remaining steadfast to our democratic values and adherence to the Rule of Law. We must act now. Let us remember the words of wisdom of the United Nations Acting High Commissioner for Human Rights, Mr. Bertrand Ramcharan, spoken at the Opening Session of the “Sub-Commission on Promotion and Protection of Human Rights” in Geneva in July 2003. He said:

“Whatever we may say about tomorrow..... the challenge of human rights protection is immediate and pressing” particularly in our struggle against terrorism.

Thank you for your patience.



## **Seventh International Conference of National Institutions for the Promotion and Protection of Human Rights**

**Seoul, Republic of Korea, 14 – 17 September 2004**

### **The Seoul Declaration**

The Seventh International Conference for National Institutions for the Promotion and Protection of Human Rights was devoted to the theme of upholding human rights during conflict and while countering terrorism. The Conference was organized by the National Human Rights Commission of the Republic of Korea from 14 to 17 September 2004 and arranged in consultation with the Chairperson of the International Coordinating Committee (ICC) of National Human Rights Institutions (NHRIs) with the support of and in cooperation with the Office of the United Nations High Commissioner for Human Rights, and with financial contributions from the Asia Pacific Forum of NHRIs and Agence Intergouvernementale de la Francophonie.

NHRIs express their gratitude to the National Human Rights Commission of the Republic of Korea for its excellent organization of the conference and acknowledge the stimulating presentations by the keynote speakers as well as the fruitful discussions and deliberations. Observers from non-governmental organizations (NGO) made a valuable contribution at a pre-conference forum and by actively participating in the conference itself. The conference was further enriched by the participation of the President of the Republic of Korea and the United Nations High Commissioner for Human Rights.

The Seventh International Conference for NHRIs hereby adopts the following Declaration:

*The Seventh International Conference for NHRIs,*

*Recalling* the universal instruments agreed upon by States to safeguard human rights and fundamental freedoms, particularly the Universal Declaration of Human Rights, the International Covenant on Economic, Social, and Cultural Rights, the International Covenant on Civil and Political Rights, and the Rome Statute of the International Criminal Court, and underlining the contribution they can make to international peace and security, alongside the Charter of the United Nations, as well as the relevant regional instruments,

*Recognizing* that these instruments make provisions for and require States to undertake measures





to protect the security of their populations, including from threats of an exceptional nature, but that this must be within the framework of respect for human rights, fundamental freedoms and the rule of law,

*Reflecting* on the severe and unprecedented human rights challenges posed to the international community and to individual States and their inhabitants by the threats of conflict, terrorism and counter-terrorism measures,

*Recalling* the United Nations International Convention for the Suppression of the Financing of Terrorism as well as the many relevant resolutions and declarations of United Nations organs relating to conflict and to the threat of terrorism, including, inter alia, the United Nations Millennium Declaration (General Assembly resolution 55/2), Security Council resolutions 12692 (1999), 1325 (2000), 1373 (2001) and 1456 (2003), General Assembly resolutions 49/60 containing the Declaration on Measures to Eliminate International Terrorism, 58/187 on the protection of human rights and fundamental freedoms while countering terrorism, and 58/174 on human rights and terrorism, and resolutions of the Commission on Human Rights as well as those of regional bodies,

*Expressing solidarity* with these bodies in calling upon States to ensure that any measure they take to combat terrorism fully complies with their obligations under international law, in particular international human rights law, refugee law, and humanitarian law,

*Welcoming* the guidance and jurisprudence on these issues provided by the human rights treaty bodies and special procedures, including the United Nations Human Rights Committee, especially its General Comment N° 29 (2001) on states of emergency, as well as the judgements and findings of regional organizations and mechanisms,

*Stressing* the particular role played by NHRIs as expressed in the Copenhagen Declaration adopted by the Sixth International Conference of NHRIs, regarding the provision of early warning of situations which risk escalating into genocide, ethnic cleansing or armed conflict,

*Recognizing* the unique role played by NHRIs in applying international human rights standards at the national level, thereby ensuring sustainability of human rights protection. Furthermore, the unique legislative foundation and pluralistic composition of NHRIs, in accordance with the Paris Principles, enable them to contribute to conflict resolution, including through dialogue between public authorities and civil society groups at national level,

*Urging* therefore the enhancement of the role and participation of NHRIs in the international human rights system,

## Annexure 17

*Declares that:*

1. Terrorism has a devastating impact on the full range of human rights, most directly the right to life and personal security. Respect for human rights and the rule of law are essential tools to combat terrorism. National security and the protection of the rights of the individual must be seen as interdependent and interrelated. Counter-terrorism measures adopted by States should therefore be in accordance with international human rights law, refugee law, and humanitarian law.
2. NHRIs have the mandate to protect and promote human rights in conflict situations as well as in countering terrorism. There is a need to strengthen the effective implementation of this mandate especially in light of the increased pressures against fundamental rights.
3. There is a need for increased cooperation and sharing of information and best practices, including the development of specific tools, among NHRIs at regional and international levels.

### I. General principles

4. NHRIs play a vital role in reviewing and commenting on the human rights aspects of security legislation and in emphasizing the importance of adopting long-term measures and policies to rectify inequity, injustice, inequality and insecurity, so as to reduce the potential for terrorism and violent conflict.
5. NHRIs should develop early warning mechanisms and related operational guidelines. This should be linked to encouraging States to put in place mechanisms for early warning and action to address intra-State and intra-community conflicts that could lead to grave violations of human rights.
6. NHRIs should examine violations of human rights committed by the State during violent conflict and advocate against the establishment of national ad hoc tribunals and decision making bodies. They should also examine infringements of rights by non-State actors in the context of violent conflict and NHRIs should identify potential areas of conflict in a timely and accurate manner.
7. Subsequently, NHRIs should provide advice on human rights and humanitarian law to conflicting parties, or otherwise apply, facilitate and support the utilization of alternative as well as traditional methods of dispute resolution, including mediation.
8. NHRIs and States should integrate these conflict resolution tools into plans, strategies and mechanisms for the peaceful and negotiated resolution of conflict. These strategies

should include elements of truth and reconciliation processes and define the role that NHRIs should play in this respect. Particular attention should be paid to the establishment of a victims' fund and payment of appropriate compensation.

9. NHRIs should act in a proactive way by placing human rights concerns in a broader societal context so as to focus not only on the manifestations of violent conflict but also on their underlying causes.
10. In time of conflict and in countering terrorism, NHRIs play an important role in promoting a human rights culture, equal opportunities and diversity. NHRIs should a fair and equitable representation of women.

## II. Economic, social and cultural rights

11. NHRIs should focus on inequities in society, including their socio-economic dimensions. The realization of economic, social and cultural rights can play a key role in preventing conflict and terrorism. There is a need to promote justiciability of these rights and to monitor discriminatory effects of counter-terrorism measures on the economic, social and cultural rights of vulnerable groups.
12. NHRIs should promote and protect economic, social and cultural rights as an indivisible part of the full spectrum of universal human rights, including a reinforced capacity to better guarantee the State's respect for its obligations under the International Covenant on Economic, Cultural and Social Rights.
13. NHRIs should call upon States to pay proper attention to issues of corruption endangering the enjoyment of human rights. NHRIs should encourage States to ensure basic needs, including food and shelter, thereby preventing the development of conditions that give rise to terrorism and conflicts.
14. NHRIs should call upon States to enforce the mechanism for fighting poverty according to United Nations General Assembly resolution (A/57/265) establishing the World Solidarity Fund.
15. NHRIs should call upon States to fulfil their obligations under the International Covenant on Economic, Social and Cultural Rights. NHRIs encourage states to ratify the Optional Protocol to the International Covenant on Economic, Cultural and Social Rights.

## III. Civil and political rights and the rule of law

16. NHRIs underline that States have the responsibility, and the duty under international

## Annexure 17

law, to protect their inhabitants from all forms of terrorism. In this relation, States should be encouraged to ratify the Optional Protocol to the International Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. NHRIs urge States to ratify the Rome Statute of the International Criminal Court and to adopt domestic legislation in line with the Statute.

17. NHRIs play an important role in strengthening and promoting the efficient protection of civil and political rights before a conflict breaks out as well as during and after conflict.
18. NHRIs should pay special attention to signs of xenophobia and discrimination and disproportionate limitations of human rights so as to anticipate conflict.
19. During conflict and in countering terrorism, any measures that may have an impact on the enjoyment of civil and political rights must be both necessary and proportionate. It is important for NHRIs to monitor the limited and justifiable application of such measures. NHRIs should demand of the State that counter-terrorism legislation is neither enacted in haste nor without prior public scrutiny. Furthermore, NHRIs should take the necessary measures to prevent violations of derogable and especially non-derogable rights, such as the fundamental requirements of due process and fair trial, respect for human dignity, freedom from torture and ill-treatment, and arbitrary detention.
20. In post-conflict settlements, NHRIs play a key role in investigating violations and protecting against impunity, as well as preventing the retroactive application of criminal laws.
21. In order to avoid abuse by authorities, NHRIs underline the importance of the principle of legality and precise legal definitions of terrorism and terrorism-related crime. Furthermore, NHRIs stress the need for remedies and judicial review in cases of alleged infringement of human rights in counter-terrorism measures.
22. NHRIs should engage in preventive activities, leading public interventions and debate, and raising awareness about both the origins of terrorism and the most effective and comprehensive responses by including human rights education for the judiciary, the public administration and security forces. Furthermore, NHRIs should stress the media's right to freedom of expression.
23. NHRIs must monitor violations of human rights in the implementation of counter-terrorism measures through periodic review, including their impact on minority communities and human rights defenders.

#### IV. Migration in the context of conflict and terrorism

24. Terrorism and situations of conflict have affected efforts to ensure protection of migrant workers and other persons who are outside their country of origin as well as those displaced within the borders of their country of origin.
25. International standards exist on the protection of migrant workers. Nevertheless, a majority of migrant workers are received in States that have not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.
26. NHRIs should promote and ensure the national implementation of international standards on migrant workers, refugees, asylum-seekers, internally displaced persons (IDPs) and victims of trafficking.
27. NHRIs should advocate the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, in particular among receiving countries, and engage more actively in the monitoring process by the treaty bodies when they consider issues relating to migrant workers and the particular issues facing migrant women and children. NHRIs encourage States to ratify the additional protocol to the International Convention of the Rights of the Child on children in armed conflict.
28. It is recommended that NHRIs from sending, transit and receiving countries should establish bilateral and regional cooperation among themselves to better address the issues of irregular migrants.
29. NHRIs should actively monitor the economic, social and political rights of refugees, asylum seekers, migrant workers and IDPs, including fair procedures, treatment by police and immigration authorities, conditions of detention, access to services, employment conditions and family reunification, in cooperation with the Office of the United Nations High Commissioner for Refugees and other United Nations and regional bodies, and NGOs.
30. NHRIs should promote programmes of human rights awareness for migrant workers, refugees, asylum-seekers, IDPs and victims of trafficking, and programmes of integration and reintegration, where applicable, especially for returning women migrants.

#### V. Women's rights in the context of conflict

31. NHRIs should play an important role in highlighting invisible and unacknowledged violence against women in the context of conflict. This violence is closely linked to

## Annexure 17

violence against women in everyday life, such as domestic and sexual violence. NHRIs should facilitate counselling for women suffering violence.

32. NHRIs should provide education and raise awareness on women's rights to further their economic self-sufficiency and independence.
33. NHRIs should have an important role in collecting data, investigating allegations and receiving complaints of violence against women during conflict.
34. There is a special need for NHRIs to protect and promote the rights of women refugees and internally displaced women. This should include providing a complaint mechanism, inspection of refugee and IDP camps and monitoring complaints from women in detention centres of other States waiting to receive refugee status, and from forcibly repatriation of women. NHRIs should take measures to protect women refugees and IDPs from being trafficked. NHRIs should contribute to the formulation and implementation of reconstruction and rehabilitation programmes with the participation of women.
35. Any commission of inquiry, truth or reconciliation commission set up as part of a peace process should address past widespread and systematic violence against women, and should have a fair representation of women.
36. During the negotiations for a political settlement of a conflict, States should enact constitutional provisions providing for equality and affirmative action.

## VI. The Seoul commitment

37. In order to implement this declaration, NHRIs hereby agree:
  - (a) To take all necessary action at the national level as prescribed by the declaration;
  - (b) To promote, where relevant, regional cooperation among NHRIs;
  - (c) To encourage their States to support the establishment of an effective mechanism to monitor the compliance of counter-terrorism measures with human rights standards in the United Nations;
  - (d) To report to the annual meeting of the ICC in April 2005 on national and regional actions taken;
  - (e) To request the ICC to identify ways in which it can further the implementation of this declaration.

**Letters from Chairperson, NHRC to the Minister for  
Human Resource Development, Government of  
India and the Chief Ministers/Administrators of all  
States/Union Territories Regarding Campaign  
Against Child Marriage**

D.O. No.8/3/95 – PRP&P

March 17, 2005

Dear Minister,

The Child Marriage Restraint Act, 1929 (CMRA) has been in force since 1929. The objective of the legislation has been to restrain solemnization of child marriages as it is punishable under the Act.

2. The Act has been in force for almost 75 years. However, it is unfortunate that the evil of child marriage continues to exist even today in a few States like Rajasthan, Chhattisgarh, Madhya Pradesh, Jharkhand, Bihar and Uttar Pradesh etc. It is on ‘*Akshya Trutiya*’, popularly known as ‘*Akha Teej*’ when hundreds of child marriages are performed in violation of the CMRA.

3. You would agree that the prevalence of the practice of child marriage is a stigma on the society. In order to eradicate this evil, there is need to generate public awareness so that the people at large are educated about the demerits of child marriage as well as the prohibition contained in the Act. Since the Department of Women and Child Development is the Nodal Department in the Ministry of Human Resource Development, I would request that a systematic effort should be made by your concerned Department in organising awareness programmes/campaigns to educate people as well as sensitise them through the print and electronic media on the scourge of child marriage to eliminate this evil practice.

With regards,

Yours sincerely,

Sd/-  
(A.S. Anand)

Shri Arjun Singh  
Minister for Human Resource Development  
Shastri Bhawan  
New Delhi – 110 001



## Annexure 18

D.O. No.8/3/95 – PRP&P

March 17, 2005

Dear

The Child Marriage Restraint Act, 1929 (CMRA) has been in force since 1929. The objective of the legislation has been to restrain solemnization of child marriages as it is punishable under the Act.

2. The Act has been in force for almost 75 years. However, it is unfortunate that the evil of child marriage continues to exist even today in a few States like Rajasthan, Chhattisgarh, Madhya Pradesh, Jharkhand, Bihar and Uttar Pradesh etc. It is on ‘*Akshya Trutiya*’, popularly known as ‘*Akha Teej*’ when hundreds of child marriages are performed in violation of the CMRA.

3. You would agree that the prevalence of the practice of child marriage is a stigma on the society. In order to eradicate this evil, there is need to generate public awareness so that the people at large are educated about the demerits of child marriage as well as the prohibition contained in the Act. I would request that a systematic effort should be made by the concerned Department in the States/Union Territories in organising awareness programmes/campaigns to educate people as well as sensitise them through the print and electronic media on the scourge of child marriage to eliminate this evil practice.

With regards,

Yours sincerely,

Sd/-  
(A.S. Anand)

To  
The Chief Minister/Administrators of all States/Union Territories

**Letter from the Secretary General, NHRC to the Secretaries,  
Ministry of Panchayati Raj and the Department of Women and  
Child Development as well as to the Chief Secretaries and  
Secretaries of the Department of Women and Child Development/  
Social Welfare of all States and Union Territories regarding  
campaign against Child Marriage**

D.O. No.8/3/95 – PRP&P

March 18, 2005

Dear Smt. Nayyar,

The Child Marriage Restraint Act, 1929 (CMRA) has been in force since 1929. The objective of the legislation has been to restrain solemnization of child marriages as it is punishable under the Act.

2. The Act has been in force for almost 75 years. However, it is unfortunate that the evil of child marriage continues to exist even today in States like Rajasthan, Chhattisgarh, Madhya Pradesh, Jharkhand, Bihar and Uttar Pradesh etc. It is on ‘*Akshya Trutiya*’, popularly known as ‘*Akha Teej*’ when hundreds of child marriages are openly performed in violation of the CMRA.

3. You would agree that the prevalence of the practice of child marriage is a stigma on society. In order to eradicate this evil, there is need to generate public awareness so that the people at large are educated about the demerits of child marriage as well as the prohibition contained in the Act. Since the Department of Women and Child Development (DWCD) is the Nodal Department in the Government of India, I would request that a systematic effort should be made by the DWCD in organising awareness programmes/campaigns to educate people as well as sensitise them through the print and electronic media on the scourge of child marriage so that the society at large may swerve away from this evil practice.

4. I would appreciate if the Integrated Child Development Services (ICDS) Scheme whereby the existent three tier system consisting of the Child Development Project Officers, Supervisors and Anganwadi workers could also be used to spread awareness against child marriages.

With regards,

Yours sincerely,

Smt. Reva Nayyar  
Secretary,  
Ministry of Human Resource Development  
(Department of Women & Child Development)  
Shastri Bhawan,  
New Delhi – 110 001

Sd/-  
(Nirmal Singh)

## Annexure 19

D.O. No.8/3/95 – PRP&P

Dated the 25 Feb., 2005

Subject:- Campaign against child marriage through PRI institutions from 1<sup>st</sup> March, 2005 till 22<sup>nd</sup> April, 2005 i.e. the date of Akshaya Teej.

Dear Shri Habibullah,

The National Human Rights Commission is concerned about the prevalence of child marriages across the country. It is disturbing to note that even mass-marriages are performed without paying heed to the legal and medical aspects of child-marriage. Legal measures need to be explored to prevent the same, however the more effective measure would be public awareness.

The Commission is therefore of the view that Department of Panchayati Raj should take up the campaign of building awareness to the PRI elected representatives at all levels and also to bring about public awareness. It is therefore, requested that a strategy may be worked out starting from 1<sup>st</sup> March, 2005 to carry out a nation wide campaign at panchayat, block and district levels. We would request you to send a copy of this to Commission.

A wide media campaign against child marriage need also be planned and it is requested that your department may like to take necessary action regarding this.

With regards,

Yours sincerely,

Sd/-  
(Nirmal Singh)

Shri Wajahat Habibullah  
Secretary,  
Panchayati Raj,  
Krishi Bhavan  
New Delhi

D.O. No.8/3/95 – PRP&amp;P

March 18, 2005

Dear

The Child Marriage Restraint Act, 1929 (CMRA) has been in force since 1929. The objective of the legislation has been to restrain solemnization of child marriages as it is punishable under the Act.

2. The Act has been in force for almost 75 years. However, it is unfortunate that the evil of child marriage continues to exist even today in States like Rajasthan, Chhattisgarh, Madhya Pradesh, Jharkhand, Bihar and Uttar Pradesh etc. It is on ‘*Akshya Trutiya*’, popularly known as ‘*Akha Teej*’ when hundreds of child marriages are openly performed in violation of the CMRA.

3. You would agree that the prevalence of the practice of child marriage is a stigma on society. In order to eradicate this evil, there is need to generate public awareness so that the people at large are educated about the demerits of child marriage as well as the prohibition contained in the Act. I would request that a systematic effort should be made by the concerned Department of the State Government/Union Territory in organising awareness programmes/campaigns to educate people as well as sensitise them through the print and electronic media on the scourge of child marriage so that the society at large may swerve away from this evil practice.

4. I would appreciate if the Integrated Child Development Services (ICDS) Scheme whereby the existent three tier system consisting of the Child Development Project Officers, Supervisors and Anganwadi workers could also be used to spread awareness against child marriages.

With regards,

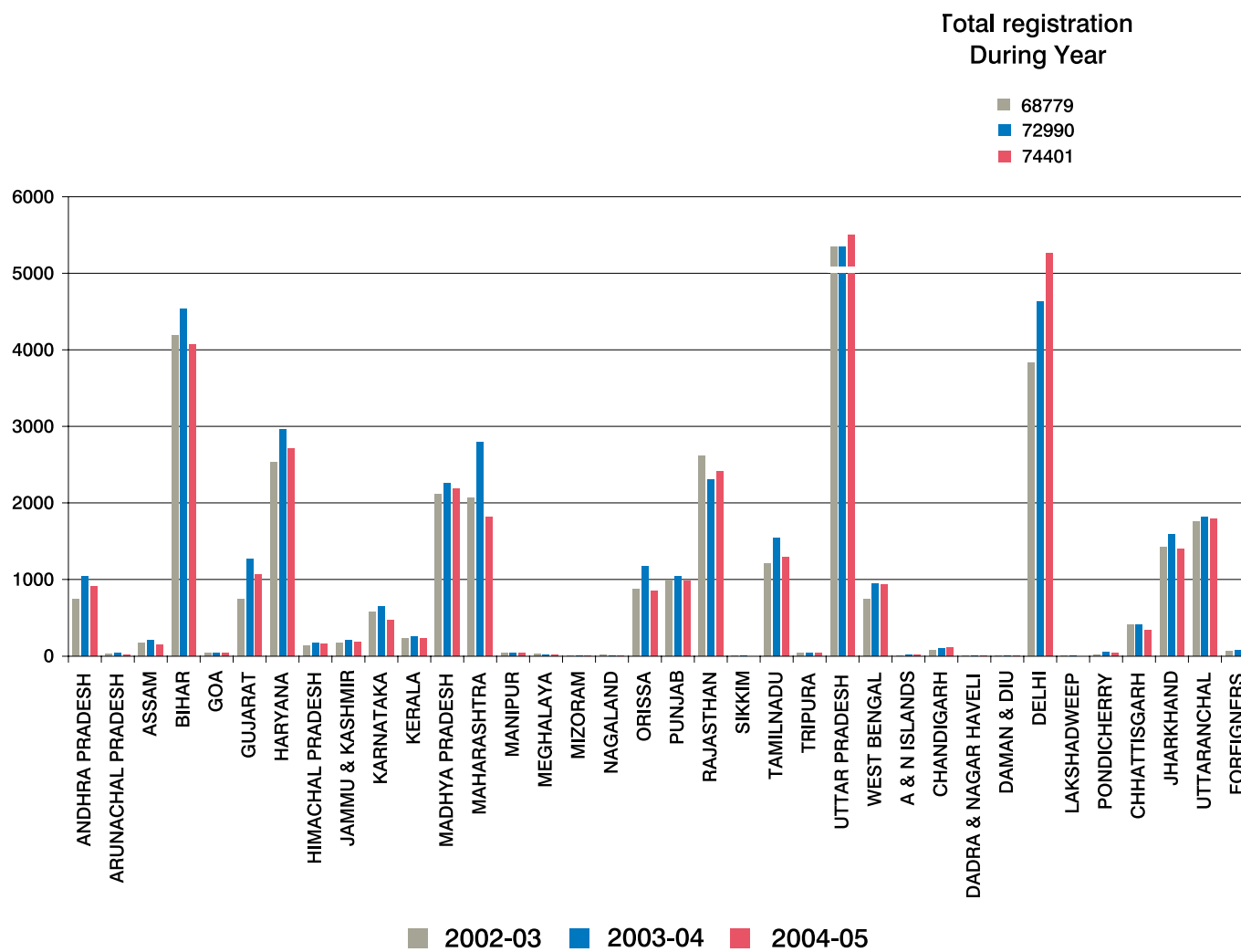
Yours sincerely,

Sd/-  
(Nirmal Singh)

To  
Chief Secretaries and Secretaries of Department of Women and Child Development/Social Welfare of all States/Union Territories

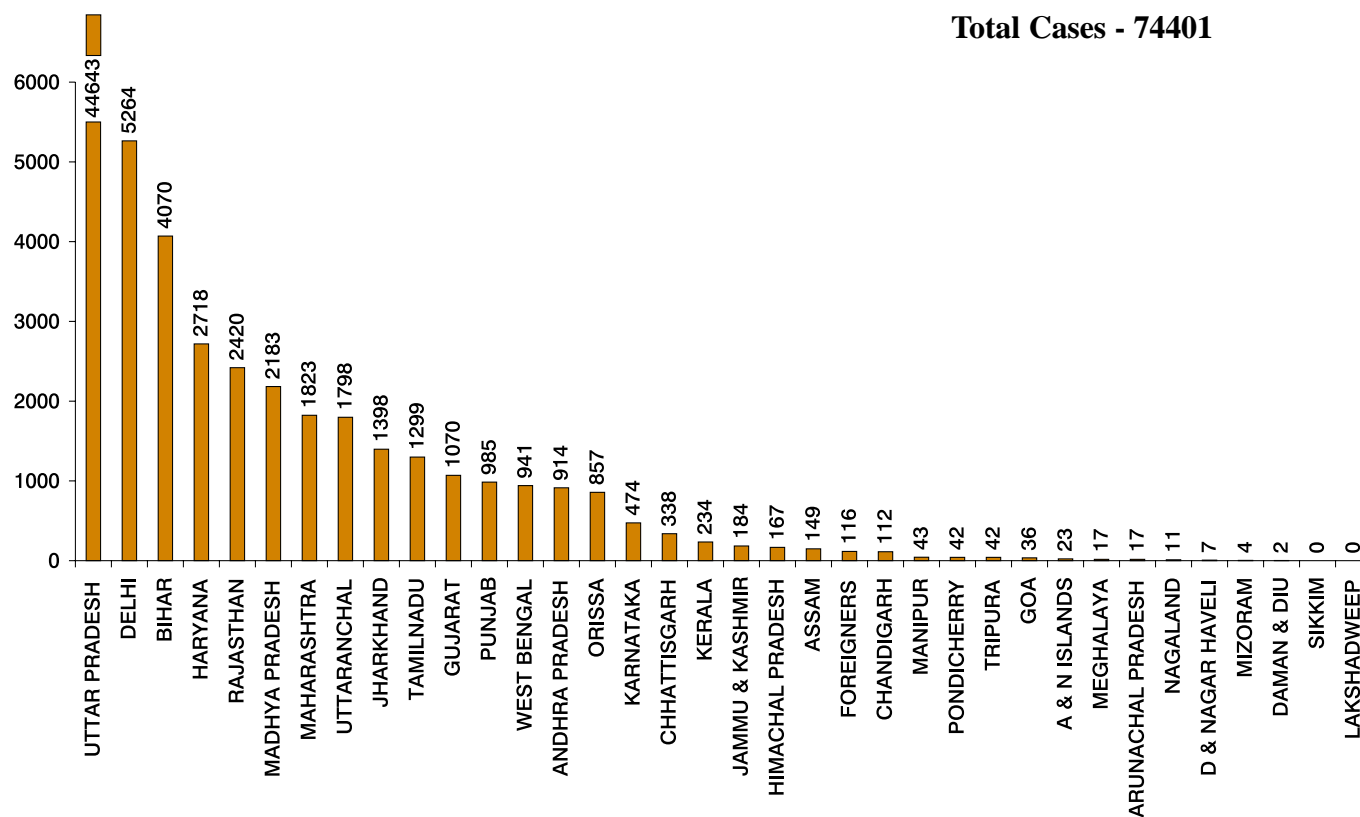
# List of Cases Registered During the Last Three Years

For details see Annexure-1 & 5



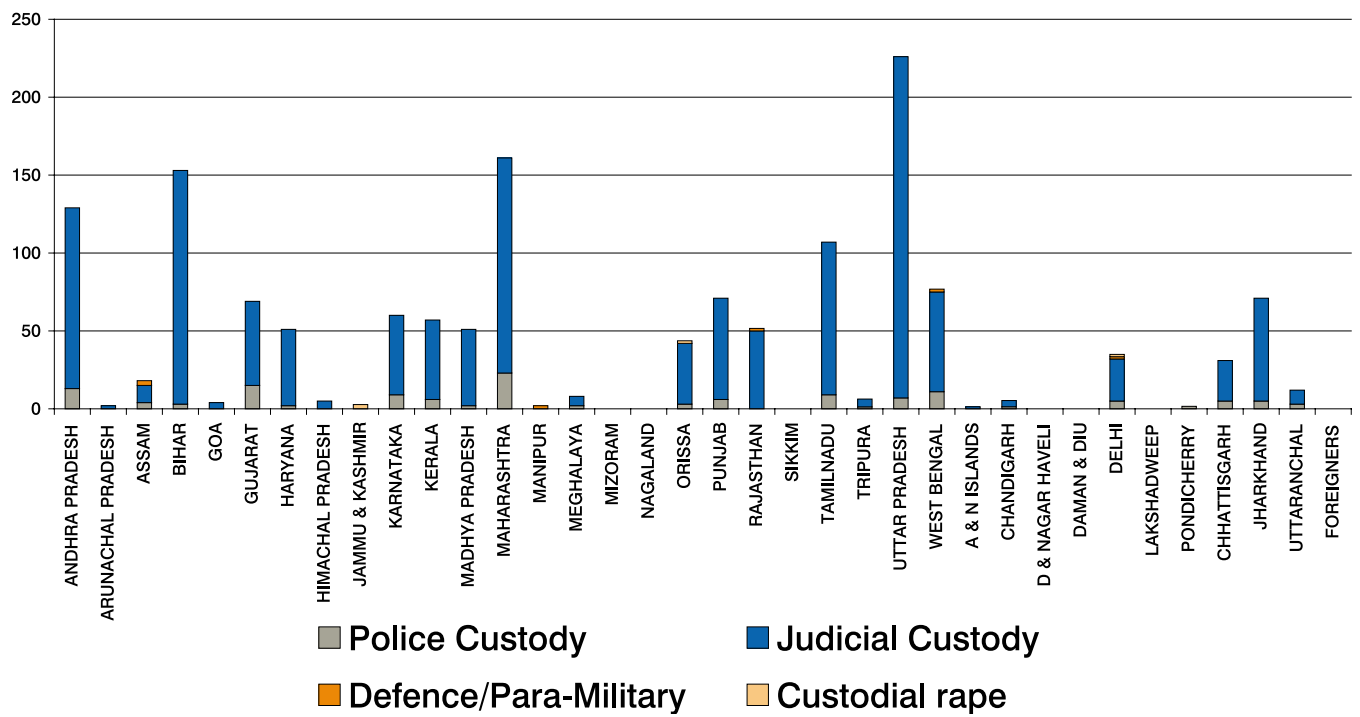
# State wise List of Cases Registered During 2004-2005

For details see Annexure-1 & 5



# State-wise List of Intimations Registered Relating to Custodial Death/Rape During the Year 2004-2005

For details see Annexure-1 & 5

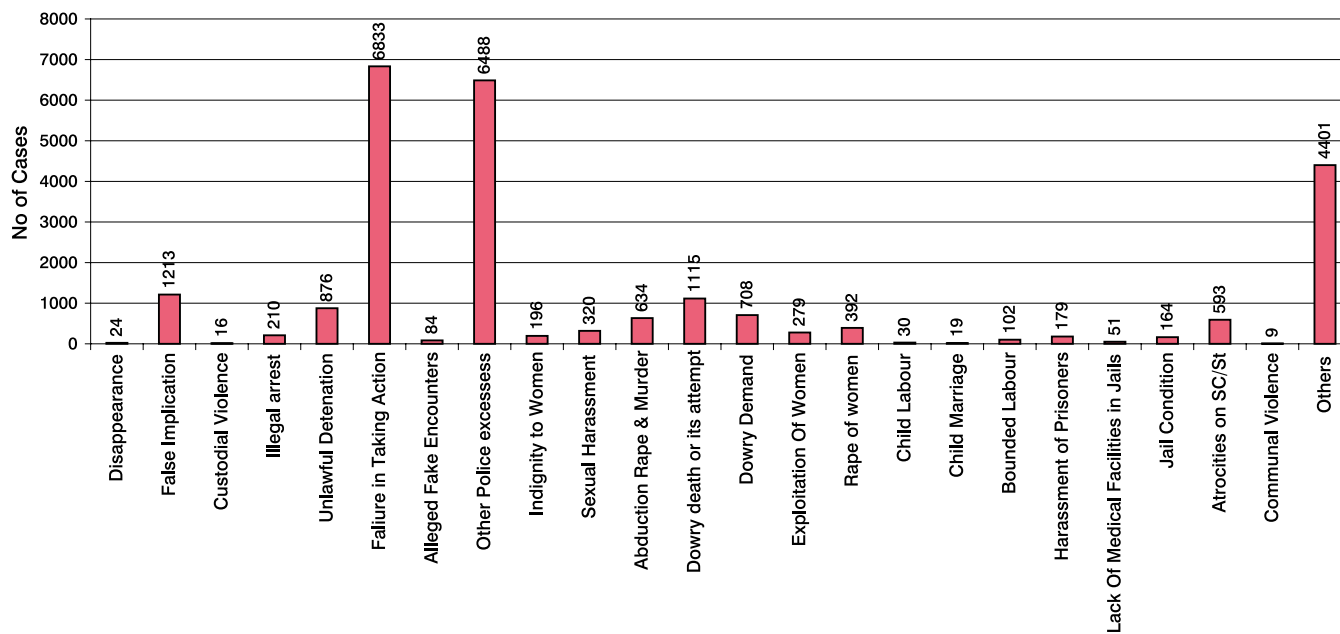




# Nature and Categorisation of the Cases Disposed of by the Commission During the Year 2004-2005

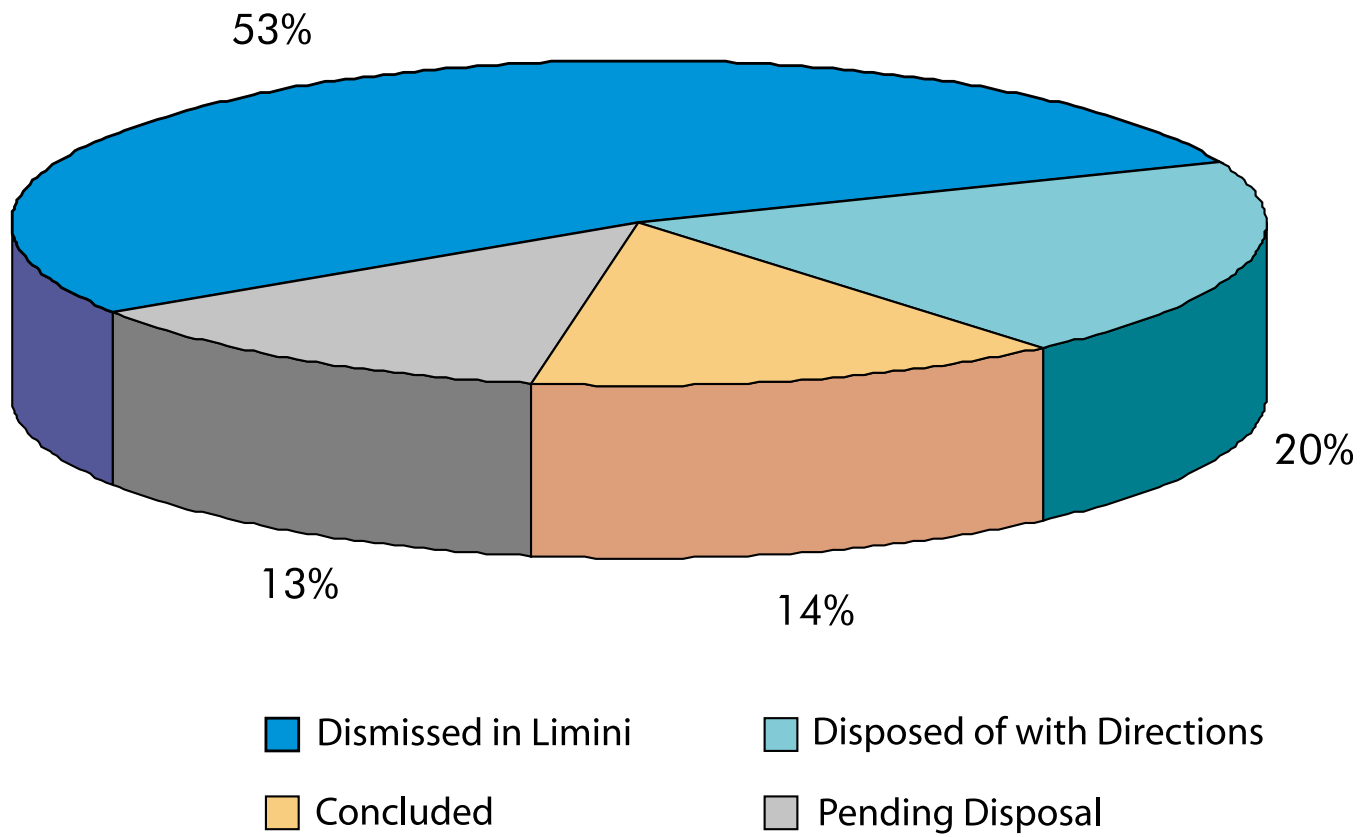
(Total Cases : 24936 )

For details see Annexure-3(a)to(c)



# Cases Disposed of/Pending Disposal by the Commission During the Year 2004-2005

For Details see Annexure-2

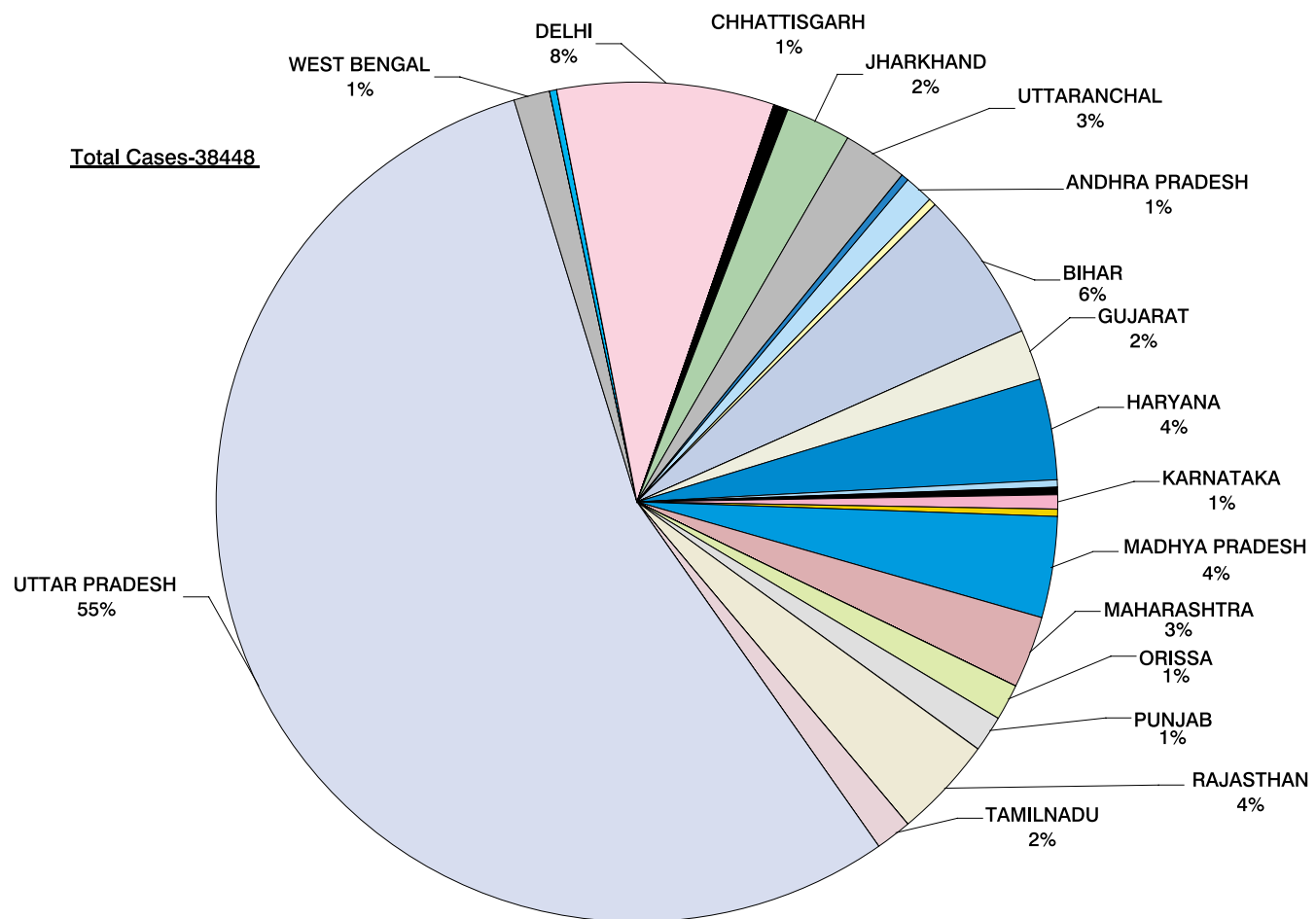




## Cases Dismissed in limini During the Year 2004-2005 States/UTS with a Dismissal Rate of More Than 1%

For Details see Annexure-2

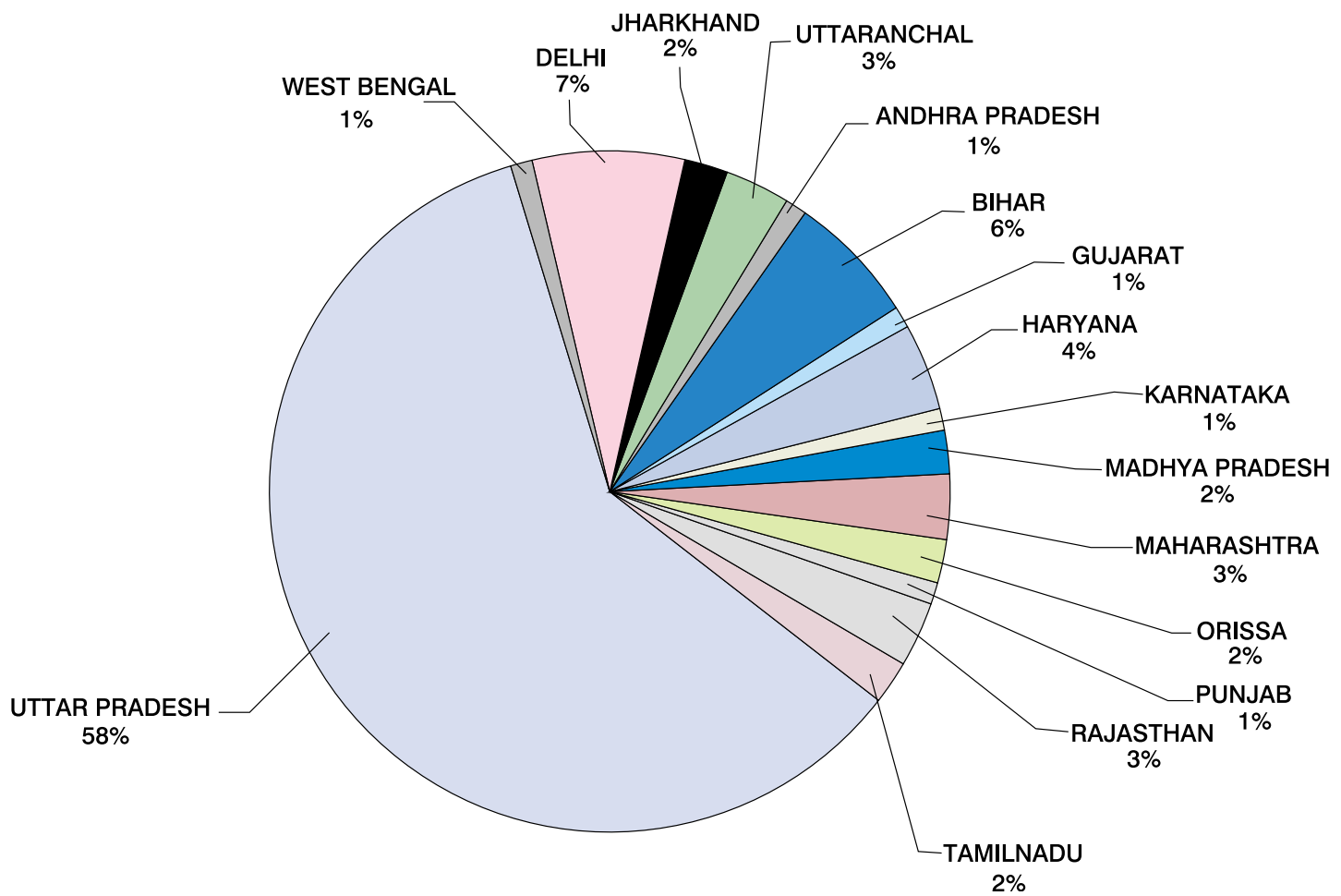
Total Cases - 38448



# Cases Disposed off with Directions During the Year 2004-2005 States/UTs with a Dismissal Rate of More Than 1%

For Details see Annexure- 2

Total Cases - 21465







## **National Human Rights Commission**

Faridkot House, Copernicus Marg  
New Delhi - 110 001, India

Fax: 91-11-23384863

e-mail: [covdnhrc.nic.in](mailto:covdnhrc.nic.in)

web: [www.nhrc.nic.in](http://www.nhrc.nic.in)

